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**Catherine H. Reheis-Boyd**

Executive Vice-President and Chief Operating Officer

August 26, 2009

Christopher Calfee, Special Counsel  
ATTN: CEQA Guidelines  
California Resources Agency  
1017 L Street, #2223  
Sacramento, CA 95814

Re: Proposed CEQA Guideline Amendments Relating to Greenhouse Gas Emissions

Dear Mr. Calfee:

On July 3, 2009, the California Natural Resources Agency (“Resources Agency”) issued “Proposed Amendments to the Guidelines Implementing the California Environmental Quality Act to address Greenhouse Gas Emissions” (“Proposed Amendments”). The Proposed Amendments were issued in accordance with the directive contained in California Public Resources Code § 21083.05, added to CEQA<sup>1</sup> by Senate Bill 97 (“SB 97”) in 2007. This letter provides the Western States Petroleum Association’s (“WSPA”) comments on the Proposed Amendments.

WSPA is a non-profit trade organization representing twenty-eight companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy products in California and five other western states. Our organization is dedicated to working toward ensuring that consumers continue to have reliable access to petroleum and petroleum products through policies that are socially, economically and environmentally responsible.

WSPA has a significant interest in the implementation of California’s Global Warming Solutions Act of 2006 (“AB 32”). Our interest, as relevant to the Proposed Amendments, is related to the manner in which those Amendments attempt to evaluate and mitigate impacts from Greenhouse Gas (GHG) emissions pursuant to CEQA.

Generally, WSPA believes the Proposed Amendments accurately reflect that the unique global nature of climate change dictates that the manner in which project-specific impacts from GHG emissions are evaluated pursuant to CEQA be somewhat distinct from, and inherently more flexible than, the evaluation of other environmental impacts.

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<sup>1</sup> The California Environmental Quality Act, Pub. Res. Code § 21,000 et. Seq, as implemented by the State CEQA Guidelines (“CEQA Guidelines”), 14 Cal. Code Regs. § 15,000 et seq.

Unlike impacts from criteria pollutant emissions, there does not appear to be a scientific basis linking GHG emissions from a particular project to specific physical, localized environmental effects. Impacts from GHG emissions must be evaluated in a significantly larger context than most environmental impacts under CEQA.

To evaluate accurately an individual project's impacts on climate change, the project must be viewed in the context of the statewide reductions targeted under AB 32, as well as statewide, or at least, sector-wide GHG emissions. The Proposed Amendments as presented generally reflect this unique reality.

In particular, proposed Sections 15064(h)(3) and 15064.4 of the Draft Guidelines recognize that lead agencies need discretion when evaluating impacts from GHG emissions. They also recognize lead agencies should be able to rely upon important qualitative criteria that might demonstrate that a project's GHG emissions do not result in a significant impact pursuant to CEQA.

We believe that such a qualitative evaluation should include consideration of whether a project will result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint.

WSPA appreciates that the Proposed Amendments recognize lead agencies should have the discretion to conclude that a project's asserted incremental contribution to a cumulative effect is not cumulatively considerable if the project will meet the requirements of a previously approved plan or mitigation program.

But, WSPA believes that any CEQA Guidelines governing GHG emissions should recognize the importance of the AB 32 Scoping Plan adopted by the California Air Resources Board.

The Scoping Plan provides a blueprint for how the state will achieve the GHG reductions needed to meet the AB 32 mandate. Therefore, projects for sources within sectors covered by the GHG measures and reductions referenced in the Scoping Plan should be able to rely on those mandated measures and reductions when determining whether the projects result in a significant environmental impact pursuant to CEQA.

WSPA is also pleased the Proposed Amendments acknowledge, in draft Section 15093(d), that given the unique nature of global climate change, lead agencies should have discretion to consider asserted local effects in the context of region-wide or statewide benefits.

