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Division of Water
Quality/SWRCB

December 16, 2015

Kimberly Tenggardjaja, Environmental Scientist
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814

Re: Comment letter – OTC Draft Determination El Segundo

Dear Dr. Tenggardjaja,

On behalf of Heal the Bay, we submit the following comments on the *Draft Determination to Approve Mitigation Measures for the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Once-Through Cooling Policy): El Segundo Generating Station* (“Draft Determination”). Heal the Bay is an environmental organization with over 15,000 members dedicated to making the coastal waters and watersheds of greater Los Angeles safe, healthy, and clean. We appreciate the opportunity to provide comments on the Draft Determination.

While we are very pleased to see that El Segundo Power (ESP) intends to achieve compliance by December 31, 2015, we have concerns that the Draft Determination does not meet the intent of the Once Through Cooling (OTC) Policy and sets a poor precedent for future mitigation determinations. We therefore ask that the State Water Resources Control Board’s (Board) Executive Director revise the Draft Determination to state that ESP has not achieved compliance with interim mitigation requirements, or alternatively, that this issue be brought before the full Board as part of a scheduled public meeting. Below we detail our specific concerns with the Draft Determination.

Taken directly from the State Water Board’s OTC Policy document, the amended Policy “requires owners and operators of existing power plants to implement measures to mitigate interim impingement and entrainment impacts resulting from the cooling intake structures.”¹ To our understanding the goal of this Policy is to directly reduce the detrimental effects OTC power plants have on the ocean environment that are currently ongoing (i.e., in the case of ESP, between October 1st and December 31st 2015) as power plants work to get in compliance with the State Water Board’s Policy. Indeed, the OTC Policy further states that Option A for mitigation can be achieved that demonstrating that the facility is compensating for interim impacts through “existing” mitigation activities.² In this sense we fail to understand how funds provided by El Segundo Power, LLC on the request of the California Energy Commission over five years ago work to do this. Further, the activities that were funded through this payment, while valuable, were individual studies and analyses, not existing projects that would result in compensation for the marine life lost through OTC operations of the plant.

¹ State Water Resource Control Board, Once-Through Cooling Policy, pg. 7 (May 2010); available at http://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/otc_2014.pdf

² State Water Resource Control Board, Once-Through Cooling Policy, pg. 8 (May 2010); available at http://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/otc_2014.pdf



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We believe allowing a years-old payment to substitute for present day mitigation would undermine the goals that the State Water Board is trying to establish in two ways. First, it implies that the interim mitigation funds should be considered a fine or financial penalty directed at the power plant operators. This is not what we believe the Board actually intends, instead we understand the intent of interim mitigation to be a way to curtail the ongoing damage to our coastal resources while the power plant comes into compliance.

Second, by allowing this past payment made by the El Segundo Generating Station to become a substitute for fees towards mitigation, a precedent to all the remaining power plants who have yet to attain compliance will be set. We are concerned that this precedent will encourage other power plants to scour through past funding projects to accommodate their requirements. The State Water Board must take particular care with El Segundo Generation Station as this is the first individually evaluated power plant since the Board's OTC Policy was established. What the Board asks for in this particular instance will set the tone for all future power plants not in compliance. The Board needs to ask itself as early as possible in this endeavor whether its measures are truly about lessening the environmental impact the power plants are having on our state coastal waters or merely financially penalizing the plants for doing it.

Finally, due to the lack of explanation or supporting data provided to demonstrate how the Board's mitigation calculations were completed, it is impossible to review or verify the accuracy of the calculation. We therefore additionally request that the Board provide a clear basis for the maximum fee of \$100,000 that is cited in the Draft Determination.

Thank you for your consideration of these comments. If you have any questions please feel free to contact us at (310) 451-1500.

Sincerely,

/S/ Steven Johnson
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