

# **Responses to Comments**

**on the Amendment to the Water Quality  
Control Policy on the Use of Coastal and  
Estuarine Waters for Power Plant Cooling**

**to Revise the Compliance Schedules for  
the Alamitos, Huntington Beach, Ormond  
Beach, and Scattergood Generating  
Stations and Diablo Canyon Nuclear  
Power Plant**

**State Water Resources Control Board**

**July 26, 2023**

## List of Abbreviations and Acronyms

<b>Acronym</b>	<b>Full Term</b>
2010 Final SED	2010 Final Substitute Environmental Document
AB	Assembly Bill
AES	AES-Southland, LLC
Alamitos	Alamitos Generating Station
Amendment	Proposed Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling to Extend the Compliance Schedules for the Alamitos, Huntington Beach, Ormond Beach, and Scattergood Generating Stations, and the Diablo Canyon Nuclear Power Plant
BTA	Best Technology Available
CAISO	California Independent System Operator
CARB	California Air Resources Board
CEC	California Energy Commission
CEQA	California Environmental Quality Act
Coastal Conservancy	State Coastal Conservancy
CPUC	California Public Utilities Commission
CWA	Clean Water Act
Diablo Canyon	Diablo Canyon Nuclear Power Plant
Energy Agencies	California Public Utilities Commission, California Energy Commission, and California Independent System Operator
ERP II	Expert Review Panel II
Final 2022 Special SACCWIS Report	Final 2022 Special Report of the Statewide Advisory Committee on Cooling Water Intake Structures
GenOn	GenOn Energy, Inc.
Huntington Beach	Huntington Beach Generating Station

<b>Acronym</b>	<b>Full Term</b>
LADWP	Los Angeles Department of Water and Power
MW	Megawatts
NPDES	National Pollutant Discharge Elimination System
OTC	Once-Through Cooling
OPC	Ocean Protection Council
Ormond Beach	Ormond Beach Generating Station
OTC Policy	Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling
PG&E	Pacific Gas and Electric
Porter-Cologne	Porter-Cologne Water Quality Control Act
Regional Water Board	Regional Water Quality Control Board
SACCWIS	Statewide Advisory Committee on Cooling Water Intake Structures
SB	Senate Bill
Scattergood	Scattergood Generating Station
Staff Report	Staff Report on the Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling to Revise the Compliance Schedules for the Alamitos, Huntington Beach, Ormond Beach, and Scattergood Generating Stations, and Diablo Canyon Nuclear Power Plant
State Water Board	State Water Resources Control Board
Strategic Reserve	Electricity Supply Strategic Reliability Reserve Program
TSO	Time Schedule Order
U.S. EPA	United States Environmental Protection Agency

**Table 1: Index of Oral Commenters**

<b>Identifier</b>	<b>Affiliation</b>	<b>Last Name</b>	<b>First Name</b>
V01	California Air Resources Board	Botill	Matthew
V02	GenOn Energy, Inc.	Watts	Eric
V03	Heal the Bay	Moe	Annelisa
V04	City of Oxnard	Nguyen	Alex
V05	AES-Southland, LLC	Miller	Mark
V06	San Luis Obispo Mothers for Peace	ZamEk	Jill
V07	Tree People	Mills	Katie
V08	Los Angeles Waterkeeper	Harris	Ben
V09	Los Cerritos Wetlands Land Trust	Geever	Joe
V10	Creed LA	Strasters	Zach
V11	N/A	Nieto	Samuel
V12	Iron Workers Local 433	Moreno	Paul
V13	N/A	Valencia	Desiree
V14	Anchor Church	Valtierra	Carlos
V15	UA Plumbers Local 78	Galindo	Omar
V16	East Bay Community Energy Authority	Newton	John
V17	Smart Local 105 Sheet Metal Workers	Scott	Dwight
V18	IBEW Local 18	Marrufo	Martin
V19	California Coastkeeper Alliance	Bothwell	Sean
V20	UA Local 250 Pipe Fitters, Welders and Apprentices	Torres	Gus

**Table 2: Index of Written Commenters**

<b>Identifier</b>	<b>Affiliation</b>	<b>Last Name</b>	<b>First Name</b>
C01	Santa Lucia Chapter of the Sierra Club	Christie	Andrew
C02	Heal the Bay	Moe	Annelisa
C03	Los Angeles Waterkeeper	Harris	Benjamin
C04	GenOn Energy, Inc.	Watts	Eric
C05	Los Angeles Department of Water and Power	Rubin	Katherine
C06	N/A	Campeggi	Leslie
C07	Surfrider Foundation	Sackett	Mandy
C08	AES-Southland, LLC	Miller	Mark
C09	Central City Association	McOsker	Nella
C10	Alliance for Nuclear Responsibility	Becker	Rochelle
C11	Venskus & Associates, APC on behalf of San Luis Obispo Mothers for Peace	Venskus	Sabrina
C12	California Coastkeeper Alliance	Bothwell	Sean

## Introduction

The State Water Resources Control Board (State Water Board) received 20 oral comments and 12 written comments on the Draft Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling to Revise the Compliance Schedules for the Alamitos, Huntington Beach, Ormond Beach, and Scattergood Generating Stations, and the Diablo Canyon Nuclear Power Plant (Amendment) and the Draft Staff Report (Staff Report). The public comment period for the Amendment and Staff Report started on January 31, 2023, and closed at noon on March 17, 2023. The State Water Board held a public hearing on the Amendment on March 7, 2023. This document contains responses to oral comments received at the March 7, 2023 public hearing and timely comment letters submitted to the State Water Board on the Amendment and Staff Report. Based on these comments, the Staff Report has been slightly revised.

Oral comments received at the March 7, 2023 public hearing are summarized in Table 3. All writings in the written comments field in Table 4 are the true and accurate representation of the comments provided to the State Water Board. Written comments were not changed for spelling, grammar, or clarity.

Information provided in these responses is based upon and supplements data and findings previously set forth within the Final 2022 Special Report of the Statewide Advisory Committee on Cooling Water Intake Structures (Final 2022 Special SACCWIS Report) and the Staff Report, including context on the electrical grid and energy use, recent energy agency decisions and recommendations, and detail on other regulatory issues raised in comments. Information provided in these responses also supplements data and findings previously presented to the State Water Board in other reports related to the OTC Policy, including the report titled *Alternative Cooling Technologies or Modifications to the Existing Once-Through Cooling System for the Diablo Canyon Power Plant*, which was prepared by Bechtel Corporation and presented to the State Water Board on November 18, 2014.

The responses to comments and revisions to the Staff Report do not add significant new information that is material to the State Water Board's decision nor warrant action that is not a logical outgrowth of the Amendment that was previously subject to the written comment period. Therefore, it is not necessary to afford interested persons with another written comment period to address the responses to comments or revisions to the Staff Report.

**Table 3: Responses to Oral Comments**

Identifier	Summary Comment	Response
V01.01	<p>Commenter states that the California Air Resource Board (CARB) supports the proposed extensions to the compliance dates in the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Once-Through Cooling or OTC Policy).</p> <p>Commenter states that at the meeting of the Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS) in September 2022, the CARB abstained from commenting on the Scattergood Generating Station (Scattergood) extension request because more time was needed to coordinate with the South Coast Air Quality Management District and the Los Angeles Department of Water and Power (LADWP) to determine whether Scattergood would comply with applicable air quality permitting requirements during the proposed extension period. Commenter states that the CARB determined that Scattergood will be able to comply with applicable air quality permitting requirements during the proposed extension period.</p>	Comment noted.

Identifier	Summary Comment	Response
V02.01	<p>Commenter supports the proposed OTC Policy compliance date extensions, especially for Ormond Beach Generating Station (Ormond Beach).</p> <p>Commenter states that Ormond Beach is currently preparing for a planned outage in anticipation of the decision regarding the proposed OTC Policy compliance date extensions.</p> <p>Commenter emphasizes the importance of energy generated by Ormond Beach to local communities. Commenter states that Ormond Beach’s continued operation would produce minimal environmental impacts. Commenter notes that Ormond Beach is currently meeting all interim mitigation requirements and has a low impingement rate. Commenter states that there are no violations of air or other permits required for operation.</p> <p>Commenter highlights the previous agreement between GenOn Energy, Inc (GenOn) and the City of Oxnard to remediate the Ormond Beach site after it retires. Commenter notes that the fund for site demolition and remediation will be fully funded by the end of this year. In addition,</p>	<p>Additionally, Section 8 of the Staff Report notes that operations of OTC facilities that receive compliance date extensions will not result in any new or additional impacts beyond those considered in the scope of the 2010 Final SED. For example, as stated on page 63 in Section 8 of the Staff Report:</p> <p><i>The extension of specific compliance dates for purposes of grid reliability being considered now continues the baseline environmental setting that existed at the time of the 2010 adoption of the OTC Policy. In addition, because the OTC Policy as adopted and as analyzed in the 2010 Final SED explicitly included the potential for compliance date extensions, any new extension is a part of the project as originally analyzed. Extending a compliance date is not a new, independent action that requires CEQA analysis under these circumstances. Moreover, the proposal to extend the deadlines for the facilities does not constitute a project within the meaning of CEQA, because it continues the status quo and does not result in any direct</i></p>



Identifier	Summary Comment	Response
	GenOn will continue the agreement to provide funding for public coastal access.	<i>physical change in the environment or a reasonably foreseeable indirect physical change in the environment.</i>
V03.01	Commenter supports subsequent comments from Benjamin Harris of the Los Angeles Waterkeeper.	Comment noted.
V03.02	Commenter highlights the pivotal role of Heal the Bay in the development of the OTC Policy. Commenter is disappointed with the proposed OTC Policy compliance date extensions and lack of progress made by the state’s energy agencies and OTC facilities toward their energy procurement commitments. Commenter understands the need for grid reliability, particularly during times of peak energy demand, but highlights that the original compliance dates in the 2010 OTC Policy were developed in coordination with the state’s energy agencies specifically to account for grid reliability.	Section 1.G of the OTC Policy states the intent of the Policy is to ensure the beneficial uses of the state’s coastal and estuarine waters are protected while also ensuring the electrical power needs essential for the welfare of residents of the state are met. The OTC Policy acknowledges that compliance date changes may be necessary to support grid reliability. The State Water Board created the multi-agency SACCWIS to regularly monitor grid reliability and provide recommendations to the State Water Board if extensions are necessary. Because grid reliability determinations are fact-specific and the relevant facts are inherently dynamic, there is nothing in the OTC Policy that limits any particular OTC power plant from receiving multiple

Identifier	Summary Comment	Response
		<p>compliance date extensions if necessary for grid reliability.</p> <p>The State Water Board recognized that, in order to implement the OTC Policy, it is necessary to develop replacement infrastructure to maintain electric reliability. As described in Section 1.H of the OTC Policy, during the development of the OTC Policy, the State Water Board consulted with the California Energy Commission (CEC), California Public Utilities Commission (CPUC), California Independent System Operator (CAISO), the State Coastal Conservancy (Coastal Conservancy), CARB, and State Lands Commission to develop a realistic implementation plan and schedule so the OTC Policy would not cause a disruption to the state's electrical supply. The phased compliance date approach was developed considering a recommendation prepared by the CPUC, CEC, and CAISO (collectively as the "energy agencies"). The energy agencies' phased compliance date approach aimed to address the replacement, repowering, or retirement of</p>

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		<p>OTC power plants by (1) maintaining reliability of the electric system, (2) meeting California’s environmental policy goals, and (3) achieving these goals through effective long-term planning for transmission, generation, and demand resources. Further, the energy agencies indicated that the phased compliance schedule may require periodic updates to ensure grid reliability.</p> <p>In accordance with Section 1.I and Sections 3.B(1) through 3.B(5) of the OTC Policy, to prevent disruption in the State’s electrical power supply, the State Water Board convened the SACCWIS, which includes representatives from the CEC, CPUC, CAISO, CARB, Coastal Commission, California State Lands Commission, and State Water Board. Each of these agencies oversee energy resource planning, permitting, and regulations with the potential to impact OTC facility operations.</p> <p>The SACCWIS provides a public-facing forum where impacts of OTC Policy implementation on statewide and local grid reliability may be considered and discussed. The SACCWIS meets at least annually to review grid reliability</p>

Identifier	Summary Comment	Response
		<p>from the CAISO and from the LADWP, and to receive status updates on compliance submitted by owners and operators pursuant to the OTC Policy. The SACCWIS reports to the State Water Board with recommendations on the implementation of the OTC Policy to ensure that the compliance schedule does not negatively impact grid reliability.</p> <p>Please also refer to Section 2.2 of the Staff Report for more information on the role of the SACCWIS, Section 5 of the Staff Report for the rationale and considerations for the compliance date extensions, and Section 7 of the Staff Report for an analysis of the alternatives.</p> <p>Further, the U.S. EPA recognized the importance of balancing the need for environmental protection with grid reliability when considering CWA 316(b) implementation:</p> <p><i>The EPA recognizes that it will take facilities time to upgrade existing technologies, and install new technologies, and that there are limits on the number of facilities that can be simultaneously offline to install control technology and still supply goods and services to orderly, functioning</i></p>

Identifier	Summary Comment	Response
		<p><i>markets. It is appropriate for the Director to take this into account when establishing a deadline for compliance. Any such schedule would take into account factors provided in § 125.98(c), such as measures needed to maintain adequate energy reliability by an electric generating facility, or extenuating circumstances such as scheduled production outages at a manufacturing facility. (Final Rule, 79 Fed. Reg. 48300, 48359, Aug. 15, 2014.)</i></p>
V03.03	<p>Commenter highlights the need to consider negative impacts of the continued operation of OTC facilities on public and environmental health, which should not be secondary considerations.</p>	<p>Please refer to Sections 2, 5, and 8 of the Staff Report, which includes discussions of the impacts to human health and the environment. Furthermore, as referenced in Section 2.1 of the Staff Report, all facilities subject to the OTC Policy are required to comply with applicable regulatory requirements that are designed to minimize environmental impacts and protect human health, including all state and local permits. If the compliance dates of Alamitos Generating Station (Alamitos), Huntington Beach Generating Station (Huntington Beach), Ormond Beach, and Scattergood are extended, those facilities would continue to be regulated by applicable air and water quality permits, and</p>

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		therefore continue to comply with requirements imposed to minimize environmental impacts and protect human health.
V03.04	<p>Commenter suggests the State Water Board should not consider further extensions unless the State Water Board increases interim mitigation payments. Commenter notes that interim mitigation payments made between 2015 and 2022 were miniscule and were never meant to be punitive or fully mitigative of OTC impacts. Commenter suggests the State Water Board should increase interim mitigation payments for facilities operating beyond their original compliance dates to account for increased infiltration rates, ongoing OTC impacts that would otherwise be eliminated, and cumulative impacts of OTC operations.</p> <p>Commenter states that the mitigation payments should be directed towards local mitigation projects that will remediate harm caused by OTC at remaining facilities.</p>	<p>The State Water Board is evaluating potential revisions to the calculation used to determine the annual interim mitigation payments for facilities in accordance with Section 2.C(3)(b) of the OTC Policy through a separate process outside the scope of this Amendment. This may include revising the default cost of entrainment, the site-specific cost of entrainment for Diablo Canyon Nuclear Power Plant (Diablo Canyon), the default cost of impingement, and the annual escalator for inflation to ensure the interim mitigation payments remain compensatory.</p> <p>In considering updates to the calculations for interim mitigation payments, the State Water Board plans to conduct government-to-government tribal consultations and host joint agency public listening sessions with the OPC and Coastal Conservancy in fall 2023. The listening sessions will provide an opportunity to engage with representatives of disadvantaged communities, environmental groups, other interested parties, and the general public on interim mitigation, including recalculation efforts</p>

Identifier	Summary Comment	Response
		<p>and how the funds have and will be used by the OPC and Coastal Conservancy. These meetings will also include discussions on opportunities for tribal, disadvantaged, and local communities to further engage on OTC Policy interim mitigation efforts, the recalculation effort, and project selection.</p> <p>Until the State Water Board revises the interim mitigation calculation or distribution process, the interim mitigation measures for Alamitos, Huntington Beach, Ormond Beach, and Scattergood generating stations are appropriate as they are based on the best available, Board-considered information to mitigate impingement and entrainment impacts on aquatic life. Resolution No. 2015-0057 and the OTC Policy will continue to apply after compliance dates are extended. Neither Resolution No. 2015-0057 nor the OTC Policy include provisions to increase interim mitigation requirements or payments if an owner or operator is complying with Section 2.C(3)(b) of the OTC Policy when a compliance date is modified to ensure grid reliability.</p> <p>The OTC Policy includes a provision that existing power plants must implement measures</p>

