STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY
ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

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Chair Charles Hoppin and Members of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

VIA EMAIL: commentletters@waterboards.ca.gov

RE: Comments on "Draft Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling"

Dear Chair Hoppin and Board Members,

We appreciate the opportunity to comment on the March 22, 2010 version of the above-referenced proposed policy. These comments augment those provided by Coastal Commission staff earlier in the policy review process and are focused on the proposed changes to the previous November 23, 2009 draft policy.

General Comments: We support the Board's interest in maintaining a reliable electricity supply for the state while protecting the state's water quality and marine resources. However, the changes proposed in this latest version of the policy almost entirely emphasize the former and diminish the latter.

Adoption of the policy with these most recent proposed changes, which include weakened compliance requirements, extended and uncertain compliance schedules, and weakened mitigation and monitoring measures, would likely result in little or no change to the existing operations of once-through cooling systems in California and a continuation of the significant adverse impacts they cause. Some of the proposed changes would largely negate the purpose of the policy, which is to ensure that cooling water intake structures use Best Technology Available to minimize adverse environmental impacts. It appears, too, that most of these recent proposed changes do not appear necessary to ensure grid reliability, given that the state agencies most directly concerned about that issue – the California Energy Commission, the California Public Utility Commission, and the California Independent System Operator – were largely supportive of the November 2009 policy, which provided much stronger protection for the state's water quality and marine resources while simultaneously supporting grid reliability.

Given the many steps California is taking to improve its coastal resources – including establishment of Marine Life Protected Areas, the work of the Ocean Protection Council, and others – adoption of the policy as currently proposed would represent a significant step backwards, especially given the substantial efforts expended over the past several years by the multiple state agencies and stakeholders involved with the Board's development of this policy to provide a workable approach for reducing the impacts of once-through cooling systems.

Our overall recommendation is that the Board not adopt the policy as currently proposed, but that it instead adopt the November 2009 version of the policy. While that version was not ideal, it provided key elements that are missing from the latest draft – including measures necessary to ensure grid reliability and providing stronger and legally appropriate requirements for water quality protection – and it was more broadly supported by the many stakeholders involved in developing the policy over the last several years. If the Board wishes instead to consider adopting the latest draft, we strongly recommend the Board first provide additional opportunities for stakeholder review, workshops, and discussion.

Key Concerns: The examples below include some key elements of the recent proposed changes that illustrate our overall concerns about the policy:

- **Compliance alternatives – restore the feasibility test:** The policy should revert to the previous proposed approach, in which facilities were to implement Track 1 – i.e., reduce flow rates to levels commensurate to closed-cycle wet cooling – unless it was infeasible to do so, in which case the Track 2 alternative options, including mitigation and monitoring, would be available (see Section 2.A of the policy). As most recently proposed, an owner or operator could select Track 2 compliance even if it would be feasible to comply using Track 1. Removing the feasibility requirement is likely to result in continued and significant, yet avoidable, impacts to water quality and marine biology, especially when combined with other aspects of the policy's latest proposed changes, including those described below. Additionally, removing the consideration of feasibility does not appear to be consistent with Clean Water Act Section 316(b) or Section 13142.5 of the Porter-Cologne Act, both of which include a feasibility test. Because other laws and regulations applicable to these intake systems also require consideration of feasibility – including, for example, several Coastal Act policies – facility owners and operators may need to go beyond Board decisions arising from the currently proposed policy, which could result in unnecessary regulatory confusion.

- **Base compliance on actual, recent flows rather than design flows:** Along with inappropriately providing equal consideration of Track 1 and Track 2 compliance options, the current proposed changes would weaken Track 2 compliance requirements by using artificially high "design flows" as the basis for entrainment reductions, and would provide additional credits for measures that don't result in actual flow reductions (see, for example, Section 2.A.2(d)). In many instances, this would likely result in little or no change to the significant adverse entrainment impacts caused by these facilities operating at flow levels much lower than their design flows. Design flow is an artificially high basis to use as the starting point, as these flows at many facilities were established decades ago and are based on considerations like total pumping capacity or maximum generating capacity, not on a facility's impacts to marine biology. Further, even though most of the facilities have not operated at their design flows for years or decades, they continue to cause significant adverse marine biological impacts.

- **Ensure that mitigation requirements result in actual mitigation:** Some of the recent proposed changes would provide credits for mitigation but do not necessarily ensure that mitigation will occur. For example, Section 2.C would establish a preference that mitigation take the form of funding to support "…implementation, monitoring, maintenance, and management of the State's Marine Protected Areas". We recognize that funding is a necessary part of mitigation, but also that not all funding serves as mitigation – for example, funding used for monitoring, maintenance, or management generally does not mitigate for identified impacts. We recommend that this section be deleted, or, as an alternative, that the policy specify that any required funding be adequate to fully implement the necessary on-the-ground mitigation projects.

Conclusion: Again, thank you for the opportunity to comment on this important policy. Please contact Tom Luster of my staff at 415-904-5248 if you have any additional questions or would like additional information.

Sincerely,

Peter M. Douglas
Executive Director