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September 30, 2024

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## **Re: WSPA Comments on LCFS Recirculated Draft Environmental Impact Analysis**

Dear Chair Randolph and Members of the Board,

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) Recirculated Draft Environmental Impact Analysis (EIA) for the proposed Low Carbon Fuel Standard (LCFS) program amendments. WSPA agrees with CARB that recirculation of the EIA is necessary here, because the changes to CARB's preferred scenario are significant, but is concerned that the EIA remains insufficient.<sup>1</sup>

WSPA is a non-profit trade association representing companies that import and export, produce, refine, transport, and market petroleum, petroleum products, alternative fuels, natural gas, and other energy supplies in California and four other western states, and has been an active participant in air quality planning issues for over 30 years. WSPA is proud of the technological advancements our member companies have made in bringing more alternative fuels and electricity to California's transportation market since the LCFS came into effect. We believe a well-designed LCFS program with clear objectives is essential to supporting a healthy lower carbon fuels market, including renewable fuels. It remains essential for CARB to finalize revisions that align with statutory requirements, are implementable, and achievable to continue this success.

CARB's Recirculated Draft EIA fails to fully address the Agency's obligations under the California Environmental Quality Act (CEQA) for the following reasons: (1) CARB's changes to its preferred scenario are being proposed too late in the environmental review process; (2) CARB's Recirculated Draft EIA fails to evaluate a reasonable range of alternatives by failing to consider alternatives that include more feasible near-term carbon intensity (CI) reduction targets and fewer restrictions for biofuels; and (3) CARB's Recirculated Draft EIA fails to consider potentially significant indirect impacts associated with proposed limits on crop-based feedstock and increased development of renewable electricity sources.

### **CARB's Recirculated Draft EIA includes significant program revisions evaluated too late in the environmental review process.**

CARB is proposing significant changes to its preferred regulatory scenario too late in the review process, undermining the efficacy of CEQA's EIA requirement. In its original Draft EIA, released in January 2024, CARB proposed interim CI reduction targets of 18.75% in 2025 and 21.0% in 2026, based on lowering the 2030 reduction target from 20% to 30%.<sup>2</sup> However, in its Recirculated Draft EIA, developed just prior to CARB's November 8, 2024, hearing date, CARB updated its preferred

<sup>1</sup> See CEQA Guidelines section 15088.5.

<sup>2</sup> CARB, *Draft Environmental Impact Analysis for the Proposed Low Carbon Fuel Standard Regulation*, at 14-15 (Jan. 2, 2024), <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/appd.pdf>.

scenario to include interim CI reduction targets of 22.7% in 2025 and 24.2% in 2026.<sup>3</sup> CARB's Draft EIA demonstrates that increasing the stringency of reduction targets significantly alters the analysis of associated environmental impacts. For example, in discussing Alternative 4 (based on a more stringent 40% reduction target in 2030), CARB determined that this scenario "would result in an increase of the compliance responses associated with the Proposed Amendments and in turn would result in an increase in the environmental impacts."<sup>4</sup> For this reason, CARB *rejected* Alternative 4 without additional analysis.<sup>5</sup> Similarly, CARB's last-minute adjustment to the interim reduction targets will significantly impact compliance scenarios. As WSPA explained in its comment letter submitted on August 27, 2024, CARB's most recent proposal to increase the 2025 CI target by a 5% near-term "step down" would effectively mandate that industry achieve approximately eight years' worth of progress (as measured under the current program) in a single year. Achieving these more stringent targets will therefore involve inherently different environmental impacts that CARB has provided only limited analysis on very late in the regulatory process.

As the Supreme Court has emphasized, "the [EIA] is the 'heart of CEQA.' ... Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.) For this reason, it is essential that an Environmental Analysis is "prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design." (See *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 395 (1988), *as modified on denial of reh'g* (Jan. 26, 1989).) Agencies must avoid the kind of "bureaucratic and financial momentum" that provides "a strong incentive to ignore environmental concerns." *Id.* "[T]he later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project. . . ." *Id.*

CARB's Recirculated Draft EIA exemplifies this kind of momentum, adopting a preferred scenario with potentially significant environmental impacts beyond those originally proposed, just in advance of a hearing to adopt these changes.

**CARB's Recirculated Draft EIA fails to cure deficiencies in its Draft EIA by unreasonably excluding alternatives capable of reducing environmental impacts.**

CEQA requires CARB to assess "a reasonable range of alternatives to the proposed project, which could feasibly attain most of the project objectives but could avoid or substantially lessen any of the identified significant impacts." (Cal. Code Regs., tit. 17, § 60004.2). CEQA Guidelines further specify that, in developing regulatory alternatives, agencies must consider alternatives "which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives." Cal. Code Regs., tit. 14, § 15126.6(b).

