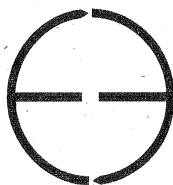


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California Council for Environmental and Economic Balance

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August 26, 2009

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Mr. Christopher Calfee
Special Counsel
California Natural Resources Agency
1017 L Street, Room 2223
Sacramento, CA 95814

Comments On Proposed Amendments to the California Environmental Quality Act (CEQA) Guidelines

Dear Mr. Calfee,

Thank you for the opportunity to submit comments on the proposal before the California Natural Resources Agency (CNRA) to amend the CEQA Guidelines.

The purpose of the Guidelines is to explain and implement the requirements of CEQA and the purpose of the Proposed Amendments to the CEQA Guidelines ("Proposed Amendments") is to provide guidance for consideration of greenhouse gas (GHG) emissions of a project subject to the CEQA review process.

The Proposed Amendments are a requirement of SB 97 (Dutton, 2007). The need for this guidance is driven by the enactment of California's Global Warming Solutions Act of 2006 (AB 32), and more specifically, the urgent need to improve the permitting process for projects affected by AB 32.

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit organization comprised of business, labor and public leaders, that seeks to achieve the state's environmental goals in a manner consistent with a sound economy.

CCEEB is an active participant in the implementation of AB 32 and recognizes the importance of the Proposed Amendments. As you may know, on February 2, 2009 CCEEB submitted comments on a Preliminary Draft of the Proposed Amendments prepared by the Office of Planning and Research (OPR). A copy of our February letter is attached hereto for your reference. We appreciate OPR's consideration of our earlier comments and are pleased to see the many improvements made to the Proposed Amendments now before the CNRA.



Since enactment of AB 32, no other CEQA topic has been more controversial than the manner in which GHG emissions are addressed in a CEQA document, including methods of determining significance, establishing thresholds of significance, and mitigating the unavoidable impacts of GHG emissions. Thoughtful guidance is clearly needed and CCEEB believes that the Proposed Amendments before the CNRA are a good start on that needed guidance. In particular, CCEEB appreciates that the Proposed Amendments would:

- Support a lead agency's discretion in determining the method for assessing the significance of a project's GHG impacts, including either quantitative or qualitative approaches, taking into consideration the context of the project (§ 15064.4(a));
- Direct a lead agency to consider the extent to which a project complies with regulations and control measures implementing GHG emission reduction plans when assessing the significance of GHG emissions, (§ 15064.4(b));
- Encourage a lead agency to consider thresholds of significance for GHG emissions previously adopted by other public agencies or recommended by experts, rather than attempting to reinvent the wheel (§ 15064.7);
- Amend the application of CEQA's "statement of overriding considerations" so that adverse environmental effects of GHG emissions can be considered in the context of region-wide or statewide environmental benefits in contrast to localized impacts (§ 15093);
- Add a new section to the Guidelines describing feasible means for mitigating GHG emissions to include off-site measures and offsets while at the same time steering clear of the debate over whether or not to prioritize mitigation measures according to proximity to the project site (§ 15126.4(c));
- Add a new section for "tiering" and streamlining the analysis of GHG emissions, including the ability to tier off of CEQA documents for GHG emission reduction plans and/or their implementing regulations and control measures (§ 15183.5); and
- Advise a lead agency to avoid double-counting the GHG emissions of energy consumed by a project if the energy source serving the project has already been analyzed and GHG impacts mitigated; and further by deleting the reference to "initial and life cycle energy costs." (Appendix F).

While all of these proposed changes are helpful, and CCEEB would strongly object to the weakening of any of these important changes, the CNRA should (1) adopt further amendments to the Guidelines supporting a clear path for AB 32-driven projects in the CEQA review process; and (2) add to the Initial Statement of Reasons (ISOR) a discussion of statutory options for improving the permitting process for projects with net GHG emission-reduction effects.

1. The Guidelines Need to Support a Clear Path for Permitting AB 32-Driven Projects.

The Proposed Amendments allow a lead agency, when assessing the significance of a project's GHG impact, to consider the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction of GHG emissions (Section 15064.4(b)). The California Air Resources Board's AB 32 Scoping Plan is the state's leading GHG emission reduction plan and should be expressly identified in the Guidelines as such.

The Proposed Amendments also allow a lead agency to “determine that a project’s incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program” (Section 15183.5(b)). Under AB 32, mitigation of GHG emissions is made possible through various means, including a cap-and-trade program. Mitigating a project’s GHG emissions through an AB 32 cap-and-trade program should be deemed adequate mitigation for CEQA purposes.

The AB 32 Scoping Plan includes a comprehensive set of GHG emissions-reduction strategies combining regulatory approaches, voluntary measures, and programs. Such strategies include, but are not limited to, development of renewable energy, more efficient freight transportation, use of combined heat and power technology, energy efficiency investments identified in audits of large industrial facilities, and the delivery of motor vehicle fuels meeting a low carbon fuel standard. Many of these strategies are also dependent on significant infrastructure improvements becoming available to help deliver the intended GHG emissions-reduction benefits. The CEQA review of GHG emissions associated with infrastructure projects necessary to implementing an AB 32 strategy should be considered in the context of those projects necessary to implementing an AB 32 strategy and not viewed in isolation.

The successful and timely development of projects necessary to the implementation of these strategies is essential to achieve the required emissions reductions. GHG emissions associated with projects required by regulations, measures, or programs identified in the AB 32 Scoping Plan should be considered less than significant by virtue of their contribution to the state’s overarching plan for GHG emissions reductions.

In the interest of supporting efficient CEQA review of projects necessary to the implementation of AB 32, the Guidelines should be amended to (a) expressly recognize the AB 32 Scoping Plan as an overarching context for the review of GHG emissions; (b) clearly recognize that participation in a cap-and-trade program satisfies the mitigation requirements of CEQA; (c) clarify that a project in compliance with adopted regulations or requirements includes the infrastructure necessary to implement the type of projects described in the AB 32 Scoping Plan and otherwise controlled under AB 32 regulations, measures or programs, and additional mitigation measures are not required for such infrastructure; and (d) the GHG emissions of projects required by AB 32 should be deemed less than significant.

