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Kimberly Tenggardjaja, Environmental Scientist  
State Water Resources Control Board  
1001 I Street, 15th Floor  
Sacramento, CA 95814  
Sent via electronic mail to: [kimberly.tenggardjaja@waterboards.ca.gov](mailto:kimberly.tenggardjaja@waterboards.ca.gov)

**RE: Comment letter - OTC Draft Determination El Segundo**

Dear Ms. Tenggardjaja:

On behalf of the Natural Resource Defense Council and our over one million members and activists—more than 250,000 of whom reside in California—we are writing to provide comments on the State Water Resources Control Board's (State Water Board) Draft Determination (Determination) regarding the interim mitigation for El Segundo Power (ESP). **We disagree with the State Water Board's Determination that ESP has complied with its interim mitigation obligations pursuant to the Once Through Cooling (OTC) Policy and believe that the Determination sets a dangerous precedent the remaining 12 OTC facilities that have yet to submit and receive approval for their proposed interim mitigation.**

We request the State Water Board's Executive Director revise the draft Determination to deny ESP's asserted compliance with its interim mitigation obligations. Alternatively, we request the Director bring this issue to the attention of the State Water Board Members and schedule the item for a public hearing.

Our specific concerns about ESP's Determination and its implications for future OTC interim mitigation across the state are discussed below:

**1. ESP's proposal to use past mitigation will not mitigate the impacts of OTC operations between October 1 and December 31, 2015.** ESP has requested to comply with the interim mitigation requirement through use of a previous \$1 million payment for impacts that occurred at the time of the California Energy Commission (CEC) licensing requirement. Those mitigation funds, however, were intended to compensate for ESP's impacts over the last 11 years and not for marine life impacts occurring *in the interim timeframe between October 1<sup>st</sup> and the OTC compliance deadline*. The OTC Policy states the use of past mitigation can be approved 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>1</sup> ESP's proposal will not

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<sup>1</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).

offset interim impacts through existing mitigation efforts. Any previous mitigation payment has already been spent on studies and analyses that are at least a decade old and will not compensate for marine life lost as a result of ongoing OTC use.

The ESP Determination approving past mitigation to count towards current interim OTC impacts should not be approved and the plant should be required to comply with interim mitigation requirements through either Option B or C of the OTC policy.

## **2. ESP's Determination sets a dangerous precedent for future interim mitigation**

**determinations.** Our review of OTC facilities' implementation plans and relevant documents reveals that six of 13 plants are likely to request credit for existing mitigation projects. Owners or operators of El Segundo Generating Station, Pittsburg Generating Station, Encina Power Station, Mandalay Generating Station, Huntington Beach Generating Station, and Ormond Beach Generating Station have all argued in their Implementation Plans or related documentation that they should be given full or partial credit for existing mitigation activities.

If the ESP Determination is approved, other OTC facilities will claim a similar exemption from their interim mitigation obligations, with significant implications for marine life and ocean health in California. To avoid this precedent and to prevent the remaining 12 OTC facilities where interim mitigation is yet to be determined—from evading their interim mitigation requirements, we request the State Water Board deny ESP's draft Determination.

**3. The Determination does not provide the public with the information and data necessary to verify an accurate mitigation fee.** The current ESP Determination provides inadequate public information for assessing the accuracy of the State Water Board's mitigation calculation. ESP's Determination states, "State Water Board staff calculates that, if ESP were to comply with interim mitigation option B, using the default method for calculating the entrainment fee set forth in Resolution 2015-0057, the maximum fee would be approximately \$100,000." This is the extent of information provided to the public.

To assess interim mitigation on a case-by-case basis, it is necessary to know the actual intake volume, intake velocity, and impingement mass for each facility. To analyze the appropriateness of mitigation projects, it is also necessary to project future intake levels consistent with the requirement to minimize those intakes. In future interim mitigation determinations, the State Water Board should provide the public with past, current, and projected intake volume, intake velocity, and impingement mass.

Given the absence of current data on ESP's operations, we can only rely on past data. ESP's last implementation plan indicated that they were utilizing 607 MGD: using the \$4.60/MG entrainment average for the 92 days of interim OTC operations (10/1-12/31) x 607 MGD = \$256,882. This calculation only addresses the entrainment value and does not include the impingement fee nor the project management and monitoring fee. Therefore, it is unclear how the State Water Board derived its \$100,000 mitigation fee.

To ensure public transparency regarding interim mitigation fee calculations and their appropriateness in offsetting impacts based on actual plant operations, we request that the State Water Board provide the public with the data necessary to verify interim mitigation calculations, as well as clear justification for how fee amounts are calculated, rather than only providing a final total.

With the adoption of the OTC Policy, the State Water Board took significant steps towards eliminating significant impacts to marine life in state waters from harmful open ocean intakes. Requiring adequate and appropriate interim mitigation is critical to ensure the OTC Policy is upheld

and continues to phase-out the destructive practice of OTC in California.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Murdock". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Elizabeth Murdock  
Director, Pacific Ocean Initiative  
NRDC

A handwritten signature in black ink, appearing to read "Jenn Eckerle". The signature is cursive and somewhat stylized, with the first name being the most prominent part.

Jenn Eckerle  
Ocean Policy Analyst  
NRDC