



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

September 1, 2011

CERTIFIED MAIL AND EMAIL

Stephan C. Volker, Esq.
Law Offices of Stephan C. Volker
436 14th Street, Suite 1300
Oakland, CA 94612
svolker@volkerlaw.com

Dear Mr. Volker:

PETITION OF BACKCOUNTRY AGAINST DUMPS, THE PROTECT OUR COMMUNITIES FOUNDATION, EAST COUNTY COMMUNITY ACTION COALITION, AND DONNA TISDALE (RECONSIDERATION OF CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ORDER FOR THE SAN DIEGO GAS AND ELECTRIC COMPANY SUNRISE POWERLINK PROJECT [FILE NO. SB09015IN] AND U.S. ARMY CORPS OF ENGINEERS [FILE NO. 2007-00704-SAS]) STATE WATER RESOURCES CONTROL BOARD: BOARD MEETING NOTIFICATION
SWRCB/OCC FILES A-2152

Enclosed is a copy of the proposed order in the above-entitled matter. The State Water Resources Control Board (State Water Board) will consider this order at its meeting that will be held on *Tuesday, October 4* commencing at *9:00 a.m.* in the Coastal Hearing Room, Second Floor of the Cal/EPA Building, 1001 I Street, Sacramento, California. You will separately receive an agenda for this meeting.

At the meeting, interested persons will be allowed to comment orally on the draft order, subject to the following time limits. The petitioners, Backcountry Against Dumps, the Protect our Communities Foundation, East County Community Action Coalition, and Donna Tisdale collectively will be allowed five minutes for oral comment. The real party in interest, San Diego Gas and Electric Company, will likewise be allowed five minutes for oral comment. Additional time may be provided for questions by the State Water Board members. Other interested persons will be allotted a lesser amount of time to address the State Water Board. At the meeting, the State Water Board may adopt the draft order as written or with revisions, it may decide not to adopt the order, or it may continue consideration until a later meeting.

All comments shall be based solely upon evidence contained in the record or upon legal argument. Supplemental evidence will not be permitted except under the limited circumstances described in California Code of Regulations, title 23, section 3869, subdivision (b). Written comments on the draft order must be received by **September 20, 2011 at noon**. Please

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

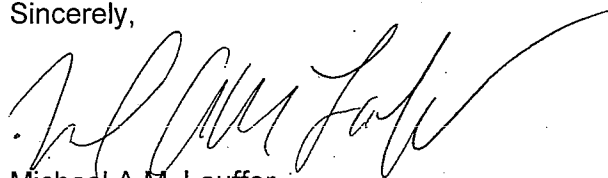
1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

indicate in the subject line, comments to A-2152—October 4 Board Meeting. Those comments must be addressed to:

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(tel) 916-341-5600
(fax) 916-341-5620
(email) commentletters@waterboards.ca.gov

If there are any questions or comments, please contact James Herink, Staff Counsel, in the Office of Chief Counsel, at (916) 341-5150 or email jherink@waterboards.ca.gov.

Sincerely,



Michael A.M. Lauffer
Chief Counsel

Enclosure

cc: See next page

cc: **[via U.S. Mail only]**
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[via U.S. Mail and email]
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[via U.S. Mail only]
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[via U.S. Mail only]
Ms. Heather A. Pert, Ph.D.
Environmental Scientist
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[via U.S. Mail only]
Mr. Eric Porter
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
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[via U.S. Mail only]
Ms. Billie Blanchard
California Public Utilities Commission
Energy Division CEQA Unit
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[via U.S. Mail and email]
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cc: (Continued)

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Mr. Larry Kinley, Executive Director
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Interested Persons List

Inter-Office Service List

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2011-

In the Matter of the Petition of

**BACKCOUNTRY AGAINST DUMPS, THE PROTECT OUR COMMUNITIES FOUNDATION,
EAST COUNTY COMMUNITY ACTION COALITION, AND DONNA TISDALE**