2. ISOR Discussion of Possible Statutory Improvements Is Needed

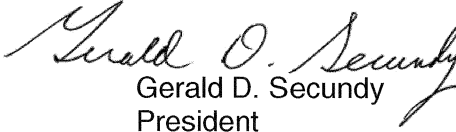
The traditional CEQA review process considers the assessment of environmental impacts of a specific project and, when necessary, identifies mitigation measures to protect the natural and human environment in a defined geographic area. The Proposed Amendments have taken a cautious approach to incorporating GHG emissions into the CEQA Guidelines, especially in light of the controversies over how to assess the significance of GHG emissions and how best to mitigate GHG impacts. But fundamental differences between the policy objectives of CEQA and AB 32 make the review of GHG emissions through CEQA awkward at best.

The CNRA should include in the ISOR a discussion of how the policy objectives of CEQA and AB 32 differ, a description of the ambitious agenda and timeline for implementing the AB 32 Scoping Plan, and identify possible statutory improvements to CEQA to remove, or at least reduce, uncertainties in the analysis of GHG impacts, especially for projects driven by AB 32.

For example, the Legislature may wish to consider an amendment to CEQA that identifies projects for which GHG impact analysis is unnecessary.

I appreciate your consideration of these comments and look forward to the CNRA's final amendments to the Guidelines and the ISOR. Should you have any questions, please contact Allan Lind at 916-503-2250.

Sincerely,


Gerald D. Secundy
President

cc: Hon. Darrell Steinberg
Hon. Dennis Hollingsworth
Hon. Bob Dutton
Hon. Karen Bass
Hon. Sam Blakeslee
Hon. Mary Nichols, Chair, Air Resources Board
Ms. Cynthia Bryant, Office of Planning and Research
Mr. Bob Lucas, Lucas Advocates
Mr. Jackson R. Gualco, The Gualco Group, Inc.
Ms. Kendra Daijogo, The Gualco Group, Inc.
Mr. Allan Lind, Allan Lind & Associates

Attachments:
CCEEB to Bryant, February 2, 2009
CCEEB to Nichols, January 16, 2009
CCEEB to Nichols, August 15, 2008
CCEEB to Nichols, November 7, 2007

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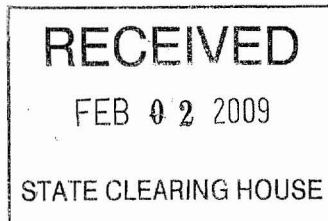
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February 2, 2009

Ms. Cynthia Bryant, Director
Governor's Office of Planning and Research
PO Box 3044
Sacramento, CA 95812-3044



RE: CEQA Guidelines for Greenhouse Gas Emissions

Dear Ms. Bryant:

On behalf of the California Council for Environmental and Economic Balance (CCEEB) we appreciate the opportunity to make a few brief comments on the Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions. The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit organization of business, labor and community leaders that seeks to achieve the State's environmental goals in a manner consistent with a sound economy.

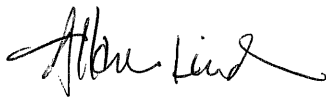
AB 32 will change the way California does business now and for the foreseeable future. The current CEQA efforts attempt to deal with only a fraction of what may become a significant obstacle to timely AB 32 compliance by all manner of California's public and private sectors. Attached is a copy of our January 16, 2009 correspondence to the CA Air Resources Board that expounds upon this concern in greater detail.

CCEEB must also register its opposition to a proposed amendment addressing cumulative impacts [proposed paragraph (f), Section 15130 Preliminary Draft Guidelines]. This paragraph states that assessment of the cumulative impacts of a project's greenhouse gas emissions should take into consideration "*the effects of past projects, the effects of other current projects, and the effects of probable future projects.*" Since the impact of GHG is, in fact, global, this broad statement sets an impossible standard for cumulative impact analysis, CEQA already mandates that cumulative project impacts be considered. The difficulty with the proposed amendment language is that describing all past, current, and probable future projects may be interpreted as requiring a list of all other projects that produce GHG in order to analyze cumulative impacts associated with GHG emissions with no clear indication of how far a field one might have to go to satisfy all projects producing GHG. It would be impossible to develop such a list of all projects associated with climate change impacts. The proposed amendment

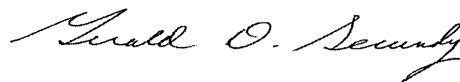
is virtually certain to form the basis for unwarranted legal challenges of a CEQA document over the adequacy of any discussion of the cumulative effects of greenhouse gas emissions. We recommend instead that this proposed amendment be deleted from future CEQA Guideline drafts and a new concept be established that fairly defines a reasonable and manageable standard for assessing the cumulative effects of GHG.

We appreciate the opportunity to comment on this important issue currently being considered by the Office of Planning and Research. If you have any questions or would like to discuss in greater detail, please contact Allan Lind at 916-503-2250, Bob Lucas at 916-444-7337 or Gerald Secundy at 415-512-7890.

Sincerely,



Allan Lind
Air Project Manager



Gerald Secundy
President

Att. (CCEEB's Letter to CARB re CEQA and AB 32 Implementation dated 1-16-09)

cc: Victoria Bradshaw, Cabinet Secretary, Office of the Governor
Darren Bouton, Deputy Cabinet Secretary, Office of the Governor
John Moffatt, Deputy Legislative Secretary, Office of the Governor
Linda Adams, Secretary, CA Environmental Protection Agency
Mary Nichols, Chairman, Air Resources Board
Cindy Tuck, Undersecretary, CA Environmental Protection Agency
James Goldstene, Executive Officer, Air Resources Board
Tom Cackette, Chief Deputy Executive Officer, Air Resources Board
Chuck Shulock, Chief, Office of Climate Change, Air Resources Board
Michael Peevey, President and Members of the CA Public Utilities Commission
Paul Clanon, Executive Director, CA Public Utilities Commission
Michael Chrisman, Secretary, Resources Agency
Michael Gibbs, Assistant Secretary for Climate Change, Cal/EPA
Jackson R. Gualco, The Gualco Group, Inc.
Robert W. Lucas, Lucas Advocates

regulating GHG emissions, and its authority under the CEQA statute to provide statewide guidance on the application of CEQA to projects. Since that time OPR has been given the responsibility to adopt new CEQA guidance regarding the general inclusion of GHG considerations in CEQA environmental review documents.

