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Sempra Energy[®] utilities

August 31, 2012

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



VIA E-MAIL: commentletters@waterboards.ca.gov

RE: **PROPOSED AMENDMENT TO THE CALIFORNIA OCEAN PLAN REGARDING DESIGNATING STATE WATER QUALITY PROTECTION AREAS TO PROTECT MARINE PROTECTED AREAS AND THE DRAFT SUBSTITUTE ENVIRONMENTAL DOCUMENTATION FOR THE PROPOSED AMENDMENT**

Dear State Water Board Members:

Sempra Energy's regulated utilities, San Diego Gas & Electric Company and Southern California Gas Company (collectively, the "Utilities") appreciate this opportunity to provide the State Water Resources Control Board ("SWRCB") with comments on the 2012 Proposed Amendment to the California Ocean Plan Regarding Designating State Water Quality Protection Areas to Protect Marine Protected Areas and the Draft Substitute Environmental Documentation for the Proposed Amendment.

Delivery of essential public services requires routine and emergency construction, operation, inspection, maintenance, repair and replacement of utility and other linear infrastructure. A primary mandate to utilities and other entities with linear facilities regulated by the California Public Utilities Commission and/or other state and federal regulatory agencies is to provide safe and reliable service. Since the Utilities have thousands of miles of linear facilities throughout southern California, to accomplish this mandate they each need an efficient and timely process to obtain any required permits and authorizations for their work. These operations and activities often require the use of National Pollutant Discharge Elimination System ("NPDES") permits and/or Waste Discharge Requirements ("WDRs"). The use of these permits will likely be affected by the designations, conditions and prohibitions in the Proposed Amendment.

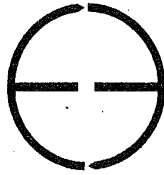
The utilities have worked with the California Council for Environmental & Economic Balance to review and develop comments on the Proposed Amendment and we herein incorporate their letter to Ms. Jeanine Townsend ("Proposed Amendment to the California Ocean Plan Regarding Designating State Water Quality Protection Areas to Protect Marine Protected Areas and the Draft Substitute Environmental Documentation for the Proposed Amendment"), dated August 31, 2012, by reference into this submittal, as an attachment.

The Sempra Utilities urge the SWRCB to incorporate our comments into the Proposed Amendment.

Please feel free to contact Fred Jacobsen (San Diego Gas & Electric Company) at 858-637-3723 if you have any questions concerning our comments.

Yours sincerely,

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Dear State Water Resources Control Board Members:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board (SWRCB) for this opportunity to comment on the Proposed Amendment to the California Ocean Plan Regarding Designating State Water Quality Protection Areas to Protect Marine Protected Areas and the Draft Substitute Environmental Documentation for the Proposed Amendment.

CCEEB membership includes companies with linear system facilities that provide gas, electric and communication services which are essential services to California's citizens (e.g., residents, businesses, hospitals, government). Gas transmission and distribution pipelines are located underground as are many of the transmission and distribution electric facilities and communications facilities. These facilities include underground structures (e.g., underground structures such as vaults, manholes and handholes) that provide access to connections and, in some cases, equipment. Prompt access to these underground structures is imperative when responding to outages and is critical for the on-going maintenance and reliability of these systems.

In order to enter these underground structures and conduct the necessary work in a safe manner, any waters that have collected in the underground structures need to be removed. This results in short-term intermittent discharges from these underground structures. Discharges may be scheduled or unscheduled (e.g., emergency response). Since many of the gas, electric and communications underground facilities are located in urbanized areas, the discharges of accumulated waters are to the municipal stormwater conveyance systems. Less frequently in urban areas, the discharge may be made directly to a surface water body.



