

## Letter 3

Independent Energy Producer's Association, et al.  
Addendum (August 27, 2009)

August 27, 2009

### **Comment 3-1**

New power plants must be analyzed in the context of the entire electric system in order to accurately inform the public of their true environmental impact.

### **Response 3-1**

Section 15064.4(b)(1) advises lead agencies to consider the extent to which a project would increase or decrease greenhouse gas emissions compared to the existing environmental setting. The "setting" to be described varies depending on the project and the potential environmental resources that it may affect. In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, for example, the lead agency failed to adequately describe the environmental setting by limiting its discussion primarily to the southern portions of its water system. Framing the setting narrowly resulted in impacts to the northern portion of the water system being ignored. Finding that section 15125 is to be construed broadly to ensure the fullest protection to the environment, the court in that case held that the lead agency was required to disclose that increased use of the southern portion of the water system would require greater diversions from the northern portion, and to analyze the impacts on species in the northern portion of the system. (*Id.* at pp. 873-875.) In the context of power generation, to the extent that a project may cause changes in greenhouse gas emissions in an existing power system, and substantial evidence substantiates such changes, those changes may be considered pursuant to section 15064.4(b)(1). Thus, section 15064.4(b)(1) does ensure that decision-makers and the public will be fully informed of a project's potential impacts related to greenhouse gas emissions.

### **Comment 3-2**

Clarify Section 15064.4(b) to replace the phrase "a lead agency may consider the following" with "a lead agency may include the following considerations."

### **Response 3-2**

The Natural Resources Agency has revised the text of section 15064.4(b) to clarify that a lead agency should consider at least the factors listed in that section, as well as others if appropriate. Though the comment suggests that a lead agency's discretion to consider such factors should not be limited, the

language of the factors indicates that they should be part of the lead agency's analysis. For example, (b)(2) asks whether "the project emissions exceed a threshold of significance that the lead agency determines applies to the project." A threshold is defined as a level at which impacts are normally less than significant. (State CEQA Guidelines, § 15064.7(a).) If a lead agency determines that the threshold applies to the project, it should consider whether a project's emissions exceed that threshold because that would indicate the significance of those emissions. Similarly, (b)(3) asks whether a project complies with regulations and requirements designed to reduce greenhouse gas emissions. Case law recognizes that compliance with environmental regulations is relevant to the determination of significance, so compliance with requirements should also be a part of a lead agency's significance determination. (*Comm. for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 111 ("a lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation").) Finally, since the accumulation of greenhouse gas emissions in the atmosphere may lead to environmental harm, a project's potential incremental contribution to that problem should be considered. Thus, because consideration of each of the listed factors plays a key role in the determination of significance of a project's greenhouse gas emissions, the Natural Resources Agency concluded that the word "should" is more appropriate than the word "may" in section 15064.4(b).

As noted in the Initial Statement of Reasons, however, "while subdivision (b) provides a list of factors that may assist public agencies to consider all relevant information, other factors can and should be considered as appropriate." (Initial Statement of Reasons, at p. 20.) To clarify that lead agencies may consider additional factors if appropriate, the Natural Resources Agency added the phrase "factors, among others" to section 15064.4(b). The addition of the word "factors" is responsive to the comment's suggested addition of the word "considerations."

For the reasons described above, however, the Natural Resources Agency declines to incorporate the precise language suggested in this comment.

### **Comment 3-3**

Clarify Section 15064.4(b)(1) to require a cumulative analysis of emissions, but limit the emissions to be considered to those associated with the consumption of fuels or other energy resources.

### **Response 3-3**

This comment suggests two types of changes to section 15064.4(b)(1). The first would limit the analysis to cumulative effects. The second would limit the types of emissions that would be considered to those associated with the consumption of fossil fuels and other energy sources.

As to the first limitation, the addition of the phrase "in combination with related past, present, or future projects and activities" to section 15064.4(b)(1) would unnecessarily conflate that section with section

15130 on the analysis of cumulative impacts. While the Natural Resources Agency agrees that greenhouse gas emissions are most appropriately analyzed in most cases as cumulative impacts, the Guidelines cannot suggest that lead agencies never need to consider project-specific impacts if substantial evidence suggests such an impact. Further, the Natural Resources Agency disagrees that section 15064.4(b)(1) “could be read to only allow for projects’ emissions to be assessed on an incremental or project specific basis.” Section 15064.4 would have to be read in connection with sections 15064(h), 15130, and 15355, which require that a project’s incremental contribution be considered together with the contributions of other past, present, and reasonably foreseeable probable future projects. In either a project-specific or cumulative impact analysis, a lead agency would consider the extent to which a project increases or decreases emissions compared to the existing environmental setting. Thus, the Natural Resources Agency declines to revise section 15064.4(b)(1) as suggested.

As to the second limitation, the Natural Resources Agency finds that the limitation would be contrary to SB97. Section 21083.05(a) of the Public Resources Code requires the development of guidelines addressing analysis of the effects of greenhouse gas emissions and the mitigation of greenhouse gas emissions, “including, but not limited to, effects associated with transportation or energy consumption.” (Emphasis added.) Proposed section 15064.4(b)(1) was, therefore, broadly drafted to encompass all types of greenhouse gas emissions. The proposed limitation to increases in emissions from “the consumption of fuels or other energy resources, especially fossil fuels that contribute to greenhouse gas emissions” would conflict with the “including, but not limited to,” clause in section 21083.05.