We now believe that in recognition of the state's obligation to facilitate permitting related to AB 32 compliance, CARB should (a) prepare a master or program EIR or equivalent for each Rule adopted to implement AB 32, that assesses the potential environmental impacts of projects that will be undertaken to reduce GHG emissions in accordance with the Rule, so that potential GHG-related issues and other topics of regional or statewide impact are fully evaluated (and mitigated if necessary) and need not be separately evaluated for each project; and, (b) explore those circumstances under which a CEQA categorical exemption could be applied to certain categories of projects designed to implement a Rule to achieve GHG reductions in accordance with AB 32 requirements. These recommendations are made within the context of the normal application of CEQA such that projects that exhibit unusual circumstances may require reconsideration of an exemptions or analysis of potential localized impacts. We believe that CARB's authority to undertake these actions can be found in Government Code Section 21081(a)(2).

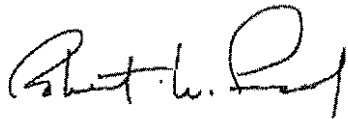
CCEEB remains greatly concerned that a lack of attention to the need to facilitate CEQA compliance and permit issuance could easily undermine the logic of placing great reliance on command-and-control rules to achieve AB 32's objectives. Companies are being given regulatory requirements to reduce GHG emissions in a particular manner and on a particular schedule. These companies will also require special regulatory attention and relief to achieve these mandates in a timely and cost-effective manner.

We are particularly concerned about potential litigation under CEQA, that could seriously delay project implementation up to and beyond 2020. In this regard, CARB should consider the Proposition 65 litigation provisions, which provide for a pre-litigation notice and screening process with the Attorney General and local District Attorneys, including a mandatory certificate of merit, as a means to contain frivolous lawsuits while allowing the AG or DA to proceed with those of merit (see Health and Safety Code section 25249.7(d)). AB 32 implementation is likely to also benefit by such a process, and CCEEB encourages CARB to consider recommending enactment of such legislation.

Additionally, CARB's October 24, 2008 Preliminary Draft Staff Proposal suggests that GHG emissions associated with power purchased for an industrial project should be considered in connection with the CEQA review of that project. (Attachment A, "Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the CA Environmental Quality Act", at 10.) Because AB 32 will regulate electricity generation directly at the source of the emissions within California, or otherwise account for these emissions associated with imported power, we believe this recommendation will give rise to "double counting" of emissions. Only emissions directly associated with a proposed project, not purchased power, should be considered as project-related environmental impacts for CEQA purposes.

CCEEB appreciates this opportunity to comment. If we can be of further assistance or provide any additional information please do not hesitate to contact Bob Lucas at (916) 444-7337.

Sincerely,



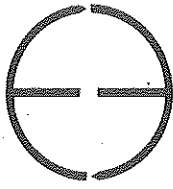
Robert W. Lucas
Climate Change Project Manger



Gerald D. Secundy
President

cc: Victoria Bradshaw, Cabinet Secretary, Office of the Governor
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John Moffatt, Deputy Legislative Secretary, Office of the Governor
Cynthia Bryant, Director of the Office of Planning and Research,
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August 15, 2008

Mary Nichols, Chair
California Air Resources Board
1001 'I' Street
Sacramento, CA 95814

RE: Comments on the Climate Change Draft Scoping Plan

Dear Mary:

The California Council for Environmental and Economic Balance (CCEEB) supports the general direction of the California Air Resources Board's (CARB) Climate Change Draft Scoping Plan ("Scoping Plan") released on June 26th, and appreciates the opportunity to provide comment. The Plan strikes a balance between the use of a cap and trade policy design in reducing greenhouse gases (GHG) in the state, and the use of direct measures in areas, which are more effective due to potential market failures and alternative policy goals, such as transportation fuels. However, for California to be a leader and set a global model for GHG emissions reductions, the Plan should select the most cost-effective set of policies.

CCEEB is concerned that the proposed approach still remains more expensive than necessary because of optimistic assumptions of the effectiveness of proposed direct measures, proposed restrictions on the use of offsets and an over-reliance on efforts to achieve co-benefits at the expense of cost effectiveness. Thus, CCEEB believes CARB should clarify overall design elements, expand the allowed uses of offsets, address CEQA and co-benefits issues as early as possible and re-calibrate the balance between co-benefits and cost-effectiveness.

I. Overall Program Design

While CCEEB recognizes that the staff has chosen to defer consideration of cost effectiveness until actual rules are developed, we continue to believe that the criterion of cost effectiveness should be kept in the forefront of CARB consideration as it fine tunes the Scoping Plan and further develops program detail. As such, we believe it is important to carefully review assumptions of effectiveness of direct measures under consideration to avoid committing to unnecessarily high amounts of capital for measures for which cost effective



technology has not yet been developed. The Scoping Plan should anticipate design prices above which reductions would be deemed too costly, and therefore trigger a parallel track of compliance where the sources covered by too-costly measures are placed into a market system.