CARB developed only a limited range of regulatory alternatives in its original Draft EIA, including:

- Alternative 1, a no project alternative where the current LCFS program would continue unchanged;
- Alternative 2, a focused crediting scenario that would limit credit generation opportunities for methane and direct air capture; and
- Alternative 3, a less stringent reduction scenario with a revised 2030 CI reduction target of 25%.<sup>6</sup>

According to CARB, these alternatives "allow the public and Board to consider different approaches"

<sup>3</sup> CARB, *Recirculated Draft Environmental Impact Analysis for the Proposed Low Carbon Fuel Standard Regulation*, at 10 (Aug. 16, 2024), [https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/recirculated\\_draft\\_eia.pdf](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/recirculated_draft_eia.pdf).

<sup>4</sup> CARB, *Draft Environmental Impact Analysis for the Proposed Low Carbon Fuel Standard Regulation*, at 178-79 (Jan. 2, 2024), <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/appd.pdf>.

<sup>5</sup> See *id.*

<sup>6</sup> Draft EIA at 173-78.

based on “potentially feasible project alternatives.”<sup>7</sup> However, none of these alternatives evaluate feasible compliance options that could mitigate environmental impacts associated with the proposed LCFS program revisions, including:

- Less stringent near-term reduction targets; and
- Additional credit generation opportunities for biofuels.

**Less stringent near-term reduction targets:** As CARB explained in its discussion of Alternative 3, decreasing the rate of deployment of lower-carbon intensity fuels would reduce “near-term construction-related emissions due to the slower buildout of new fuel production infrastructure.”<sup>8</sup> By strengthening the CI reduction targets in 2030 and beyond, while still providing additional compliance flexibility in the next 2-3 years, CARB could achieve the greater emissions benefits associated with its preferred scenario in the long-term, without incurring additional near-term environmental impacts associated with increased compliance responses. This scenario would meet most of the objectives of the Proposed Amendments, similar to Alternative 4, while reducing construction-related emissions, similar to Alternative 3. Therefore, pursuant to the CEQA Guidelines, CARB is required to consider less stringent near-term reduction targets. See Cal. Code Regs., tit. 14, § 15126.6(b). CARB’s Recirculated Draft EIA does not address this deficiency, but rather *increases* near-term reduction targets without evaluating any additional alternatives.

**Additional credit generation opportunities for biofuels:** In its evaluation of Alternative 2, CARB concluded that limiting credits for effective emission reduction projects like direct air capture “would reduce one of the key incentives to deploy this technology and jeopardizes the feasibility of achieving California’s long-term decarbonization targets and the 2045 carbon intensity target proposed under this project.”<sup>9</sup> Similarly, CARB emphasized that “[t]he more stringent deliverability requirements for out-of-state biomethane and elimination of avoided methane credits could limit the diversification of the state’s fuel portfolio and the use of increasingly lower-CI transportation fuels (objective 1), increase the State’s dependence on fossil fuels (objective 5), and reduce investments in alternative fuel production and fueling infrastructure (objective 3).”<sup>10</sup>

These concerns are equally important for biofuel credit generation opportunities. As WSPA has explained in prior comment letters, ethanol has been used in California for decades and is a critical renewable fuel with lower carbon intensity. Ethanol has limited-to-no substitutes to achieve today’s CI reductions in California and is therefore an important component of the State’s efforts to reduce greenhouse gas emissions from gasoline. CARB’s proposed feedstock limitations in its preferred scenario would increase the risk of a supply shortage for ethanol and would run counter to CARB’s ongoing efforts to evaluate potential future approval of E15 blends. Meeting these requirements would significantly increase the cost and burden of ethanol, thus disincentivizing ethanol development and limiting the diversification of California’s fuel portfolio, counter to Objective 1. These more stringent requirements would also increase indirect environmental impacts through higher emissions of PM and several other pollutants as a result of lower ethanol blending.

Despite these concerns, CARB failed to analyze an alternative with more flexible credit generation opportunities for biofuels, instead considering only the more restrictive requirements in the Agency’s preferred scenario and a baseline scenario that would maintain existing requirements for biofuel credit generation. However, *increasing* credit generation opportunities for biofuels would address these concerns and help achieve the project objectives compared to the baseline scenario, while limiting indirect environmental impacts associated with the Proposed Amendments. Pursuant to the CEQA Guidelines, CARB is therefore required to consider this alternative. See Cal. Code Regs., tit. 14, § 15126.6(b).

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<sup>7</sup> *Id.* at 172.