The revisions suggested in this comment are, therefore, rejected.

#### **Comment 3-4**

Insert new Section 15064.4(b)(2) to address the extent to which a project or related projects may increase energy efficiency or decrease GHG emissions from other facilities.

#### **Response 3-4**

The suggested text in this comment contains several elements. First, it would ask lead agencies to consider whether a project increases energy efficiency. Second, it would allow lead agencies to consider increases in energy efficiency from other projects. Third, it would allow consideration of decreases in emissions resulting from other facilities. The Natural Resources Agency declines to incorporate these suggestions for the reasons described below.

First, section 15064.4 addresses the determination of the significance of greenhouse gas emissions. The energy efficiency associated with a project, standing alone, does not appear to provide information relating to the significance of the greenhouse gases emitted from any particular proposed project. Second, energy efficiency is already addressed in Appendix F of the CEQA Guidelines. Therefore, the Natural Resources Agency has determined that further revision of the CEQA Guidelines is not required in response to this comment.

Second, consideration of increased energy efficiency at other projects does not provide any information regarding the greenhouse gas emissions of the project being analyzed. Even in a cumulative impacts analysis, which does consider other projects, an “EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.” (State CEQA Guidelines, § 15130(a)(1).)

Third, for the same reason, consideration of reductions in greenhouse gas emissions from other facilities is not appropriate if such reduction do not “result in part from the project” being considered. To the extent this addition is proposed to allow a “system-wide” analysis of new power facilities, Response 3-1, above, explained the circumstances in which such consideration might be appropriate under the proposed section 15064.4(b)(1).

### **Comment 3-5**

Clarify Section 15064.4(b)(3) to include that only GHG emissions that are found to be significant must be mitigated.

### **Response 3-5**

The Natural Resources Agency finds that the suggested phrase is not necessary to effectuate the purpose of SB97. As currently drafted, section 15064.4(b)(3) would allow consideration of a project’s consistency with regulations implementing AB32 and the Air Resources Board’s Scoping Plan. Further, mitigation measures avoid or reduce significant effects, so a plan that mitigates greenhouse gas emissions necessarily reduces the significance of those emissions. Response 3-1, above, explains the circumstances in which a system-wide approach may be appropriate. Thus, the Natural Resources Agency declines to incorporate the suggested text.

### **Comment 3-6**

Revise Sections 15064.4 to include suggested two subsections: 15064.4(b)(1) and 15064.4(b)(2), as suggested comments 3-3 and 3-4. Commenter believes this would avoid applying a system-wide approach to addressing GHG emissions inappropriately.

### **Response 3-6**

As explained in the Initial Statement of Reasons, section 15064.4(b)(1) was drafted to ensure that all project components and phases are considered. (Initial Statement of Reasons, at p. 20.) Both direct and indirect effects should also be analyzed. Separating the increases from the decreases, and then allowing lead agencies to choose to exclude consideration of one or the other, as suggested in the comment, could prevent full disclosure of the actual effects of a project. For example, under the text proposed in the comment, a lead agency could choose to base its significance determination solely on the decreases in emissions that would result at other facilities, and ignore the increases in greenhouse gas emissions

resulting from the project under consideration. This result is contrary to the fundamental information disclosure purpose of CEQA. (State CEQA Guidelines, § 15002(a)(1).) Therefore, as explained above in Responses 3-3 and 3-4, the Natural Resources Agency declines to incorporate the suggested text.

### **Comment 3-7**

Commenter believes the decision to choose a qualitative or quantitative approach to analyzing GHG emissions is that of the lead agency. Removal of qualitative or establishing a stronger preference to quantitative methods in the Guidelines, would be contrary to fundamental principles of CEQA.

### **Response 3-7**

The Natural Resources Agency has rejected suggestions to require a quantitative analysis in all or most cases. Section 15064.4(a) still recognizes the discretion of lead agencies to choose to perform a qualitative analysis or a quantitative analysis. That section has been revised to clarify that a lead agency may perform both types of analysis as appropriate. Notably, however, the discretion recognized in section 15064.4 is not unfettered. A lead agency's analysis, whether quantitative or qualitative, would be governed by the standards in the first portion of section 15064.4. The first sentence applies to the context of greenhouse gas emissions the general CEQA rule that the determination of significance calls for a careful judgment by the lead agency. (Proposed § 15064.4(a) (“[t]he determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064”).) The second sentence sets forth the requirement that the lead agency make a good-faith effort to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. That sentence has been further revised, as explained in greater detail below, to provide that the description, calculation or estimation is to be based “to the extent possible on scientific and factual data.” The third sentence advises that the exercise of discretion must be made “in the context of a particular project.” Thus, as provided in existing section 15146, the degree of specificity required in the analysis will correspond to the degree of specificity involved in the underlying project. In other words, even a qualitative analysis must demonstrate a good-faith effort to disclose the amount and significance of greenhouse gas emissions resulting from a project.

### **Comment 3-8**

New power plants must be analyzed in the context of the entire electric system in order to accurately inform the public of the true environmental impact of new power plants.

### **Response 3-8**

As explained in Response 3-1, above, the emissions from a new power plant would have to be considered in the context of all project components, including direct and indirect effects, and in the

context of the system within which it would operate. The circumstances in which that system-wide analysis may be appropriate is described in Response 3-1.