

March 15, 2018

Christopher Calfee, Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Submitted via electronic mail to: CEQA.Guidelines@resources.ca.gov

Comment letter: Proposed Amendments to the CEQA Guidelines

Dear Mr. Calfee:

On behalf of the California Water Association (CWA) and the 100 water utilities regulated by the California Public Utilities Commission (CPUC) that serve 6 million Californians with safe, reliable high-quality water, I am pleased to provide the following comments on the Governor's Office of Planning and Research's (OPR) proposed updates to regulations implementing the California Environmental Quality Act (CEQA), Title 14, Division 6, Chapter 3 of the California Code of Regulations (Guidelines).

OPR has proposed the most comprehensive and far-reaching revisions to the CEQA Guidelines in more than a decade. The proposed revisions, if adopted, could dramatically increase CEQA compliance requirements for all projects, including capital projects undertaken by CWA's member water utilities. As such, our specific comments that follow emphasize balancing critically needed new water and wastewater infrastructure with effective and reasonable protection of the environment under CEQA.

The amendment to section 15155, *City or County Consultation with Water Agencies*, proposes to codify the holding in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. Specifically, this amendment would require an evaluation of a proposed project's water supply and the environmental impacts of supplying that water to the project for all phases of the project. This amendment will affect water service utilities that will have to devote considerable administrative time and resources to comply with the new substantial analytical requirements in preparation of water supply assessments under Senate Bill (SB) 610. OPR's explanation of this amendment places a strong emphasis on drought and climate change as drivers that heighten the need to identify reliably water supplies (Proposed Updates to the CEQA Guidelines (Nov. 2017), pp. 69-70). The amendments also would require an acknowledgement of circumstances affecting the certainty of supplies and identification of alternative supplies where there is uncertainty (*id.* at pp. 71-72). CWA suggests that the text of the proposed amended Guidelines section 15155, subdivision (f)(4) include language that is currently only in the explanatory text (*id.* at p. 72) which states

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that project alternatives may include alternatives that require less water and curtailing later project phases.

New section 15064.3, *Determining the Significance of Transportation Impacts*, implements SB 743 and represents a paradigm shift in the evaluation of projects' transportation impacts. The new section replaces the traffic congestion-based LOS metric with the vehicle miles traveled (VMT) metric (*id.* at pp. 77-80). Under the new required VMT analysis, the very act of driving a vehicle is an environmental impact requiring analysis and potentially mitigation. The proposed regulation generally removes traffic congestion from the required scope of a CEQA impacts analysis even though congestion analysis will still be required to show consistency with local jurisdictions' general plans. CWA member utilities' capital water projects would be evaluated under the new VMT regulation as there is no carve out for non-transportation related infrastructure. The new VMT-based impacts analysis will likely result in water service infrastructure projects – even those with minimal long-term traffic impacts – having significant transportation impacts requiring new costly mitigation under the new required VMT measure. Water infrastructure projects, which are essential to address California's water supply needs under conditions of drought and climate change, should not be subordinated to an environmental impact analysis and potential mitigation for driving a vehicle. Accordingly, CWA respectfully requests that the new VMT regulation **not** apply to water service-related infrastructure.

Analysis of Energy Impacts, per new section 15126.2(b), is intended to underscore the requirement to perform an energy impacts analysis for all project phases and components, include a determination of whether a project's energy use is "wasteful, inefficient, and unnecessary," and identify alternatives and/or mitigation measures to reduce energy use determined to be wasteful, inefficient, and unnecessary (*id.* at pp. 66-67). Water utilities will have to gain approval from the CPUC to incorporate potentially expensive energy savings technologies as alternatives or mitigation into capital projects and will further need to seek CPUC approval of rate increases to fund those technologies. At a time when cost pressures on customer rates have created a difficult regulatory environment for water utilities and their regulators, CWA respectfully requests that the CPUC have discretion over determining whether water infrastructure projects' energy use rises to the level of "wasteful, inefficient and unnecessary."

The amendments to section 15064.4, *Analysis of Impacts from Greenhouse Gas Emissions*, largely codify the caselaw and good CEQA practice. That said, compliance with the amendments would nonetheless result in significant administrative burdens and potential imposition of costly new mitigation. The changes to this section would clarify that the analysis of impacts from greenhouse gas (GHG) emissions: (i) is a requirement (not a recommendation), (ii) should focus on projects' incremental contribution to climate change,

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and (iii) should consider a timeframe appropriate to the project. The amendments also would require projects to support any determination about a project's incremental contribution to climate change with substantial evidence, when based on the project's consistency with long-term climate goals, strategies, and policies. This requirement was added to force project proponents and lead agencies to fill a potential analytical gap between a statewide GHG reduction goals and a specific project (*id.* at p. 83), something that may present practical challenges for CWA member utilities' undertaking water infrastructure projects.

CWA appreciates that it is necessary to update the Guidelines from time to time, and it is supportive of OPR's overall efforts to reflect recent legislative changes to CEQA, clarify certain portions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. However, CWA's members must always be aware of the administrative burdens and increased costs resulting from regulatory updates as they must be approved by the CPUC and ultimately passed onto water service customers. CWA hopes that OPR agrees and that the final amendments to the Guidelines will reflect these concerns.

CWA appreciates this opportunity to provide these comments on the proposed amendments to the Guidelines. If you have any questions, please feel free to contact me at jhawks@calwaterassn.com or (415) 561-9650.

Sincerely,



Jack K. Hawks
Executive Director

cc: Honorable Martha Guzman Aceves; Commissioner, CPUC
Rami S. Kahlon; Director, CPUC Division of Water