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		<p>to mitigate the interim impingement and entrainment impacts to marine life resulting from cooling water intakes during operation. Section 2.C(3) of the OTC Policy provides options for owners and operators to demonstrate compliance with the interim mitigation requirements. This requirement commenced on October 1, 2015, and continues up to and until the owner or operator achieves final compliance with the OTC Policy.</p> <p>On August 18, 2015, the State Water Board adopted Resolution No. 2015-0057, which (1) authorized the Executive Director, on a case-by-case basis, to approve the measures by which owners and operators proposed to comply with the interim mitigation requirements and (2) established the calculation for determining annual interim mitigation payments for facilities complying via Section 2.C(3)(b) of the OTC Policy. The State Water Board previously contracted with Moss Landing Marine Laboratory to establish an expert review panel (ERP II) on minimizing and mitigating intake impacts on marine life from power plant and desalination facility seawater intakes. The ERP II developed a scientifically defensible method to calculate</p>



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		<p>payment for facility interim mitigation using the Habitat Production Foregone method that would compensate for the impingement and entrainment of marine life resulting from operation of OTC intakes. The Habitat Production Foregone method, as required by the OTC Policy, calculates the area of habitat that would need to be created to compensate for loss of resources, such as larval fish, due to entrainment. Findings from the ERP II were referenced as the basis of the interim mitigation calculation method set forth in Resolution No. 2015-0057.</p> <p>Section 2.C(3)(e) of the OTC Policy states that it is the preference of the State Water Board that interim mitigation funds are provided to the Coastal Conservancy and California Ocean Protection Council (OPC) for mitigation projects directed toward increases in marine life associated with the State's Marine Protected Areas in the geographic region of the facilities.</p> <p>Please refer to Section 5.3 of the Staff Report, which includes a discussion of the interim mitigation requirements.</p>

Identifier	Summary Comment	Response
		<p>Additionally, several projects supported by the interim mitigation funds are within the geographic scope of the OTC facilities. For example, a wetland conservation and restoration project by Ormond Beach is managed by the Coastal Conservancy with The Nature Conservancy and the City of Oxnard, and receives funding from the interim mitigation payments. Details on how the OPC and Coastal Conservancy distribute interim mitigation funds to projects are available in the annual reports provided to the State Water Board. Annual Reports are available on the State Water Board's <a href="#">interim mitigation measures webpage</a>. The State Water Board will continue to coordinate with the OPC and Coastal Conservancy regarding discussion and approvals of projects funded by the interim mitigation payments.</p> <p>Finally, the assertion that additional mitigation is needed to address the impacts of continued use of OTC power plants beyond the original compliance dates may imply that there are additional environmental impacts not previously analyzed or addressed in the 2010 Final Substitute Environmental Document (2010 Final</p>

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		<p>SED) or in the addendum to the 2010 Final SED in the Staff Report for this Amendment. In 2010, the State Water Board conducted a full California Environmental Quality Act (CEQA) analysis on the potential impacts of the proposed adoption of the OTC Policy, including significant or potentially significant adverse environmental impacts of the project and impacts associated with reasonably foreseeable methods of compliance. The Amendment is considered within the scope of the OTC Policy, since the OTC Policy from its inception recognized the need for potential modifications to the original compliance schedule to maintain grid reliability. Any requirement for new or additional mitigation to satisfy CEQA would conflict with this conclusion. Please refer to Section 8 of the Staff Report, which includes an addendum to the 2010 Final SED and further discussion of the CEQA analysis.</p>
V03.05	<p>Commenter believes that the State Water Board should direct operators to coordinate with local organizations to develop sufficient compliance plans prior to consideration of adoption of the Amendment.</p>	<p>Owners and operators submitted implementation plans to the State Water Board in 2011, in accordance with Sections 2.C(3), 2.C(4), and 3(A) of the OTC Policy. These implementation plans indicate the specific measures that would be undertaken for each facility to comply with the</p>

Identifier	Summary Comment	Response
		requirements in the OTC Policy, including the measures to comply with the interim mitigation requirements. Because the owners and operators of Alamitos, Huntington Beach, Ormond Beach, and Scattergood have not indicated their intent to change their compliance measures, the State Water Board does not require new or revised implementation plans.
V03.06	Commenter states that Heal the Bay continues to work with the LADWP to develop a mitigation plan, but Heal the Bay has not yet received a mitigation plan in writing.	Comment noted.
V03.07	Commenter does not support the proposed OTC Policy compliance date extensions.	Comment noted.
V03.08	Commenter additionally highlights that the SACCWIS does not include any non-governmental representation. Commenter recommends that the SACCWIS includes sufficient justification not only for the reason of proposed extensions, but also based on actions taken to support final compliance when extension recommendations are made. Commenter suggests the SACCWIS should submit a summary of actions taken toward final	<p>Please refer to the responses to comments V03.02 for additional information on the role of the SACCWIS and V03.05. Current reporting is sufficient and additional reporting is not necessary.</p> <p>The SACCWIS was created to advise the State Water Board on the ongoing implementation of the OTC Policy to ensure that the implementation schedule would be revised as</p>

Identifier	Summary Comment	Response
	<p>compliance, including identification of alternative energy sources to replace the OTC facilities.</p> <p>Commenter would like the SACCWIS and owners and operators of OTC facilities to provide regular updates regarding actions taken to achieve 100 percent zero-carbon electricity resources by 2045, and would also like the SACCWIS to report on contributions towards this goal provided by the remaining operational OTC facilities. Commenter suggests the State Water Board should require the SACCWIS to provide regular updates on actions taken to improve efficiency during times of peak energy demand, and that the SACCWIS and owners and operators of the remaining OTC facilities should provide detailed plans on how final OTC Policy compliance will be achieved in addition to implementation that has occurred to date.</p>	<p>appropriate to consider the reliability of California’s electricity supply, including local area reliability, statewide grid reliability, and permitting constraints. The SACCWIS is comprised of representatives from the CEC, CPUC, CAISO, Coastal Commission, California State Lands Commission, CARB, and State Water Board, as these agencies oversee energy resource planning, permitting, and regulations with the potential to impact OTC facility operations. Please also refer to Sections 1.I and 3.B of the OTC Policy and Section 2.2 of the Staff Report, which further describes the SACCWIS’ role.</p> <p>The SACCWIS provides reports to the State Water Board each year on the status of procurement, grid resources, infrastructure planning, and overall grid reliability. Recent SACCWIS reports have included a discussion of the status of zero-carbon procurement under CPUC Decisions 19-011-016 and 21-06-035. For additional information, please refer to Section 6 of the Final 2022 Special SACCWIS Report. The SACCWIS will continue to include this and other relevant information in its annual reports as they are released.</p>

Identifier	Summary Comment	Response
		<p>In addition to the implementation plans referenced in the response to comment V03.05, the State Water Board requests information annually, in accordance with Resolution No. 2015-0057, to draft determinations for each interim mitigation cycle applied under the OTC Policy. Annual determinations and invoice letters, which are posted on the State Water Board's <a href="#">interim mitigation measures webpage</a>, include a description of the interim mitigation measures that respective owners and operators have chosen for each interim mitigation cycle, consistent with section 2.C(3) of the OTC Policy, to remain compliant with the OTC Policy.</p>
V04.01	<p>Commenter understands and accepts the state's broader needs for grid reliability. Commenter notes that public benefit agreements have made extensions more palatable. However, the commenter is concerned about too many restrictions on GenOn's ability to obtain contracts, which could diminish these agreements.</p> <p>Commenter notes that the first agreement from the prior Ormond Beach extension to dismantle the facility after its retirement Commenter states that the Oxnard City Council agreed to a new</p>	<p>Please refer to the response to comment V03.02 for additional information on the state's broader needs for grid reliability and the role of the SACCWIS.</p> <p>As described in Sections 1 and 5.1.1.3 of the Staff Report, the energy agencies submitted a letter to the State Water Board on November 30, 2022, clarifying that their recommendation is contingent upon Alamitos, Huntington Beach, and Ormond Beach participating in the Strategic Reserve should the Amendment be adopted. Section 3.B(5) of the OTC Policy states that, in</p>

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	<p>contract with GenOn. Should the proposed extension be approved, this new agreement would provide funding to build park improvements and public beach access after Ormond Beach is dismantled. Commenter notes that the local community has not had public beach access for half a century. Commenter supports the proposed extension but hopes it will be the final one.</p>	<p>the event that the energy agencies of the SACCWIS make a unanimous recommendation for an implementation schedule modification based on grid reliability, the State Water Board shall afford significant weight to the recommendation. Furthermore, by participating in the Strategic Reserve, the power plants would only be called upon to support grid operations during extreme events. This would limit the use of once-through cooling and air emissions. If the power plants served as resource adequacy resources, they would have an obligation to provide power to the market on a consistent basis. Further, the State Water Board does not have the authority to consider energy contracts and provisions included therein.</p>
V05.01	<p>Commenter highlights the readiness of the Alamitos and Huntington Beach to support grid reliability in the Electricity Supply Strategic Reliability Reserve Program (Strategic Reserve) subject to successful contract negotiations with the Department of Water Resources.</p> <p>Commenter notes that these facilities have demonstrated they can support reliability needs. The commenter notes that AES-Southland, LLC. (AES) invests capital annually to ensure these</p>	<p>Comment noted.</p>

Identifier	Summary Comment	Response
	<p>facilities are maintained and able to serve local and statewide needs. Commenter notes that all units at Alamitos and Huntington Beach supported critical peak hours for a 10-day period during a recent heatwave. Commenter states that air emissions and water intakes and discharges associated with the facilities are subject to all applicable permits, regulations, and laws, and notes that the facilities comply with all permit requirements. Commenter states that the facilities would continue to be subject to interim mitigation requirements.</p> <p>Commenter states that AES supports coastal enhancement through wetland restoration and educational programs that benefit local disadvantaged communities. Commenter notes that AES created the AES Coastal Enhancement Program in 2022, and that AES intends to produce a similar voluntary environmental benefits program if the OTC Policy compliance dates are extended for Alamitos and Huntington Beach. Commenter notes that AES is developing this program with key stakeholders now.</p>	



Identifier	Summary Comment	Response
	<p>Commenter supports the proposed OTC Policy compliance date extensions.</p>	
V06.01	<p>Commenter disagrees with the assertion in the Draft Staff Report that Senate Bill (SB) 846 is a change without regulatory effect to revise Diablo Canyon’s compliance dates. Commenter suggests that changing the compliance date for Diablo Canyon is an impermissible exemption to federal Clean Water Act (CWA) section 316(b) because it was already determined that cooling towers are the best technology available (BTA) for Diablo Canyon. Commenter notes that the State Water Board and Pacific Gas and Electric (PG&amp;E) never found that cooling towers are either infeasible or in conflict with Nuclear Regulatory Commission safety requirements. Commenter notes that the BTA analysis was not finished because PG&amp;E ultimately decided to shut down Diablo Canyon.</p> <p>Commenter also states that SB 846 cannot be lawfully interpreted as having already extended the OTC Policy compliance date for Diablo Canyon because the State Legislature does not have the authority under the CWA to take this action. Commenter states that the State Legislature has no federal statutory authority to</p>	<p>Diablo Canyon’s compliance date was amended by the State Legislature and passed into law when SB 846 was signed by Governor Newsom on September 2, 2022. Additionally, the Staff Report states that the Amendment includes administrative changes to the implementation provisions and schedule in the OTC Policy, including a change without regulatory effect to Diablo Canyon’s compliance date listed in Table 1 of the OTC Policy. The Staff Report does not indicate that SB 846 is a change without regulatory effect.</p> <p>SB 846 added section 13193.5 to the Water Code effective September 2, 2022. Water Code section 13193.5 specifies the following:</p> <p><i>[n]otwithstanding any provision to the contrary in the State Water Resources Control Board’s Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, referenced in Section 2922 of Title 23 of the California Code of Regulations, the final compliance dates</i></p>

Identifier	Summary Comment	Response
	<p>alter the State Water Board’s previously established OTC Policy compliance dates. Commenter states that the State Water Board imposed these previous dates to ensure compliance with CWA section 316(b), including the provision that the location, design, construction, and capacity of cooling water intake structures must reflect the BTA for minimizing adverse environmental impacts.</p> <p>Commenter states that Diablo Canyon’s OTC Policy compliance dates can only be altered by the State Water Board under the authority delegated to it by the CWA as well as the Memorandum of Understanding between the state and the United States Environmental Protection Agency (U.S. EPA) for implementation of the CWA. Commenter states that the State Water Board must maintain the existing OTC Policy compliance dates for PG&amp;E’s replacement of Diablo Canyon’s OTC system with cooling towers unless the State Water Board completes a BTA analysis and determines that cooling towers are not feasible at the Diablo Canyon site as alleged by PG&amp;E.</p>	<p><i>for Diablo Canyon Units 1 and 2 shall be October 31, 2030.</i></p> <p>While the OTC Policy currently lists the compliance dates for Diablo Canyon Units 1 and 2 as 2024 and 2025, respectively, the compliance deadlines were extended to October 31, 2030, by virtue of enactment of Water Code section 13193.5 via SB 846. The component of the Amendment that modifies the OTC Policy to reflect the existing October 31, 2030 deadline for the Diablo Canyon Units 1 and 2 is a change without regulatory effect because the extensions for Diablo Canyon Units 1 and 2 are already in effect. The Amendment for Diablo Canyon serves to update the compliance dates to avoid confusion and ensures the OTC Policy is accurate.</p> <p>The State Water Board was designated by the Legislature as the state water pollution control agency for all purposes under the CWA. (Wat. Code § 13160(a).) This designation excludes other state agencies, but the Legislature is not another state agency. The Legislature has authority to make laws unless expressly prohibited or prohibited by necessary implication. (See Cal. Const. Art. IV, § 1 and <i>Methodist</i></p>

Identifier	Summary Comment	Response
		<p data-bbox="1188 269 1881 431"><i>Hosp. v. Saylor</i>, 5 Cal.3d 685, 691 (1971).) The commenter has not identified any prohibition or other limitation on the Legislature’s powers applicable here.</p> <p data-bbox="1188 472 1881 1089">The State Water Board interprets the commenter’s reference to the “Memorandum of Understanding between the state and the United States Environmental Protection Agency (U.S. EPA) for implementation of the CWA” to refer to the 1989 Memorandum of Agreement (MOA) between the U.S. EPA and the State Water Board and regional water quality control boards (regional water board) based on the 1987 certification by the California Attorney General that the State and regional water boards have adequate legal authority to issue, implement and enforce the National Pollutant Discharge Elimination System (NPDES) permitting program within the State of California.</p> <p data-bbox="1188 1130 1881 1414">To receive U.S. EPA approval to implement its own permitting program in lieu of U.S. EPA’s NPDES program, states such as California must demonstrate they have authority to implement federal regulatory provisions including 40 CFR section 122.44 and part 125.90 et seq. (See CWA § 402(b); 40 CFR § 123.25.) 40 CFR</p>

Identifier	Summary Comment	Response
		<p>section 122.44 requires, among other things, that NPDES permits must include, “requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.” (40 CFR § 122.44(b)(3).) (See also FR 48300, 48313 (Aug. 15, 2014) [“Under section 316(b), NPDES permits are required to contain conditions to implement the requirements of section 316(b).”])</p> <p>The 1989 MOA spells out the working relationship between the U.S. EPA and the State and regional water boards concerning the NPDES permitting process. (MOA, p. 5.) It does not apply to the adoption of rules such as the OTC Policy. The OTC Policy is not an NPDES permit and is not itself subject to the MOA.</p> <p>Adoption of rules in California is shared between the Legislature and the State Water Board and regional water boards. The State Water Board has authority under state law to adopt and amend statewide water quality control plans and policies (see Wat. Code § 13140 et seq.) and the regional water boards similarly have authority to adopt and amend water quality control plans for</p>

Identifier	Summary Comment	Response
		<p>their respective geographic regions. (See Wat. Code § 13240 et seq.) The State Water Board adopted the OTC Policy through the Water Code’s rulemaking process to establish rules for implementing CWA section 316(b) as applicable to coastal and estuarine power plants using cooling water intake structures. To the extent adoption of a plan or policy also establishes a water quality standard, the standard may be subject to or require U.S. EPA approval before it becomes effective. But the OTC Policy does not establish a water quality standard and is not subject to U.S. EPA approval.</p> <p>Diablo Canyon is located in the region of the Central Coast Regional Water Board and is subject to an NPDES permit/waste discharge requirements issued by the Central Coast Regional Water Board. If, and when, the Central Coast Regional Water Board issues or amends a permit for the facility that implements requirements in the OTC Policy, U.S. EPA would have the opportunity to review and object to the proposed permit if it concludes the permit is inconsistent with provisions applicable to existing cooling water intake structures established in 40 CFR Part 125 (subd. J.) In that instance, the</p>

Identifier	Summary Comment	Response
		<p>MOA would govern the objection process and identify any recourse U.S. EPA may have.</p> <p>While the Legislature has authorized the Water Boards to adopt plans and policies through state rulemaking processes in accordance with the Water Code, it has not stated that it lacks reserved authority to also adopt rules that may be implemented through NPDES permits. The commenter has not cited any authority for the proposition that the Legislature lacks this authority. Additionally, Congress has not placed limits on states (including state legislatures) adopting rules such as the OTC Policy as long as they are consistent with federal law.</p> <p>The Legislature has authority to adopt a rule, and its action establishing revised compliance dates for Diablo Canyon is fully consistent with the substantive requirements of CWA section 316(b) and the OTC Policy; the action is supported by evidence in the State Water Board's record.</p> <p>Revising the compliance dates for Diablo Canyon is not an impermissible exemption to the BTA requirements of the CWA because a compliance date extension does not change the</p>

