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Heal the Bay

November 19, 2010

Charlie Hoppin, Chair and Board Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Via electronic mail: commentletters@waterboards.ca.gov

Re: Comments on Proposed Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling

Dear Chair Hoppin and Board Members:

On behalf of Heal the Bay, a non-profit environmental organization with over 13,000 members dedicated to making the Santa Monica Bay and southern California coastal waters and watersheds safe and healthy for people and local ecosystems, we have reviewed the Proposed Amendment ("Amendment") to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling. We respectfully urge the State Water Board to reject the proposed Amendment. After numerous discussions with the city of Los Angeles and State Water Board staff, we are convinced that the only appropriate path to pursue schedule modifications is the well vetted procedure in the recently approved OTC policy. We also support the detailed comments submitted by the California Coastkeeper Alliance and associated environmental and fishing groups regarding the proposed Amendment on November 19, 2010.

Once-through cooling ("OTC") causes significant, ongoing devastation to our valuable marine and coastal ecosystems and their inhabitants. California's coastal power plants are permitted to withdraw more than 16 billion gallons of water for cooling daily. The 12 Southern California plants kill up to 30% of the number of fish recreationally caught in the Southern California Bight each and every year.¹ A 2005 CEC study finds that the three power plants in the Santa Monica Bay (Scattergood, El Segundo, and Redondo) consume nearly 13% of the nearshore water in the Bay every six weeks.² The threats of OTC are even greater for enclosed bays and estuaries; it is estimated that Alamitos and Haynes Generating Stations together take in the entire volume of Alamitos Bay every five days.³

Heal the Bay has been extensively involved in the 5-year development of the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling ("Policy"), including serving on the Expert Review Panel, providing written and oral comments, and meeting with several stakeholders to discuss approaches to a policy on OTC. The Policy adopted by the State Water Board on

¹ SWRCB, "Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling: Final Substitute Environmental Document," (May 4, 2010).

² California Energy Commission, Issues and Environmental Impacts Associated with Once-Through Cooling at California's Coastal Power Plants: Staff Report. (2005).

³ Tenera Environmental and MBC Applied Environmental Science (October 2005) Summary of Existing Physical and Biological Information and Impingement Mortality and Entrainment Characterization Study Sampling Plan for Haynes Generating Station, p.2.



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May 4, 2010 pursuant to Resolution 2010-0020, and approved by the Office of Administrative Law (“OAL”), represents a reasonable compromise informed by years of exhaustive research and extensive public and partner-agency outreach, and was designed to provide a careful approach that minimizes the impacts associated with once-through cooling, while maintaining grid reliability. While the Policy does not achieve all of its potential conservation goals, it was supported by several government agencies involved in its development, including the United States Environmental Protection Agency (“US EPA”).

Unfortunately, since its adoption, the Policy has been under assault. Late in the 2010 legislative session, AB 1552 was introduced by the Los Angeles Department of Water and Power (“LADWP”) via a gut-and-amend attempt to carve out specific exemptions from the policy. Fortunately, the bill was not successful; however, the Amendment would result in a similar outcome – a severe, precedent setting erosion of water quality protections provided by the recently approved policy. We urge the State Water Board to reject the Amendment because an amendment is not the appropriate place to address LADWP’s reliability and timeline concerns. Also, inadequate information has been provided by the City to justify consideration of policy amendments at this time. The State Board should address LADWP reliability and timeline concerns through the existing procedure laid out in the approved policy. Furthermore, the policy is under attack by members of the energy industry, as reflected by the lawsuit filed on October 27, 2010 by RRI Energy, Inc.; Mirant Delta, LLC; Dynegy Moss Landing, LLC; Dynegy Morro Bay, LLC; El Segundo Power, LLC; and Cabrillo Power I LLC. At a minimum, we recommend the State Water Board postpone consideration of the proposed Amendment until the energy industries legal attempt to gut the policy is behind us.

We understand that the Amendment has primarily been introduced because of concerns raised by LADWP regarding the Policy. Prior to and after adoption of the Policy, we have had several meetings with LADWP to discuss their concerns. The City’s commitment to eliminating their reliance on polluting coal for approximately half of the City’s energy needs by 2020 is highly commendable, as is their commitment to increase their Renewable Portfolio Standards to 40% by 2020. However, based on the information provided at these meetings, we maintain that their issues can be resolved within the framework of the adopted Policy.

The Policy provides sufficient flexibility for considering alteration of the compliance timeline due to grid reliability. This approach was developed with extensive input from the regulated community and state energy agencies. The schedule provides the certainty and time that the industry asserted was needed to protect grid reliability while upgrading facilities as needed.⁴ The Policy affords flexibility by building in two tracks for compliance: Track I, which requires closed cycle cooling, and Track II, which requires entrainment and impingement reductions via structural and operational controls comparable to the levels achieved with closed-cycle cooling. The timeline was developed in partnership with energy agencies and provides unique compliance deadlines for each power plant across a multi-year period ending in 2022 to address grid reliability. The Policy presents a clear public process by which the deadlines in the schedule may be carefully reviewed by both energy regulatory entities and the State Water Board in the event that industry raises specific concerns about newly arising reliability or

⁴ The Staff Report notes that the current Policy “provides a compliance schedule and the necessary flexibility to meet the goal of final compliance while ensuring grid reliability.” Staff Report, p. 7.



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permitting issues. This defined process for change in the timeline allows flexibility, while preventing constant reshuffling that would cause confusion and uncertainty for plant owners and operators.

We believe that consideration of the proposed Amendment is premature, as the LADWP hasn't even attempted yet to pursue the preferred paths provided in the approved policy. Under the Policy, power plant owners are required to submit implementation plans within six months of final adoption of the Policy, or April 1, 2011. Based on the information in those implementation plans, it is possible that the State Water Board, in consultation with the state energy agencies, may decide to modify the implementation schedule as a result of reliability issues raised in the plans. Without such information or basis, and without even an attempt to pursue these changes through the existing policy, the proposed Amendment should be denied.

Furthermore, the Amendment grants unprecedented authority to the regulated community to select their own compliance dates, in direct contravention of US EPA's delegation of authority to the state of California. The Amendment allows an owner/operator of a combined cycle facility to inform the State Board of its new compliance deadline, with no evidence that compliance with BTA is infeasible. Specifically, the Amendment states that OTC may be used "until the unit reaches the end of its useful life." The Amendment also allows an owner/operator of non-combined cycle units to set their own deadlines under the new "compliance-flexible" path in Amendment Section 3.A.(1)(a). Specifically, the changes state that when committing to repowering without use of OTC, "the owner or operator shall specify the date of repowering the unit." Without a specific compliance timeline, the Amendment provides an opening for power plants to continue using outdated and destructive once-through cooling technologies instead of the Best Technology Available ("BTA") well into the future without certainty that BTA will ever be achieved. Leaving this deadline up to the regulated entity is poor public policy, sets a horrible precedent that surely will be exploited by other power generators in California, and is inconsistent with the State Water Board responsibility of environmental protection.

For these reasons, we urge the State Water Board to reject the proposed Amendment, and instead utilize the implementation plan development procedure required under the Policy by April 1, 2011. There is no harm to the regulated community in simply developing these plans and allowing them to inform the compliance discussion. By contrast, adoption of the Amendment as proposed will cause significant, lasting harm to California's coastal, estuarine, and marine ecosystems. Please contact us at 310.451.1500 if you have any questions.

Sincerely,

Mark Gold, D.Env
President

Sarah Abramson Sikich, MESM
Coastal Resources Director