The discharges from these underground structures are conducted in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. The SWRCB's NPDES permit for these discharges finds that:

"Utility companies operate and maintain numerous vaults and underground structures within their service territories. These vaults and structures may be located in residential, agricultural, commercial, or industrial areas. Sizes can vary from 15 cubic feet to 1,500 cubic feet, depending on their intended use, type, or contents. For safety reasons, utility companies must de-water vaults and underground structures prior to performing any repair, maintenance, and/or installation of equipment. When the amount of water in the vaults or structures interferes with the safety and quality of the work to be done, water must be pumped out. Volume of discharges can vary from a few gallons to a few thousand gallons depending on the configuration and individual situation at each vault or structure. These intermittent discharges are routed to waters of the United States directly or indirectly via local storm conveyance systems."¹

Gas, electric and communications underground structures do not generate water, although they may collect water that seeps into the underground structures from groundwater or surface runoff. Therefore, the water that collects in the underground structures is chemically similar to that from groundwater seeps and surface runoff. In many areas, municipalities require utilities to be installed in underground systems which necessarily include vaults and underground structures (e.g., vaults, manholes, handholes, etc). This means that the number of underground structures will increase over time. Furthermore, State Water Board and Regional Water Board policies (Low Impact Development, Hydromodification) require infiltration of stormwater which may actually increase the volume of water found in underground structures.

If the underground structures are not allowed to discharge into municipal stormwater systems or other man-made conveyances that ultimately discharge to State Water Quality Protection Areas (SWQPAs), it would require all of these discharges to be hauled off for disposal, resulting in longer outage times (which directly impacts human health and safety), reduced system reliability, and an increased number of trucks used for hauling water, resulting in increased air emissions, traffic, etc. Many of the utilities have large service territories where there are no licensed haulers, Publicly Owned Treatment Works (POTWs) or other permitted disposal companies located in close proximity to their facilities. If utilities are not allowed to discharge this water under their utility underground structure dewatering NPDES discharge permit, outages will be prolonged and emergencies will not be resolved in a timely manner.

This same concern also applies to the other types of short term and/ or intermittent discharges (e.g., groundwater dewatering, hydrotest discharges, well permits, etc.) that may be required for the construction, operation and/ or maintenance of utility systems.

CCEEB's membership is consequently concerned that the proposed requirements for SWQPAs could adversely impact their ability to conduct intermittent discharges pursuant to a National NPDES or Waste

¹ Section III.B. on Page 3 of Order No. 2006-0008-Dwq NPDES No. CAG990002 General National Pollutant Discharge Elimination System (NPDES) Permit for Discharges From Utility Vaults and Underground Structures to Surface Waters

Discharge Requirements (WDRs) (or other otherwise authorized non-storm waters) to municipal separate storm sewer system (MS4) or other man-made conveyances that discharge to SWQPAs and therefore impact their ability to provide safe and reliable essential public services.

This same issue was raised in the March 20, 2012 SWRCB public hearing for general exceptions for Areas of Special Biological Significance (ASBS) and revisions were made to the proposed exception prior to adoption to clarify that permitted discharges (NPDES) are not prohibited to MS4s or other man-made conveyances that ultimately discharge to an ASBS. CCEEB appreciates that the revised draft amendment includes language to address this issue that is consistent with the ASBS exception.

Dewatering Discharges Pursuant to WDRs or NPDES permits From Linear System Facilities that Provide Gas, Electric and Communication Services Should be Explicitly Authorized by the Proposed Amendment to the Ocean Plan

As described above, linear system facilities that provide gas, electric and communication services have intermittent, short term dewatering discharges from underground structures pursuant NPDES permits and these discharges are necessary to provide safe and reliable essential public services. These discharges to MS4s or other man-made conveyance systems that eventually discharge to SWQPAs should be explicitly authorized by the proposed amendment to the Ocean Plan.

While the addition of the ASBS language to the SWQPA amendment provides a process for the State Water Board or Regional Water Boards to authorize non-storm water discharges to SWQPAs, a more direct approach would be to specifically authorize short-term and/ or intermittent discharges in these amendments. CCEEB requests a new Section E.3. be added to (and subsequent sections be renumbered) to state the following:

“Dewatering discharges and other short-term and/ or intermittent discharges made pursuant to NPDES permits to MS4s or other man-made conveyance systems from linear system facilities that provide gas, electric and communication services pursuant NPDES permits are necessary to provide safe and reliable essential public services and are authorized under this section.

