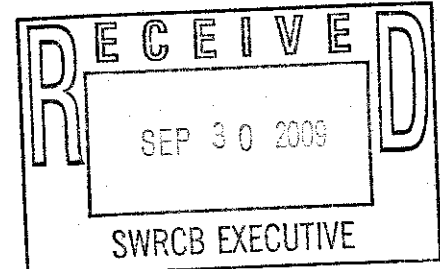




SAN FRANCISCO
BAYKEEPER.

September 30, 2009

Members of the Board
c/o Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Submitted via electronic mail to: commentletters@waterboards.ca.gov

Re: Proposed statewide policy on the use of coastal and estuarine waters for power plant cooling

Dear Chair Hoppin and Members of the Board,

On behalf of San Francisco Baykeeper and our members, I would like to thank you for this opportunity to provide input on the State Board's proposed once-through cooling ("OTC") policy. We fully support and integrate by reference the letter submitted on September 30, 2009 by the California Coastkeeper Alliance ("CCKA"). These comments are intended to supplement CCKA's letter. We offer this supplement to illustrate the significant impacts of OTC on the San Francisco Bay-Delta estuary, as well as to point out the areas where the proposed policy can be strengthened to make it more protective for marine life.

In the San Francisco Bay Area, the Potrero, Pittsburg and Contra Costa Power Plants all use outdated once-through cooling systems that draw billions of gallons of San Francisco Bay and Delta waters through their intake screens annually. Not one of these three plants has a current Clean Water Act permit; therefore, they have legally continued to impinge and entrain countless organisms in the interim. Records for the Potrero Plant show that outdated technology regularly kills longfin smelt, a species recently upgraded to endangered status under the California Environmental Species Act¹. In addition to taking longfin smelt, the Contra Costa and Pittsburg Power Plants also report takings of delta smelt, an endangered species with a population that has plummeted in recent years². Furthermore, all of the federally listed salmonid species that migrate through the Sacramento and San Joaquin River watersheds, including the Chinook salmon, Coho salmon, and steelhead trout, are at risk as they pass the intakes for the Pittsburg and Contra Costa Power Plants on their way to and from spawning grounds.

Despite repeated requests by the environmental community, the Regional Water Boards have allowed harm to continue by refusing to issue new Clean Water Act permits. The San Francisco

¹ California Department of Fish and Game. 2009. A Status Review of the Longfin Smelt (*Spirinchus thaleichthys*) in California. Report to the Fish and Game Commission.

² EPA. 316(b) Case Studies, Part E: San Francisco Bay/Delta Estuary. Chapter E3: Evaluation of I&E Data, Tables E3-2 and E3-6.



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and Central Valley Regional Water Boards have not increased scrutiny of the power plant operations, nor have they adopted interim requirements. In fact, most if not all of the current requirements are the result of negotiations between the plants and state and federal wildlife agencies.

Baykeeper strongly supports the State Board's decision to adopt a statewide policy to implement federal Clean Water Act section 316(b). A statewide policy will ensure consistency across regions while providing the guidance necessary for the Regional Boards to reissue and modify permits with requirements that will protect marine and estuarine life. We appreciate the efforts of the State Water Board staff to create this policy; however, we see several areas that can be strengthened to ensure better compliance. We request that the following changes be addressed before the policy is adopted:

- Under Immediate and Interim Requirements, the policy should clearly state that the mitigation requirements are being imposed pursuant to the Board's authority under the Porter-Cologne Act and are in no way intended as a means of complying with 316(b) of the CWA. Additionally, power plants should demonstrate to the Regional Boards that their existing mitigation efforts effectively mitigate impacts to *all species*. Mitigation efforts enacted solely for the benefit of protected species (like those undertaken by the Mirant plants) are not sufficient. The Regional Boards must be provided with the information and guidance necessary to quantify the amount of mitigation that is needed. We also recommend that the payments to compensate for interim impingement and entrainment be collected in a fund to be managed by the State Board.
- Under Implementation Provisions, the policy must emphasize that the final compliance dates are immutable. We suggest making the following change: "The implementation plan shall identify the compliance alternative selected...and propose a realistic schedule for implementing these measures that is as short as possible but, in no event, exceeds the milestone due dates listed in Table 1's Implementation Schedule."
- Additionally, the public and wildlife agencies should have the opportunity to comment on the implementation plans, especially with regards to the mitigation plans. The NPDES permit reissuance section should also include more specifics and deadlines. Permits should be reissued or modified within six months of the implementation plan being approved.
- Under Monitoring Provisions, baseline studies should account for yearly variations in populations. Salmon populations, for example, vary due to several factors affecting recruitment and delta smelt populations change according to differences in water year. The public and appropriate wildlife agencies need to be given an opportunity to review and comment on these studies. It may also be necessary to require a Technical Advisory Committee to review and evaluate baseline studies if the Regional Boards do not have sufficient expertise.

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- Finally, the State Board should include an explanation as to how the Long-Term Procurement Plan led to the final compliance date of 2017 for Bay Area Plants.

We hope that by adopting this statewide policy, the State Board will ensure the rapid phase-out of OTC by power plants. In the interim, however, San Francisco Baykeeper would like to see power plants take meaningful steps to mitigate the destructive impacts of OTC, thereby making significant progress in the protection of imperiled marine and estuarine wildlife.

Sincerely,



**Rosalind Becker, Program Fellow
San Francisco Baykeeper**

**Sejal Choksi, Program Director
San Francisco Baykeeper**