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August 23, 2011

California Air Resources Control Board
1001 "I" Street
Sacramento CA 95814

VIA HAND DELIVERY

Attn.: Clerk of the Board

Re: *Comments on Supplement to AB 32 Scoping Plan Functional
Equivalent Document*

Dear Clerk:

On behalf of the California Independent Petroleum Association ("CIPA") and each of its members¹, we submit this letter with respect to the California Air Resources Board's ("CARB") written responses to our comment letters dated July 1, 2011 and July 28, 2011 ("Responses to Comments"), which responses have been incorporated into the proposed Final Supplement to the AB 32 Scoping Plan Functional Equivalent Document ("Final FED Supplement"). As detailed below, CARB's responses do not cure the inadequacies in the Draft FED Supplement published on June 13, 2011 and, indeed, add to the inadequacies in the Final FED Supplement. Since CARB is legally precluded from taking action on the proposed AB 32 Scoping Plan without first certifying a legally adequate Final FED Supplement, we strongly urge CARB to revise the Final FED Supplement and recirculate it for public comment.

¹ California Independent Petroleum Association ("CIPA") is a non-profit, non-partisan trade association representing approximately 450 independent crude oil and natural gas producers, royalty owners, and service and supply companies operating in California. CIPA's mission is to promote greater understanding and awareness of the unique nature of California's independent oil and natural gas producer and the market place in which he or she operates; highlight the economic contributions made by California independent producers to local, state and national economies; foster the efficient utilization of California's petroleum resources; promote a balanced approach to resource development and environmental protection and improve business conditions for members of our industry. CIPA and its members are affected by CARB's

One of the most glaring errors created by CARB's Responses to Comments is the confusion that it has created with respect to the description of the proposed "project" that is the subject of the Final FED Supplement. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d, 185, 193. "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." *County of Inyo, supra*, at pp. 192-193.

CARB has stated in prior documents that the proposed project is the adoption of the Scoping Plan and the measures described in the Scoping Plan that are aimed at reducing the amount of greenhouse gases (GHG) in California to the 1990 level. (Original FED, p. 20.) Despite that project description, the Draft FED Supplement incorrectly stated that the No Project Alternative could not be adopted because AB 32 mandated the adoption of a Scoping Plan. However, as pointed out in our July 28th Comment Letter, even if one interprets AB 32 to require CARB to adopt a "scoping plan," the scoping plan can, and should, provide that no new GHG reduction measures are required to reduce the State's GHG emissions to 1990 levels by 2020 and CARB should only be monitoring the effectiveness of the other GHG reduction measures already in place.

In response to that comment, CARB has apparently re-fashioned the description of the proposed project. In Response to Comment 75-3, CARB suggests that the project is the adoption of a Scoping Plan and GHG reduction measures that are aimed at reducing GHG emissions *lower than* the 1990 level. That significant change in the description of the proposed project affects all aspects of the Final FED Supplement, including the baseline, impact analyses and project alternatives. Therefore, CARB must clarify the description of the proposed project. If the proposed project is the adoption of a scoping plan and implementation of GHG reduction measures that reduce GHG emissions lower than the 1990 level, then the entire Final FED Supplement must be revised and recirculated. If the proposed project is the adoption of a scoping plan and implementation of GHG reduction measures that will reduce GHG emissions to the 1990 level, then the No Project Alternative should be adopted for all the reasons stated in our July 28 comment letter.

proposed certification of the Final FED Supplement and adoption of the AB 32 Scoping Plan. CIPA's comments on, and objections to, the adequacy of the Final FED Supplement and Scoping Plan are submitted on behalf of CIPA, as a representative trade association, as well as on behalf of the individuals and companies that CIPA represents as a trade association. More information about CIPA can be found at www.cipa.org.

In addition to creating confusion on the scope of the proposed project, the Final FED Supplement fails to update the cap and trade program that is an essential element of the proposed project. Specifically, after the Draft FED Supplement was released for public review and comment, CARB proposed significant and material changes to the proposed cap and trade program. (Refer to <http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm> and <http://www.arb.ca.gov/cc/capandtrade/meetings/072011/presentation.pdf>). These material program changes, and the potential significant impacts resulting therefrom, have not been described in either the Draft or Final FED Supplement. That failure to adequately describe the proposed project and its impacts will deprive the public and decision-makers of information necessary to weigh the project against its alternatives.