CCEEB requests a new section E.5.c.2 be added to existing Section E.5.c. (and subsequent sections be renumbered) to state the following:

“Dewatering discharges and other short-term and/ or intermittent discharges made pursuant to NPDES permits to MS4s or other man-made conveyance systems from linear system facilities that provide gas, electric and communication services pursuant NPDES permits are necessary to provide safe and reliable essential public services and are authorized under this section.

The Marine Managed Areas Improvement Act (Public Resources Code Section 36600 et. seq.) Does Not Classify State Marine Reserves, State Marine Parks and State Marine Conservation Areas as State Water Quality Protections Areas and They Therefore Should Not be Managed to Achieve “Natural Water Quality”

The Public Resources Code (PRC Section 36700 et. seq.) identifies six Marine Managed Areas (MMAs) as follows:

- State Marine Reserves;
- State Marine Parks;
- State Marine Conservation Areas;
- State Marine Cultural Preservation Areas;

- State Marine Recreational Management Areas; and
- State Water Quality Protection Areas.

Three of these MMAs are further classified as Marine Protected Areas (MPAs). These MMAs are:

- State Marine Reserves;
- State Marine Parks; and
- State Marine Conservation Areas.

These MPAs are areas that were previously or will be in the future designated by the Fish and Game Commission or the State Parks & Recreation Commission based on their own unique criteria for these designations. In general, these designations are intended to protect habitat and other marine resources through controlling various human actions such as fishing, alterations to geological, cultural or recreational features, and/ or collection of marine species. As such, these areas have been, and in the future will be, designated based on the unique criteria these agencies have that are focused on protection needs other than a need for enhanced water quality protection.

The Public Resources Code (PRC) itself does not classify any of these MPAs (State Marine Reserves, State Marine Parks and State Marine Conservation Areas) as SWQPAs. Each of these MMA classifications (State Marine Reserves, State Marine Parks, State Marine Conservation Areas and State Water Quality Protection Areas) is classified separately under PRC Section 36700.

Had the intent of the Legislature been to classify the three MPAs (State Marine Reserves, State Marine Parks and State Marine Conservation Areas) as SWQPAs, it would have done so in the enacting legislation (as it did to specify that some MMAs were also MPAs), but it did not. Therefore, the certain protections to be provided to the MPAs should be unique and distinct from those identified for SWQPAs.

Furthermore, of these three MPAs, the PRC only specifies for State Marine Reserves that the area “...be maintained *to the extent practicable* in an undisturbed and unpolluted state” (*emphasis added*). In other words, State Marine Reserves is the only MPA that could be considered by statute to potentially require enhanced water quality protections that go above and beyond those water quality protections already contained in the California Ocean Plan. But the standard for State Marine Reserves (“...be maintained *to the extent practicable* in an undisturbed and unpolluted state”) is different than the standard for SWQPAs (protection of “...marine species or biological communities from an undesirable alteration in natural water quality...”). This standard for Marine Reserves should be achieved through compliance with water quality objectives contained in the Ocean Plan.

It is important to note that the California Ocean Plan already contains water quality objectives that have been incorporated to ensure protection of the Plan’s beneficial uses, which include:

- Industrial water supply;
- Water contact and non-contact recreation, including aesthetic enjoyment;
- Navigation;
- Commercial and sport fishing;
- Mariculture;
- Preservation and enhancement of designated Areas of Special Biological Significance (ASBS);
- Rare and endangered species;
- Marine habitat;

- Fish migration;
- Fish spawning; and
- Shellfish harvesting.

As such, the California Ocean Plan already provides water quality protection for the areas identified as MPAs. If further protections are considered for any of the MPAs (*i.e.*, State Water Quality Protection Areas – General Protection), they should only be considered for State Marine Reserves.

CCEEB requests that any consideration of additional protections be limited to State Marine Reserves and that the Ocean Plan incorporate reasonable amendments consistent with the PRC (*i.e.*, not the “undesirable alteration in natural water quality” standard) that take into account the practicability of the proposed protections.