Anticipate Shortfalls and Reassign the Anticipated Reductions to Cap and Trade

Concomitantly, we also believe that potential emission reduction shortfalls should be anticipated where possible. Tools such as reverse engineering should be employed to test the viability of assumptions regarding the timing and amounts of emission reductions. For example, the Scoping Plan assumes timely emissions reductions from a high-speed rail line. These assumptions should be tested by reviewing the specific steps of project development. In this case, the public needs to approve a bond, right-of-ways need to be purchased, the rail line and ancillary facilities need to be built, equipment purchased and tested, and ridership needs to be developed. The staff needs to assess whether the emission reductions assigned to this measure are based upon reasonable assumptions. Should these steps not proceed on schedule, CARB must recognize that the reductions in GHG emissions will not be realized. That shortfall in emission reductions should be assigned to the cap and trade system and not recouped by additional command and control measures.

Develop Economic and Performance Indicators

The Scoping Plan needs to develop indicators to measure the program's impact on the economy as well as its impacts on GHG reductions. Indicators should include such items as statewide employment figures, the KW cost of electricity, the per gallon retail cost of gasoline, the market price of carbon, the availability of technology improvements, and the number of permits in the queue for project approvals to meet AB 32 compliance obligations, etc.. These indicators need to be reviewed on a regular basis (in any case, more frequently than the five-year period specified for overall Scoping Plan review) as a report card/audit/assessment tool to identify potential problems before they grow unmanageable.

Do Not Consider Additional Direct Measure for Sources Within Cap and Trade

CARB appears to be considering additional direct measures on facilities in the cap and trade program through either the audit process or the ongoing sectoral review process. CCEEB strongly urges CARB to not add new and additional mandatory measures for industries that are part of the cap and trade program. The cap and trade program is already a mandatory requirement for these facilities. CARB has already taken a close look at each sector's ability to reduce GHGs and concluded that a 35 MMTCO₂e cap and trade program is appropriately sized. These findings were shared during public meetings on major sectors in March 2008. The findings demonstrate that many of the rulemakings CARB could consider for direct regulation of each sector either depend on unproven and untested technologies or generate a very small amount of emissions, reduced in many cases at high price and low cost effectiveness.

By comparison, the cap and trade program will incent facilities to look for emissions reductions in their facilities and try new technologies that are appropriate for their facility's specific configuration. Direct regulation will not have the ability to enhance these actions, and will instead undercut these efforts and unnecessarily imperil the cap and trade program. Imposing other mandatory regulations on sources already covered by a cap does not achieve more emission reductions; it just redistributes reductions among sectors.¹

Maximize Available Efficient Transportation and Energy Choices

Reducing California's GHGs is essential, but forcing high-cost, currently unproven technologies too early can damage the California economy and the AB 32 program. In order to achieve cost effective GHG reductions early under AB 32, the 2008 scoping plan measures should include the best options available now, even as ARB continues to push for innovations in the future. Maximizing freight rail, cogeneration power facilities, and public transit can achieve GHG reductions across the state now while benefiting the economy and containing costs in the early years of the AB 32 program.

At the Scoping Plan Workshops, stakeholders such as the regional transit agencies and proponents of combined heat and power facilities observed that those transportation and energy alternatives are known to be significantly more efficient and should be encouraged to grow now as a cost-effective strategy for decreasing greenhouse gasses in the early years. As a result, GHG emissions from transit, freight rail, and cogeneration power may actually grow to a limited degree while the overall emissions from their respective sectors decline due to the greater efficiency of transit, freight rail, and cogeneration power compared to other means of transportation and power generation. Given the projected population growth in California during the next 12 years, efficiency improvements in the transportation and power sectors are an essential strategy for California meeting its GHG reduction goals cost effectively and efficiently from now until 2020.

II. Offsets are Critical to Program Success

Limitations on Offsets will Undermine, Not Advance, the Environmental Effectiveness of California's Efforts

Emissions leakage, which undermines the environmental effectiveness of climate regulations, will be a serious concern in the context of any California (or even regional) regulation. The higher the costs of complying with those regulations, the greater the level of leakage. Therefore, if climate regulations impose significant costs on the Californian economy, many of the perceived in-state emission reductions that those regulations generate may simply represent leakage of emissions out-of-state. By increasing the cost

¹ Judson Jaffe, Analysis Group, Presentation to CCEEB Summer Issues Seminar. An Economic Perspective on the Effects of Blending a Cap-and-Trade Program with Other Mandatory Requirements. July 24, 2007.

of climate regulations, limitations on the use of offsets may increase emissions leakage and would thereby undermine the environmental effectiveness of California's efforts. In contrast, by reducing the cost of climate regulations, the use of offsets that satisfy CARB qualitative criteria offers an opportunity to simultaneously reduce emissions outside of California (the offset itself) while at the same time reducing emissions leakage from California. So, allowing broader use of offsets may actually lead to a net reduction in GHG emissions relative to policies that prohibit or restrict the use of offsets.

Quantitative Limits are Counterproductive

CARB has indirectly proposed a 10% limit on offsets. CCEEB believes such a quantitative limit has more costs than benefits, and urges CARB to reconsider such limits. Limitations on the use of offsets will clearly increase the cost of climate regulations within California. Some argue in favor of such limitations on the grounds that they will ensure that California enjoys more in-state benefits from, for example, reductions in co-pollutants. Yet, unlike the clear costs of limiting offsets, the benefits are far more speculative. Even if broad use of offsets is allowed, significant emission reductions will be achieved in California. The use of offsets will just avoid the need for the highest-cost emission reductions in California. While those highest-cost reductions that could be avoided through the use of offsets would otherwise have placed a significant burden on the Californian economy if they had to be undertaken (i.e., if offsets were not allowed), it is pure speculation as to whether those reductions would have offered significant co-benefits, such as from reductions in co-pollutants. For example, the highest-cost emission reductions that could be avoided through offsets may be reductions that would have otherwise occurred at a clean-burning natural-gas fired power plant in a part of California without significant air quality concerns. In sum, as a policy instrument, limits on the use of offsets would represent an incredibly blunt and ineffective means of addressing localized environmental concerns.

