



August 29, 2017

Chair Felicia Marcus and Board Members  
c/o Katherine Faick  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

*Sent via electronic mail to: [Katherine.Faick@waterboards.ca.gov](mailto:Katherine.Faick@waterboards.ca.gov)*

**RE: Comment Letter – OTC Draft Determination for Huntington Beach Generating Station**

Dear Chair Marcus and Board Members:

On behalf of California Coastkeeper Alliance, which unites locally-based Waterkeeper organizations to fight for swimmable, fishable, drinkable waters for California communities and ecosystems, we appreciate the opportunity to provide comments on the State Water Resources Control Board's ("State Water Board") Draft Determination (Determination) regarding the interim mitigation for Huntington Beach Generating Station (HBGS).

The Once-Through Cooling (OTC) Policy requires owners or operators of existing power plants to implement measures to mitigate interim impingement and entrainment impacts resulting from their cooling water intake structures. The interim mitigation period commenced on October 1, 2015, and continues up to and until owners or operators achieve final compliance with the OTC Policy.

On August 18, 2015, the State Water Board adopted Resolution 2015-0057 (2015 Resolution), delegating to its Executive Director the authority to approve proposed measures for power plant owners or operators to comply with interim mitigation on a case-by-case basis. However, the Resolution states that after "considering the public comments received on a draft determination, the Executive Director shall consider whether, in light of unusual circumstances or significant controversy, the final approval of the determination should be made by the State Water Board at a public meeting."

HBGS's draft Determination is flawed and needs to be denied or re-circulated. HBGS's mitigation for OTC operations between 2001 through 2011 should not be double-counted for continuing and ongoing operations that have occurred since October 1<sup>st</sup>, 2015. The OTC Policy's interim mitigation requirement was intended to encourage facilities to come into compliance as quickly as possible. The HBGS draft Determination lacks any incentive to phase-out OTC operations. This Determination is inequitable for other OTC facilities, is not consistent with the mitigation fee calculation approved in the 2015 Resolution, and it does not comply with the OTC Policy or the Clean Water Act.

We respectfully request that the State Water Board Executive Director revise the draft HBGS Determination to deny the adjusted interim mitigation. In the alternative, we ask the Director to bring this issue to the attention of the State Water Board Members, and to schedule the item for a public hearing. Such a material deviation of the OTC Policy's requirements – and the State Water Board's own statements from its August 18, 2015 Board Hearing – should be presented to the full Board for consideration.

**A. THE STATE WATER BOARD SHOULD NOT ALLOW PREVIOUS MITIGATION BY THE ENERGY COMMISSION TO REDUCE HUNTINGTON BEACH GENERATING STATION’S CURRENT RESPONSIBILITIES UNDER THE OTC POLICY.**

The State Water Board is impermissibly allowing HBGS to avoid its requirements – under the OTC Policy – to mitigate for ongoing marine life impacts after October 1<sup>st</sup>, 2015. The HBGS draft Determination states that the intake flow volume used to calculate the mitigation fee was “further refined to account for existing mitigation.” AES-Southland was previously required to mitigate for the improvement and preservation of 66.8 acres of area of habitat production foregone (HPF), which was required based on a previous operation of intake flow of 126,775 MGD or a total annual volume of 46,272.875 MG. This mitigation has been stipulated in Huntington Beach Station California Energy Commission license and order to operate since 2006. The draft Determination states that “AES-Southland *proposes* that any volume of once-through-cooling flow in excess of 46,272.875 MG per year after October 1, 2015, should be used to calculate the mitigation costs.” This proposal should be outright denied and the State Water Board should calculate HBGS’s mitigation fee using an intake flow volume of 54,959.79 MG.

HBGS’s past mitigation was not identified as eligible for interim mitigation. At the State Water Board’s August 18<sup>th</sup>, 2015 hearing, we raised substantive concerns regarding the lack of guidance or criteria for determining whether an OTC facility would be eligible for applying past mitigation to its interim mitigation requirements. Additionally in our written comments, we specifically noted that HBGS would attempt to argue its past mitigation should be applied to mitigate its current OTC impacts. However, our concerns went unaddressed because the State Water Board believed at the time that only two OTC facilities were eligible for applying past mitigation – those two facilities did not include HBGS.

When we raised our concerns regarding past mitigation at the August 2015 hearing<sup>1</sup>, Chair Marcus asked staff how many projects would be eligible for applying past mitigation to the interim mitigation requirements. The response from staff was they knew of only two facilities that would be eligible for applying past mitigation to the interim mitigation requirements: San Onofre Nuclear Generating Station (SONGS) and Moss Landing Power Plant. The Board members relied upon staff’s assertion – as did we – and concluded that additional guidance was moot and unnecessary since all past mitigation had been decided.