In addition to creating these errors in the description of the proposed project, the Responses to Comments continue to perpetuate the flaws already in the Draft FED Supplement or provide information that triggers the need to recirculate the Draft FED Supplement. For example, in our July 1, 2011 comment letter, we stated that the Draft FED Supplement does not contain the technical information needed to analyze the adequacy of the analyses in the Draft FED Supplement, and requested that CARB immediately provide that information and extend the comment period. Despite having received that comment letter only 18 days into the 45-day comment period, CARB refused to timely provide the necessary information, let alone extend the comment period. Instead, in Response to Comment 2-2, CARB provides some of the information requested in our July 1st letter, including links to 27 websites that reportedly contain the information requested. However, even though many of those websites pre-date the publication of the Draft FED Supplement, only 3 of those 27 websites were cited in the Draft FED Supplement. Since members of the public were not able to adequately review and comment on the Draft FED Supplement without this new information, CARB must revise and recirculate the Draft FED Supplement. (*County of Amador v. El Dorado Water Agency* (1999) 76 Cal.App.4th 931, 946.)

As to other flaws in the analyses in the Draft FED Supplement, CARB's Responses to Comments do not provide any new information needed to cure those flaws. For example, in our July 28th comment letter, we pointed out that the Draft FED Supplement does not include any of the GHG reduction programs that CARB has proposed but not yet adopted. In response, CARB continues to dismiss those proposed programs as not reasonably foreseeable solely because CARB has not adopted them. Such a dismissive reason fails to meet the substantial evidence test imposed on all lead agencies under CEQA. For example, CARB provides no details as to CARB's future consideration of those proposed measures, analysis of their efficacy in reducing GHGs, or targeted dates for publication of a proposal to approve any of these measures. Absent that information, CARB's conclusory contention that these proposed measures are not reasonably foreseeable renders the Final FED Supplement defective under CEQA.

Finally, when CARB's Responses to Comments provide some additional technical analysis, that analysis is flawed. Those analytical flaws are discussed in the attached letter report from Environ dated August 23, 2011 (which is incorporated herein by reference).

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Given the numerous inadequacies in CARB's Responses to Comments and CARB's failure to correct the inadequacies still in the Draft FED Supplement, we must repeat our request from our July 28th letter – Revise the Final FED Supplement and recirculate it for public review and comment. After properly updating the FED Supplement with the missing data and correcting the analyses therein, it will be evident to the public and lead-agency decisionmakers that the additional GHG reduction programs proposed in the Scoping Plan are not necessary to achieve the goals of AB 32 and, accordingly, that CARB should adopt the No Project Alternative.

Very truly yours,



Edward J. Casey

EJC/ysr

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ENVIRON

August 23, 2011

via E-Mail (in PDF)

Mr. Edward J. Casey, Attorney
Alston Bird LLP
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Los Angeles, CA90071

**Re: Comments on ARB's Responses to Comments on the AB 32
Scoping Plan Supplemental**

Dear Mr. Casey:

We have prepared the following comments based on our review of Response to Comments 2 and 75 on the Supplement to the AB 32 Scoping Plan Functional Equivalent Document (FED) released by the California Air Resources Board (CARB) on August 19, 2011 (Response to Comments). We have listed our current findings based on our initial review of the Response to Comments.

Comment 2-2.

In response to measure E-1 (Energy Efficiency and Conservation) and the downward revision from 15.2 million tons in the 2008 Scoping Plan to a current value of 7.8 million tons, CARB stated "The change in the expected reduction is because the Renewables Portfolio Standards (RPS) was moved to first in the loading order (refer to the RPS measure below). Measures loaded later in the process are credited with fewer reductions than if they were earlier in the loading order." We do not see why this explains a reduction of nearly 50%. Prior studies from the California Energy Commission and other experts have agreed that incremental emission reductions from energy efficiency more directly impact the generation at the margins of the electricity dispatch order.^{1,2} If renewable energy is at the top of the loading order, it is considered "must serve" and therefore not a marginal provider of electricity. Marginal generation units providing electricity are predominately natural gas combined cycle units.³ CARB's response also referred to the 2009 IEPR and changed economic conditions. It should be noted that the electricity growth forecast in the 2009 IEPR (1.2% per year) was virtually unchanged from the pre-recession 2007 IEPR (1.25% per year) and does not appear to provide a basis for such a change in the reduction estimate.

Comment 2-3.

CARB has indicated that Appendix F, Compliance Pathway Analysis is not relevant to the FED. CARB instead refers us to their response for Comment 2-2, which includes reference to this website: <http://www.arb.ca.gov/cc/inventory/data/forecast.htm>. This website still does not

¹ Impacts of Electric-drive Vehicles on California's Energy System, Available at: pubs.its.ucdavis.edu/download_pdf.php?id=1145; Available at: <http://www.greencarcongress.com/2009/12/mccarthy-marginal-20091229.html>. Accessed: August 2011.

² Greenhouse gas emission intensity factors for marginal electricity generation in Canada. Available at: <http://onlinelibrary.wiley.com/doi/10.1002/er.1676/abstract>. Accessed: August 2011.