Limitations on Offsets Do Not Lead to More Innovations

The other concern CARB has voiced is that without limits on offsets, innovation will not occur in California. Limitations on offsets do not lead to more innovations. The kind of significant innovations that are essential to combating climate change will depend on clear, long-term price signals that indicate that a value will be placed on breakthrough technologies decades into the future. These long-term price signals will be present with or without offsets. A firm's willingness to invest in breakthrough research and development also will depend on it believing that there will be an enduring and stable commitment to reducing GHG emissions.

As an important cost-containment mechanism, offsets can ensure that California does not expose itself to the kinds of unexpectedly high costs that would jeopardize Californian's commitment to climate policy, and would thereby jeopardize the value of investments in innovation. In this respect, by creating a more stable regulatory environment, the use of offsets can actually spur innovation. Also, offsets can spur innovation by placing a value on emission reduction opportunities that would otherwise fall outside of the coverage of a

cap-and-trade or other regulations. Absent the use of offsets, there will be little incentive to invest in a number of potentially promising means of reducing emissions that cannot be easily covered by a cap-and-trade system or by prescriptive regulation.

Offsets Should be Allowed as Alternative Compliance to Direct Measures

For the same reasons we believe that CARB staff should revisit its initial position against allowing the use of offsets as an alternative compliance mechanism for direct measures. This is especially true in light of the indicated high reliance on technology forcing requirements where neither the cost nor the effectiveness of the technology, or its ability to come to commercial fruition, is known at this time.

EUAs and CERs Should be Recognized in California and Used for Compliance Purposes

Certain international carbon products should be recognized as useable for AB 32 compliance purposes. Specifically, European Union Allowances, or EUAs (the tradable unit under the European Emissions Trading System (EUETS) which equals 1 tonne of CO₂ and issued by the EU) should be useable. So too should issued Certified Emission Reductions, CERs, which represent 1 tonne of CO₂ equivalent reductions. CERs are issued under the Clean Development Mechanism (CDM) and result from project-based emission reduction activities in developing countries. In the EUETS issued CERs can be used in lieu of EUAs to satisfy compliance obligations (subject to caps defined in regulations issued by the country within which the buyer is located). Prior to the use of such credits for AB 32 compliance purposes, CARB should be afforded the opportunity to request and review information relative to the credit's creation, quantification, monitoring, and verification.

CARB should be required to disallow the use of any credit if it determines that the credits (and the program under which they are created) are not compatible with California's needs as defined by AB 32. Concomitantly, if CARB is unable to make such a showing, it should be required to approve the use of such credits. Note, in order to demonstrate that the credits are enforceable by the CARB (or its surrogates, typically, the APCDs), it is likely that some sort of memorandum of understanding will need to be executed that requires: (1) the credits to be transferred to a CARB controlled EUETS account; (2) the credits to be kept in the host country's inventory; and (3) provides for adequate enforcement mechanisms to ensure that the creating source maintains the reductions.

III. Permit Assistance and CEQA

The plan should recognize that the state has an obligation to facilitate the issuance of permits and streamline CEQA and other processes that would otherwise impede the ability to bring projects to fruition. Port efficiency, refinery retooling and electrical transmission projects are prime examples of the types of projects that will be required to be performed in a timely manner in order to successfully implement AB 32. Entangling these projects in years of local debate and litigation will only serve to frustrate entities in

the various sectors that are doing their best to comply with the emission reduction mandate of AB 32.

In our comment letter on the Scoping Plan dated November 7, 2007, we suggested the CARB use its authority under AB 32 as the state agency responsible for regulating GHG, and its authority under the CEQA statute to provide statewide guidance on the application of CEQA to projects. We are aware that the South Coast Air Quality Management District has also made such a recommendation. We urge the Board to reconsider its position on this suggestion.

Since that time the Governor's Office of Planning and Research has been given the responsibility to adopt new CEQA guidance regarding the inclusion of GHG considerations. In recognition of the state's obligation to facilitate permitting related to AB 32 compliance, we urge CARB to work closely with OPR in this effort.

CARB should (a) prepare a master or program EIR or equivalent, that assesses the potential impacts of CARB's adoption and implementation of the Scoping Plan and of the projects that will be undertaken to reduce GHG emissions in accordance with the Scoping Plan and CARB's AB 32 regulations, and (b) recommend to OPR that it include in its CEQA guidance a Categorical Exemption for all projects undertaken by facility or equipment owners and operators to reduce GHG emissions in accordance with the obligations to be imposed pursuant to the Scoping Plan.

We also recommend that CARB make the following recommendations to OPR with regard to its CEQA Guidelines for projects that may not be included within the scope of the master or program EIR or the categorical exemption for projects undertaken to comply with AB 32 requirements:

- Consistent with existing CEQA guidelines and case law, the baseline for determining the potential climate change impacts of a project should be "current conditions" at the time of project approval. Given the variability inherent in many sectors of the economy, the "current conditions" should allow for the use of average or peak GHG emissions during several previous years for determining a GHG emissions baseline.
- OPR need not establish a numerical threshold for determining whether a project's GHG emissions are significant for CEQA purposes. Instead, OPR should establish qualitative thresholds (as authorized by CEQA Guidelines section 15064.7) that provide that projects which meet GHG standards adopted by CARB or other agencies to implement AB 32 will not have a significant impact on GHG emissions or climate change, and that projects that improve energy efficiency or decrease the carbon intensity of a particular sector of the economy do not have a significant effect on climate change even if project-specific GHG emissions will increase.

Lack of attention to the need to facilitate CEQA compliance and permit issuance could easily undermine the logic of placing great reliance on command and control to achieve AB 32 objectives.

IV. Re-calibrating AB 32 Criteria is Essential

While we understand CARB is mandated to maximize co-pollutant reductions, ARB is also equally mandated to minimize program costs. The Plan appears to be heavily skewed toward maximizing reductions in co-pollutants without equal attention to cost effectiveness, technological feasibility or cost-minimization efforts in general. As CCEEB noted in its June 20, 2008 letter, there are no less than 15 criteria that CARB must weigh to meet the requirements of AB 32. To date, it appears that one criterion, co-benefits, has received the most attention from CARB staff. While this is important, it cannot be the overriding concern. We would have hoped, for example, that additional economic impacts data, cost effectiveness data and other such information would have been made available concomitant with the release of the Scoping Plan.