The State Water Board has materially changed its position regarding which facilities are eligible for applying past mitigation to its interim mitigation. Our organization, the Board Members, and other stakeholders relied on staff’s assertion that they would only allow two facilities to use past mitigation. The State Water Board’s HBGS Determination directly conflicts with the assertions made at the August 18, 2015 hearing; we therefore request this draft Determination be either revised to deny past mitigation, or schedule this issue for a Board hearing.

HBGS’s past mitigation did not increase marine life to mitigate ongoing OTC operations. The OTC Policy provides a preference for mitigation directed towards increasing marine life lost as a result of ongoing OTC operations. We acknowledge that interim mitigation Option A (past mitigation) is vague regarding how one shall demonstrate compliance, which was the basis for our concerns in our July, 2015 comments, and at the August, 2015 hearing, requesting better guidance and criteria regarding past mitigation. The OTC Policy states that Option A can be achieved by “[d]emonstrating to the State Water Board’s satisfaction that the owner or operator is compensating for the interim impingement and entrainment impacts through *existing* mitigation efforts.”<sup>2</sup> HBGS is not compensating for interim impacts through *existing* mitigation efforts. Any previous mitigation

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<sup>1</sup> See State Water Board, August 18<sup>th</sup> Board Hearing, approximately 3 hours and 30 minutes into the hearing; *available at*: [http://www.waterboards.ca.gov/board\\_info/media/aug2015/swrcb\\_brdmtg081815.shtml](http://www.waterboards.ca.gov/board_info/media/aug2015/swrcb_brdmtg081815.shtml).

<sup>2</sup> 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](http://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/otc_2014.pdf).

payment was for marine life impacts from 2001 through 2010. The OTC Policy requires Option A mitigate current OTC impacts through existing mitigation – something HBGS cannot demonstrate.

The OTC Policy dictates that mitigation projects prior to 2010 are not to be considered under Option A. The OTC Policy states that a facility can:

Demonstrate to the satisfaction of the State Water Resources Control Board (State Water Board) that the owner or operator is compensating for the interim impingement and entrainment impacts through existing mitigation efforts, including any projects that are required by state or federal permits as of October 1, 2010.

We interpret this to mean that mitigation required by other agencies, such as the CEC, after the OTC Policy was adopted can be used – under Option A – for existing mitigation. If that is correct, then the alternative is also true that mitigation required by another state or federal agency prior to 2010 should not be allowed as existing mitigation for current and ongoing marine life impacts. If the State Water Board were to allow mitigation that occurred prior to 2010, it would make the clause “including any projects that are required by state or federal permits as of October 1, 2010” superfluous. The clause in Option A referring to mitigation projects since 2010 has meaning – and the State Water Board must follow the requirements set forth in the OTC Policy. Therefore, we request that HBGS’s mitigation prior to 2010 not be allowed as an existing mitigation project.

The HBGS draft Determination approving past mitigation to count towards current interim OTC impacts should not be approved. HBGS should not be eligible for past mitigation given the State Water Board’s August 18<sup>th</sup> statements that only two OTC facilities – neither of which is ESP – are eligible under Option A. Furthermore, past mitigation does not mitigate the impacts of OTC operations occurring since October 1<sup>st</sup>, 2015. And lastly, ESP’s mitigation payment was for impacts caused from OTC activities from 2001 through 2010 – not for current OTC impacts as a result of not coming into compliance by October 1, 2015. Therefore, we request the State Water Board deny HBGS draft Determination; and require HBGS comply with its interim mitigation requirements through either Option B or C. If staff is unwilling to deny the determination, we request a formal hearing to bring this issue before the full Board’s consideration.

**B. IF PAST MITIGATION IS ALLOWED TO REDUCE HBGS’S CURRENT MITIGATION OBLIGATIONS, IT SHOULD ONLY BE REDUCED BY THEIR CURRENT MITIGATION PAYMENTS OF \$20,000 ANNUALLY.**

The State Water Board should not dismiss the vast majority of HBGS’s current intake flow due to past mitigation for impacts from 2001 through 2010. The State Water Board should require HBGS to mitigate its full, current impacts. However, alternatively, if the State Water Board decides to proceed with HBGS’s proposed “adjustment”, then the Board should only reduce the mitigation fee by the current amount HBGS is paying - \$20,000 in management costs.

