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September 20, 2011

VIA EMAIL AND FEDEX

State Water Resources Control Board
 Attn: Ms. Jeanine Townsend
 Clerk to the Board
 1001 I Street, 24th Floor
 Sacramento, CA 95814
 Email: commentletters@waterboards.ca.gov

File No. 026877-0040



Re: Comments to A-2152 – October 4 Board Meeting

Dear Board Members of the State Water Resources Control Board:

On behalf of San Diego Gas & Electric Company (“SDG&E”), we respectfully request that the State Water Resources Control Board (“State Board”) adopt the proposed order dismissing the petitioners’ (“Project Opponents”) Petition for Reconsideration of federal Clean Water Act Section 401 water quality certification, SWRCB/OCC Files A-2152. Though SDG&E believes that the Project Opponents’ petition for reconsideration was untimely, the proposed order correctly concludes that the petition fails to raise any substantial issue appropriate for review.¹

Construction of the Sunrise Powerlink Transmission Project—one of the most studied and mitigated projects in the history of California—has been under way for now over a year, with construction proceeding subject to over 120 mitigation measures, including those specified in the State Board’s November 9, 2010 Section 401 certification. The project is bringing material benefit to the region, including environmental, as well as economic stimulus. The project employs hundreds of people, many of them in high paying construction jobs, and at its peak will employ between 650 and 700 people. SDG&E has secured or otherwise funded over 9,000 acres of the over 10,390 acres of mitigation lands that ultimately will be acquired or conserved in perpetuity as part of the project. SDG&E also has purchased greenhouse gas credits to fully offset air emissions impacts during the construction phase of the project, a significant percentage of which have already been retired.

¹ SDG&E reserves the right to continue to challenge the timeliness of the Project Opponents’ petition for reconsideration in further administrative or court proceedings.

By adopting the proposed order, the State Board will moot some or all of the lawsuit the Project Opponents have filed in Superior Court against the State Board. The State Board also will join the multiple courts and administrative tribunals that have evaluated the Project Opponents' attacks against this important project and found them to lack merit.

A. Adopting the proposed order will moot some or all of the lawsuit the Project Opponents have filed against the State Board.

By adopting the proposed order, the State Board would render some or all of the Project Opponents' lawsuit moot. The Project Opponents have sued the State Board in Superior Court alleging the same and/or similar arguments that they raise in their petition for reconsideration.² The lawsuit alleges that the State Board improperly rejected the Project Opponents' petition for reconsideration as untimely and challenges the adequacy of the analysis under the California Environmental Quality Act ("CEQA").

B. The Project Opponents have filed numerous lawsuits and administrative complaints to stop the project, without success.

The petition for reconsideration is part of the Project Opponents' larger campaign against the Sunrise Powerlink Transmission Project. The Project Opponents have challenged the project multiple times, and have previously made arguments almost identical to those in their petition for reconsideration, on the same environmental document at issue here. In these various fora, the Project Opponents have been unsuccessful in their unwarranted and duplicative challenges to the project's compliance with environmental laws:

- *Center for Biological Diversity et al. v. Cal. P.U.C.* (Cal. Supreme Court, 2011, No. S191074). On April 13, 2011 the California Supreme Court rejected the precise CEQA argument the Project Opponents raise here—that changes in the project require additional CEQA review.³
- *Backcountry Against Dumps, et al. v. Jim Abbott, et al.* (Southern Dist. of Cal., 2010, Case No. 3:10-cv-01222), and an appeal of this case to the Ninth Circuit Court of Appeals. This case challenged the Bureau of Land Management's environmental review—also on the same environmental impact report/environmental impact statement that the Project Opponents challenge here—and decision for the project. The District Court denied the Project Opponents' request for a preliminary injunction

² *The Protect Our Communities Foundation v. State Water Resources Control Board* (Super. Ct. Sacramento County, 2011, No. 34-2011-80000787).

³ Courts have also rejected challenges to the project's environmental review and permitting by petitioners other than the Project Opponents. On August 17, 2010, the California Court of Appeal rejected a challenge to the certificate of public convenience and necessity for the project in *Utility Consumers' Action Network v. Public Utilities Com.* (2010) 187 Cal.App.4th 688. On February 23, 2011, the California Supreme Court rejected a challenge to the environmental impact report for the project in *Utility Consumers' Action Network et al. v. Cal. P.U.C.* (Cal. Supreme Court, 2009, No. S175532).

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and granted summary judgment in favor of the project. Thereafter, the Ninth Circuit denied the Project Opponents' request for an injunction pending appeal.

- *The Protect Our Communities Foundation et al. v. U.S. Dept. of Agriculture et al.* (Southern Dist. Of Cal., 2011, Case No. 3:11-CV-0093). In this case, the Project Opponents sued the Forest Service for a number of claims, including for failing to prepare a supplemental environmental impact statement based upon modifications to the project described in the Project Modification Report. On September 15, 2011, the court rejected the Project Opponents' request for a preliminary injunction, finding that they had not shown that they are likely to succeed on the merits of their case, and that the public interest weighs in favor of the project.
- Multiple administrative challenges before the California Public Utilities Commission, the Interior Board of Land Appeals, and the Forest Service.

* * *

We encourage the State Board to adopt the proposed order. We look forward to the October 4th meeting and answering any questions the State Board may have about the project and its compliance with water quality control law.

Very truly yours,



Paul N. Singarella
of LATHAM & WATKINS LLP

cc: See next page

CERTIFICATE OF SERVICE

I am employed in Orange County in the State of California. I am over the age of 18 and not a party to this proceeding. My business address is 650 Town Center Drive, Suite 2000, Costa Mesa, CA 92626.

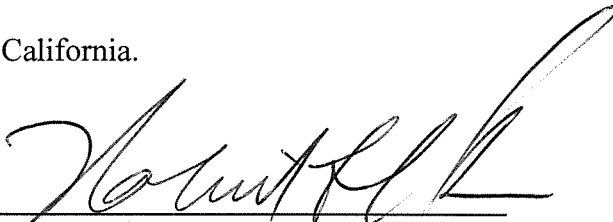
On September 20, 2011, I served the following document:

COMMENTS TO A-2152 – OCTOBER 4 BOARD MEETING

on all interested parties in this proceeding in the attached service list by FedEx.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 20, 2011 at Costa Mesa, California.



Robert L. Dickson, Jr.

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