Identifier	Summary Comment	Response
		<p>technology requirements. CWA section 316(b) requires that “[a]ny standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the BTA for minimizing adverse environmental impact.” Section 316(b) does not establish a statutory deadline by which facilities must achieve compliance. Instead, U.S. EPA regulations implementing CWA 316(b) as applicable to cooling water intake structures for existing facilities recognize that compliance schedules may be appropriate and must provide for compliance <u>as soon as practicable</u>. (40 CFR § 125.98(c).) “When establishing a schedule for electric power generating facilities, the director should consider measures to maintain adequate energy reliability and necessary grid reserve capacity during any facility outage.... The Director may confer with independent system operators and state public utility regulatory agencies when establishing a schedule for electric power generating facilities.” (Ibid.)</p> <p>The State Water Board’s OTC Policy also requires compliance with the Policy “as soon as</p>

Identifier	Summary Comment	Response
		<p>possible, but no later than, the dates” established in the policy. (OTC Policy, Section 2.B). Like the federal regulations, however, the OTC Policy also anticipated that compliance date extensions would be necessary to address reliability of the electric system. The OTC Policy established a process for consulting with and receiving recommendations from energy agencies regarding implementation of the Policy to ensure the schedule takes into local area and grid reliability considerations. (<i>Id.</i>)</p> <p>U.S. EPA recognized that California’s regulations (the OTC Policy) establishing BTA for cooling water intake structures at existing power plants are at least as stringent as U.S. EPA’s regulations. (“Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements for Phase I Facilities,” effective August 15, 2014 (79 FR 48300-01, 48345).) U.S. EPA further recognized that in its OTC Policy, “California [has] enacted State requirements that are at least as stringent as those of the final rule, and therefore, U.S. EPA has analyzed facilities in [California] that are subject to those State requirements as already</p>



Identifier	Summary Comment	Response
		<p>complying with the final rule. [fn. omitted.]” (79 FR 48300-01, 48313.)</p> <p>In SB 846, the Legislature based the extension of final compliance dates for Diablo Canyon’s two units on grid reliability and energy needs, consistent with federal law and the state’s OTC Policy. (Pub. Resources Code § 25548, subd. (b) [“Preserving the option of continued operations . . . for an additional five years beyond 2025 may be necessary to improve statewide energy system reliability and to reduce the emissions of greenhouse gases while additional renewable energy and zero-carbon resources come online, until those new renewable energy and zero-carbon resources are adequate to meet demand. Accordingly, it is the policy of the Legislature that seeking to extend Diablo Canyon’s operations for a renewed license term is prudent, cost effective, and in the best interests of all California’s electricity customers.”].) The Legislature also reserved the option to require early decommissioning that “safeguards electrical reliability in the state” if continued operation of the power plant does not continue to benefit electric customers or the costs of operation</p>

Identifier	Summary Comment	Response
		<p>increase significantly.... (Id., at § 25548, subd. (d).)</p> <p>Consistent with the “as soon as practicable” standard for compliance with the substantive provisions of CWA section 316(b) as laid out in federal regulations and the OTC Policy, the Legislature found that final compliance with the OTC Policy for Diablo Canyon’s two units is not practicable prior to October 31, 2030. (Pub. Resources Code, § 25548, subd. (e) [“The estimated costs and timelines for design and construction of alternatives that would comply with the [OTC Policy], which were presented to the State Water Resources Control Board in accordance with Section 3.D of the [OTC Policy], conclusively establish that it is not practicable for the Diablo Canyon Power Plant to achieve final compliance . . . before October 31, 2030.”].)</p> <p>The comment that the State Water Board must maintain the existing OTC Policy compliance dates for PG&amp;E’s replacement of Diablo Canyon’s OTC system with cooling towers unless the State Water Board completes a BTA analysis and determines that cooling towers are not feasible at the Diablo Canyon site as alleged by PG&amp;E is incorrect. The Legislature’s</p>

Identifier	Summary Comment	Response
		<p>determination that it is not practicable to design and construct alternatives for Diablo Canyon to achieve final compliance with the OTC Policy prior to October 31, 2030 (Pub. Resources Code § 25548(e)) is supported by evidence in the State Water Board record.</p> <p>CWA section 316(b) requires that the location, design, construction, and capacity of cooling water intake structures reflect the BTA for minimizing adverse environmental impacts. The OTC Policy establishes requirements for the implementation of CWA Section 316(b) and provides two tracks for compliance. Facility retirement, which PG&amp;E has chosen as its compliance path, reduces the capacity of OTC usage to a level commensurate with or greater than that required by Track 1 compliance. Track 1 compliance requires a minimum 93 percent reduction in intake flow rate for each OTC unit compared to the unit's design intake flow rate, along with reducing the through-screen intake velocity below 0.5 foot per second. Unit retirement comports with Track 1 compliance.</p> <p>In establishing the OTC Policy, the State Water Board established special provisions for nuclear-fueled power plants. Section 3.D of the OTC</p>

Identifier	Summary Comment	Response
		<p>Policy requests that nuclear power plant owners and operators such as PG&amp;E conduct special studies for submission to the State Water Board, in part to investigate alternatives for the nuclear-fueled power plants to meet the requirements of the OTC Policy and the costs of identified alternatives. Section 3.D(7) of the OTC Policy requires that the State Water Board consider the results of the special studies and evaluate the need to modify the OTC Policy with respect to nuclear-fueled power plants. In evaluating the need to modify the OTC Policy, Section 3.D(7) requires that the State Water Board base its decision on:</p> <ul style="list-style-type: none"> <li>A. Costs of compliance in terms of total dollars and dollars per megawatt (MW) hour of electrical energy produced over an amortization period of 20 years,</li> <li>B. Ability to achieve compliance with Track 1 considering factors including, but not limited to, engineering constraints, space constraints, permitting constraints, and public safety considerations, and</li> <li>C. Potential environmental impacts of compliance with Track 1, including, but not limited to, air emissions.</li> </ul>

Identifier	Summary Comment	Response
		<p>Per Section 3.D of the OTC Policy, PG&amp;E contracted with Bechtel Corporation to conduct a study evaluating Diablo Canyon’s alternatives for compliance. This report was released and presented to the State Water Board by the Nuclear Review Committee on November 18, 2014. Before the State Water Board evaluated the need to modify the OTC Policy based on the special study, PG&amp;E opted to comply by retiring Diablo Canyon; nonetheless, the Bechtel report contains valuable information that examines the implications of converting Diablo Canyon to a closed-cycle cooling system.</p> <p>The Bechtel report was divided into several phases, and Phase 2 identified five closed-cycle cooling technologies as technically feasible for Diablo Canyon, including: passive draft dry/air cooling, mechanical (forced) draft dry/air cooling, wet natural draft cooling, wet mechanical (forced) draft cooling, and hybrid wet/dry cooling.</p> <p>All these solutions require the construction of cooling towers, the number of which is technology dependent. At minimum, 62 acres would have to be leveled to accommodate the installation of two cooling towers, which would require the excavation and removal of 190</p>

Identifier	Summary Comment	Response
		<p>million cubic yards of earth. The installation of one of the closed-cycle cooling technologies would cost, at minimum, \$8.567 billion dollars (in 2014 dollars). The time required to convert Diablo Canyon to a closed-cycle cooling system would take, at minimum, 13 years. Therefore, if PG&amp;E opted to change its method of compliance with the OTC Policy, it would not be technically feasible, let alone practicable, for PG&amp;E to complete BTA installation prior to its current compliance date of October 31, 2030.</p> <p>The Bechtel report presented to the State Water Board in 2014 supports the Legislature’s finding in Public Resources Code section 25448, subdivision (b), that it is not practicable for Diablo Canyon to achieve final compliance with the OTC Policy before October 31, 2030.” Compliance was not practicable when the report was presented in 2014 and there is no evidence to support a conclusion that it has become practicable in the intervening time.</p>
V07.01	<p>Commenter states that Tree People has partnered with AES to create the Coastal Enhancement Program, in collaboration with the Los Cerritos Wetlands Authority and Bolsa Chica Conservancy, to restore coastal wetlands in the</p>	<p>Comment noted.</p>

Identifier	Summary Comment	Response
	<p>cities of Long Beach and Huntington Beach and to engage with disadvantaged communities to expose families and students to these wetlands.</p> <p>Commenter understands the need to extend the operations of AES facilities to ensure grid reliability as California transitions to renewable energy sources.</p>	
V08.01	<p>Commenter echoes the comments made by Annelisa Moe from Heal the Bay.</p> <p>Commenter states that interim mitigation payments must be increased for all OTC facilities referenced in the Amendment, and that those facilities must comply with the OTC Policy as soon as possible. Commenter suggests that any future extension requests include justification based on actions taken to date to identify alternative generation resources that can replace OTC facilities.</p>	Please refer to the responses to comments V03.01 through V03.08.
V08.02	<p>Commenter highlights the LADWP extension request for Scattergood. Commenter states that Los Angeles Waterkeeper understood the LADWP would be seeking an OTC Policy compliance date extension for Scattergood to 2019. Commenter notes that Los Angeles</p>	Please refer to the responses to comments V03.02, V03.03 and V03.04.

Identifier	Summary Comment	Response
	<p>Waterkeeper is generally skeptical of compliance date extensions because of significant coastal impacts from OTC operation and the original compliance timelines were carefully selected to account for grid reliability. Commenter states that the LADWP also had the longest compliance timelines for its facilities to come into compliance.</p> <p>Commenter states that repeated OTC Policy compliance date extensions reinforce the notion that agencies like the LADWP can continue to request extensions without consequences.</p>	
V08.03	<p>Commenter notes that Los Angeles Waterkeeper has attempted to negotiate with the LADWP regarding Scattergood since 2019, with the understanding that any extension request would come with additional mitigation payments to address the harm from Scattergood’s ongoing operation. The commenter also understood that an extension request would be accompanied by commitments from the LADWP to a clean energy future through in-basin renewable generation. Commenter believed these provisions would allow Scattergood to close permanently and</p>	<p>Additional mitigation beyond that required by Section 2.C(3) of the OTC Policy is voluntary and based on the discretion of owners and operators. Such additional mitigation is beyond the scope of the Amendment.</p> <p>As addressed in Sections 5.1.2 and 8.2 of the Staff Report, the LADWP had initially planned to replace Scattergood’s capacity with natural-gas-fired technology on the same site. However, due to the requirements of the Los Angeles Green New Deal, the LADWP is presently developing a project to replace Scattergood’s OTC units with on-site hydrogen generation. The LADWP</p>



Identifier	Summary Comment	Response
	<p>create opportunities to reclaim coastal land after the facility closed.</p> <p>Commenter states their frustration regarding lack of an agreement with the LADWP about mitigation payments. Commenter now asserts that previously discussed amounts of additional mitigation are no longer sufficient.</p> <p>Commenter notes they hope to reach an agreement with the LADWP on additional mitigation and are continuing to meet to understand the LADWP's plan for a clean energy future.</p>	<p>intends to cease the use of once-through cooling by December 31, 2029, which is the proposed compliance date for Scattergood in the Amendment.</p>
V08.04	<p>Commenter notes that the LADWP plans to replace in-basin renewables with green hydrogen generation and suggests that the hydrogen generation does not represent clean energy production given the use of a blend of hydrogen and methane. Commenter states that the LADWP has not provided specific information about their hydrogen generation plans, especially regarding the source of water needed to obtain the hydrogen, which is critical given the permanent state of water conservation in California.</p>	<p>The type of non-OTC power generation at the Scattergood site is outside the scope of the Amendment.</p>

Identifier	Summary Comment	Response
V08.05	<p>Commenter states they oppose the proposed extension unless, at minimum, it includes significant increases in required interim mitigation payments for continued OTC operation. Commenter notes their support in the State Water Board's work to revise interim mitigation calculations and hopes that payments will be used for projects in close proximity to Scattergood and other OTC facilities.</p>	<p>Please refer to the response to comment V03.04 for information on interim mitigation payments required by the OTC Policy.</p>
V09.01	<p>Commenter states that the mission of the Los Cerritos Wetlands Land Trust is compromised by two OTC facilities drawing cooling water from wetlands.</p> <p>Commenter opposes the proposed OTC Policy compliance date extensions without added conditions. Commenter states that there was concern during development of the OTC Policy that reliance on mitigation would be illegal under the Riverkeeper legal cases, that the timeline for final compliance was too long, and that the mitigation payments too little to achieve full replacement value.</p> <p>Commenter also notes that during the development of the OTC Policy, they did not agree that mitigation payments should be</p>	<p>The Second Circuit Court of Appeals in <i>Riverkeeper Inc., et al. v. U.S. Environmental Protection Agency</i> (2nd Cir. 2007) (475 F.3d. 83) (<i>Riverkeeper II</i>) concluded that allowing compliance with CWA section 316(b) through implementation of restoration measures conflicts with the statute. (<i>Riverkeeper, II, supra</i>, 475 F.3d 83, 110, and refer to discussion in 2010 Final SED for adoption of the OTC Policy, pp. 6-7.) However, the OTC Policy does not authorize compliance with CWA section 316(b) through restoration. The OTC Policy requires compliance with statewide BTA controls for coastal and estuarine power plants through selection of either Track 1 or Track 2. Compliance can be achieved via Track 1 by reducing intake flow to a level commensurate</p>

Identifier	Summary Comment	Response
	<p>dedicated to marine protected area maintenance, especially where OTC intakes are located in wetlands. Commenter notes they withheld potential challenges at the time because they understood the complexities of energy transition and that the compliance dates were temporary.</p> <p>While the commenter understands the continued challenges of energy transition, they state that the Riverkeeper legal cases were clear that mitigation is not a legal substitute for BTA.</p>	<p>with what can be attained with the installation of a closed-cycle cooling system. Compliance can be achieved via Track 2 by reducing impingement and entrainment equivalent to that which can be attained through Track 1. Owners or operators can achieve compliance through retiring, repowering, or retrofitting OTC units. The OTC facilities affected by the Amendment continue to plan to achieve final compliance with the OTC Policy by ceasing operations, which falls under Track 1 compliance.</p> <p>The OTC Policy includes a provision that existing power plants must implement measures to mitigate the interim impingement and entrainment impacts to marine life resulting from cooling water intakes during operation. Section 2.C(3) of the OTC Policy provides options for owners and operators to demonstrate compliance with the interim mitigation requirements. This requirement commenced on October 1, 2015, and continues up to and until the owner or operator achieves final compliance with the OTC Policy. See response to comment V03.04 for additional discussion of interim mitigation.</p>

Identifier	Summary Comment	Response
		<p>In the 2010 Final SED, the State Water Board also recognized that, while restoration cannot be used to comply with the BTA standard, restoration can be used to offset impingement and entrainment impacts during the interim period between the adoption of the OTC Policy in 2010 and when owners and operators of OTC facilities achieve final compliance (2010 Final SED, p.83). The State Water Board determined that such interim measures are appropriate when the compliance period is lengthy, and impingement and entrainment impacts are expected to continue unabated. As a result, the State Water Board established the interim mitigation requirements in Section 2.C(3) of the OTC Policy.</p> <p>The OTC Policy defines mitigation projects as projects to restore marine life lost through impingement mortality and entrainment. The OTC Policy states that restoration of marine life may include projects to restore or enhance coastal marine or estuarine habitat, as well as those that protect marine life in existing marine habitat, for example through the funding implementation and management of Marine Protected Areas.</p>

Identifier	Summary Comment	Response
		<p>The State Water Board recognizes that wetlands play a critical role in protecting and enhancing marine life associated with marine protected areas by providing protected habitat for reproduction and development that supports populations of various organisms commonly found in marine protected areas.</p>
V09.02	<p>Commenter states that extensions cannot continue without provisions that ensure OTC Policy compliance. Commenter states the OTC Policy extension requests show a pattern rather than an exception. Commenter notes the passage of legislation relying on continued OTC operation supports this notion.</p>	<p>Please refer to the responses to comments V03.02 for additional information on compliance date extensions and the need for grid reliability, V04.01 for more information on the importance of SACCWIS recommendations, and V09.01 for more information on compliance with the OTC Policy.</p> <p>Additionally, the mission of the State Water Board is to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. The State Water Board is dedicated to this vision and has regulatory responsibility for protecting water quality; however, events in recent years have required extension of the compliance dates of</p>

Identifier	Summary Comment	Response
		<p>OTC facilities to ensure all Californians have access to reliable electricity resources. In 2020, the SACCWIS recommended extending the compliance dates of four OTC facilities based on several compounding events impacting grid reliability starting in summer 2021, including shifts in peak demand, related changes in the method for calculating the qualifying capacity of wind and solar resources, an increase in projected reliance on imported electricity, and earlier-than-expected closures of some non-OTC generating facilities. In 2021, the SACCWIS recommended extending the compliance date of Redondo Beach Generating Station as a result of an August 2020 heatwave and associated rotating outages that caused the energy agencies to revise their forecasting models and identify the need for additional capacity beyond summer 2021. As described in Section 5.1 of the Staff Report, the current Amendment is associated with a recent reliability analysis conducted by the energy agencies that considered impacts from several compounding events, including extreme weather events, supply chain constraints, interconnection and</p>

Identifier	Summary Comment	Response
		<p>permitting concerns, and climate change updates in the electricity demand forecast.</p> <p>Regarding Assembly Bill (AB) 205, it did not specify that the compliance dates for Alamitos, Huntington Beach, and Ormond Beach should be extended; rather, it recognized challenges to statewide grid reliability and established tools for the State of California to address these grid reliability issues, including the Strategic Reserve. The energy agencies identified OTC facilities as assets that could comprise a portion of the target capacity of the Strategic Reserve, and unanimously supported the extension of compliance dates as a result.</p>
V09.03	<p>Commenter makes the following recommendations should the OTC Policy compliance dates be extended. Commenter suggests the proposed compliance dates must include a new mitigation formula that fully funds mitigation efforts and result in full replacement value of marine life destroyed by OTC operation. In situations where OTC operations impact estuarine species, commenter states that mitigation payments should be directed to in-kind and in-place wetland restoration.</p>	<p>Please refer to the response to comment V03.04 for information on interim mitigation payments.</p>

Identifier	Summary Comment	Response
V09.04	Finally, commenter suggests that any further OTC Policy compliance delays should be interpreted as a violation of the CWA and that punitive action would be necessary.	Please refer to the responses to comments V03.02 for information on compliance date extensions, V03.03 for information on compliance with applicable environmental regulations, and V09.01 for information on compliance with the OTC Policy.
V09.05	Commenter notes support for the transition to a cleaner energy future, but notes that CWA section 316(b) must be enforced, and coastal wetlands must be restored to ensure comprehensive climate change mitigation and adaptation planning.	Please refer to the responses to comments V09.01 for information on compliance with the OTC Policy and V09.02 for information on compliance date extensions and the need for grid reliability. Additionally, restoration of coastal wetlands for the purposes of adaptation planning and mitigating climate change is outside of the scope of the OTC Policy and the Amendment.
V10.01	<p>Commenter emphasizes the necessity of the energy produced by OTC facilities until further renewable infrastructure is developed.</p> <p>Commenter supports the proposed OTC Policy compliance date extensions for Huntington Beach, Alamitos, and other facilities.</p>	Comment noted.
V11.01	Commenter emphasizes the necessity of the energy produced by OTC facilities until further renewable infrastructure is developed.	Comment noted.



