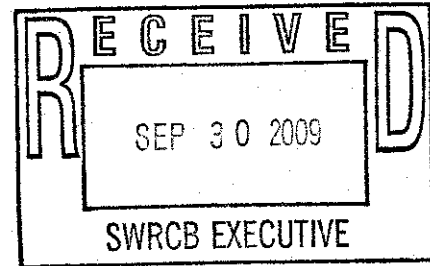




**SIERRA CLUB**  
**CALIFORNIA**

Charlie Hoppin, Chair and Board Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
*Via Email:* [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



**Re: Comments on "Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plants" Draft Substitute Environmental Document.**

Dear Chair Hoppin and Board Members:

Sierra Club California submits the following comments on the State Water Resources Control Board and California Environmental Protection Agency Draft Substitute Environmental Document for the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling and the draft Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling. We welcome the opportunity to comment on this important issue.

California faces a federal mandate to prevent coastal power plants from continuing to decimate sea life along the coast, but the state water board is proposing a policy that will take up to 12 years to require all remaining 19 plants to comply. This long delay would be a violation of the spirit and intent of the law. In even 10 years, many of the plants will be 50 to 60 years old, highly inefficient and unnecessary ongoing sources of significant air pollution.

The proposed timeline is unacceptable because little evidence has been provided to justify allowing the destructive and needless practice of destroying sea life to go on that much longer. This opportunity to stop the killing before many fish species disappear and some estuaries may collapse, as one has on the East coast, stems from a 2007 landmark federal court decision, now the law of the land, which stated that coastal power plant "operations kill or injure billions of aquatic organisms every year" when swept into plants in water for cooling purposes.

In its historic ruling, the United States Court of Appeals for the Second Circuit required technology-based cooling be used by all power plants and, in effect, banned the use of water from bays, estuaries and the ocean for plant cooling. States all over the nation are required to incorporate that ban into their statutory policies governing the impacts of plant operations on the ocean, rivers and lakes.

The proposed policy allows unnecessary and unreasonable delays in complying with the court decision's requirements, a result of the fact that it is often vague, unclear, ill-defined, contradictory, lacking in essential information and, most importantly, without dates certain by which the court decision will be complied with and OTC will end. Instead, power plant owners are presented with opportunities to exercise options made available in the policy to avoid achieving the board's stated goal of "protecting the state's coastal and estuarine waters."

Perhaps the clearest example of how the proposed policy plainly anticipates ongoing use of OTC is its stated requirement for developing and implementing a mitigation program for the facility, approved by the Regional Water Board, which will compensate for the interim...impacts." This mitigation, or compensation, for continuing to kill marine life would be in effect until five years after the board policy is adopted. Whether OTC would actually end after five years is not clear because of the opportunities in the policy for plant owners to avoid final compliance.

The key to avoiding compliance is the "cost-benefit" analysis in the policy, which would allow plant owners to argue that the cost of ending OTC exceeds the benefit of protecting marine life. The board's cost-benefit process contains no standards, criteria or ground rules on how cost versus benefit is to be decided by authorities.

The policy represents a significant opportunity to transform California's dependence on pollution-emitting power plants--which the EPA has concluded imposes a severe risk to public health ranging from asthma to premature death in people with heart or lung disease--via the placement of solar panels (photovoltaic) on rooftops, mainly on parking lots and warehouses, the most practical, available and cost-effective sites. On June 17, the California Energy Commission recognized photovoltaic's vast potential to revolutionize energy generation. The Commission's groundbreaking ruling concluded that PV is a feasible, cost-effective alternative to conventional gas-fired power plants, which means it now will be considered in the regulatory process of selecting the most efficient, effective and environmentally safe ways to generate electricity and serve California markets.

As the Energy Commission's June 17 ruling elevating PV to its new status as a replacement for gas-fired power plants may have come after the drafting of the Board policy on power plant cooling, the policy should be revised in light of the CEC ruling.

Additionally, the policy:

- Fails to assure that the existing coastal plants--some a half century old and the epitome of technological inefficiency--will actually stop using bay, estuary and ocean water for cooling.
- Contains no legal precedent or guidance for development of the new policy and ignores the 2004 (new plants) and 2007 (existing plants) decisions by the United States Court of Appeals for the Second Circuit, which gave rise to the board's effort to adopt new OTC policy. This omission is misleading because it conveys the notion that the board's pursuit of a new policy is voluntary, not a legal obligation, hence less urgency.

- Is guided by an "Energy Agencies" staff report that states, "The SWRCB's mission is to create policy that guides OTC mitigation for existing power plants." That is grossly misguided because the court-mandated mission is ending OTC.
- Asserts that continued operation of many, if not most, of the 19 remaining coastal power plants indefinitely is necessary to protect electricity grid reliability and ensure availability to the public. But the board's own consultant concluded last year that "more than enough power plants are expected to be operating in 2015 to more than compensate for any or all OTC plant retirements." (Electric Grid Reliability Impacts from Once-Through Cooling in California).
- Sets specific dates for various plants to virtually end use of OTC but then offers an escape clause if the plant owner can demonstrate that compliance is "not feasible." No criteria, explanation or definition of "feasible" is provided.
- Orders plants that are not generating electricity or are engaged in critical system maintenance to "cease intake flows" within one year of adoption of this policy, but allows intakes to continue if the owner can demonstrate (no definition or criteria provided) it "is necessary for operations."
- Allows plants to mitigate, or compensate, for the killing of aquatic life commencing five years after the OTC policy is adopted, even though the 2007 court decision explicitly banned habitat restoration, which is defined as mitigation.
- Is based in part on a report by the "Energy Agencies" (California Energy Commission, California Independent System Operator, California Public Utilities Commission) that focuses on means to avoid relying on existing power plants in order to end use of OTC. But the report cites as a main way to accomplish this goal is "to rely more upon remote generation." That means building more, very costly and environmentally-damaging transmission lines, which PV on warehouse and vehicle shelters, as well as home and business, roofs would not require because they would be in local areas where power plants to be phased out are located. Therefore, this report has not taken localized PV into account as a source of energy to replace that of power plants, a major omission.
- The Energy Agencies report cites the lack of air credits to upgrade or replace gas-fired plants in the Los Angeles Basin because of its poor air quality as a significant obstacle to replacing a large percentage of plants now using OTC. It fails to recognize the potential of localized PV to sharply reduce or eliminate the need for pollution-producing plants, making air credits irrelevant.

For the first time in the 35 years since the Clean Water Act was adopted by the U.S. Congress, California has an opportunity to stop the killing of billions of fish and larvae that has savaged the aquatic life of our coastal waters, which studies show has contributed significantly to the disappearance of fish and the deterioration of coastal economies. The California State Water Resources Control Board is poised to implement the policy requiring that modern technology replace the outmoded and now illegal use of ocean, river and lake water-- once-through cooling-- by power plants. But the long-awaited Board policy to accomplish that requirement misses the opportunity to ensure that the killing will stop as soon as possible and to begin replacing or converting the outmoded power plants with technology-based cooling methods or alternative energy sources. The newest and most promising alternative is PV, which also on a broader scale has the potential of quickly reaching the state's widely-praised goal of converting its energy generation to 33% renewables by the year 2020.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Jim Metropulos". The signature is written in dark ink and is positioned above the typed name.

Jim Metropulos  
Senior Advocate