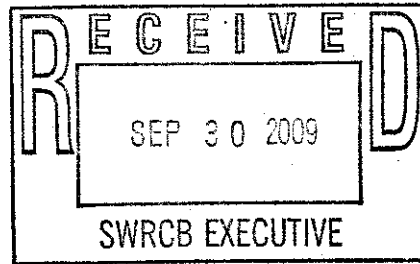


**COASTAL
ENVIRONMENTAL
RIGHTS
FOUNDATION**



September 30, 2009

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Via First Class Mail and Electronic Mail
commentletters@waterboards.ca.gov

Re: CERF Comments Regarding the State Water Resources Control Board and California Environmental Protection Agency Draft Substitute Environmental Document for the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling and the draft Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling

Dear Ms. Townsend:

On behalf of the Coastal Environmental Rights Foundation (CERF), thank you for the opportunity to provide these supplemental comments regarding the State Water Resources Control Board and California Environmental Protection Agency Draft Substitute Environmental Document for the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling and the draft Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling ("Draft Policy").

CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents. In addition to the comments provided herein, CERF is a signatory to statewide and regional coalition letters submitted by the California Coastkeeper Alliance and Environmental Health Coalition, respectively.

Passage of an OTC Policy is Meaningless Without Addressing Desalination

While we greatly appreciate the efforts of State Board staff and others to further the ocean protection goals underlying the draft OTC Policy, any action taken to establish or affirm interpretation of Best Technology Available for power plants will be rendered essentially meaningless if ocean desalination facilities are allowed to co-locate with open ocean intake structures currently associated with such power plants. Indeed, it boggles the mind to imagine that after decades of work to reach a point where the devastating impacts of once-through cooling are on the verge of being addressed, an entirely new industry *with exactly the same impacts as OTC* would be allowed to proliferate almost within the same footprints of the very plants we are seeking to now address. The quantities of source water to be taken in for desalination are as boundless as our thirst for fresh water, and as such, it would be an absolute travesty to pass a policy that does not address on a meaningful level the absurdity of allowing desalination facilities to piggy-back on outgoing OTC technologies. CERF recommends the State Board OTC Policy be supplemented to include the following restrictions:

- 1 No seawater desalination facility shall be approved co-located with a once-through cooled power plant unless it is shown by the applicant that, upon cessation of the need for OTC infrastructure for energy generation, alternative seawater intake

- structures (i.e. sub-seafloor) would be viable at the facility's optimum freshwater production design requirements.
- 2 The Best Technology Available for seawater intake for desalination is sub-surface.
 - 3 California Water Code section 13142.5(b) requires that new desalination facilities be sized appropriately and located in areas of the state where sub-seafloor intakes are viable.
 - 4 The analysis of BTA in the *Riverkeeper II* decision is analogous to establishment of BTA for desalination facilities under Water Code section 13142.5(b), meaning that because the standard is technology driven, consideration of environmental impacts is not required prior to establishment of appropriate technological requirements.

Dry Cooling should be considered Best Technology Available

The draft Policy and Substitute Environmental Document fail to provide sufficient analysis and rationale for establishing closed cycle wet cooling as appropriate Best Technology Available for energy generation. The genesis for establishment of closed cycle wet cooling as BTA rests with the Federal EPA's assertion that Clean Water Act section 316(b) only applies to facilities that utilize cooling water intake structures, and because a dry-cooled plant would not require an intake structure, Congress could not have contemplated elimination of intake structures altogether without saying so in the statute. This rationale fails to take into consideration California law, specifically Water Code section 13142.5.

If regulators first apply section 316(b)'s plain meaning, California's existing OTC power plants do not meet BTA (regardless of whether BTA is closed cycle wet or dry cooling). Therefore, the OTC plants must be significantly retrofitted or entirely repowered. In either of these scenarios, State law can be interpreted to mandate dry-cooling as BTA.

California Water Code section 13142.5 (annotated for clarity) states: For each [1] new or expanded coastal powerplant or [2] other industrial installation using seawater for cooling, heating, or industrial processing -- the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

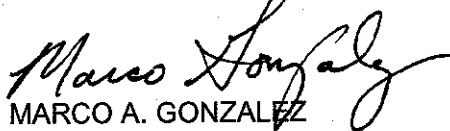
Therefore, once the 316(b) analysis requires an essentially *new* coastal power plant to be built, State law requires that best available technology (BAT) be used to minimize intake and mortality of marine life. The statute is not drafted such that the BAT can only include cooling water intake structures.

So, while a straightforward reading of Federal Clean Water Act 316(b) might require closed cycle wet cooling, once construction of a new plant is triggered, Water Code section 13142.5(b) requires dry cooling at BAT.

Thank you for your consideration of CERF's comments in the development of this important Policy.

Sincerely,

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION


MARCO A. GONZALEZ
Interim Executive Director