Identifier	Summary Comment	Response
	<p>Commenter supports the proposed OTC Policy compliance date extensions.</p>	
V12.01	<p>Commenter supports the proposed OTC Policy compliance date extensions.</p> <p>Commenter emphasizes the importance of jobs provided by the operation of the OTC facilities and the importance of the energy produced by the facilities.</p>	Comment noted.
V13.01	<p>Commenter supports the proposed OTC Policy compliance date extensions.</p> <p>Commenter emphasizes that existing infrastructure should be retained for energy reliability and safety until additional renewable infrastructure is built.</p>	Comment noted.
V14.01	<p>Commenter supports the proposed OTC Policy compliance date extensions.</p> <p>Commenter recognizes that renewable energy is important, but that OTC facilities are needed.</p>	Comment noted.
V15.01	<p>Commenter supports the proposed OTC Policy compliance date extensions.</p>	Comment noted.

Identifier	Summary Comment	Response
	<p>Commenter emphasizes the importance of existing energy infrastructure for grid reliability.</p>	
V16.01	<p>Commenter supports the overarching goal of the existing OTC Policy to ensure a timely, managed retirement of all OTC resources.</p> <p>Commenter suggests that resources should be allowed to serve as reliability resources, as indicated in the Final 2022 Special SACCWIS Report. Commenter notes that reliability needs are tightening, and that East Bay Community Energy Authority is still working through supply chain issues. Commenter notes the Amendment would make continued operation of the OTC resources contingent upon participation in the Strategic Reserve. The commenter supports statewide grid reliability, and notes that these resources would no longer be eligible to support the CPUC Resource Adequacy Program under the Amendment.</p> <p>Commenter states that the OTC facilities would be needed for reliability needs according to the Final 2022 Special SACCWIS Report, and the commenter supports this conclusion.</p> <p>Commenter states that the East Bay Community Energy Authority is a part of a trade association</p>	<p>Please refer to the responses to comments V04.01 and V09.02 for a discussion of AB 205 and the Strategic Reserve. Because the State Water Board shall afford significant weight to unanimous recommendations from the energy agencies of the SACCWIS, the Amendment includes the footnote explaining that the extensions for Alamitos, Huntington Beach, Ormond Beach are contingent on these facilities participating in the Strategic Reserve.</p>

Identifier	Summary Comment	Response
	<p>called the California Community Choice Association, and that both entities have conducted reliability analysis as part of CPUC proceedings. Commenter states that the reliability analysis demonstrates a potential capacity shortfall in California.</p> <p>Commenter notes the contingency of the Strategic Reserve participation would narrow the capacity available to load serving entities to meet resource adequacy needs, which would increase customer costs and place reliability at risk. Commenter suggests the State Water Board adopt the Amendment without the Strategic Reserve contingency.</p>	
V17.01	<p>Commenter supports the Amendment.</p> <p>Commenter states the OTC facilities provide jobs and ensure reliable energy during peak energy needs.</p>	Comment noted.
V18.01	<p>Commenter suggests that the issue of grid reliability must be addressed holistically. Commenter states that delays in OTC Policy compliance are because the city council is listening to environmental groups that want to stop the operation of gas-fired power plants.</p>	Comment noted.

Identifier	Summary Comment	Response
	<p>Commenter suggests that this push from environmental groups will affect residents and ratepayers in Los Angeles.</p> <p>Commenter cites the Los Angeles 100 Percent Renewable Energy Study that indicates the need for gas-fired generation until hydrogen technology is developed.</p> <p>Commenter emphasizes the importance of the OTC facilities to create jobs for local communities. Commenter notes that the environmental movement has impacted the attempts of the Wilmington community to help. Commenter highlights the importance of Scattergood in maintaining base load. Commenter emphasizes the potential impacts of closing Scattergood to ratepayers.</p> <p>Commenter supports the proposed OTC Policy compliance date extensions.</p>	
V19.01	<p>Commenter states that OTC facilities are ignoring the need for BTA and section 316(b) of the CWA. Commenter states that the State Water Board has a duty under the CWA to require BTA to minimize environmental impacts.</p>	<p>Please refer to the responses to comments V03.02 and V09.01.</p>

Identifier	Summary Comment	Response
	<p>Commenter states that the OTC Policy is being used to replace the requirement for BTA with restoration. Commenter states that the CWA requires the location, design, construction, and capacity of cooling water intake structures must reflect the BTA for minimizing adverse environmental impacts. Commenter notes that it does not mention mitigation as a means of compliance, nor does it give the option to allow operators to wait to comply until they decide to shut down.</p> <p>Commenter cites the Riverkeeper legal case wherein a federal appellate court found that compliance via restoration measures is inconsistent with the text and intent of the CWA. Commenter states that the court also found that the U.S. EPA exceeded its authority by allowing compliance with 316(b) through restoration measures.</p>	
V19.02	<p>Commenter states that a nuclear review committee conducted a BTA feasibility analysis for Diablo Canyon, but no decision was made by the State Water Board because PG&amp;E subsequently agreed to terminate Diablo Canyon's operations. Commenter states that Diablo Canyon has no way to comply with the</p>	<p>Please refer to the response to comment V06.01 for more information on Diablo Canyon, BTA and why the Diablo Canyon extension is not an exemption from CWA section 316(b).</p>

Identifier	Summary Comment	Response
	<p>OTC Policy other than to continue operation and make mitigation payments until it shuts down as a result. Because no BTA decision was ever made for Diablo Canyon’s compliance with the OTC Policy, commenter suggests that the Diablo Canyon extension is being treated as an exemption from CWA section 316(b).</p>	
V19.03	<p>Commenter suggests removing the ability to extend compliance schedules for grid reliability purposes after the current proposed extension, and also suggests abolishing the SACCWIS. Commenter states that the State Water Board has a responsibility to ensure facility compliance with CWA section 316(b).</p>	<p>Please refer to the response to comment V03.02 for a discussion of the OTC Policy’s approach to ensuring the beneficial uses of the state’s coastal and estuarine waters are protected while also ensuring the electrical power needs essential for the welfare of residents of the state are met. It is inappropriate to remove the ability of a future State Water Board to further extend compliance schedules if such extensions would be necessary to help ensure a reliable energy grid necessary or the welfare of Californians.</p> <p>The response to comment V03.02 also discusses the role and value of the SACCWIS. Retaining the SACCWIS in its current form provides the State Water Board with the expertise necessary to understand energy needs and OTC impacts, which is critical to implementation of the OTC Policy. As described in Section 6.2 of the Staff Report, the</p>

Identifier	Summary Comment	Response
		<p>Amendment includes language specifying that the SACCWIS will continue reporting to the State Water Board on the status of OTC Policy implementation at least through 2026 and may reconvene as needed beyond 2026 to address grid reliability concerns affecting existing OTC facilities.</p> <p>Please see response to comment V09.01 for a discussion of compliance with CWA section 316(b).</p>
V19.04	<p>Commenter also recommends that the State Water Board finishes the analysis to determine the BTA for Diablo Canyon.</p>	<p>Please refer to the response to comment V06.01 for more information on the BTA analysis for Diablo Canyon.</p>
V19.05	<p>Commenter states that the State Water Board should start treating the proposed extensions as noncompliant actions with the OTC Policy. Commenter recommends that the State Water Board charges permittees for noncompliance. Commenter also suggests the State Water Board should not use the term interim mitigation anymore and should instead address the situation as noncompliance subject to enforcement penalties.</p>	<p>To the extent the commenter is suggesting that facilities that receive an extension should be considered noncompliant with the OTC Policy, a power plant that receives an extension to its compliance date is not violating the OTC Policy as long as it complies with its new compliance date. If a power plant does not receive an extension to its existing OTC Policy compliance date and fails to comply with that compliance date, then the power plant is in violation of the corresponding provision in its NPDES permit.</p>

Identifier	Summary Comment	Response
		<p>It is inappropriate to treat extensions of compliance dates as noncompliant actions subject to enforcement penalties with the OTC Policy because of the importance of balancing the need for protection of marine life with grid reliability. Please refer to the responses to comments V03.02 for additional discussion of compliance date extensions, V03.04 for the role of interim mitigation, V09.01 for compliance pathways through Track 1 or Track 2, and V09.02 for the need for recent extensions. The OTC Policy accounts for the possibility of compliance date extensions to support grid reliability and grid reliability remains important for the welfare of Californians.</p>
V20.01	<p>Commenter supports the proposed OTC Policy compliance date extensions for Alamitos, Huntington Beach, and others.</p> <p>Commenter states that the OTC facilities are assets because they generate jobs and ensure grid reliability.</p>	Comment noted.



**Table 4: Responses to Written Comments**

ID	Comment	Response
C01.01	<p>Diablo Canyon’s average annual flow rate of 2.2 billion MGD is 400% greater than the combined flow rate of all the natural gas plants that are the primary focus of the policy amendment. Entrainment entails 100% morbidity for all the larvae and plankton impacted, with even greater damage done to the marine environment by the heated outflow, earning the plant its Coastal Commission sobriquet as “California’s largest marine predator.” These are the impacts proposed for extension as a “change without regulatory effect” over a timespan in which it will be directly impacting the Chumash Heritage National Marine Sanctuary.</p>	<p>Please refer to the response to comment V06.01 for a discussion of why the revisions to the Diablo Canyon compliance dates are changes without regulatory effect.</p> <p>Diablo Canyon’s average annual flow rate is approximately 2.3 billion gallons per day. Based on data reported in the California Integrated Water Quality System from 2015 to 2022, the average annual flow rate for Diablo Canyon is approximately 834,000 million gallons, which equates to 2,300 million gallons per day or 2.3 billion gallons per day.</p> <p>Although Diablo Canyon uses large volumes of water compared to the other OTC power plants, Diablo Canyon’s impacts are expected to be at or below baseline impacts established in the 2010 Final SED because Diablo Canyon was used as a base load facility prior to the OTC Policy taking effect in 2010 and the amount of once-through cooling water used has not increased since 2010. Also, per SB 846, the owners and operators of Diablo Canyon will continue to be subject to at least the minimum interim mitigation requirements outlined in Section 2.C(3) of the OTC Policy through October 31, 2030. In addition, SB 846 requires that the owners and operators of Diablo Canyon consult and work collaboratively with local California Native American tribes</p>

ID	Comment	Response
		<p>with a historical connection or interest in the lands, but not limited to, upon which Diablo Canyon is currently sited.</p> <p>Furthermore, thermal discharges from OTC facilities are regulated by CWA section 316(a), which is implemented through the Water Quality Control Plan for the Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (also known as the California Thermal Plan), and are outside of the scope of the Amendment.</p>
C01.02	<p>We have lost track of the number of times Diablo Canyon’s date of compliance with the state’s requirement to end the practice of once-through cooling has been revised, waived, extended, and delayed. It is becoming difficult to take the state at its word in matters involving both Diablo Canyon’s closure and cooling system.</p>	<p>Prior to this Amendment, the State Water Board revised the compliance dates for Diablo Canyon Units 1 and 2 once since adopting the OTC Policy in 2010. In 2020, the State Water Board adopted Resolution No. 2020-0029, which included an administrative update to conform the OTC Policy compliance date for Diablo Canyon with the expiration dates of the Nuclear Regulatory Commission’s licenses for each unit. This shortened the compliance date for Diablo Canyon Unit 1 by approximately two months from December 31, 2024, to November 2, 2024, and extended the compliance date for Unit 2 by approximately nine months from December 31, 2024, to August 26, 2025.</p> <p>Please refer to the responses to comments V03.02 for discussion of the appropriateness of compliance date extensions for grid reliability, V06.01 for discussion of</p>

ID	Comment	Response
		Diablo Canyon's extension via SB 846, and V09.02 for the need for recent extensions.
C01.03	For this reason, and because PG&E is applying for a 20-year license renewal from the Nuclear Regulatory Commission, we urge that the Diablo Canyon portion of the draft amendment include a requirement that PG&E add a 2030 closing date to its license renewal application. (By way of precedent, in applying for a renewal of the license to operate the Indian Point Nuclear Power Plant, Entergy amended its application for a 20-year license to include an earlier closure date, and the Nuclear Regulatory Commission agreed.)	Consideration of the license timeline is beyond the scope of the State Water Board's authority.
C02.01	The State Water Resources Control Board (State Board) must require compliance with the 2010 OTC Policy as soon as possible.	Please refer to the responses to comments V03.02 for discussion of the appropriateness of compliance date extensions for grid reliability and V06.01 for discussion of Diablo Canyon's extension via SB 846.
C02.02	Interim mitigation fees must be increased to better address ongoing impacts from continued OTC operation, to be developed in coordination with local organizations while the State Board is	Please refer to the responses to comments V03.04 for information regarding the State Water Board's separate evaluation of potential revisions to the interim mitigation calculation and to the process for allocating funds to better include discussions with tribal communities,

ID	Comment	Response
	considering adjustments to the baseline mitigation fees.	disadvantaged communities, local communities, and other interested parties.
C02.03	The Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS) must provide a summary of actions taken to date that support movement towards final compliance as part of their justification for an extension recommendation prior to Board consideration later this year.	Please refer to the response to comment V03.08 for information on why current reporting by the SACCWIS is sufficient.
C02.04	SACCWIS must provide regular updates on zero-carbon energy procurement to increase supply from sources other than OTC facilities, and efficiency efforts to reduce overall energy demand.	Please refer to the response to comment V03.08 for information on zero-carbon energy procurement updates from the SACCWIS.
C02.05	OTC operation causes significant, harmful, and ongoing impacts to our valuable marine environment and resources. As one example, turning on one coastal power plant destroyed almost 10% of the kelp forests along California's mainland coast, with associated fish losses.	<p>Please refer to Section 5.2 of the Staff Report for a description of OTC impacts to marine and estuarine life and how the OTC Policy addresses impacts on marine and estuarine life.</p> <p>Regarding impacts to kelp forests along California's coast, the commenter does not provide references regarding this statement.</p>