For Reconsideration of Clean Water Act Section 401 Water Quality Certification for the San Diego Gas and Electric Company, Sunrise Powerlink Project [File No. SB09015IN] and U.S. Army Corps of Engineers [File No. 2007-00704-SAS]

Issued by the
State Water Resources Control Board,
Executive Director

SWRCB/OCC FILE A-2152

BY THE BOARD:

On November 9, 2010, the State Water Resources Control Board's (State Water Board) Executive Officer issued a water quality certification for the Sunrise Powerlink Project (Project). The Project is to construct, operate, and maintain approximately 115 miles of transmission lines from the El Centro area to northwestern San Diego County, near the City of Poway. The Project will have the capacity to import up to 1,000 megawatts of electricity and is needed to ensure electricity reliability to the area, to reduce energy costs, and to allow San Diego Gas & Electric Company (SDG&E) to meet its obligations to purchase certain amounts of energy from renewable generation resources.

A number of non-profit entities and an individual (Petitioners) have filed a petition for reconsideration of the Executive Director's issuance of a water quality certification.¹ The Petitioners' allegations focus on the State Water Board's alleged failure to comply with the California Environmental Quality Control Act (CEQA).² In a series of related arguments, the Petitioners claim that the Executive Director's issuance of the water quality certification was in

¹ The Petitioners also requested a stay during the State Water Board's reconsideration of this matter. Additionally, whether Petitioners timely filed their petition in accordance with California Code of Regulations, title 23, section 3867, subdivision (c) is in dispute. Because the matter is being dismissed, neither of these issues will be addressed.

² Pub. Resources Code, § 21000 et seq.

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error, because it was done on reliance of a flawed, insufficient environmental impact report and that the State Water Board should have required the California Public Utilities Commission (CPUC) to prepare a supplemental environmental impact report due to modifications made to the Project's route and methods by which the Project will be constructed.

The CPUC's final environmental impact report (FEIR) contained over 120 mitigation measures, many of which required avoidance and minimization of environmental effects. After the FEIR's adoption, SDG&E completed the engineering and design of the Project. In compliance with the FEIR's mitigation measures, the Project's route and construction methods were altered in order to avoid or minimize environmental impacts. SDG&E submitted these changes to the CPUC in a Project Modification Report (PMR) on May 14, 2010. Though not required, the CPUC publicly noticed and accepted comments on the PMR. The CPUC published its final analysis of the PMR in a Project Modifications Report Memorandum (Memorandum) in September 2010. The Memorandum analyzed each modification, both collectively and individually, and concluded that no supplemental environmental review was necessary.

The Division of Water Quality staff reviewed and considered the FEIR, the PMR, and the Memorandum along with numerous other documents when it drafted the water quality certification and recommended it be signed by the Executive Officer. In response to the petition for reconsideration, the Office of Chief Counsel and Division of Water Quality have again reviewed the administrative record in this matter, along with the Petitioners' allegations and SDG&E's response to the petition. The State Water Board has complete discretion to determine whether a petition raises substantial issues that are appropriate for review, and to dismiss petitions that fail to raise such issues.³ We have concluded that the petition for reconsideration does not raise any substantial issues appropriate for review.

³ Cal. Code Regs., tit. 23, § 3869, subd. (a)(1); See also, *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177 & *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1114 [discussing comparable review authority in Water Code section 13320].

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ORDER

IT IS HEREBY ORDERED that the petition of Backcountry Against Dumps, the Protect our Communities Foundation, East County Community Action Coalition, and Donna Tisdale for reconsideration of Clean Water Act, section 401 water quality certification for the SDG&E, Sunrise Powerlink Project (SWRCB/OCC File A-2152) is dismissed for failure to raise any substantial issues appropriate for review.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 4, 2011.

AYE:

NO:

ABSENT:

ABSTAIN:

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Jeanine Townsend
Clerk to the Board