HBGS’s past mitigation is not consistent with current science or the State Water Board’s mitigation calculation approved in the 2015 Resolution. As part of HBGS’s 2001 License Amendment, the California Energy Commission (CEC) required AES to fund a study to determine environmental impacts on aquatic life from the OTC system. The study was completed in 2005 and a determination was made with regard to the environmental effect, and appropriate mitigation to lessen impacts to a less than significant level. It is important to note that this mitigation was required to comply with CEQA – not the OTC Policy and not in conformance with the 2015 Mitigation Fee Calculation Resolution. CEC staff concluded that the proposed license extension could have the potential for significant impacts and required the 66.8 acres of wetlands to be restored as mitigation. However, the science and expertise on mitigating OTC marine life impacts has changed dramatically since 2005. For example, the ability to translate APF into a cost value was largely indeterminate in 2005. The final number of 66.8 acres and the associated cost to restore those acres was chosen arbitrarily and was not based on current science.

The State Water Board cannot rely on past mitigation determined on incomplete scientific values when new information is currently being relied upon. Realizing that California needed a better way to calculate mitigation fees for seawater intakes, the State Water Board created several Expert Panels to develop a scientifically-based mitigation fee. The State Water Board contracted Moss Landing Marine Laboratory to establish an Expert Review Panel on minimizing and mitigating intake impacts from power plants and desalination facilities (ERP II). ERP II developed a “*scientifically defensible* mitigation fee for power plant interim mitigation that would compensate for continued intake impacts due to impingement and entrainment.” If previous mitigation calculations – like the Energy Commission’s 66.8 acres – were scientifically defensible, then ERP II would not have been necessary. Therefore, the only logical conclusion is that the science used in 2005 to come to 66.8 acres is not scientifically defensible. The State Water Board should rely only upon its mitigation calculation, recommended to it by ERP II, and approved in August, 2015.

If any mitigation reduction is allowed, it should only be the current HBGS payments of \$20,000 for ongoing wetland management. On March 2, 2010, AES Huntington Beach, LLC filed a petition with the California Energy Commission (Energy Commission) to extend the license for the Huntington Beach Generating Station Retool Project (HBGS) Units 3 and 4, for an additional 10-year period (September 30, 2011 to December 31, 2020). During the approval of the license extension, Energy Commission staff concluded that the continued viability of the restored wetlands will mitigate the continued OTC impacts from the extension of the license. To comply with CEQA, staff decided that AES shall contribute an additional \$20,000 to fund the annual maintenance and monitoring activities from 2012 to 2018 to maintain proper functioning of the 66.8 acres of wetlands restored under the original licensing of the Huntington Beach Power Plant.

If HBGS’s mitigation is to be adjusted, it should only be for current mitigation payments. It is clear from HBGS’s 2011 – 2020 license extension that the mitigation required by the Energy Commission was only a \$20,000 management fee. If the State Water Board wants to adjust HBGS’s mitigation fee due to ongoing CEC mitigation – then it should only do so by subtracting its current mitigation payment of \$20,000 annually. HBGS should be required to mitigate all of its impacts according to the OTC Policy and the 2015 Resolution; however, alternatively HBGS’s entrainment calculation should be determined by multiplying the full intake volume by \$4.73, and then subtracting \$20,000. The calculation should look like this:

$$(54,959.79 \text{ MG} \times \$4.73/\text{MG}) - \$20,000 = \$239,959.80$$

### **C. THE STATE WATER BOARD SHOULD ADDRESS OTHER ISSUES IN OTC MITIGATION DETERMINATIONS.**

Lastly, we would like to flag several smaller issues in other OTC determinations. First, we found one instance of faulty math, for Alamitos, where the intake volume multiplied by the entrainment flow fee (\$4.73/MG) was \$283.00 short, working out to a total shortage of \$340.56. This is a minor error, but worth correcting.

For Alamitos and Redondo, the State Water Board proposed a correction to intake volumes that should be investigated. The draft Determinations state that the flow rate was mis-matched with the months, which would only explain the difference if the reported volumes that were included in the sum for the time range were for months outside the time range. If the volumes are just mismatched, the total sum should be the same. The two plants' corrections results in a combined reduction in payment of \$69,416.63. This is an important issue that could be repeated and compounded in future years, resulting in very significant losses in mitigation payments over time.

Lastly, the impingement numbers seem vastly under reported. In the case of Harbor, they report 4.9 lbs. of total impinged biomass resulting in a fee of \$3.92 for the entire year—this seems implausible. The State Water Board needs a better methodology for ensuring accuracy for the amount of impingement reported.

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Our organizations look forward to working with you to ensure the OTC Policy is upheld and continues to phase-out the destructive practice of OTC in California.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Bothwell", with a long horizontal flourish extending to the right.

Sean Bothwell  
Policy Director  
California Coastkeeper Alliance