We note that, when evaluating project-specific GHG emissions in such broader context, local agencies must still base any determination of significant effects on substantial evidence. They do not have the discretion to burden individual projects with mitigation measures or conditions designed to achieve reductions greater than those required to mitigate such projects' asserted cumulative contribution to climate change.

While WSPA is generally supportive of the Proposed Amendments, we believe there are certain areas in which the Proposed Amendments can be improved. For example, for purposes of determining significance, lead agencies should have discretion to evaluate reductions in GHG emissions achieved via compliance with non-AB 32 state and federal mandates (e.g., Clean Air Act programs).

Lead agencies should also have discretion to evaluate overall GHG emission reductions achieved from an equipment upgrade and/or replacement in the context of statewide, or at least sector-wide, GHG emissions, even if the upgrade might result in slight CO<sub>2</sub> emission increases..

WSPA suggests the following revisions be made to Sections 15064(h) (3) and 15064.4 to reflect this necessity<sup>2</sup>:

Section 15064(h)(3):

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) which provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located; or other state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that, when implemented result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan or program, the lead agency should explain how the particular requirements in the plan or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. ~~If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.~~

§15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions.

(a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:

(1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; or

(2) Rely on a qualitative analysis or performance based standards.

(b) A lead agency may consider the following when assessing the significance of impacts from greenhouse gas emissions on the environment:

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<sup>2</sup> WSPA's suggested revisions are shown in **bold, double underscore** for insertions, and strikethrough (~~strikethrough~~) for deletions.

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions; or other state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that, when implemented result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint. Such regulations or requirements must be adopted by the relevant public agency through a public review process and must include specific requirements that reduce or mitigate the project's incremental contribution of greenhouse gas emissions. ~~If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.~~

These same issues are relevant to the consideration of mitigation measures.

The factors that constitute feasible mitigation for purposes of determining whether a project's GHG emissions should be required to go through the CEQA review process, should be evaluated based on several criteria. These include the totality of the circumstances related to a particular project's or facility's or the State's overall increase in energy efficiency, or decrease in the carbon intensity of the underlying economic activity, or of the state's overall carbon footprint.

Further, with regard to Section 15126.4(c)(2), WSPA is concerned that by categorizing project features, project design and other measures that are incorporated into a project as feasible mitigation, the Proposed Amendments imply a project that includes such features or measures is considered significant by default.

WSPA believes the opposite presumption should be used. A project that incorporates project features, project design and other measures that are incorporated into the project to reduce substantially energy consumption or GHG emissions should be presumed to be insignificant for purposes of CEQA.

WSPA suggests that proposed Section 15126.4(c) be revised as follows to address these concerns:

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means of mitigating greenhouse gas emissions that may include, but not be limited to:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision; or compliance with state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint.

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F. Inclusion of such project features, project design, or other measures as a component of

the project does not create a presumption that the project would result in significant environmental effects.:

- (3) Off-site measures, including offsets, to mitigate a project's emissions;
- (4) Measures that sequester greenhouse gases; and
- (5) In the case of the adoption of a plan, such as a general plan, long range development plan, or greenhouse gas reduction plan, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

Finally, in Section VII(a) of Appendix G, the Proposed Amendments currently propose to evaluate a project's impacts based in part on whether the project would "[g]enerate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance." The use of the word "any" in this criterion could potentially be read to undermine a lead agency's ability to rely on qualitative factors to determine significance.

WSPA believes this issue is fundamental to an accurate evaluation of a project's impacts to climate change. We suggest that this criterion be amended as follows in order to preserve lead agency discretion:

VII. GREENHOUSE GAS EMISSIONS -- Would the project:

~~a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance?~~

(a) Result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint?

b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?

WSPA appreciates the opportunity to comment on the Proposed Amendments. If you have any questions, please contact me at this office or Michaeleen Mason of my staff at (916) 498-7753.

Sincerely,



cc: Secretary Mike Chrisman, the Natural Resources Agency  
Kirk Miller, the Natural Resources Agency  
Michaeleen Mason, Western States Petroleum Association