ID	Comment	Response
C02.06	<p>We understand the need for grid reliability, particularly during times of peak energy demand, as we transition to renewable and carbon-free energy sources in Southern California and throughout the state. However, we are well past the time for additional extensions predicated on grid reliability, and the current Proposed Amendment is no longer reasonable. It is important to remember that the original deadlines in the 2010 OTC Policy were developed in coordination with the energy agencies specifically to account for the need for grid reliability.</p>	<p>Please refer to the responses to comments V03.02 and V09.02.</p> <p>Additionally, as discussed in Section 5 of the Staff Report, the energy agencies conducted a new reliability analysis that considered impacts from several compounding events, including extreme weather events, supply chain constraints, interconnection and permitting concerns, and climate change updates in the electricity demand forecast. The analysis also considered the potential for coincidental events that could further adversely impact system-wide reliability, such as a simultaneously occurring extreme heat wave, drought, and wildfire affecting transmission capacity. The resulting conclusions of this analysis identified a projected shortfall as high as 10,000 MW in summer 2025, and a need for resource capacity beyond existing required planning criteria. The State subsequently passed into law Assembly Bill 205 (AB 205), which established the Strategic Reserve, and the energy agencies identified the operational OTC facilities as assets that could provide critical capacity to the Strategic Reserve to support statewide grid reliability.</p>
C02.07	<p>Further, we must consider the negative impacts of allowing OTC operations to continue beyond the timeline specified in the 2010 OTC Policy, and the implications of this extension on both</p>	<p>Please refer to the responses to comments V03.02, V03.03, and V03.04.</p>

ID	Comment	Response
	public and environmental health, which cannot be treated as secondary considerations.	
C02.08	Extending OTC operation will extend existing water quality, air quality, noise, and other impacts. The Staff Report states that these impacts are expected to remain at or less than the baseline conditions of 2010; however, there will still be significantly more impacts than there would have been if all facilities had complied with the OTC Policy by the original deadlines.	Please refer to the responses to comments V03.02, V03.03, V03.04, and V09.01.
C02.09	We recommend that the State Board require the remaining eight facilities to come into compliance with the 2010 OTC Policy as soon as possible. If the State Board considers this Proposed Amendment, it must be the last extension.	Please refer to the responses to comments V03.02, V09.01, and V19.03.
C02.10	However, the study on OTC impacts on marine life was completed 15 years ago, and since marine conditions have changed significantly since then, the existing mitigation calculation no longer accurately reflects true impacts.	Please refer to the response to comment V03.04.
C02.11	In addition, when mitigation costs per gallon were determined in 2015, the State Board indicated that the fees were not intended to be	Please refer to the responses to comments V03.04 and V09.01. Additionally, the primary intent of the OTC Policy's interim mitigation requirement is to address the

ID	Comment	Response
	<p>punitive in any way. If interim mitigation is allowed in place of compliance with water quality law, it must at a minimum fully curtail the ongoing damage to our coastal resources while a power plant comes into compliance, as well as incentivize compliance action.</p>	<p>interim impacts of ongoing OTC facility operations until final compliance is achieved. The interim mitigation requirement is not primarily intended to incentivize early compliance with the OTC Policy, though some owners and operators may choose to comply early based on any number of business decisions, including the cost of interim mitigation payments.</p>
C02.12	<p>These amounts are miniscule given the tremendous economic benefit for utilities to continue OTC operation, and clearly have not served to incentivize compliance action, as many extension requests have been submitted since the OTC Policy was approved. If OTC operation continues beyond the original deadlines of the 2010 OTC Policy, there must be increased mitigation fees across the board to better alleviate the continued degradation of California's coast and marine life.</p>	<p>Please refer to the responses to comments V03.02, V03.04, and C02.11.</p>
C02.13	<p>The State Board should direct OTC operators to coordinate with local organizations to develop and finalize sufficient mitigation plans prior to State Board consideration of the Proposed Amendment later this year.</p>	<p>Please refer to the responses to comments V03.04 and V08.03.</p>

ID	Comment	Response
C02.14	<p>The State Board must also take an active role to ensure that mitigation fees are directed toward local projects that will actually serve to remediate the harm caused by continued OTC operation at the facilities receiving extensions. At least 50% of mitigation funds must go towards mitigating the detrimental impacts caused by OTC. Funding of Marine Protected Area (MPA) monitoring, enforcement, and community engagement has provided substantial benefit; however, these efforts do not provide direct mitigation for the harm caused by OTC operation. Major investments in wetland restoration projects are critical to mitigate the extensive harm to marine life cause by OTC power plants proximate to those coastal wetlands. In addition, the OTC facilities are often located in frontline, low-income communities that would greatly benefit from the restoration efforts. The State Water Board must exert leadership to ensure that their sister agencies, the Ocean Protection Council and the California Coastal Conservancy, are moving forward quickly on restoration projects that mitigate for extensive marine life losses, such</p>	<p>Please refer to the responses to comments V03.04 and V09.01.</p>



ID	Comment	Response
	as restoration efforts at Los Cerritos wetland and Ormond Beach.	
C02.15	<p>We urge the State Board to update the analysis of the impacts of OTC operation on marine life with the support of highly respected academics (such as UCSC's Professor Pete Raimondi) as soon as possible to allow this baseline mitigation fee adjustment to coincide with consideration of the Proposed Amendment. The assessment of the economic impacts of OTC should consider fisheries, marine life, and community impacts of continued OTC power plant operations. We encourage the State Board to consider significantly increasing the interim mitigation fees for facilities operating beyond the original deadlines of the 2010 OTC Policy to account for higher inflation rates, ongoing OTC impacts which would otherwise be eliminated by the original deadlines, significant changes to current marine conditions, and the cumulative impacts of continued OTC operations at all remaining facilities. At a minimum, mitigation fees for extended use of these plants should be twice as much as the existing interim mitigation calculation. Alternatively, the Board could include a flat \$10</p>	Please refer to the responses to comments V03.02, V03.04, and V09.01.

ID	Comment	Response
	million mitigation fee, as a starting point, for operations to continue beyond the original compliance deadlines, in addition to mitigation cost per gallon of OTC water.	
C02.16	As stated above, if the State Board considers this Proposed Amendment, it must be the last extension; once new deadlines have passed, any non-compliance must be identified as a violation of the OTC Policy and met with enforcement action.	Please refer to the responses to comments V03.02 and V19.05.
C02.17	When SACCWIS submits a recommendation for extensions to the State Board, they should include sufficient justification for the recommendation, not only based on the claimed reasons the extension is necessary, but also based on actions taken by the responsible energy agencies to date in support of final compliance. While the latest extension recommendation from SACCWIS did include evidence concerning grid reliability, the energy agencies and OTC facility operators have not thus far delivered on their zero-carbon energy procurement commitments, as set forth in Senate Bill 100 (De León) and required for OTC Policy compliance. We do not believe the energy agencies have done enough to develop	Please refer to the responses to comments V03.02, V03.08, and C02.04.

ID	Comment	Response
	<p>alternatives to OTC facilities, forcing the State Board to issue an extension for grid reliability. Such an extension was entirely avoidable if the energy agencies and remaining OTC facility operators had effectively implemented an alternative energy procurement plan. For this Proposed Amendment, and any future OTC extension recommendations, SACCWIS must provide the State Water Board a summary of actions taken to date that support movement towards the energy agencies' zero-carbon energy procurement commitments to replace the need for OTC plants.</p>	
C02.18	<p>The State Board should require SACCWIS to provide regular updates on procurement order D.21-06.35, their progress towards achieving 100% zero-carbon electricity resources by 2045, and the contributions towards this goal provided by remaining OTC facilities.</p>	<p>Please refer to the responses to comments V03.02, V03.08, and C02.04.</p>
C02.19	<p>In addition, the new reliability analysis provided by the energy agencies in the Proposed Amendment focuses on the increased demand for energy as the climate crisis continues. However, it does not explore the potential for decreased demand with the implementation of efficiency measures. The State Board should</p>	<p>Please refer to the responses to comments V03.02 and V03.08. The State Water Board relies on the SACCWIS to make recommendations based on analyses of grid reliability.</p>

ID	Comment	Response
	also require SACCWIS to provide regular updates on actions taken to improve efficiency, particularly during times of peak energy demand.	
C02.20	The recommendation from SACCWIS for deadline extension is contingent upon facility participation in the Strategic Reserve, so that facilities are only called upon during extreme events to limit the impacts of OTC operation. If the State Board considers the Proposed Amendment, we support this contingency.	Comment noted.
C02.21	According to the Staff Report, “The Strategic Reserve will enable demand-side programs to scale up, new and clean resources to come online, critical grid assets to be hardened, and new planning processes to continue to be implemented.” However, these long-term benefits of bolstering the Strategic Reserve will only be achieved if energy agencies and OTC facility operators follow through on their procurement commitments moving forward. Therefore, SACCWIS must provide a detailed plan for how these long-term benefits will be achieved, given additional Strategic Reserve resources granted by the Proposed Amendment, and commit to providing regular	Please refer to the responses to comments V03.02, V03.08, and C2.19. Discussions of energy procurement and forecasting projections underlying the Amendment can be found in Sections 3 and 6 of the Final 2022 Special SACCWIS Report and Section 3 of the Final 2022 Report of the SACCWIS. The SACCWIS will next report to the State Water Board, including updates on energy procurement intended to replace OTC facilities, on or before March 31, 2024.

ID	Comment	Response
	updates on procurement and efficiency efforts to ensure progress is made. SACCWIS must provide this plan before the State Board considers approval of the Proposed Amendment later this year.	
C03.01	We are disappointed with yet another extension proposal for OTC plants generally, but we were particularly concerned to see the five-year proposed extension for Scattergood. We believe LADWP has had ample time to develop and implement plans to take Scattergood's OTC operations offline, and if necessary, replace Scattergood's generation capacity with other resources.	Please refer to Section 3 of the Final 2022 Report of the SACCWIS and Section 5.1.2 of the Staff Report for a discussion of the compliance date extension request from the LADWP and the associated reasons for this extension request.
C03.02	Despite extensive good faith negotiation efforts over the last four years between our groups (including LAW, HTB, Sierra Club, NRDC, FBW, and others) and LADWP to find a way to support the Scattergood extension, we have not yet seen LADWP make the commitments necessary for additional mitigation payments outside of the OTC Policy, or for a safe and clean green energy future, which we would need to see in order to offer our support.	Additional mitigation beyond that required by Section 2.C(3) of the OTC Policy is voluntary and based on the discretion of owners and operators. Such additional mitigation is beyond the scope of the Amendment. Please also refer to response to comment V03.04.

ID	Comment	Response
C03.03	LADWP has indicated a willingness to increase its mitigation payment by 50% of the initial figure. While we have not yet received written commitment from LADWP to increased mitigation and penalties for further missed deadlines, we believe there is a pathway forward for us to be comfortable with the five-year extension for Scattergood's OTC units once we reach a final agreement. We anticipate that we will be able to resolve our negotiations with LADWP prior to the final adoption hearing for the proposed OTC extensions, and we hope to be able to confirm our comfort with the extension at that time.	Comment noted.
C03.04	We still have significant concerns with LADWP's plans for Scattergood to continue operating as a hydrogen and methane combustion plant after 2029, and we will continue to work with LADWP to minimize the environmental impacts of operations at the Scattergood site to the fullest extent possible.	Comment noted.
C03.05	In many regulatory contexts, including the State Board's OTC Policy, repeated and never-ending compliance extensions reinforce that regulated agencies can continue to delay compliance actions, without accountability. LADWP surely	Please refer to the responses to comments V03.02, V03.04, and V09.02.

ID	Comment	Response
	<p>could have prioritized and expedited its expansion of alternative generation resources over the last decade to replace Scattergood’s OTC process. There must be accountability for this lack of action and the continued harm to marine life.</p>	
C03.06	<p>When entering these new negotiations, our initial understanding was that the Scattergood OTC extension would come with the following commitments from LADWP, as a compromise, considering the prolonged coastal impacts of continued OTC operation beyond the existing 2024 deadline:</p> <ol style="list-style-type: none"> <li>1. The possibility of closing the Scattergood plant for good by 2029, with the goal to reclaim the coastal land for public trust access after the closure;</li> <li>2. An identified pathway to a clean energy future for the City of Los Angeles through expansion of in-basin renewable energy generation, grid modernization, and battery storage; and</li> <li>3. Significant additional mitigation payments from LADWP, outside the requirements</li> </ol>	<p>Please refer to the responses to comments V03.04 and V08.03. Additionally, while the State Water Board supports clean energy, the type of non-OTC power generation at the Scattergood site is outside the scope of the Amendment.</p>

ID	Comment	Response
	<p>of the OTC Policy, to directly address the harm from Scattergood’s continued operation until 2029.</p> <p>Unfortunately, as negotiations with LADWP progressed, each of these points of understanding has been eroded significantly, again moving us away from a place of compromise:</p> <ol style="list-style-type: none"> <li>1. LADWP now plans to repower Scattergood after 2029 and retrofit the plant to eliminate the OTC process;</li> <li>2. In-basin renewables were swapped out for “green hydrogen” generation at Scattergood—not the clean energy future we wanted, with LADWP intending to combust a blend of hydrogen and methane at Scattergood following the retrofit. LADWP also has not provided enough specific information about their hydrogen plans at Scattergood, especially regarding the source of water needed to obtain hydrogen, a critical consideration as we face recurring</li> </ol>	



ID	Comment	Response
	<p>drought conditions requiring continuous water conservation efforts; and</p> <p>3. Most frustratingly, even after four years of negotiations and countless meetings with LADWP, we still have not reached an agreement with LADWP on additional mitigation payments outside the OTC Policy and do not yet have any preliminary agreements in writing.</p>	
C03.07	<p>LADWP indicated a willingness to increase its proffered mitigation payments by 50% of the previously discussed amount. While we have yet to see a draft agreement that would memorialize LADWP's commitment in writing, we are hopeful that we will be able to finalize such an agreement in the coming months (after four years of negotiations), including provisions that provide penalties for further missed deadlines. As such, while we are not presently able to offer support for the proposed OTC extension for Scattergood until 2029, we see a pathway forward where we could become comfortable with the mitigation-related aspects of an extension.</p>	<p>Comment noted.</p>

ID	Comment	Response
C03.08	Regardless, we remain greatly concerned about Scattergood's energy future after 2029, and we will work with LADWP to further explore non-combustion generation resources.	Comment noted.
C03.09	As we continue our discussions with LADWP, we sincerely hope to achieve a productive resolution by the final adoption hearing for the Proposed OTC Amendment.	Comment noted.
C04.01	GenOn supports an extension of the OTC Policy compliance deadline.	Comment noted.
C04.02	GenOn believes that a three-year extension for Ormond Beach Station will maximize reliability safeguards while minimizing community and environmental impacts.	Comment noted.
C04.03	GenOn supports an OTC compliance deadline extension to support systemwide grid reliability.	Comment noted.
C04.04	An OTC Policy compliance deadline extension will benefit the residents of the City of Oxnard (the "City") and the areas surrounding the Ormond Beach Station, as GenOn has entered into an agreement with the City for purposes of developing a park for public access to coastal resources. The funding for the public access	Comment noted.

ID	Comment	Response
	park is contingent on GenOn entering into a market-based commercial agreement.	
C04.05	GenOn agrees with Staff that a three-year extension for the Ormond Beach Station will have minimal impacts on marine life due to the plant's low level of operation and other factors. Current interim mitigation requirements will continue to offset these impacts as required by the OTC Policy during the extension period, just as they have in prior years.	Comment noted.
C04.06	The Ormond Beach Station operates in compliance with all required environmental permits. GenOn will timely file permit renewal applications to maintain permit coverage throughout the period that the Ormond Beach Station operates.	Comment noted.
C04.07	GenOn does not believe it is advisable to extend the OTC Compliance deadline with any conditions that limit contracting options when grid reliability is at stake.	Please refer to the response to comment V04.01.
C05.01	The Los Angeles Department of Water and Power (LADWP) is pleased to submit the following comments in support of the proposed Amendment to the Water Quality Control Policy	Comment noted.

ID	Comment	Response
	on the Use of Coastal and Estuarine Waters for Power Plant Cooling to Extend the Compliance Schedule for its Scattergood Generating Station (Proposed Amendment).	
C05.02	The five-year extension request for the Scattergood Generating Station is necessary for LADWP's and the State's grid reliability.	Comment noted.
C05.03	Although LADWP seeks an extension for Scattergood Units 1 and 2, it is important to note that LADWP has made significant improvements at the Scattergood Generating Station as a whole that have ultimately reduced the facility's environmental impact. Since December 31, 2015, LADWP has not had a marine mammal take and has reduced impingement mortality and entrainment impacts by 97% by replacing Scattergood Unit 3 with a combined cycle unit and eliminating the use of OTC. LADWP also has installed a velocity cap that showed to be at least 97% effective, and has operated without receiving violations to its National Pollutant Discharge Elimination System (NPDES) permit.	Comment noted.
C05.04	Finally, LADWP supports providing voluntary environmental benefits (VEBs) beyond that of	The State Water Board received the LADWP's letter on April 14, 2020, requesting interim mitigation funds for

ID	Comment	Response
	<p>the interim mitigation fee, and is working on this plan. LADWP has also sent a letter to the SWRCB requesting that the current interim fees be used to fund local coastal mitigation projects.</p>	<p>Haynes Generating Station be allocated to local mitigation projects. Per Section 2.C(3)(e) of the OTC Policy, interim mitigation funds are directed to the OPC and the Coastal Conservancy to be used for appropriate mitigation projects. On October 15, 2020, the State Water Board responded approving the LADWP's request, indicating that six million dollars from Haynes Generating Station's interim mitigation payments transferred to the OPC will be distributed to restoration projects in the Los Angeles area. Per the Memorandum of Understanding with the OPC and the Coastal Conservancy, all three agencies have and will continue to consider requests for specific projects for use of interim mitigation funds.</p> <p>In addition, please refer to the responses to comments V03.04 for information regarding the State Water Board's separate evaluation of potential revisions to the process for allocating mitigation funds and V08.03 regarding the voluntary nature of mitigation beyond that required by Section 3.C(3) of the OTC Policy.</p>
C05.05	<p>This extension is crucial for LADWP to maintain local capacity and to allow for grid reliability and resiliency during stressed grid events. The implications of the current LADWP Scattergood Generating Station OTC Policy compliance date on daily lives will result in power outages and, in</p>	<p>Comment noted.</p>

ID	Comment	Response
	addition to a grid reliability risk, is a public health and safety threat that cannot be overlooked.	
C05.06	In closing, LADWP supports the SWRCB to adopt the Proposed Amendment to the OTC Policy for the LADWP Scattergood compliance date extension.	Comment noted.
C06.01	[Redondo Beach Generating Station] rarely operates, cannot act as an emergency power source due to its inability to quickly be "up and running," provides an infinitesimal amount of electricity to the grid, and is simply not needed for grid reliability or emergency purposes. Further, it's been an egregious waste of taxpayer monies to pay them to keep the lights on for non-existent capabilities.	The Amendment does not include a proposed extension of the OTC Policy compliance date for Redondo Beach Generating Station.
C06.02	When the Board opted to extend the "life" of this antiquated power plant through 2023, it caused the City of Redondo Beach great harm. We lost millions of dollars in grant money to purchase part of the property for a regional park. Our City also lost the partnership with the County for what was to be a newly-created financial district for the same purpose.	Please refer to the response to comment C06.01.