Co-Benefits

Discussion of co-benefits needs to be decoupled from calculations of cost effectiveness. The cost effectiveness calculation should not be modified by estimates of co-benefits or it will lose its meaning and the resultant number will not be comparable to that for other direct measures or for the identical direct measures developed for use in different parts of the state, or other states. Acceptable levels of cost effectiveness should be addressed as part of the Scoping Plan to avoid inconsistent application of the term in the development of the different rules.

The Scoping Plan also needs to anticipate the need to separate the implementation of co-benefits from the implementation of AB 32 to avoid potential conflicts between local jurisdictions and the State. Local governments have jurisdiction over stationary sources of criteria pollutants. This jurisdiction should be recognized as another reason not to attempt to mingle requirements for co-benefits directly with CARB's jurisdiction over GHG emissions.

Carbon Fees and Other Revenue

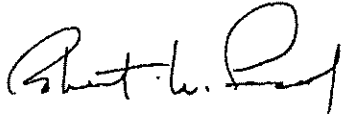
AB 32 authorizes the Board to adopt "...a schedule of fees to be paid by the sources of greenhouse gas emissions..." and to be available for purposes of carrying out the act. This broad authorization covers everything from a carbon tax, to a fee, to revenues under a cap and trade type system. CCEEB does not object to new revenues being raised to pay for program costs and administration but has serious reservations concerning utilization of the laudable goal of reducing greenhouse gas emissions in order to tackle ancillary program goals with a somewhat tenuous or nonexistent relationship to the original intent of AB 32.

CARB's Scoping Plan Workshop presentations have listed "environmental co-benefits, local government incentives, consumer rebates, community benefits and worker transition assistance" all as possible recipients of GHG emission reduction program revenues. We are extremely concerned at the overly broad nature of these

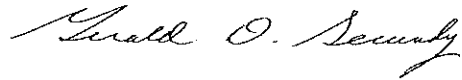
characterizations. Without regard to CARB's authority to collect revenues for such use, we would prefer that such a discussion of program revenues be restricted to a more narrow interpretation of purposes of carrying out the act. Efforts that equalize the burden of complying with program objectives (by industry or communities) or those that provide investment incentives to lower emissions are certainly legitimate recipients of program revenues. Efforts and programs that aim to accomplish separate goals are not legitimate.

Thank you for considering CCEEB's views and suggestions. We remain available in person or by phone to expand upon our comments. Bob Lucas can be reached at 916-444-7337 and Jerry Secundy at 415-512-7890.

Sincerely,



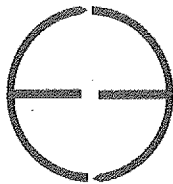
Robert W. Lucas
Climate Change Project Manager



Gerald D. Secundy
President

cc: Dan Dunmoyer, Cabinet Secretary, Deputy Chief of Staff, Office of the Governor
Darren Bouton, Deputy Cabinet Secretary, Office of the Governor
Cynthia Bryant, Director of the Office of Planning and Research,
Office of the Governor
Linda Adams, Secretary, CA Environmental Protection Agency
Cindy Tuck, Undersecretary, CA Environmental Protection Agency
James Goldstene, Executive Officer, Air Resources Board
Tom Cackette, Chief Deputy Executive Officer, Air Resources Board
Chuck Shulock, Chief, Office of Climate Change, Air Resources Board
Michael Peevey, President and Member of CA Public Utilities Commission
Paul Clanon, Executive Director, CA Public Utilities Commission
Michael Chrisman, Secretary, Resources Agency
Michael Gibbs, Assistant Secretary for Climate Change, Cal/EPA
Jackson R. Gualco, The Gualco Group, Inc.

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California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

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November 7, 2007

Ms. Mary Nichols, Chair
Air Resources Board
1001 'I' St.
Sacramento, CA 95812

RE: Development of The Scoping Plan

Dear Mary:

As a result of the enactment of AB 32, Health and Safety Code Section 38561 requires the Air Resources Board to "...prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020...." The statute also directs the board to consult with all state agencies and, in particular, the CA Public Utilities Commission and the CA Energy Resources Conservation and Development Commission on elements of the plan relating to "electrical generation, load based-standards or requirements, the provision of reliable and affordable electric service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner."

In order to further assist the board in this task, the statute again directs the board to: identify reduction and compliance measures; consider local regional and international programs; evaluate economic and non-economic benefits; account for proportional GHG emission contributions; give credit for voluntary and sequestration actions; conduct workshops in environmental justice communities and update the plan every five years.

The California Council for Environmental and Economic Balance (CCEEB) submits this letter to provide you its views on the important components of a Scoping Plan.

Market Based Compliance Measures - § 38561(b)

It is CCEEB's position that no element of a scoping plan is more critical than the establishment of a successful market mechanism, specifically a cap and trade program.

In Executive Order S-20-06, Governor Schwarzenegger directed the state to implement a market-based protocol to achieve the goal of reducing greenhouse gas emissions in California. The Governor recognized that such an aggressive environmental goal can be most effectively and efficiently achieved using a market-based approach. By directing emissions reduction activities in the most efficient and effective way, market-based mechanisms allow the state to meet its goal with the lowest economic impact on the state economy.

Success with market-based emissions regulations is driven by encouraging behavior through market signals rather than through explicit directives, often described as "harnessing market forces." A properly designed and implemented market-based program will allow any emission abatement program to be realized at the lowest overall cost to society while promoting the development of new ideas and technology.

Cap-and-trade systems exert constant pressure on participants to reduce emissions while allowing flexibility in the process. This encourages companies to meet (or exceed) their emission targets in the most innovative and cost-effective way possible. By promoting innovation, cap-and-trade systems can help slow the pace of global warming while spurring the development of new technologies and industries that will contribute to the long-term growth of the California and U.S. economies.

