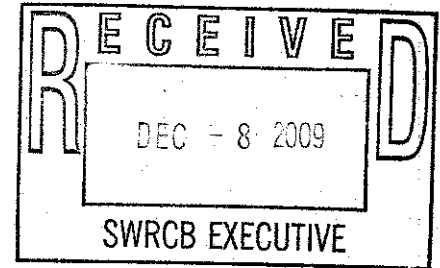


December 8, 2009

Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814



RE: Comments on the November 23rd 2009 Draft Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling

Honorable Water Board Members,

Thank you for the opportunity to comment on the development of this important policy. I applaud the efforts of the state to provide a clear statewide policy, given the absence of federal guidance, the number of power plants using once through cooling technology, and the increasing body of evidence documenting the impacts of once through cooling (OTC) on marine resources.

The Morro Bay National Estuary Program is a collaborative effort to protect and restore Morro Bay and its watershed. The impacts of OTC are a concern to us given the longstanding use of this state and national estuary as an intake for the OTC based Morro Bay Power Plant, and the ongoing discussion about the future that plant. Our brief comments and questions on the current draft policy follow:

1. **Implications of Marine Protected Area designations.** Morro Bay and Elkhorn Slough, among many other coastal areas, have recently been designated as Marine Protected Areas by the California Department of Fish and Game (CDFG), with specific prohibitions on take of marine resources. The regulations now in effect for the area of Morro Bay where the OTC intake is located prohibit the take of marine resources with the exception of recreational fishing. Impingement and entrainment in the OTC system appear to violate these regulations. The remainder of the state's coastline will soon include new MPAs as well under the Department's current plans. I encourage the Water Board to explore with CDFG how these MPA designations may affect cooling water intakes, and how the Marine Life Protection Act and MPA's interact with *this* policy.

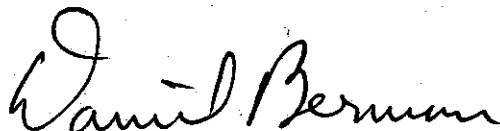
2. **Definition of terms.** Implementation of the proposed policy hinges entirely on future decisions about whether compliance is 'feasible' or 'wholly disproportionate'. The policy would be strengthened by providing more detailed definitions of these terms, as they have been used and upheld in recent legal decisions on related matters. More detailed definitions will certainly not avoid disagreements between plant operators, regulatory agencies, and other stakeholders, but it would provide more clarity to the policy.
3. **Purpose and Title of the proposed SACCWIS.** We support the creation of the proposed Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS). However the purpose of the Committee appears to be limited in the current draft policy language to advising "**...on the implementation of this Policy to ensure that the implementation schedule takes into account local area and grid reliability.**" (Page 2, I) (italics added). The overall Policy is an explicit balancing act between protecting marine resources and beneficial uses while maintaining reliable electric supply. The limited mandate of the Committee seems to focus the group's work entirely on one side (grid reliability) of the equation. The same text is mirrored in the draft Board Resolution.

We encourage you to consider striking the italicized text quoted above, so the sentence ends "**...to advise the State Water Board on the implementation of this Policy.**" This change would better reflect the role suggested in the group's title, and would provide the SACCWIS with the broader purpose of advising on the overall implementation of the policy, which clearly includes ensuring grid reliability, but also includes the fundamental policy objective of protecting beneficial uses and marine resources.

If the mandate is to remain limited as currently proposed, a more appropriate title would be 'Statewide Advisory Committee on Ensuring Grid Reliability' or something similar

I thank you for the opportunity to submit these comments, and again applaud the State Water Board for their efforts to address this important and complex issue affecting our coastal waters

Sincerely,



Dan Berman
Program Director
Morro Bay National Estuary Program

CC: Central Coast Regional Water Quality Control Board
USEPA Region 9
California Dept. of Fish and Game Marine Region