ID	Comment	Response
C06.03	While it would be great to see ALL of the OTC power plants close, please ensure that the one in Redondo Beach is shuttered, once and for all.	Regarding the need to extend compliance dates for other OTC power plants, please see Section 5 of the Staff Report and the responses to comments V03.02 and V09.01.
C07.01	To that end, we are deeply disheartened by the proposal to extend once-through cooling (OTC) retirement dates for several power plants, including Diablo Canyon's 2.2 billion gallon per day operations. While this action may be deemed necessary for grid reliability, the State Water Board has a legal duty to uphold the Clean Water Act and OTC policy.	Please refer to the responses to comments V03.02 for a discussion of the OTC Policy's approach to ensuring the beneficial uses of the state's coastal and estuarine waters are protected while also ensuring the electrical power needs essential for the welfare of residents of the state are met, V06.01 for a discussion of the revisions to the Diablo Canyon compliance dates, and V09.01 for a discussion of compliance with CWA section 316(b).
C07.02	Plants and animals that are killed during the entrainment process include phytoplankton and zooplankton that reside entirely in the water, and the eggs and larvae of larger adult animals such as fishes, abalone, crabs, lobsters, and clams. Coastal waters subject to entrainment are also habitat for gametes, spores and seeds of many types of seaweed, sea grasses, and marsh plants. This not only impacts local marine ecosystems but also disrupts the connectivity of California's marine protected area network.	Please refer to the responses to comments V03.04 and V09.01. As established in the 2010 Final SED, OTC operations present a considerable and chronic stressor to the State's coastal aquatic ecosystems by reducing important fisheries and contributing to the overall degradation of the State's marine and estuarine environments. The OTC Policy is intended to reduce general deleterious impacts of OTC intake operations.

ID	Comment	Response
C07.03	<p>Closed-cycle wet cooling was selected as BTA – officially prompting the phasing out of OTC technology.</p> <p><b>The phasing out of OTC technology was supposed to be complete by now and extension after extension of compliance schedules ignores federal and state laws vital to the health of marine life, the ocean economy and coastal recreation.</b> As such, upscaled mitigation fees and a firm expiration date of the compliance extension must be included in the staff recommendation.</p>	<p>Please refer to the responses to comments V03.02, V03.04, V09.02, and V19.03.</p>
C07.04	<p>If the extensions are granted, the recommendation must be firmly tied to an updated mitigation schedule that represents the impacts and cumulative impacts to marine resources. Mitigation measures need to be drastically upscaled to compensate for continuing impacts and should be tied to quantitative improvements to marine life. This should not be a separate process – it must be incorporated into the extensions. <b>It is unreasonable to move forward without knowing how the enormous impacts these facilities have will be mitigated. Mitigation should be earmarked for direct habitat</b></p>	<p>Please refer to the responses to comments V03.02, V03.04, V09.01, and V19.03.</p> <p>The State Water Board is not planning to consider a draft resolution to revise the interim mitigation calculation at the same time as the consideration of adoption meeting on the Amendment. The State Water Board must consider adoption of the Amendment and obtain approval by the Office of Administrative Law prior to December 31, 2023, which is the current compliance date for three facilities in the Amendment. The State Water Board intends to consider the Amendment for adoption at the August 15, 2023 board meeting to allow adequate time for the regional water boards to consider issuing new NPDES</p>



ID	Comment	Response
	<p><b>creation, ideally wetlands creation, wherever possible.</b></p> <p><b>If approved, a firm expiration date must be included in the extension.</b></p>	<p>permits or administrative extensions should the Amendment be adopted.</p> <p>As described in more detail in the response to comment V03.04, the State Water Board is concurrently evaluating updates to the calculation for the annual interim mitigation payments as a separate action. The State Water Board must also ensure that appropriate and scientifically sound methods are being used in interim mitigation recalculation updates. In addition, the State Water Board intends to discuss recalculation options with interested parties. This process is expected to take through early 2024.</p> <p>However, the State Water Board, Coastal Conservancy, and OPC intend on presenting an informational item at the August 15, 2023 board meeting on the efforts to revise the interim mitigation payment calculation and how interim mitigation funds have and will be used by the Coastal Conservancy and the OPC.</p>
C07.05	<p>A final date for Diablo Canyon’s continued operations is of particular importance. SB 846 approves an extension of Diablo Canyon’s operation until 2030, a period of 5 additional years. However, in both public statements and the media, PG&amp;E has expressly stated they are applying for a 20-year license renewal from the US Nuclear Regulatory Commission. If the</p>	<p>Please refer to the response to comment V03.02 for a discussion of the OTC Policy’s approach to ensuring the beneficial uses of the state’s coastal and estuarine waters are protected while also ensuring the electrical power needs essential for the welfare of residents of the state are met. It is inappropriate to remove the ability of a future State Water Board to further extend compliance schedules if such extensions would be necessary to help ensure a</p>

ID	Comment	Response
	<p>State Water Board does not set an enforceable restriction at this junction, PG&amp;E will be able to continue to operate as California’s largest marine predator for potentially decades to come without ever having done adequate analysis of best available cooling technology for nuclear power. PG&amp;E may have incentive to continue operations beyond 5 years, particularly if the Diablo Canyon Independent Safety Committee determines that substantial infrastructure upgrade investments will be needed that have not been made over the past years due to the plan to decommission. Therefore, we strongly urge you to set a binding end date for intake when Diablo Canyon will finally shut down on October 31, 2030.</p>	<p>reliable energy grid necessary or the welfare of Californians.</p> <p>Please also refer to the responses to comments V06.01 and C01.03.</p>
C08.01	<p>If the AGS and HBGS are needed to operate through December 31, 2026, to support California's grid reliability, AES is committed to ensuring the facilities are available. For these reasons and those discussed in our comments below, AES supports the recommendations of the Draft Staff Report and 2022 SACCWIS Report.</p>	<p>Please refer to the response to comment V03.02.</p>
C08.02	<p>While best known to the Water Board in the OTC setting, our purpose at AES is to</p>	<p>Comment noted.</p>

ID	Comment	Response
	<p>accelerate the future of energy, together with our customers, communities, and stakeholders through accelerated development of renewable energy, battery energy storage, and other zero carbon energy solutions. Our purpose at AES is aligned with that of California's energy policies - to achieve a 100% carbon-free energy future.</p>	
C08.03	<p>Balancing public health, energy reliability, and a transition to a 100% carbon free energy future is challenging. AES continues to play an important role in the development of new renewable resources and supporting the grid with our current, diverse portfolio, described below, to ensure the lights stay on in the most stressed conditions. We are committed to working with the State and Regional Water Board's, California Public Utilities Commission ("CPUC"), California Energy Commission ("CEC"), California Independent System Operator ("CAISO") (collectively, the "Energy Agencies"), our customers and other key stakeholders to transition our remaining OTC fleet in a responsible manner and one that does not threaten electric system reliability. As discussed below, we support the safe, reliable,</p>	<p>Comment noted.</p>

ID	Comment	Response
	and cost-effective transition to a 100% carbon-free energy future.	
C08.04	<p>We are committed to supporting California in the transition to a 100% carbon-free energy future. AES has:</p> <ul style="list-style-type: none"> <li>• More than 1.3 gigawatts (“GW”) of <b>solar</b> power plants in operation today in California,</li> <li>• More than 116 megawatts (“MW”) of <b>wind</b> projects in operation today in California – half of which was repowered in 2022, and</li> <li>• As a world leader in battery storage technology through our affiliate, Fluence, AES companies were the first movers to develop battery storage projects at grid scale, investing in this technology solution more than a decade ago. In California, we have 327 MW of installed Battery Energy Storage Systems (“BESS”) in operation.</li> </ul> <p>With our existing operating portfolio and these new renewable and battery energy storage investments in California, we at AES are</p>	Comment noted.

ID	Comment	Response
	working to accelerate the transition to 100% carbon free energy.	
C08.05	In recent years, the AES OTC facilities have played a vital role for electricity reliability by facilitating the integration of renewable technologies. These OTC facilities have helped ensure electric reliability by being available both to provide ramping energy for those few hours when they are needed to balance the instantaneous changes to supply and demand and to operate at their full capacity during peak demand periods.	Comment noted.
C08.06	The AES OTC facilities are also relied upon to keep the lights on for those periods during the year when the State faces emergency circumstances like wildfire outages, super peak usage periods, seasonal hydroelectric resource availability, periods of generating resource unavailability, or during periods of limited energy imports and transmission line congestion during the increasingly more frequent western United States region-wide heat emergencies and wildfires. As the State transitions to a 100% clean energy future and makes progress toward state climate policy goals, it is extremely important to maintain the safe and reliable	Comment noted.

ID	Comment	Response
	operation of the grid. In the near-term, generating resources like AGS and HBGS are needed to balance the instantaneous changes to supply and demand or when demand is high, making sure the lights stay on in California.	
C08.07	While AES continues to invest in new renewable energy resources and battery energy storage systems to meet California's energy needs, we are also committed to supporting safe and reliable operation of the grid by making investments in critical maintenance for its few remaining OTC facilities. The extraordinary performance of AGS and HBGS over the past four years - 90% availability during the critical peak season (May - October) - is confirmation that our investment programs are indeed working.	Comment noted.
C08.08	Coupled with the extensive maintenance programs, AES invests in maintaining its critical, skilled operations and maintenance staff. Keeping key staff to operate the OTC facilities is a challenge faced on an on-going basis if there is uncertainty of long-term employment - especially for our team members that are early or mid-term in their careers. As a result of the rigorous requirements to qualify many of our	Please refer to the response to comment C07.04.

ID	Comment	Response
	operating roles, and in particular Control Room Operators, it is very important to achieve a timely decision by the Water Board on the OTC Policy compliance date extension.	
C08.09	As reflected in the detailed discussion related to the Addendum to the Water Board's Final Substitute Environmental Documentation ("SED") prepared in satisfaction of the California Environmental Quality Act ("CEQA"), the Draft Staff Report correctly recognizes that the OTC Policy Amendment will not result in any significant, unmitigated impacts. (Draft Staff Report, pp. 61-82.) Moreover, should the OTC Policy amendment be approved to extend the facilities' compliance dates through December 31, 2026, AGS and HBGS will continue to comply with the provisions of Section 2.C(3) of the OTC Policy by providing continuing funding for important mitigation projects, as calculated in accordance with Resolution No. 2015-0057.	Please refer to the response to comment V02.01 for additional discussion of environmental impacts associated with extension of specific compliance dates for purposes of grid reliability.
C08.10	AES is a proud supporter of social impact programs that support coastal enhancement through wetland restoration and educational programs that benefit disadvantaged communities. Our recent rollout of the AES Coastal Enhancement Program in 2022 is a	Comment noted.

ID	Comment	Response
	<p>clear example of our commitment to working in partnership to develop sustainable programs that add value in the communities where we operate. AES intends to incorporate a similar Voluntary Environmental Mitigation Program element into this extension process, conceptually in line with that implemented in 2022 through our Coastal Enhancement Program, providing that the two facilities are extended through 2026. We are developing this program in consultation with key stakeholders over the next few months and will revert with a defined program in Spring 2023.</p>	
C08.11	<p>The air and water emissions from the Alamitos and Huntington Beach facilities are subject to, and in compliance with, all federal, state, and local laws, ordinances, regulations, and standards ("LORS") established for the protection of air and water quality through respective authorities.</p>	<p>Comment noted.</p>
C08.12	<p>The Title V air permit for the HBGS is valid through 3/22/2027 and for the AGS through 4/21/2025. While no action is required in respect of the HBGS to support operations through 2026, consistent with the requirements of the Clean Air Act, AGS intends to file for its</p>	<p>Comment noted.</p>



ID	Comment	Response
	Title V permit renewal at least 180 days prior to the expiry of the existing permit to support plant operations through the end of 2026.	
C08.13	Both facilities NPDES permits expire on 12/31/2025. As such, AES will file permit renewal applications at least 180 days prior to the expiry dates to support operations through the end of 2026, consistent with the requirements of the Clean Water Act.	Comment noted.
C08.14	With respect to the 2020 Time Schedule Order ("TSO") for the AGS, the Staff Report states that the original Alamitos TSO No. R4-2015-0174 "... became effective on September 10, 2015." While TSO No. R4-2015-0174 was effective immediately upon adoption by the Regional Water Board on September 10, 2015, the order indicated that interim effluent limits and interim receiving water limits shall be deemed effective on January 1, 2016. Regardless, the adoption of a new OTC Compliance Date by the Board as proposed will, consistent with precedent, impose a new effluent limitation that is due to a "new, more stringent, or modified regulatory requirement," that requires the issuance of a wholly new TSO.	The Staff Report was revised to indicate that the Time Schedule Order (TSO) for Alamitos was adopted by the Los Angeles Regional Water Board on September 10, 2015, and became effective on January 1, 2016. NPDES permits, including applicable compliance provisions such as existing and potential future TSOs, are administered by the regional water boards.

ID	Comment	Response
C08.15	<p>It is a correct statement of law that a TSO can be issued for up to ten years. (Water Code §133850)(3)(C)(i) and §133850)(3)(C)(i)(II).) It is an equally correct statement of law that when the Board amends the OTC Compliance Date, this date change effectuates an effluent limitation that is due to a "new, more stringent, or modified regulatory requirement," that requires the issuance of a wholly new TSO, not the amendment or revision of existing requirements.</p> <p>Consistent with law and precedent, amendments to OTC Compliance Dates have historically, and correctly, been implemented just like the re-designation of receiving waters - as a new, more stringent or modified regulatory requirement. The 2020 Alamitos TSO reflects this imposition of a new, more stringent, or modified regulatory requirement as triggering a new TSO. Specifically, the 2020 TSO expressly and correctly characterizes the 2020 TSO as "a new TSO" (2020 TSO, Section 14, p. 4) and a new regulatory requirement: "On September 1, 2020, the State Water Board considered the SACCWIS recommendation and adopted an amendment to the OTC Policy that established</p>	<p>Consideration of the TSO is beyond the scope of the Amendment and is subject to a separate regulatory process administered by the regional water boards.</p>

ID	Comment	Response
	<p>a final compliance date for the Discharger of December 31, 2023. <u><i>This is a new regulatory requirement with which the Discharger must comply</i></u>" (2020 TSO, Section 10, p. 3; emphasis added.) As a new, more stringent, or modified regulatory requirement, a new OTC Compliance Date requires the issuance of a new TSO.</p>	
C08.16	<p>The AGS intends to seek the issuance of a new, narrower TSO from the Los Angeles RWQCB to comply with this new regulatory requirement and allow full plant operations to support grid reliability through December 31, 2026, should the Water Board extend the AGS OTC compliance schedule.</p>	<p>Please refer to the response to comment C08.15.</p>
C08.17	<p>AES agrees with the Energy Agencies, SACCWIS, and Water Board staff statements that additional capacity is needed through 2026 to support grid reliability and to minimize the risks of rotating outages that can adversely impact the health and safety of California residents. AES is committed to a responsible transition to a 100% carbon-free energy future and is actively developing renewable and battery energy storage projects in California to support this transition.</p>	<p>Comment noted.</p>

ID	Comment	Response
C09.01	<p>We are in support of the proposed Amendment extending the once through cooling (OTC) compliance date for the Los Angeles Department of Water and Power (LADWP) Scattergood Generating Station (SGS), from December 31, 2024 to December 31, 2029. This will allow for grid reliability and resiliency during those stressed grid events, while maintaining financial sustainability for the rate payer.</p>	<p>Comment noted.</p>
C09.02	<p>The implications of the current LADWP SGS Policy compliance date on our daily lives will result in power outages and is a public health and safety threat that cannot be overlooked. We urge you to adopt the Proposed Amendment to the OTC Policy for the LADWP SGS compliance date extension.</p>	<p>Comment noted.</p>
C10.01	<p>In evaluating an extension for the Diablo Canyon OTC permit, you must consider the scale of entrainment that would be enabled. The proposed amendments affect four fossil powered plants in southern California in addition to Diablo Canyon, however volume of water impacted by Diablo Canyon dwarfs those plants</p>	<p>Please refer to the response to comment C01.01.</p>

ID	Comment	Response
	by over 400 percent—more than four times all those plants <i>combined</i> .	
C10.02	<p>According to the SACWIS final report (November 2022), the four fossil plants average annual flow rate was 536.9 million gallons per day. For Diablo Canyon it was 2.2 billion gallons <i>per day</i>. The sheer magnitude was enough to prompt a comment to the SWRCB in 2014 from the senior scientist at California Coastal Commission that,</p> <p style="padding-left: 40px;">[t]he Board’s independent science review team had identified this entrainment as affecting more than 500 miles of California coastal shoreline waters. They’ve also calculated that depending on how you measure it, this level of entrainment represents a loss of ocean productivity equal to several hundred or several thousand acres of rocky reef and near-shore habitat. <b>It would be fair to categorize Diablo Canyon as California’s largest marine predator.</b> [emphasis added]</p>	Please refer to the response to comment C01.01.