<sup>8</sup> Draft EIA at 178.

<sup>9</sup> Draft EIA at 176.

<sup>10</sup> See *id.*

**CARB's updated impacts analysis in its Recirculated Draft EIA fails to adequately evaluate potentially significant environmental impacts.**

CEQA requires CARB to assess regulatory alternatives in light of their indirect and cumulative impacts (Cal. Code Regs., tit. 14, § 15130). One of CEQA's primary concerns is with "human health and safety." See *Cal. Building Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal. 4th 369, 386 (2015); Cal. Pub. Res. Code § 21083(b)(3). An agency's environmental analysis must contain "[a] discussion and consideration of environmental impacts, adverse or beneficial, and feasible mitigation measures which could minimize significant adverse impacts identified," as well as "[a] discussion of cumulative and growth-inducing impacts." 17 CCR § 60004.2(a).

CARB failed to adequately consider the following potentially significant environmental impacts associated with the Proposed Amendments:

- Indirect emissions increases associated with reduced ethanol supply, based on proposed requirements that would penalize uncertified ethanol or imposing significant certification costs on the ethanol supply chain; and
- Indirect land-use impacts associated with increased development of renewable electricity sources (specifically solar), based on proposed credit restrictions on hydrogen produced using fossil natural gas as a feedstock.
- Indirect impacts associated with increased demand on the electric grid due to significantly increased zero-emission vehicle (ZEV) use, requiring additional increases in electric utility construction.

**Indirect emissions increases due to reduced ethanol supply:** The Proposed Amendments would impose "sustainability guard rails" that may limit the supply of crop-based feedstocks used in the production of biofuels. As part of these guardrails, the feedstock supply chain would be required to comply with a resource-intensive, duplicative third-party process to ensure that crop-based and forestry-based feedstocks are not sourced on land that was forested after January 1, 2008. This process would increase costs associated with biofuel production and create an unnecessary burden for transportation fuel producers that may impact the availability of alternative transportation fuels.

At minimum, these requirements would likely disincentivize the continued blending of ethanol into California fuel and instead an alternative oxygenate may be used for which the emissions impacts are unknown. As a result, these requirements have the potential to significantly increase indirect GHG emissions and criteria pollutant emissions by increasing the carbon intensity of gasoline through less ethanol blending or increasing reliance on gasoline by limiting the availability of alternative transportation fuels. The Recirculated Draft EIA concludes that "deployment of alternative fuels will also reduce criteria pollutants and toxics relative to continued use of fossil fuels like gasoline, diesel and fossil jet fuel," and that "[b]iomass-based diesel use attributed to the LCFS as part of the Proposed Amendments could result in an overall potential decrease in long-term operational NOx and PM emissions relative to use of conventional diesel in all state-designated and federally designated ozone non-attainment areas from 2024 through 2046."<sup>11</sup> However, this analysis fails to account for potential supply limitations of these fuels based on burdens for feedstock supply.

**Indirect land-use changes due to increased reliance on renewable electricity sources:** The Proposed Amendments would effectively ban LCFS crediting for hydrogen produced using fossil natural gas as a feedstock and assign any volumes of such hydrogen the default ULSD CI, starting in 2031. As CARB signaled in its 2022 Scoping Plan Update, hydrogen will play a critical role in achieving California's ambitious goal of achieving carbon neutrality by 2045. However, CARB's proposed updates would favor electrolysis using renewables, which encourages the increased development of renewable electricity sources (specifically solar). These renewable electricity

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<sup>11</sup> Recirculated Draft EIA at 44.

sources have higher land-use requirements that would result in the conversion of agricultural lands. CARB's Recirculated Draft EIA fails to account for these potentially significant land-use impacts.

**Indirect impacts due to increased electricity demand:** The Proposed Amendments strongly endorse increased ZEV use by (1) allowing a significant portion of base credits to be assigned to OEMS if the share of certified ZEV sales for MY 2024 is less than 30%—creating a strong incentive to exceed this threshold in order to preserve flexibility for base credits—and (2) proposing to stop accepting applications for new biomass-based diesel fuel pathway applications in 2031, based on successful implementation of certain ZEV regulations—limiting options for lower carbon fuel alternatives. Increased ZEV use will generate increased demand on the electric grid, which will require additional increases in electric utility construction to meet this demand. This additional construction will likely include gas units to make up for the intermittency of renewable resources such as wind and solar. The construction of these facilities, as well as the use of additional gas facilities to meet demand, will have environmental impacts, including impacts on biological resources and increased greenhouse gas emissions and criteria pollutants.

WSPA appreciates the opportunity to provide these comments.

Sincerely,



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Vice President, General Counsel & Corporate Secretary