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VIA E-MAIL & FIRST CLASS MAIL

Dave Warner
Director of Permit Services
San Joaquin Valley Air Pollution Control District
1990 East Gettysburg Ave.
Fresno, CA 93726-0244

RE: Draft Document Entitled "Characterization of Greenhouse Gas Emissions"

Dear Mr. Warner:

We have reviewed the Air District's February 10, 2009, draft document entitled "Characterization of Greenhouse Gas Emissions." We disagree with the draft document's analysis that indirect greenhouse gas ("GHG") emissions do not need to be calculated as part of California Environmental Quality Act ("CEQA") review of a project. The Air District and local governments will not fulfill their obligations under CEQA unless indirect GHG emissions are considered in a CEQA analysis. We are submitting these comments in the hope that the draft document will be corrected early in your Climate Change Action Plan process.[1]

CEQA requires that indirect effects be analyzed where they can be reasonably estimated.[2] Indirect effects include GHG emissions associated with the project's energy use, as well as emissions from the project's "lifecycle" (for example, emissions associated with raw materials used to build the project). The draft document's suggestion to exclude categorically these indirect GHG emissions is inconsistent with CEQA regulations. It is also at odds with a number of recent statewide CEQA guidance documents, including the Governor's Office of Planning and Research's ("OPR") June 18, 2008, *Technical Advisory*[3] and the California Air Pollution Control Officer's Association's ("CAPCOA") January 2008 white paper, *CEQA and Climate Change*.[4]

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[1] The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State. (See Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

[2] See CEQA Guidelines §§ 15064(d); 15126; Appendix F, "Energy Conservation." OPR is considering making Appendix F mandatory. (See Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions http://opr.ca.gov/download.php?dl=Workshop_Announcement.pdf.)

[3] Available at http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf. The Technical Advisory states that "Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO2

The suggestion in the draft document that the emissions from the generation of electricity for a project need not be included in a CEQA analysis appears to be based on a number of factual and legal errors. For instance, the draft document suggests that calculating a new project's indirect emissions from energy use is "double counting" because those emissions "have already been attributed to the power production facility and the power production facility has already been required to mitigate the impacts of its emissions." If a project under review needs electricity, then *additional* power must be produced, which will result in increased GHG emissions. Requiring new projects to explore ways to be more energy efficient, thus, generally does not lead to "double counting."

The draft document also states that power plants supplying electricity to a project have "already been required to mitigate" these additional emissions so they should not be calculated. But the emissions factors used to calculate a new project's indirect emissions from electricity use — pounds of GHG per megawatt hour — generally are based on actual emissions from the power plants that supply the state's electrical grid. To the extent these power plants have previously mitigated some of their GHG emissions, that reduction is reflected in the state's emissions factors. While California's emission factors are lower than many other states, they show that, collectively, the plants that supply the state's electrical grid still generate substantial amounts of GHGs.

While CEQA does allow for streamlined review of subsequent projects based on the review and permitting of a previous project in two instances, neither provision is applicable here. First, 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 a plan or mitigation program specified in law, which includes specific requirements that will avoid or substantially lessen the cumulative impact. (CEQA Guidelines § 15064(h)(3).) The draft document identifies no such plan or program put in place as part of permitting power plants. Second, the review and permitting of a subsequent project may "tier" from an environmental document prepared for an

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and other GHG emissions from a project, including the emissions associated with vehicular traffic, *energy consumption*, water usage and construction activities." (OPR, *Technical Advisory*, June 18, 2008, at p. 5 [emphasis added].) The Technical Advisory's suggested mitigation measures include increasing energy efficiency, as well as compliance with LEED (Leadership in Energy and Environmental Design) and waste reduction, both of which take into account lifecycle emissions. (*Id.* at pp. 18-20.)

[4] Available at http://www.capcoa.org/CEQA/CAPCOA%20White%20Paper.pdf. CAPCOA's white paper discusses the need to analyze a project's projected energy use under CEQA and the need to consider energy efficiency improvements as mitigation. (CAPCOA, *CEQA and Climate Change*, January 2008, at p. 19.) In the white paper, CAPCOA did take into account that other regulatory regimes may apply to the power generating source, but it concluded that such emission should be evaluated for the purposes of CEQA, not categorically ignored. (*Id.* at p. 61-62.) California Climate Action Registry's April 2008 "General Reporting Protocol"[4] includes detailed instructions for calculating the GHG emissions due to a project's power consumption. (*Id.* at pp. 31-37.) CAPCOA recommends applying specific protocols that account for the mix of power sources used in California based on data compiled by the U.S. Environmental Protection Agency. (*Id.* at p. 61-62.)

earlier, broader project. Where an agency determines that a cumulative effect has been "adequately addressed" in a prior environmental impact report, the effect is not treated as significant for purposes of later environmental impact report or negative declaration and need not be discussed in detail.[5] (CEQA Guidelines § 15152(f)(1).) The draft document does not identify any environmental impact reports that have adequately addressed GHG emissions from power plants and, therefore, this section does not apply.

Moreover, ignoring GHG emissions from these indirect sources will have real impacts, undermining California's ability to combat warming and to achieve the aggressive reductions required by Executive Order S-3-05 and the California Global Warming Solutions Act of 2006 (AB 32).[6] To take one example, the draft document calculates that indirect emissions account for up to 12 percent of total GHG emissions for the industrial projects studied and up to 19 percent of total emissions of the mixed-use development. Excluding these emissions sources would preclude any exploration of mitigation and improved efficiencies for these sources. Similarly, excluding lifecycle emissions removes the opportunity to explore better sourcing and consumption decisions that could positively affect climate change. For example, using concrete with higher levels of fly ash will tend to reduce a project's lifecycle GHG emissions.[7] Of course, CEQA does not require independent research to trace back to its source every single material used in construction, but there is no reason that existing, readily available information about lifecycle emissions should not be included in the CEQA analysis.

[5] CEQA Guidelines § 15152(f)(3) explains that significant environmental effects have been "adequately addressed" if the lead agency determines that:

> "(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or
> (B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project."

[6] Pursuant to these mandates, California is committed to reducing GHG emissions to 1990 levels by 2020, and to 80 percent below 1990 levels by 2050.

[7] Caltrans has explained that, "Blending cement with Supplementary Cementitious Materials (SCMs) reduces GHG emissions. Common SCMs in use include slag, fly ash, silica fume, and calcined clay. . . .The addition of SCM at concrete batch plants has the potential to significantly impact GHG savings." (http://www.dot.ca.gov/hq/esc/Translab/ClimateActionTeam/use-less-cement.html. See also http://www.dot.ca.gov/hq/esc/Translab/ClimateActionTeam/scm-concrete-measures.html.)

We urge you to revise the draft document along the lines of our recommendations. Please feel free to contact me to discuss this matter further.

Sincerely,

/s/

TIMOTHY E. SULLIVAN
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General