



OFFICE OF THE CITY MANAGER

April 21, 2010

Mr. David Gibson
Executive Officer, c/o Brian Kelley
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

RE: Tentative Order No. R9-2010-0062, hearing to receive testimony, technical evidence, and supporting documentation relevant to determining:

- 1) Whether South Bay Power Plant intake and discharge operations endanger human health or the environment and can only be regulated to acceptable levels by NPDES permit modification or termination; and
- 2) Whether any effects identified in Item 1 above provide a sufficient basis for the San Diego Water Board to require that South Bay Power Plant discharges be terminated earlier than December 31, 2010 and prior to California Independent System Operators (CAISO's) release of Units 1 and 2 from "Reliability Must Run" (RMR) status.

Dear Mr. Gibson, Chairman King and Board Members of the San Diego Regional Water Quality Control Board:

The City of Chula Vista supports the case for the rescission of the South Bay Power Plant (SBPP) discharge permit this year as recommended by your staff. The City also strongly encourages the San Diego Regional Water Quality Control Board (Board) to affirm its earlier position that their decision be made based solely on evidence regarding water quality issues. As stated by the Chula Vista City Council and representatives from multiple jurisdictions throughout south bay, the evidence in the record beginning with the 2004 permit, and the Board Staff Report of March 22, 2010 (Report) clearly demonstrates that there are significant, damaging, and avoidable impacts from the continued operations of the South Bay Power Plant. Furthermore, we agree that the evidence in the record demonstrating higher biological impacts from the use of the bay water as cooling for the SBPP occurring in May through August as sufficient evidence for the Board to terminate the discharge.

As the City has stated in the past, the South Bay watershed has co-existed with a SBPP permit that provides SBPP with the ability to operate, but not the right to damage beneficial environmental uses. This damage is effectively described and documented in the Board's own 2004 permit, that we were all led to believe would end last November, and the March 22 RWQCB staff report. Duke/Dynegy's commitment to stop operating the SBPP last year during that 2004 permit process was a key to the City and others not objecting to the permit and not requiring substantial mitigation at that time. The Board should not abdicate its authority or responsibility to protect the bay from further environmental damage either by postponing or altering their decision with respect to issues that are the responsibility of other agencies. South Bay citizens continue to encourage the Board to deliberate and make its findings solely on the basis of water quality issues.

The South Bay has shouldered the burden of the plant for almost fifty years without adequate mitigation or offsets for the damage caused by SBPP and the time has come to establish a time certain when that damage stops and restoration begins. However, Dynegy's failure to plan over the past five-year permit period when Duke/ LS Power committed to stop operating the plant demonstrates that providing a "minor modification" permit without substantive mitigation is woefully inadequate. The additional permit period already provided and any additional permit period without immediate and substantial mitigation is an incentive to continue to operate this plant for tremendous financial gain at the expense of our watershed, public access, and the economy of our region. It should be recognized that potentially doing less damage as a result of less operating capacity is not mitigation. Our families fish and kayak in this bay, our bayfront and marine businesses depend on this bay and less damage does not constitute appropriate or reasonable mitigation.

The March Staff Report states that, "If Dynegy proposes to discharge from Units 1 and 2 beyond December 31, 2010, a new report of waste discharge/NPDES permit application would need to be submitted to the San Diego Water Board and a new NPDES Order will need to be adopted by the San Diego Water Board which protects the beneficial uses of San Diego Bay and complies with all applicable requirements."

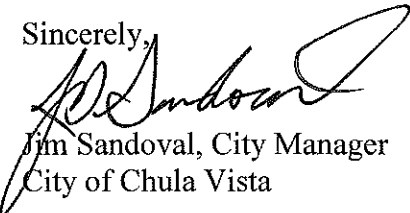
The Report goes on to state in several locations under Effects of Discharge that, "Any proposed discharge beyond 2010 must be evaluated to determine whether it poses an unacceptable risk of endangering human health or the environment in the long term." The Report highlights several significant impacts including but not limited to, Temperature where the Report states that, 104 acres of eel grass habitat or 7-8% of total eel bed grass coverage in the bay have been precluded from the discharge channel and other areas of the South Bay from the SBPP discharge, ... and, that "these thermal limitations do not fully ensure protection of water quality needed for attainment of the beneficial uses of South San Diego Bay as required by the Basin Plan and State Thermal Plan."

As previously stated, the SBPP is one of the largest NPDES permitted discharge sources in the region, let alone San Diego Bay, and the Plant operators have had more than five years to prepare for the end of the 2004 permit and perform the science that should have been required for a new permit. Dynegy's failure to do so now should not be justification to not require adequate mitigation and more egregiously continue the impacts identified by the 2004 report, subsequent monitoring and the recent March RWQCB Staff Report. It should be recognized that potentially doing less damage as a result of less operating capacity is not mitigation. Additionally, the Report does not recognize that even with less capacity the SBPP could effectively run more total hours than the recent historical run time that has contributed to and maintained the existing environmental impacts.

The Report further states that, "NPDES Order R9-2004-0154 terminates the discharge from SBPP on December 31, 2010 or the date CAISO determines that RMR services from Units 1 and 2 are no longer needed, **whichever occurs first, absent further action by the San Diego Water Board.**" Given the past comment to the City regarding limited RWQCB Staff resources and the limited time remaining this calendar year it is questionable whether or not a new public permit process for the SBPP could be appropriately conducted by December 31, 2010. Using the May 12, 2010 hearing to establish an appropriate level of required mitigation and declaring a specific end of the discharge permit will be the most transparent step the Board can take to send a clear message that the Board is focused on their responsibility to protect the watershed and its invaluable beneficial uses for all.

In closing, the City asserts that the Board has adequate justification for terminating the permit and calls on the Board to establish an absolute final termination date for the discharge permit, and to fund adequate mitigation to address the ongoing water quality impacts at least from November 2009 through the final termination of the permit. The City of Chula Vista does not plan to introduce additional evidence or call additional witnesses. Thank you for your time and consideration.

Sincerely,



Jim Sandoval, City Manager
City of Chula Vista

cc: Cheryl Cox, Mayor and City Council,
Bart Miesfeld, City Attorney
Scott Tulloch, Assistant City Manager
Michael T. Meacham, Director Conservation & Environmental Services