Any program must create the regulatory confidence necessary to encourage investments; and as such, CCEEB suggests that other principles and design factors be given high consideration as creation of a program that allows California entities to document and validate voluntary early actions is an important programmatic element that the Board should emphasize. As with other aspects of program design, data reporting and verification must anticipate integration into other regional, national and international programs, and as such, should not be overly burdensome, ensure consistent data security and similar data elements.

By contrast, conventional "command-and-control" regulations provide little if any flexibility with regard to how firms achieve their environmental goals. Such regulations require firms to implement a pollution-control burden that may not be the most cost-effective means of meeting program goals. Regulations establish uniform standards for all participants and in many cases specify the actual equipment firms must use to comply. In addition, command-and-control regulations tend to freeze the development of technologies that might otherwise result in greater levels of control. With little or no financial incentive for businesses to exceed their control targets, firms are not encouraged to develop new ideas and technologies. Moreover, it is not realistic to expect that command and control regulatory packages covering a wide spectrum of

sectors with their attendant variances, exceptions, enforcement mechanisms, etc. can be expected to achieve the total emission reduction goals mandated by AB 32.

In CCEEB's view it is critical that any command and control requirements deemed necessary to assist in the achievement of AB 32 emission reductions do not disrupt or undermine a market-based program by starving the market or creating a buyers-only program.

CCEEB also believes that emission reductions that exceed the requirements of command and control or reductions achieved through a market-based program should be fully fungible to allow trading of those emission reductions among sectors. Furthermore, we believe these credits should be available for trading without regard to borders.

We are confident that environmental and economic objectives are attainable if we promptly enact an economy-wide, market-driven approach that includes, among other things, a well-crafted cap-and-trade program that places specific limits on greenhouse gas emissions, robust cost-containment measures, complementary policies and measures, and a fully funded research, development, demonstration and deployment program for climate-friendly technologies.

Voluntary Actions - § 38561(f)

CCEEB believes that a market program will do a better job of finding the most cost effective and technologically feasible ways of accomplishing GHG emission reductions than government through extended rulemaking. Nevertheless, if CARB is going to proceed to attempt to develop all 44 additional early action measures as regulations, as its October 25, 2007 Board proceeding would indicate, it is in everyone's interest to first establish "cost effectiveness and technology feasibility" criteria that can be applied consistently to all potential measures, and to do so as soon as possible. Otherwise, potential voluntary GHG emission project developers will be in an uncertain position and will not likely go forward with investments that would be at risk of being invalidated if their measure were to be adopted as a regulation. As a result, there is a substantial chance that the state will miss potential early reductions of GHG. Additionally, the absence of clear criteria for cost effectiveness and technological feasibility could lead to the adoption of requirements that lead to leakage.

CCEEB urges CARB to provide expedited approval of offset and voluntary early action protocols long in advance of the start of regulatory standards, so that regulated entities have an incentive to begin the planning and investment to get projects on line given the long lead time for project development. Offset and trading markets in regulated commodities do not develop overnight. Markets require long ramp-ups and systems development and investment to gain the necessary interest and liquidity.

AB 32 requires that CARB give credit for voluntary early emission reduction actions and provides that the agency develop a methodology for granting credit without a lengthy rulemaking pursuant to the Administrative Procedure Act. The Legislature clearly intended that rapid innovation to reduce GHG be an integral part of the implementation

of AB 32. We encourage CARB to work with stakeholders to define a process by which credit for voluntary early emission reduction actions is as efficient as possible. Such a process will give business the certainty to make investment decisions in GHG reduction projects now. This is a critical step the state can make in reaching its goal because these early measures will reduce GHG years before regulations can be promulgated. The voluntary early action process should be used by CARB to encourage real and rapid reductions in GHG emissions and as a means to gather experience upon which to build incentives for such reduction projects into its final rules.

Many industries in the state for a variety of reasons, some economic, some practical and some out of a desire to reduce greenhouse gas emissions have already begun the process of converting to lower GHG emission equipment and stationary plants. Examples of these actions are plentiful and range from converting from diesel generators to electrical, utilization of solar irrigation pumps and technologies, switching from current high emission fuels to new Biofuels, to replacing older equipment and buildings with more energy efficient units to name a few. These efforts need and deserve to be given credit for the reduction in GHG emissions they deliver prior to any baseline being calculated and established as a reference point for any future reduction mandates.

Consideration of Regional and International Programs - § 38561(c)

There are a number of emission reduction programs on the regional or international level for the board to review. All have program variations and degrees of success in their attempts to control emissions. Whether the subject is acid rain or greenhouse gases, the RECLAIM program in Los Angeles, the EU-ETS system in Western Europe, the Western Climate Initiative, or the Regional Greenhouse Gas Initiative of the East Coast all bear close scrutiny, review and evaluation.

AB 32 is truly “landmark” legislation and must tie in to future regional, national and international efforts to affect climate change. For that reason actions taken to implement this program need to look beyond California-specific nuances and address issues in a manner that prevents leakage through cost effective and technologically feasible implementation requirements as well as through a robust market and offset program that is attractive and functional to entities in California, other states and the nation and designed to be incorporated into national and international programs.

Proportionality of GHG Emissions - § 38561(e)

AB 32 requires that, “In developing its [scoping] plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions...” As the board deliberates this requirement a final determination must be made of the statewide total of all emissions. Once this has been accomplished which will not be an easy task in itself, a proportional burden determination can be made.

From this total, the share of each sector would be equal to its share of the established emissions total. Each sector would be responsible for a proportional part of the total emission target. Since the transportation sector is responsible for approximately 41% of total emissions, their burden of the reductions would, likewise, be 41%. The electrical power sector approximately 21%, and so forth. In setting the baseline however, it is important that some mechanism be developed to give credit for recently instituted GHG reduction requirements and for sectors that have demonstrated GHG emission reductions since the 1990 baseline. In no circumstances should one sector be required to subsidize the proportional burden of another sector.

