Comments to State Water Resources Control Board
Hearing on Clean Water Act § 316(b)
September 26, 2005

My name is Joe Geever and I'm the Southern California Regional Manager for Surfrider Foundation. As I'm sure you know, Surfrider is a grassroots environmental organization of nearly 50,000 members – all dedicated to restoring and protecting our coast and ocean.

As a disclaimer, I should tell you that Surfrider is one of the co-plaintiffs challenging the new US EPA 316(b) regulations. But, given that the litigation is, as yet, unresolved – I will keep my remarks within the context of the existing regs.

I also want to endorse the comments of the Santa Monica Baykeeper and tell you that Surfrider has been working closely with them and others on these policy considerations.

I'm here to just raise some awareness of the issue of co-located desalination facilities. As you know, there are numerous proposals to utilize once-through cooling water as a source for these facilities. Of course, there are alternatives that could avoid the use of this outdated technology – namely sub-surface intakes. The important point is that desal, per se, is not completely dependent on the continued use of once-through cooling.

I wanted to briefly highlight the complicated regulatory framework for permitting co-located desal facilities. Beyond 316(b), there is existing authority for the State or Regional Boards, the Coastal Commission, the California Energy Commission, the Fish and Game Commission – and probably others. We think this is a prototype of an issue that should be coordinated through the new California Ocean Protection Council and guided by the policy of the California Ocean Protection Act – amongst several new ocean resource management and protection laws.

For your agency, I think there are 3 relevant considerations – and likely more:

First, there is the obvious consideration of whether the discharge from these new facilities will trigger new considerations for the existing NPDES permits. For example, there is a proposal to discharge the brine from a co-located desal facility with the cooling water at the Encina plant in Carlsbad. This discharge is fairly close to shallow rocky reef – a relatively uncommon habitat in the region. Any displacement of natural marine life assemblages from that habitat is significant – and raises a new and important consideration beyond the impacts from the thermal discharge. The point is, the brine dilution with the cooling discharge is NOT always a benign issue and deserves some attention in your deliberations.

The next 2 issues are more about the implications of a co-located desal facility as it relates to 316(b) intake regs.

First, we are challenging the legitimacy of several of the exemptions to the performance standards. But, given that there is currently an exemption when the cost of compliance is wholly disproportionate to the environmental benefits – we believe the Board should make an immediate determination about co-located desal facilities. It would be contrary to sound public policy for the

state to allow the construction of co-located desal facilities and then subsequently use the dismantling of those facilities to be put on the cost side of the cost-benefit scale. You should send a clear policy decision to coastal generators that the cost-benefit analysis will be determined by the circumstances that existed on the day the new regs were promulgated. There shouldn't be any allowance for "back-dooring" costs before the permit is up for review.

Second, we have heard coastal generators intimating that there is not enough space available at their sites for the construction of alternative cooling technology. Yet, they are simultaneously leasing what limited space they have to desal proponents. Again, this back-door effort to avoid compliance cuts against the spirit of the new 316(b) regulations. You should make it clear, through the Ocean Protection Council, that decisionmakers at the state and local level need to consider this in their CEQA processes and their permitting processes.

We are also concerned that the enormous energy demand for these numerous desal facilities will have the cumulative effect of just exacerbating the loss of marine life from cooling water intakes. It should be clear to policy makers that "in the fence" energy rate subsidies for desal – and other subsidies that undermine alternatives for meeting our freshwater demand – carry with them the incentive to continue, or worse, exacerbate marine life mortality.

Bottom line: we have been working for decades to reduce the dramatic impacts from once-through cooling on our marine ecosystems – and the desal industry has come to the table at the eleventh hour. We absolutely cannot go backwards on the marginal advances we've made to date on eliminating the destruction of marine life from impingement and entrainment. This Board, and the Ocean Protection Council, should make it clear that there are preferred alternatives to providing "source water" for desal, and more importantly, that co-located desal will not, in even a marginal way, justify the continued use of once-through cooling.