



Delivering More Than Power™

**SALT RIVER PROJECT
Environmental Services**

Mail Station PAB352
POST OFFICE BOX 52025
PHOENIX, ARIZONA
85072-2025
(602) 236-2828

**Ray D. Hedrick
Manager, Siting and Studies**

VIA E-MAIL (GCC.guidance@ceq.eop.gov)

May 24, 2010

Ted Boling
Senior Counsel
The Council on Environmental Quality
722 Jackson Place, NW.,
Washington D.C 20503

**Re: Draft NEPA Guidance on Consideration of the Effects of Climate Change and
Greenhouse Gas Emissions**

Dear Mr. Boling:

On February 23, 2010, the Council on Environmental Quality ("CEQ") released for public comment draft guidance on the consideration of the effects of climate change and greenhouse gas (GHG) emissions of activities undertaken in a National Environmental Policy Act ("NEPA") process. 75 Fed. Reg. 8046 (Feb. 23, 2010). See Memorandum from Nancy H. Sutley, CEQ Chair, to Heads of Federal Departments and Agencies, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (Feb. 18, 2010) (hereinafter referred to as "Guidance"). The Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association (hereinafter collectively referred to as "SRP") submits these comments on the draft Guidance.

Statement of Interest

SRP is one of the nation's largest not-for-profit public power systems, providing electrical power to about 946,000 customers in the Phoenix area, and in certain rural areas of central Arizona. Most of SRP's power is generated from natural gas, nuclear and coal-fired power plants in Arizona, Colorado and New Mexico, which are either operated by SRP or in which SRP has an ownership interest. SRP also generates power through water delivery from SRP's dams and reservoirs, and is expanding its portfolio of other renewable energy resources. In addition to its generation facilities, SRP constructs, operates and maintains electrical transmission and distribution lines and rights-of-way throughout Arizona. More than 500 miles of these power lines are located on federal or tribal lands.

SRP is also a multi-purpose federal reclamation project authorized and constructed under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.* Pursuant to contracts with the United States, SRP operates the Project works, which include, among other things, six dams and reservoirs on the Salt and Verde rivers in central Arizona, and one dam and reservoir on East Clear Creek in northern Arizona. Water is stored by SRP in these reservoirs for subsequent delivery to municipal, industrial and agricultural water rights and uses. The watersheds for these dams include part of several national forests. SRP's delivery system in the metropolitan Phoenix area encompasses 1,300 miles of canals and laterals serving cities, Indian communities, irrigation districts, homes and agricultural enterprises.

Actions and projects undertaken by SRP are frequently subject to federal permits or approvals and therefore subject to NEPA compliance. The most significant factor that influences the frequency of NEPA compliance is that over 70 percent of Arizona is federal or tribal land. SRP is very interested in the CEQ Guidance, as it will affect SRP operations when finalized.

Comments on the Guidance

SRP is a member of the Utility Water Act Group ("UWAG") and joins in the UWAG comments on the draft Guidance. SRP submits the following additional comments, which supplement or amplify the points made by UWAG.

Significance Determination and Proposed Threshold Level

The CEQ suggests a "reference point" of direct emissions of 25,000 metric tons of CO₂ equivalent as a threshold above which an analysis of greenhouse gas ("GHG") effects may be warranted, but requests comments on whether a threshold level would be useful. Establishment of a threshold level is contrary to current NEPA regulations for two reasons. First, current regulations require federal agencies to evaluate and consider both the context and intensity of an impact when determining the significance of an effect on the environment. 40 C.F.R. § 1508.27. Unlike all other environmental resources and impacts that are considered by a federal agency in determining the need for the development of an Environmental Impact Statement ("EIS"), a GHG threshold set by CEQ would infringe upon agency discretion and their independent analysis. Second, and as noted below, the federal agency must consider direct effects, as well as indirect and cumulative effects, in arriving at a significance determination. Thus, a threshold level based solely on direct emissions is neither helpful nor permissible under current regulations (40 C.F.R. §1502.16).

Indirect Effects

The CEQ's proposed Guidance asks each agency to "quantify and disclose its estimate of the expected annual direct and indirect GHG emissions" in Environmental Assessment ("EA") or EIS documents when the agencies find these quantities "may be meaningful" (Climate change Memorandum, at 2). As noted above, and as explained in the UWAG comment letter, we recommend that a threshold or reference point level of direct GHG emissions is largely arbitrary, contrary to current regulations, and not useful for federal decision makers and the public. The exclusion of indirect emissions makes this threshold figure more arbitrary still, given that

indirect emissions could conceivably be greater than direct emissions. It is not clear why the proposed Guidance explicitly avoids using a reference point for indirect GHG emissions, while imposing one for direct GHG emissions. This disparate treatment appears to create a new and perhaps unintended NEPA distinction between direct and indirect emissions.

A project could cause indirect emissions of GHGs “later in time or farther removed in distance” in many possible ways. The project might indirectly change the kinds and amounts of energy used by various parties, or change ways that public or private lands are used or managed. The proposed Guidance provides little direction to agencies regarding the analysis of indirect emissions, other than noting that analysis of indirect GHG emissions “must be bounded by limits of feasibility in evaluating upstream and downstream effects of Federal agency actions” (Climate change memorandum, at 3). In its comments on the proposed Guidance, UWAG suggests limiting the potentially vast and complex analysis of indirect emissions by adopting the definition of indirect emissions from the EPA’s regulations implementing the air conformity provisions of the Clean Air Act. The UWAG suggestion would focus the analysis of indirect emissions on those: (1) proximately caused by the federal action; and (2) under Federal control and continuing program responsibility. SRP supports the UWAG suggestion.