The disadvantage of this approach is that it does not take into account the potential for emission reductions, technical innovation, cost-effectiveness of reductions and expected economic development within the sectors. However, its' primary advantage is that it is relatively simple, straightforward, transparent and avoids the problem of data availability.

Evaluate Economic and Non-economic Impacts § 38561(d)

In an apparent attempt to comply with this section of AB 32, the California Environmental Protection Agency acting through the Climate Action Team (CAT) released its' "Updated Macroeconomic Analysis of Climate Action Strategies Presented In The March 2006 Climate Action Team Report" this past September 7.

CCEEB believes that macroeconomic analysis is essential in the development of a scoping plan and additional elements of planning and assessment of the implementation of AB 32. Macroeconomic analysis is a powerful tool for evaluating the costs of various regulatory alternatives and should play an important role in the ultimate selection of the final regulatory approach. While we appreciate the effort undertaken to update the emission reduction estimates of the climate strategies presented in the 2006 CAT Report, we are concerned that the macroeconomic impact analysis presented is not as robust and complete as was expected. We trust that as your work progresses that the ARB will revisit the CAT's assessment of the NRM-NEEM Model and incorporate its results in your deliberations.

The outcome of the MRN-NEEM model is more in line with economic modeling of cap and trade programs, which consistently demonstrate that performance standards and other programs outside of a pure cap and trade program are not as economically efficient, unless addressing a specific market failure (such as building construction and leasing). It also demonstrates that assumptions made by policy makers about the existence and scope of market failures can have significant implications on policy costs. By dismissing these outputs, and not using them to assess the outcomes of the other models, ARB is missing an opportunity to get a broader picture of the impacts of a set of non-market-based policies.

CCEEB does not support one model over another. However, we believe that the ARB should be fully informed as it considers policy choices in developing its scoping plan.

Excluding the results of one of the most sophisticated economic models available today because it is designed to function optimally by computing cost and benefits rather than inputting assumptions of costs and benefits, deprives the state of the use of a powerful tool that can provide valuable insight into the economic implications of difficult policy choices.

CEQA Application

While clearly unanticipated at the time of enactment of AB 32, the application of the California Environmental Quality Act (CEQA) has since been raised as an issue in numerous projects and in remedial legislation – and should be addressed by ARB as an element of the Scoping Plan. Even at this early stage in the AB 32 process, affected entities are already attempting to market their emission reductions to assist others in complying with CEQA, many months before ARB develops the full Scoping Plan. Additionally, this year the legislature enacted a budget trailer bill mandating that the Governors Office of Planning and Research (OPR) develop guidelines to assist public agencies in the mitigation of GHG emissions or the effects of GHG's as required under CEQA.

CEQA generally requires lead agencies to analyze the significant environmental effects of projects prior to their approval, and to mitigate, or address, those effects where feasible. AB 32, however, requires the ARB to adopt rules and regulations to achieve cost-effective and technologically feasible reductions in GHG emissions. AB 32 could not be clearer in placing the responsibility and jurisdiction regarding GHG measures with ARB:

“CHAPTER 4. Role of State Board

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.”

Yet, the State Attorney General has now jumped ahead of the AB 32 process by actively challenging several major development projects throughout California based on inadequate CEQA review for failure to take into account the GHG emissions potentially resulting from the project. During the period between April and August of 2007, 48 CEQA documents submitted to the OPR State Clearinghouse contained some discussion of GHG emissions as an environmental impact of those projects. These projects varied from oil refinery expansions and habitat restorations to large housing projects. Statewide guidance on key CEQA questions, such as level of significance, is needed now to avoid a patchwork of different determinations in different areas of the state. CCEEB believes that it is in the state's interest to avoid CEQA determinations that may undermine voluntary early actions, forego immediate GHG reductions and go beyond the legislative intent of AB 32.

Organizations such as the CA Air Pollution Control Officers Association, the League of California Cities and the CA State Association of Counties are already in the process of developing recommended guidelines for CEQA compliance with GHG emissions reductions. They recognize that CEQA itself provides that public agencies should look to ARB for leadership and sound policy in integrating CEQA with AB 32:

“**21081.** Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

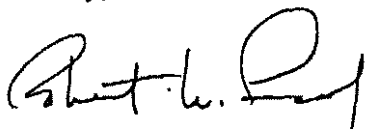
(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”

(Ca Public Resources Code; emphasis added).

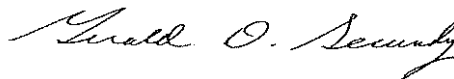
Therefore, as an element of the Scoping plan, CCEEB would encourage CARB to confirm its “**responsibility and jurisdiction**” for GHG mitigation for all projects at all facilities covered by the AB 32 programs and Scoping Plan and also to be cognizant of the far reaching impacts of GHG emissions reduction strategies on economic development projects in California. It’s impact on future land-use decisions made by the myriad of local government entities within the state’s borders dictate that extreme caution be exercised in the integration of CEQA into the framework of AB 32 and that ARB take the lead as part of its responsibility and jurisdiction under AB 32.

CCEEB offers these comments as recommendations and suggestions to the Board as it embarks upon the difficult task of developing and implementing a scoping plan that will have enormous impacts on the economic, social and political life of California for many years to come. If we can be of further assistance please feel free to call us at anytime.

Sincerely,



Robert Lucas
Climate Change Project Manager



Gerald D. Secundy
President

cc: Dan Dunmoyer, Deputy Chief of Staff, Office of the Governor
Brian Prusnek, Deputy Cabinet Secretary, Office of the Governor
Linda Adams, Secretary, CA Environmental Protection Agency
James Goldstene, Executive Office, Air Resources Board
Cindy Tuck, Undersecretary, CA Environmental Protection Agency
Eileen Tutt, Deputy Secretary, CA Environmental Protection Agency
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B. B. Blevins, Executive Director, CA Energy Commission
Michael Gibbs, Assistant Secretary for Climate Change, CA/EPA
Jackson Gualco, The Gualco Group, Inc.