The Language for ASBSs Should Specify that Discharges from Linear System Facilities that Provide Gas, Electric and Communication Services are Not Prohibited to MS4 or Other Man-Made Conveyance Systems that Discharge to ASBSs

In the SWRCB hearing held on March 20, 2012 to adopt general exceptions for ASBS, revisions were made to the proposed exception prior to adoption to clarify that permitted discharges (NPDES) are not prohibited to MS4s or other man-made conveyances that ultimately discharge to an ASBS.

CCEEB requests that the same clarification be made to the SWQPAs-ASBS section (*i.e.*, in section E.4.) so that it is clear within the Ocean Plan that these discharges are authorized.

Additional Comments

Proposed Implementation Provisions for Marine Managed Areas (Section E)

Section E.3. states that the “...State Water Board may designate SWQPAs* to prevent the undesirable alteration of natural water quality within MPAs”. As discussed above, this condition is not consistent with the Public Resources Code and therefore inappropriate. SWQPAs (specifically ASBSs), not MPAs, are to be managed to the “natural water quality” standard.

Section E.4. provides implementation provisions for SWQPA-ASBS. This section should be revised to be consistent with the recently adopted ASBS exception to clarify that, when authorized by the NPDES permitting authority, indirect permitted (NPDES) discharges to MS4s or other man-made conveyances are not subject to the ASBS prohibition.

Section E.5. – This section contains multiple references to staff’s SWQPA standard of “shall not cause an undesirable alteration in the natural ocean water quality”. As discussed above, this is not the appropriate standard for Marine Reserves (and should not be applicable to Marine Parks or Marine Conservation Areas) and needs to be revised to the standard for Marine Reserves which is “be maintained to the extent practicable in an undisturbed and unpolluted state.”

Section E.5.c. specifies implementation provisions for permitted MS4 discharges and non-point source discharges to SWQPAs-GP. This should be revised to include discharges from other man-made conveyances.

Section E.5.c.1. specifies the use of numeric receiving water limitations (Ocean Plan Table 1, chronic toxicity) for stormwater and non-stormwater discharges. This section should be clarified that these limitations are not effluent limits but are rather for the purpose of assessing water quality and the follow-up actions specified in Sections E.5.c.3-6. It may be appropriate to use these values as triggers for further actions but they should not be used as quasi-effluent limits.

Section E.5.c.2. states that non-storm water (dry weather) flows are effectively prohibited. Consistent with Section E.5.a.5., this language should be revised to acknowledge that permitted NPDES discharges of non-storm water may continue to discharge indirectly to SWQPAs-GP through MS4s and other man-made conveyances when authorized pursuant to Section E.5.

Sections E.5.c.3-6. specify requirements to assess existing discharges to SWQPAs-GP for the purpose of characterizing the discharge and determining what affect the discharge is having on the "natural water quality" in the SWQPA. As discussed above, MPAs are not required in the Public Resources Code to meet "natural water quality". State Marine Reserves are required, however, to be "... maintained to the extent practicable in an undisturbed and unpolluted state." This standard should be achieved through compliance with the existing water quality objectives contained in the Ocean Plan.

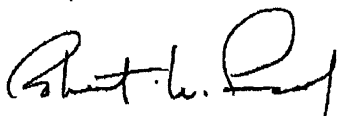
Appendix I - Definition of Terms

ASBS – CCEEB requests that staff clarify why the definition of ASBS was revised, what the change was intended to achieve, and the impact it has on the implementation of the ASBS process as the staff report does not explain why this change was made.

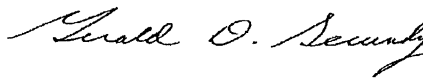
SWQPAs GP - The definition of SWQPAs GP states that these areas have been designated by the staff to protect or conserve marine life and habitat from "and undesirable alteration in natural water quality..." As described above, natural water quality is not the standard set by statute for State Marine Reserves, State Marine Parks or State Marine Conservation Areas.

CCEEB welcomes the opportunity to provide you and staff with these comments, which we urge the staff to incorporate when revising the Exception and finalizing the PEIR. We also look forward to staff's response to these and all of the other comments put forth by the stakeholders.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy
President

cc: Matt Rodriguez, Secretary for California Environmental Protection Agency
Gordon Burns, Undersecretary for California Environmental Protection Agency
Jackson Gualco, The Gualco Group, Inc.