³ Proposed Methodology to estimate the Generation Resource Mix of California Electricity Imports. Available at: <http://www.energy.ca.gov/2006publications/CEC-700-2006-007/CEC-700-2006-007.PDF>. Accessed: August 2011.

appear to include the necessary supporting tables or calculations to show how the adjustments were made. It is also unclear why CARB believes the Compliance Pathway Analysis is not relevant to the FED when it is cited in the FED.⁴

Comment 75-5

CARB's response suggests that the Commercial Recycling (RW-3) is not included because it was not counted in the 2008 Scoping Plan and because it may double count potential emission reductions. Given the numerous changes made with the FED since the 2008 scoping plan, it seems that if this measure provides any Greenhouse Gas (GHG) reductions, the GHG reductions should be included regardless if it was or was not included in the 2008 scoping plan. CARB's response also does not provide adequate information on how or why the potential GHG reductions that would result from RW-3 would be double counting.

Comment 75-6

CARB's response suggests that no information is available to estimate emissions for the Energy Efficiency and Co-Benefits Assessment, but information is included in the FED that could be used to estimate the GHG reductions from this program. On page 68 of the Final FED, CARB includes an estimate of 5 Million Metric Tons (MMT) of potential emission reductions from the industrial sector.⁵ The FED indicates that this information is from the Compliance Pathway Analysis.⁶ Thus, it's unclear why CARB does not believe that the Energy efficiency and Co-Benefits Assessment measure could have an associated GHG emissions reduction in the FED analysis.

Comment 75-8

Our original comment referenced two existing federally driven voluntary programs (Natural Gas Star and CHP) as well as pending regulations in progress at the federal level that would significantly reduce emissions for most classes of medium and heavy duty vehicles and engines. The Natural Gas Star program appears to be successfully driving down emissions despite being voluntary in nature.⁷ The medium and heavy duty vehicle standards have now been finalized (August 9, 2011) and will result in significant GHG emissions reductions beginning in year 2014. Our concern remains that CARB's lack of consideration of these programs does not properly reflect existing and expected future emission changes in these sectors.

Comment 75-10

Our concern remains that in relying on the 2009 IEPR, CARB has not properly accounted for the current recession in the FED. For example, the 2009 IEPR forecast a robust growth rate in electricity consumption – 1.2% per annum. This was virtually unchanged from the electricity consumption growth rate from the pre-recession 2007 IEPR, which forecast a 1.25% per annum growth rate. All other comparable post-recession studies we are familiar with – specifically the Federal Government's Annual Energy Outlooks (AEO) for 2009, 2010, and 2011 (AEO 2009, AEO 2010, and AEO 2011) for the Pacific region and CARB's own AB 32 modeling conducted in February 2010 (Energy 2020 model) - forecast considerably lower electricity demand growth

⁴ Available at: http://www.arb.ca.gov/cc/scopingplan/document/final_supplement_to_sp_fed.pdf. Accessed: August 2011. Pg 68 and 113.

⁵ Available at: http://www.arb.ca.gov/cc/scopingplan/document/final_supplement_to_sp_fed.pdf. Accessed: August 2011. Pg 68.

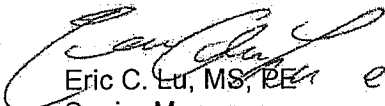
⁶ Available at: <http://www.arb.ca.gov/regact/2010/capandtrade10/capv3appf.pdf>. Accessed: August 2011.

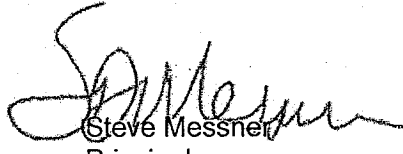
⁷ Available at: <http://www.epa.gov/gasstar/accomplishments/index.html#three>. Accessed: August 2011.

rates through 2020.⁸ All of these studies showed regional or State demand to increase only at 0.5 to 0.7% per annum through 2020. This discrepancy could cause a considerable reduction in the baseline emissions forecast for year 2020. Our initial review of the transportation sector emissions indicates that the 2009 IEPR did make a significant recession adjustment for transportation fuels so we have no additional comments for this sector.

The comments included are based on the best available information we have and the extent of our review of the responses at this time. Please contact Eric Lu ((949) 798-3650) or Steven Messner ((415) 899-0747) if you have any questions regarding this matter.

Very truly yours,


Eric C. Lu, MS, PE
Senior Manager


Steve Messner
Principal

EL:co

cc: Mr. Ron Friesen, ENVIRON

⁸ Available at: <http://www.eia.gov/forecasts/aeo/index.cfm>. Accessed: August, 2011.