ID	Comment	Response
C10.03	<p>Mitigation funds as currently configured are woefully inadequate to compensate for the full replacement value of the loss of productivity in marine life, and the nexus of mitigation measures to their perceived restorative value is often tenuous. Both monetary and practical mitigation measures would need to be dramatically upscaled to compensate for any continuing losses.</p>	<p>Please refer to the responses to comments V03.04 and C01.01.</p>
C10.04	<p>We also question the notion that exemptions and waivers to the initial 2010 OTC policy have become more a routine occurrence than an <i>bona fide exemption</i>. As a member of the Nuclear Review Committee, our final report concluded that:</p> <p style="padding-left: 40px;">The Subcommittee finds that there is no basis for an exemption for Diablo Canyon from the OTC Policy. Based on the information presented above, the closed cycle cooling options are viable alternatives to OTC for Diablo Canyon and should be considered with other viable cooling options.</p> <p>A final resolution to this issue was never pursued by the Board, and was still pending at</p>	<p>Please refer to the response to comment V06.01. The State Water Board has not issued any exemptions or waivers to the OTC Policy. While the owners and operators of the facilities in the Amendment have not yet achieved final compliance, they are compliant with other immediate and interim requirements and implementation provisions in the OTC Policy and still intend to achieve final compliance with the OTC Policy, as indicated in their respective implementation plans.</p>

ID	Comment	Response
	<p>the time the retirement of Diablo Canyon was announced in 2016. Given the impending closure of the plant, which would have occurred within the already existing amended OTC timeframe (by 2024/25) there would have been no need to pursue it.</p>	
C10.05	<p>SB 846 approves an extension of Diablo Canyon’s operation until 2030, a period of 5 additional years. However, in both public statements and the media, PG&amp;E has expressly stated they are applying for a 20-year license renewal from the US Nuclear Regulatory Commission. Had PG&amp;E continued to pursue their original NRC license renewal attempt (from 2025-2045) the recommendations of the Nuclear Review Committee would have merited full consideration by this Board. Absent any enforceable restriction that prevents PG&amp;E from skirting the circumscribed timeline of the legislature’s intent, the recommendation that closed cycle cooling is the “Best Available Technology” continues to merit full consideration for even a 5-year extension—that could quickly morph into the full 20 years.</p> <p>As such, the Board must perform a full evaluation of the Nuclear Review Committee’s</p>	<p>Please refer to the responses to comments V06.01 and C01.03.</p>

ID	Comment	Response
	<p>recommendations prior to granting any further exemptions. It must adopt enforceable safeguards to ensure that the legislative 5-year extension limit is observed, and it must create realistic mitigation measures – fiscal and practical – that reflect current and projected costs.</p>	
C11.01	<p>As stated in the Notice, the Draft Policy Amendment would make:</p> <p style="padding-left: 40px;">a change without regulatory effect to revise the compliance date for Diablo Canyon Nuclear Power Plant (Diablo Canyon) Units 1 and 2 to October 31, 2030 to comport with the extension provided by Senate Bill 846.</p> <p>The Draft Policy Amendment would extend by five to six years the current compliance dates of November 2, 2024 for Unit 1 and August 28, 2025 for Unit 2.</p> <p>Commenters respectfully submit that the proposed change to the deadlines for complying with Section 316(b) are unlawful because the WRCB has not complied with its own legal processes for establishing or changing CWA</p>	Please refer to the response to comment V06.01.



ID	Comment	Response
	compliance deadlines, as set forth in the 2010 Policy.	
C11.02	<p>Moreover, contrary to the WRCB's assertion, a recently passed State law, S.B. 846, purportedly setting a new compliance deadline for Diablo Canyon, has no lawful effect on the 2024 and 2025 deadlines established in the 2010 Policy and 2021 Policy Amendment. The U.S. Environmental Protection Agency (EPA) has delegated the authority to WRCB to carry out the requirements of the CWA. The EPA gave no such authority to the California Legislature. Therefore, statutory compliance deadlines may only be altered by the WRCB under the authority delegated to it by the CWA and the Memorandum of Agreement between the State and the U.S. Environmental Protection Agency (EPA), for implementation of the CWA.</p> <p>Accordingly, the WRCB must not interpret S.B. 846 as extending Diablo Canyon's compliance deadline with the OTC Policy because to do so would run afoul of WRCB's delegated authority by the USEPA; the existing compliance deadlines of November 2, 2024 (Unit 1) and August 28, 2025 (Unit 2) for PG&amp;E to come into</p>	Please refer to the response to comment V06.01.

ID	Comment	Response
	compliance with CWA Section 316(b) must be maintained.	
C11.03	And because the WRCB has determined that cooling towers constitute the “best technology available” (BTA) for achieving compliance with Section 316(b), PG&E must be required to install cooling towers by those dates.	Please refer to the response to comment V06.01.
C11.04	The WRCB must disregard the finding contained in § 5 of S.B. 846 that cooling towers are not “feasible,” because the California Legislature has no delegated statutory or regulatory authority to make such a finding, nor is there any substantial evidence supporting such a finding.	Please refer to the response to comment V06.01.
C11.05	<p>NPDES permits issued by the WRCB “must comply with all minimum federal clean water requirements” and “are issued under an EPA-approved state water quality control program.” In administering this EPA-approved program, the WRCB and all other State agencies must acknowledge and apply “the supremacy of federal law.”</p> <p>In 2010, in an exercise of its delegated authority under the CWA, the WRCB established a</p>	Please refer to the response to comment V06.01.

ID	Comment	Response
	<p>Statewide Water Quality Control Policy. Based on an exhaustive environmental study as documented in the Final Substitute Environmental Document, the WRCB concluded that for existing power plants including Diablo Canyon, closed cycle wet cooling systems (<i>i.e.</i>, cooling towers) constituted the Best Technology Available (BTA).</p> <p>Thus, Diablo Canyon was required to install cooling towers by December 31, 2024, unless it could demonstrate that cooling towers were infeasible or created a conflict with U.S. Nuclear Regulatory Commission (NRC) safety requirements.</p>	
C11.06	<p>As held by the California Supreme Court in <i>Voices of the Wetlands v. State Water Resources Control Bd.</i> (2011) 52 Cal.4th 499, the WRCB's actions must, above all, be consistent with federal law. Here, federal law is established by Section 316 of the CWA; the MOA; and the WRCB's duly-promulgated policy for implementing Section 316, the 2010 Statewide Water Quality Control Policy. Where action by the State legislature is inconsistent with a federal law, here the CWA and its</p>	Please refer to the response to comment V06.01.

ID	Comment	Response
	implementing state law and policy, it must be disregarded.	
C11.07	<p>The WRCB Staff Report interprets S.B. 846 in a manner which results in inconsistencies with the CWA and the 2010 Policy in several key respects.</p> <p>First, by claiming that the Draft Policy Amendment would make “a change without regulatory effect to revise the compliance date for Diablo Canyon Nuclear Power Plant (Diablo Canyon) Units 1 and 2 to October 31, 2030 to comport with the extension provided by Senate Bill 846” the WRCB staff is essentially claiming that the Legislature has usurped WRCB’s regulatory authority and has, as such, <i>per se</i> extended the compliance dates legislatively. If this is indeed a correct reading of SB 846, which Commenters do not necessarily concede, then this provision of SB 846 is <i>ultra vires</i> and must be disregarded.</p>	Please refer to the response to comment V06.01.
C11.08	The Clean Water Act does not permit the state legislature to contravene its terms, nor does the MOA between the federal government and the state. Under the MOA between the State and USEPA, as well as the corresponding provisions	Please refer to the response to comment V06.01.

ID	Comment	Response
	<p>of the Porter-Cologne Act, only the WRCB can change the compliance schedule established in the 2010 Statewide Water Quality Control Policy pursuant to the required procedures and processes.</p>	
C11.09	<p>Further, Section 5 of SB 846 makes a bald claim that “it is not practicable for the Diablo Canyon Power Plant to achieve final compliance” with the OTC Policy before 2030. However, the OTC Policy contains specific procedures and requirements that WRCB must follow when appropriately determining BTA feasibility and compliance deadline extensions. The OTC Policy has federal authority, and thus these procedures are akin to federal regulations with the force of federal law, which the state cannot legislatively circumvent. For this reason, notwithstanding the legislature’s claim to the contrary, unless WRCB completes its process of determining whether BTA is cost-prohibitive vis-à-vis its environmental benefits, and supports any such determination with substantial evidence, the Draft Policy Amendment may not lawfully be approved by WRCB.</p>	<p>Please refer to the response to comment V06.01.</p>
C11.10	<p>As California Coastkeeper Alliance notes in its comment letter, during the State Water Board’s</p>	<p>Please refer to the response to comment V06.01. Additionally, the commenters assertion that State Water</p>

ID	Comment	Response
	<p>March 7th OTC Policy Board Workshop, State Water Board staff responded to CCKA's concerns over the lack of BTA for Diablo Canyon. During the workshop, staff responded to Board Member inquiries by stating that it would be infeasible for Diablo to achieve BTA by 2030 and that the 5-year extension would have minimal environmental impacts. First, there is no evidence in the administrative record that it would be infeasible for Diablo to install BTA by 2030. The Nuclear Review Committee determined that Diablo Canyon had several feasible BTA options – the greatest concern was largely over the cost to comply, but that was ultimately never decided by the State Water Board." To the extent that the WRCB staff's comments at the workshop regarding BTA infeasibility and minimal environmental impacts might be considered implied or express findings, these findings are not supported in law or substantial evidence.</p>	<p>Board staff stated that it would be infeasible for Diablo to achieve BTA by 2030 is unsubstantiated. In reviewing the recording of the March 7, 2023 public hearing for the Amendment, the most relevant statement made by State Water Board staff was "there is a question as to how much we can require in a 5-year extension." The commenter's assertion that State Water Board staff stated that the 5-year extension would have minimal environmental impacts is also unsubstantiated. In this case, the most relevant statement State Water Board staff made was that while SB 846 will change the final compliance date for Diablo Canyon, it does not change the ultimate compliance requirements for Diablo Canyon. Additionally, State Water Board staff's comments and responses to board members during the hearing are not conclusive findings but were intended to provide information to State Water Board members for context. Furthermore, the State Water Board took no action at the hearing.</p>
C11.11	<p>In addition, the State legislature cannot lawfully mandate the WRCB to "continue to impose an interim mitigation fee" on Diablo Canyon until its retirement, in lieu of the procedures and requirements of the OTC Policy; SB 846 cannot</p>	<p>Please refer to the responses to comments V03.04, V06.01, V09.01, and V09.02. The OTC Policy provides several options for compliance, and owners and operators may make the final decision for the method of compliance. PG&amp;E chose to retire Diablo Canyon to comport with</p>

ID	Comment	Response
	<p>lawfully order the Water Board to impose interim mitigation fees on Diablo Canyon as its sole form of compliance with Clean Water Act Section 316(b) for the rest of its operational life, because to do so would be ordering the Water Board to violate the federal court’s holding in <i>Riverkeeper, Inc. et al. v. U.S. Environmental Protection Agency</i>, (2nd Cir, January 25, 2007) 475 F.3d 83. (“<i>Riverkeeper II</i>”). Thus, because legislation may not be interpreted in a manner that would lead to absurd results (<i>Torres v. Parkhouse Tire Service, Inc.</i> (2001) 26 Cal 995, 1003) the WRCB must do more than simply impose a mitigation fee on PG&amp;E. Instead, it must order PG&amp;E to install cooling towers by 2024/2025, or demonstrate, supported by substantial evidence, why the environmental benefits of doing so do not outweigh the financial costs of installing them.</p>	<p>Track 1 compliance, and PG&amp;E has not indicated to the State Water Board that it intends to change its compliance path. SB 846 added section 15548, subdivision (e), to the Public Resources Code, which expresses legislative intent that the State Water Board:</p> <p><i>[T]hrough its authority pursuant to Resolution Number 2010-0020, continue to impose an interim mitigation fee, such as an interim mitigation fee of ten dollars (\$10) per million gallons of water, subject an annual increase, that it deems appropriate in its discretion and that does not exceed all reasonable costs to, or incurred by, the state to address the entrainment impacts resulting from the continued ocean water intakes at Diablo Canyon after the current expiration dates set forth in Section 25548.1.</i></p> <p>The legislature did not order that the State Water Board impose a mitigation payment in lieu of compliance with CWA section 316(b) or in lieu of the requirements in the existing OTC Policy and the Amendment. The OTC Policy does not impose mitigation payments in lieu of compliance with CWA section 316(b). The OTC Policy provides interim mitigation requirements, such as annual interim mitigation payments, as a means of mitigating entrainment</p>

ID	Comment	Response
		and impingement impacts beginning on October 1, 2015, and continuing until final compliance is achieved.
C11.12	<p>With the passage of an additional twelve years since 2010, it is now 47 years since enactment of CWA Section 316. And Diablo Canyon has been operating for many decades with an antiquated OTC system that causes massive adverse impacts to the marine environment. In fact, substantial evidence, which is contained in the record on the OTC Policy, demonstrates that Diablo Canyon's marine life impacts are significantly larger than all the remaining OTC power plants combined.</p> <p>Commenters urge the WRCB to stay true to its word:</p> <p style="padding-left: 40px;">Thus, in passing the 2021 amendment to the 2010 Statewide Water Quality Control Policy that conformed the compliance dates for the Diablo Canyon reactors to their [2024/2025] retirement dates, the WRCB committed that it remains “firmly committed” to “timely compliance” with the deadlines for modernizing cooling systems at electric plants.</p>	Please refer to the responses to comments V03.02, V03.04, V06.01 and C01.01.