The uncertainty over how to deal with indirect GHG emissions (or for that matter, with direct emissions and with cumulative effects) presents a problem for agencies and project proponents. Courts have held that agencies must provide a thorough and reasonably detailed analysis of direct, indirect and cumulative effects of the Federal action and of the mitigation measures that might reduce them. *See, e.g., South Fork Band Council of Western Shoshone of Nevada v. United States Department of the Interior*, 588 F.3d 718 (9th Cir. 2009); *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989 (9th Cir. 2004). At the same time, agencies are told to use the rule of reason and recognize the “limits of feasibility” in limiting their analyses. When it comes to the numerous and subtle kinds of indirect emissions through time, and the myriad of possible but poorly understood effects of GHG emissions, CEQ’s draft Guidance provides no clear guidance.

Quantification of Emissions as a Proxy of Impacts does not satisfy NEPA

NEPA requires that federal agencies take a “hard look” at the potential environmental consequences of the proposed action, and in doing so must “carefully consider [] detailed information concerning significant environmental impacts,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835, 104 L.Ed. 2nd 351 (1989), but they are “not require[d] to do the impractical.” *Inland Empire Public Lands Council v. United States Forest Service*, 88 F.3d 754, 764 (9th Cir. 1996). The agency must link the effects of a proposed action (and alternatives) with specific environmental consequences – a general discussion of an environmental problem (e.g., climate change) across a large area does not satisfy NEPA. *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 997 (9th Cir. 2004); *South Fork Band Council of Western Shoshone of Nevada v. U.S. Dept of Interior*, 588 F.3d 718 (9th Cir. 2009). Simply reporting an area or an amount of a resource impacted also does not satisfy this substantive requirement. *Id.*

Despite these requirements for practical specificity, the Guidance as drafted require the more impractical, general approach: “The estimated level of GHG emissions can serve as a reasonable proxy for assessing potential climate change impacts, and provide decision makers and the public with useful information for a reasoned choice among alternatives.” GHG Guidance at 3. By requiring the reporting of emissions where a full analysis of impacts is not scientifically within reach, the Guidance places federal agencies in an untenable position. They mandate the reporting of GHG emissions, weighing of alternatives, and describing mitigation measures to lessen their impact on the environment. But, as the existing NEPA regulations and case law make clear, the reporting of emission levels (in the absence of a concomitant analysis of the environmental consequences of emission levels) does not satisfy the “hard look” test. At the same time, the Guidance clearly recognizes that it is not scientifically possible at this time to conduct such an analysis for almost all projects (GHG Guidance at 3).

Similarly, although not requiring that harms be mitigated, NEPA does require an assessment of the effectiveness of proposed mitigation. *South Fork Band Council of Western Shoshone of Nevada v. U.S. Dept of Interior*, 588 F.3d 718 (9th Cir. 2009). To quantify the effectiveness of an alternative or mitigation measure, the decision maker would need to understand how the measure would actually reduce specific impacts of the project on the effected environment. Merely stating the relative emission levels of various alternatives or reductions caused by mitigation measures does not provide a substantive analysis concerning the effectiveness of such measures. See *Methow Valley*, 490 U.S. at 352, 109 S.Ct. 1835. Moreover, it confounds a decision maker’s ability to weigh actual, quantifiable impacts of an alternative or mitigation measures (e.g., actual direct wildlife impacts due to habitat loss caused by construction of coal plant, solar field, or wind farm) with highly speculative benefits (or harms) of GHG reduction within the action area. *Id.*

Requiring such an approach wastes agency time and resources, thwarts a federal decision maker’s ability to accurately weigh alternatives, and establishes an impact assessment methodology that does not further the purposes of NEPA to provide meaningful information to assess the environmental consequences of federal actions. It is admittedly outside the capabilities of current climate science to analyze the direct, indirect, and cumulative effects of GHG emissions on the environment. Given this fact, the reporting of emission levels is not useful and cannot “serve as a proxy” for an analysis of the impacts of GHG emissions on the environment.

SRP therefore proposes that CEQ revise the draft Guidance to remove the requirement that agencies use GHG emissions as a proxy for assessing environmental impacts, and instead recommend that the federal agency consider GHG emission impacts in their decision making process based on existing regulations and as science allows (i.e., the ability to downscale emission impacts to local or regional effects within the proposed project’s action area). The Guidance should also clearly state that given the current state of the science, the impacts of individual sources of GHG (even for large emitters, such as fossil fuel power plants)¹ are currently unknowable and it is unreasonable and impracticable to analyze the specific impacts on

¹ See UWAG comments regarding emission impacts of a large facility producing over 14,000,000 metric tons of GHG per year for fifty years would represent only 0.0001 of total global atmospheric CO₂ concentrations during that period.

May 24, 2010

the environment at local, regional, or global scales. However, in some cases, such as some national level agency actions (e.g., setting of corporate average fuel economy standards)² GHG impact analysis may be scientifically and technically reasonable.

SRP appreciates the opportunity to comment on the Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions proposed by CEQ.

Sincerely,



Ray Hedrick
Manager, Siting and Studies
Salt River Project

² See *Center for Biological Diversity v. National Highway Traffic Safety Administration* 538 F.3d 1172 (9th Cir. 2008).