ID	Comment	Response
C11.13	<p>The WRCB should withdraw its proposal to revise the November 2, 2024 and August 28, 2025 deadlines as set forth in the 2021 amendment to the 2010 Statewide Water Quality Control Policy. Finally, the WRCB should clarify that it will require Diablo Canyon to operate in compliance with those deadlines or require that the reactors must cease to operate.</p>	<p>Please refer to the responses to comments V06.01 and V09.02. The State Water Board does not have the authority to require the cessation of Diablo Canyon’s reactor operations under the OTC Policy.</p>
C12.01	<p>Compliance deadlines for several facilities have been extended repeatedly, and under the current proposed amendment to the OTC Policy, they stand to be extended again. Initially, the OTC Policy’s Compliance Schedule was a practical tool to phase-out the use of OTC and bring power plants into compliance with the Clean Water Act, all while ensuring grid reliability. However, the State’s repeated compliance schedule extensions have resulted in power plants being allowed to evade Section 316(b) of the Clean Water Act, and instead pay a restoration fee in-lieu of ever implementing the required Best Technology Available (BTA).</p>	<p>Please refer to the responses to comments V03.02 for discussion of the appropriateness of compliance date extensions for grid reliability, V06.01 for discussion of Diablo Canyon’s extension via SB 846, V09.01 for discussion of compliance with CWA section 316(b), and V09.02 for the need for recent extensions.</p>
C12.02	<p>The OTC Policy’s interim mitigation measures were intended to encourage power plant operators to phase-out OTC operations in a timely manner. Today, however, the interim</p>	<p>Please refer to the responses to comments V09.01 and C02.11.</p>

ID	Comment	Response
	<p>mitigation measures have lost their temporary, incentivizing character and have instead effectively become a standing method for power plants to evade the law and choose to pay restoration fees as a permanent solution in lieu of actual compliance with the Clean Water Act and the OTC Policy. This violates the Clean Water Act mandate to employ the best technology available for minimizing adverse environmental impacts. It further runs counter to the precedent set by the U.S. Court of Appeals for the Second Circuit in <i>Riverkeeper v. US EPA</i> (“<i>Riverkeeper I</i>”), which held that restoration measures were not an acceptable method of compliance given Congress’s clear intent that cooling intake structures be regulated directly. The Second Circuit reiterated, in <i>Riverkeeper II</i>, that it is also unacceptable for existing OTC facilities to comply with Section 316(b) through restoration measures in-lieu of implementing BTA.</p>	
C12.03	<p>Additionally, the Governor and the California State Legislature overstepped their authority with Senate Bill 846 by requiring the State Water Board to extend the compliance schedule for the Diablo Canyon Nuclear Facility (“Diablo</p>	<p>Please refer to the response to comment V06.01.</p>

ID	Comment	Response
	<p>Canyon”), counter to the Clean Water Act, effectively allowing the powerplant to operate in noncompliance until its retirement. More distressing, Governor Newsom made findings that usurp the State Water Board’s authority to determine whether it is feasible for Diablo Canyon to implement the BTA in accordance with the federal Clean Water Act.</p>	
C12.04	<p>Finally, due to the establishment of Assembly Bill 205’s Electricity Supply Strategic Reliability Reserve Program (“ESSRRP”), the Statewide Advisory Committee on Cooling Water Intake Structures (“SACCWIS”) recommended the Water Boards enact the current proposed amendment to extend compliance dates for four facilities by at least three and up to five years. AB 205 thus creates a statutory basis to coerce the Water Board to continue issuing compliance extensions indefinitely, contrary to section 316(b) of the Clean Water Act, the OTC Policy, and the <i>Riverkeeper</i> decisions.</p>	<p>Please refer to the responses to comments V03.02 and V09.02.</p>
C12.05	<p>Our recommendations are intended to help the state not be in this same position five years from now when additional compliance extensions are forced upon the State Board. It is time we stop</p>	<p>Please refer to the responses to comments V03.02, V03.04, V06.01, V09.01, V19.03, V19.05, and C11.11.</p>

ID	Comment	Response
	<p>kicking the proverbial “can down the road”, and instead, the State Water Board should:</p> <ul style="list-style-type: none"> <li>(1) Remove the SACCWIS and all other provisions allowing for future compliance extensions within the OTC Policy;</li> <li>(2) Finalize the BTA determination for Diablo Canyon while considering a potential 2030 compliance extension <i>pursuant to the provisions of the OTC Policy</i>; and</li> <li>(3) Start issuing enforcement actions with civil liability fines, above and beyond the interim mitigation fees, for OTC operators that continue to operate without implementing BTA.</li> </ul>	
C12.06	<p>The State Water Board’s ongoing compliance deadline extensions have created a pathway for power plants to evade the requirements of the Clean Water Act.</p>	<p>Please refer to the responses to comments V03.02 and V09.01.</p>
C12.07	<p>In <i>Riverkeeper I</i>, the Second Circuit Court of Appeals opined on how strict Section 316(b)’s technology-based standard was intended to be by Congress. The regulation subject to dispute in <i>Riverkeeper I</i> was the U.S. EPA’s two-track</p>	<p>Please refer to the responses to comments V06.01 and V09.01.</p>

ID	Comment	Response
	<p>permitting system for power plants that utilized OTC. Under this regulation, new facilities intending to use once-through cooling were required to comply with one of two regulatory pathways: Track I, which set out intake capacity and velocity limits as well as “additional design and construction technologies or operational measures’ to minimize impingement mortality and entrainment”; and Track II, under which a facility could take any steps that reduced adverse environmental impact to a level comparable to that achieved by Track I. A group of environmental protection organizations collectively referred to as “Environmental Petitioners” challenged Track II of the regulation, arguing that it unlawfully allowed compliance through restoration measures (including habitat restoration and fish restocking) which were “unrelated to the ‘location, design, construction, and capacity of cooling water intake structures’” as the Clean Water Act required. The Court agreed, and concluded that compliance via restoration measures “is plainly inconsistent with the statute’s text and Congress’s intent in passing” the 1972 [Clean Water Act] amendments,” and further holding that “the EPA exceeded its</p>	

ID	Comment	Response
	<p>authority by” allowing compliance with section 316(b) through restoration measures.” Several years later, the Riverkeeper II decision reaffirmed the Riverkeeper I decision that restoration measures cannot be used in-lieu of implementing the Best Technology Available. The <i>Riverkeeper</i> cases clearly sets forth that 316(b) of the Clean Water Act demands strict technology-based compliance and that attempts at compliance by any other means, including restoration measures, is unacceptable.</p>	
C12.08	<p>California’s OTC Policy does not allow compliance by restoration fees on its face, but rather structures these payments as a temporary solution to the problem of inducing compliance while maintaining power grid reliability. However in reality, the State Water Board’s pattern and practice of repeated compliance date extensions has created a system where power plants can opt to pay restoration fees indefinitely until their retirement, in lieu of actual compliance via implementation of the BTA standard. Practically speaking, the State Water Board’s interim mitigation measures result in in-lieu restoration when compliance schedules are extended indefinitely</p>	<p>Please refer to the responses to comments V03.02, V09.01, and V09.02.</p>

ID	Comment	Response
	<p>until the power plant determines to stop operating. Thus, this proposed amendment and the practices it upholds violate the Clean Water Act, California's own OTC Policy, and the clear precedent set by the <i>Riverkeeper</i> decisions.</p>	
C12.09	<p>Considering the above, CCKA requests the State Water Board end the ability to extend the OTC Policy's compliance schedule. By perpetuating endless compliance extensions without any evidence that operators are working towards BTA, the OTC Policy's interim mitigation is now in-lieu restoration. The need to stagger compliance for grid reliability concerns is over. Operators and the energy agencies have had 13 years to ensure grid reliability. At some point – this point – the State Water Board needs to do its Clean Water Act duty to minimize environmental impacts from OTC by requiring BTA. We request that the State Water Board make a clear statement that this is the last compliance extension.</p>	<p>Please refer to the responses to comments V03.02, V09.01, and V19.03.</p>
C12.10	<p>If further extensions are warranted to ensure grid reliability than OTC operators better start building cooling towers.</p>	<p>Please refer to the responses to comments V03.02 and V09.02.</p>

ID	Comment	Response
C12.11	<p><u>We request the State Water Board remove the SACCWIS and all other provisions allowing for future compliance extensions within the OTC Policy.</u></p>	<p>Please refer to the response to comment V19.03.</p>
C12.12	<p>Senate Bill 846, Section 10, illegally extends the final compliance date for Diablo Canyon to October 31, 2030. As stated in the State Water Board’s Notice, the Draft Policy Amendment would make:</p> <p style="padding-left: 40px;">a change without regulatory effect to revise the compliance date for Diablo Canyon Nuclear Power Plant (Diablo Canyon) Units 1 and 2 to October 31, 2030 to comport with the extension provided by Senate Bill 846.</p> <p>By signing SB 846 into law, Governor Newsom violated the Clean Water Act, because the State Legislature had no federal statutory authority to alter the federally-delegated State Water Board’s previously-established compliance deadlines of November 2, 2024 (Unit 1) and August 28, 2025 (Unit 2) for Diablo Canyon. The WCRB imposed those 2024 and 2025 deadlines in order to ensure compliance with the requirement of Section 316 of the CWA, 33</p>	<p>Please refer to the response to comment V06.01.</p>



ID	Comment	Response
	<p>U.S.C. § 1326. Therefore, the deadlines may only be altered by the State Water Board under the authority delegated to it by the Clean Water Act.</p>	
C12.13	<p>Senate Bill 846, Section 5, illegally makes a finding that “it is not practicable for the Diablo Canyon Power Plant to achieve final compliance” with the OTC Policy before 2030. Considering that finding, SB 846 mandated that the State Water Board “continue to impose an interim mitigation fee” on Diablo Canyon until its retirement, in place of final compliance with the OTC Policy. Thus, SB 846 has ordered the Water Board to impose interim mitigation fees on Diablo Canyon as its sole form of compliance with Clean Water Act Section 316(b) for the rest of its operational life, in disregard of the actual requirements of federal law.</p> <p>As previously discussed, the <i>Riverkeeper</i> decisions held that restoration measures are not an acceptable form of compliance with section 316(b) of the Clean Water Act and the strict technology-based standard therein. But here, Governor Newsom has codified restoration measures as the permanent and exclusive method of compliance for Diablo Canyon. Thus,</p>	<p>Please refer to the responses to comments V06.01, V09.02, and C11.11.</p>

ID	Comment	Response
	<p>the Governor and Legislature have overtly contravened federal law by passing a bill ordering the Water Board to disregard the Clean Water Act as interpreted by the <i>Riverkeeper</i> decisions, and instead, follow a contradictory state law that lacks the authority to evaluate or change the federal regulation of the state's OTC Policy.</p>	
C12.14	<p>Thus, the OTC Policy has the effective legal status of a federal regulation, and the State Water Resources Board is the sole state entity with the delegated federal authority to execute that policy.</p> <p>Therefore, when the Governor and State Legislature enacted SB 846 and determined that Diablo Canyon's compliance date would be extended and BTA would not be feasible for the Facility, they usurped the federal authority of the Water Board and contravened federal regulation. It is the Water Board, not the Governor or Legislature, which the Clean Water Act has granted the authority to take these actions on behalf of the federal government. It is also only the Water Board which has the expertise needed to conduct the analyses necessary to make these determinations. By</p>	Please refer to the response to comment V06.01.

ID	Comment	Response
	<p>overstepping their authority in this way, the Governor and State Legislature have set a dangerous precedent of disregard for federal law by state governments.</p>	
C12.15	<p>Furthermore, the OTC Policy contains specific procedures and requirements that the Water Board must follow when appropriately determining BTA feasibility and compliance deadline extensions. As previously stated, the Policy has federal authority, and thus these procedures are akin to federal regulations with the force of federal law. Regardless, the Governor and State Legislature felt they could circumvent the OTC Policy's procedures and independently determine compliance date extensions and BTA feasibility for Diablo Canyon. The considerations and analyses that the Water Board would have been required to make (and could have more readily made considering its particular expertise), were completely disregarded by the Governor and Legislature in violation of the Clean Water Act.</p>	<p>Please refer to the response to comment V06.01.</p>
C12.16	<p>By overstepping their authority in this way, the Governor and State Legislature have set a dangerous precedent of disregard for federal law. In making independent determinations of</p>	<p>Please refer to the response to comment V06.01.</p>

ID	Comment	Response
	<p>BTA feasibility and compliance schedule extensions for Diablo Canyon, the Governor and Legislature have unlawfully appropriated the Water Board’s federal authority and directly contravened the Clean Water Act. Not only do the Governor and Legislature lack the authority to have taken these actions in the first place, but it is even more egregious to have usurped this authority without regard for the OTC Policy’s procedures set in place specifically to guide these determinations.</p>	
C12.17	<p>During the workshop, staff responded to Board Member inquiries by stating that it would be infeasible for Diablo to achieve BTA by 2030 and that the 5 year extension would have minimal environmental impacts. First, there is no evidence in the administrative record that it would be infeasible for Diablo to install BTA by 2030. The Nuclear Review Committee determined that Diablo Canyon had several feasible BTA options – the greatest concern was largely over the cost to comply, but that was ultimately never decided by the State Water Board.</p>	<p>Please refer to the responses to comments V06.01 and C11.10.</p>

ID	Comment	Response
C12.18	<p>Besides the lack of evidence on the record demonstrating BTA is infeasible for Diablo Canyon, including the lack of a final decision by the State Water Board, it is also important to appreciate that Diablo Canyon's marine life impacts are significantly larger than all the remaining OTC power plants combined. Given the immense amount of entrainment caused by the Diablo Canyon Nuclear Facility, the State Water Board should seriously keep-in-mind that a final 2030 operating lifetime is speculative and optimistic at best. SB 846 was originally proposed with a 2035 operating life, with the Governor forcing a 10 year compliance extension upon the State Water Board. The State Water Board should not be naïve to the likelihood that future extensions for Diablo will likely be proposed, and again, forced upon the Board to make. The State Water Board needs to set BTA, and compliance extensions need to end, in order to put PG&amp;E (and Governor Newsom) on notice that if Diablo does not shut down by 2030, then cooling towers are expected to be built in order to comply with Clean Water Act, Section 316(b).</p>	<p>Please refer to the responses to comments V03.08, V06.01, V19.03, and C01.01.</p>

ID	Comment	Response
C12.19	<p>Considering subsections (a) and (b) above, <u>CCKA requests the State Water Board – independent of Governor Newsom’s illegal proclamation – finalize its BTA determination for Diablo Canyon, evaluate a potential 2030 compliance extension pursuant to the provisions of the OTC Policy, and eliminate the ability for future compliance extensions putting Governor Newsom on notice that extending the life of Diablo past 2030 will require the construction of cooling towers as BTA.</u></p>	<p>Please refer to the responses to comments V06.01 and V19.03.</p>
C12.20	<p>In and of itself, AB 205 does not explicitly <i>require</i> SACCWIS or the Water Board to issue compliance schedule extensions under the OTC Policy. However, the ESSRRP is structured such that SACCWIS and the Water Board realistically <i>must</i> issue these extensions, even absent a direct command. The ESSRRP needs power plants to produce the energy for the reserve it created, and if these power plants implement BTA in compliance with the OTC Policy, they very likely will not have the production capacity required to generate energy for the reserve. Thus, in order to keep energy available for the ESSRRP as mandated by AB 205, SACCWIS and the Water Board</p>	<p>Please refer to the responses to comments V03.02, V09.02, V19.03. The State Water Board does not have the expertise or authority to consider the impacts of AB 205, or the provisions contained therein on grid reliability or resource planning. Furthermore, in accordance with Section 3.B(5) of the OTC Policy, in the event that the energy agencies make a unanimous recommendation for compliance date extensions based on grid reliability, the State Water Board shall afford significant weight to the recommendation.</p>

ID	Comment	Response
	<p>necessarily must continue extending compliance deadlines and allowing these facilities to operate without regard to section 316(b) of the Clean Water Act. We are already seeing this effect play out before us in the extensions currently proposed.</p>	
C12.21	<p>Though AB 205 is not as explicit as SB 846 in its mandate of unlawful extensions, the real-world effects of the ESRRP show that the Bill in fact contravenes federal law in essentially the same way. The structure of the ESSRRP does not give SACCWIS or the Water Board any real choice but to issue repeated compliance schedule extensions under the OTC Policy, leaving restoration fees as the sole form of compliance for these facilities for the foreseeable future. The <i>Riverkeeper</i> decisions make clear that restoration measures are not an acceptable form of compliance with the technology-based standard set forth in section 316(b) of the Clean Water Act. In addition, as previously explained, only the Water Board has the delegated federal authority and expertise to issue compliance date extensions. Thus, the Governor and State Legislature have once again exceeded their legal authority in AB 205</p>	<p>Please refer to the responses to comments V03.02, V06.01, V09.01, V19.03, C11.11, and C12.20.</p>

ID	Comment	Response
	by coercing the Water Board into ignoring federal law and issuing compliance schedule extensions in violation of the Clean Water Act.	
C12.22	<p>Considering the above, CCKA requests the State Water Board begin treating the lack of OTC Policy compliance as an enforcement action and require civil penalties for non-compliance with the Clean Water Act. Compliance with Clean Water Act Section 316(b) and continued power operations are not mutually exclusive. The OTC Policy was designed to stagger BTA compliance while keeping the lights on. Continuing to operate in disregard of Section 316(b) until power generation is no longer necessary is not a compliance option within the OTC Policy and runs counter to the Congressional intent of Section 316(b). The time has come to put an end to compliance extensions, and instead start treating those still out of compliance with the 13-year old OTC Policy as violators of the Clean Water Act. Therefore, <u>CCKA requests that in addition to requiring interim mitigation payments, the State Water Board needs to start issuing civil liability fines to those operators that</u></p>	<p>Please refer to the responses to comments V03.02, V03.04, V09.01, V09.02, V19.03, and V19.05. Furthermore, the Regional Water Boards implement OTC Policy requirements through NPDES permits and may consider enforcement actions as appropriate where there is a violation of, or non-compliance with, the permit requirements.</p>



ID	Comment	Response
	<u>are continuing to use OTC without implementing BTA.</u>	
C12.23	<p>The state was a national-leader and did a laudable job in creating the OTC Policy, but like so many environmental policies in California, the implementation of the Policy has been underwhelming at best. The State Water Board has deferred its Clean Water Act authority in the name of “grid reliability” for far too long. It is time the State Water Board lives up to its delegated Clean Water Act authority to reduce the harmful effects on marine and estuarine life associated with cooling water intake structures. We implore the State Water Board to take measures so that we do not find ourselves here again in another five years. The State Water Board should remove the ability to extend compliance schedules, set BTA for Diablo Canyon, and treat those still operating with OTC as non-compliant and start assessing civil liability penalties above and beyond the existing interim mitigation payments.</p>	<p>Please refer to the responses to comments V03.02, V03.04, V06.01, V09.01, V09.02, V19.03, V19.05, and C12.22.</p>