

CALIFORNIA COASTAL COMMISSION

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April 6, 2012

Ms. Joanna Jensen
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814

VIA EMAIL: jjensen@waterboards.ca.gov

RE: Scoping Notice for Proposed Policy on Desalination Facilities and Brine Disposal

Dear Ms. Jensen:

We appreciate the opportunity to provide initial comments on the above-referenced proposed desalination policy. The policy is likely to serve an important role in future decisions about California's water supply, and we welcome the ability to participate in its development.

For purposes of this scoping process, we are providing just general comments on the proposed policy. We expect to address more detailed aspects of the policy through our ongoing involvement later in the process. Our primary comments are to recommend: 1) that the policy be developed through a coordinated effort with the several agencies that have jurisdiction over water supply and desalination proposals; 2) that the policy integrate other existing state policies relevant to water supply and desalination; and, 3) that the policy be based on a comprehensive set of peer-reviewed technical information.

- 1) **Policy development should be coordinated with other agencies:** Desalination involves a range of issues – from ensuring that projects meet drinking water and public health standards to determining their consistency with land use and water quality requirements. These issues and concerns are addressed by the Coastal Commission, State and Regional Water Boards, the Department of Health, State Lands Commission, Department of Water Resources, and others. Therefore, along with the standard public outreach provided through the Board's policy development process, we recommend that it include coordination among other state agencies with jurisdiction over water supply and desalination.

This coordinated approach will likely result in a more effective policy and more efficient review process. Because the eventual policy could affect how those agencies implement their policies and regulations, coordination throughout the policy development process will likely ensure the Board's approach is in harmony with requirements of the other agencies. This approach would also be consistent with several recommendations from the 2003 California Desal Task Force report that emphasize the need for coordination.¹

¹ See the California Desal Task Force's report, *Water Desalination – Findings and Recommendations*, Department of Water Resources, October 2003.

Basing the policy development on a coordinated process is particularly important for the Coastal Commission, given its role in permitting coastal facilities. A desalination facility's coastal development permit is the most comprehensive of its required permits, as the Commission's review addresses issues ranging from land use, water supply, public access, and other coastal issues, along with marine life and water quality concerns. It is important that the eventual policy be consistent with the review the Commission conducts, and we believe that a coordinated approach to developing the policy will most effectively address the multiple interests and concerns associated with desalination.

- 2) **The policy should be consistent with other relevant state policies:** To allow the policy to support an effective, efficient, and comprehensive process for reviewing desalination proposals, we recommend that it reflect and integrate other state policies and regulations having to do with water supply and desalination. These include relevant sections of the Porter-Cologne Act as well as a number of other state laws and guidelines. For example, much of the discussion about the proposed policy has centered on Porter-Cologne Act Section 13142.5(b), which requires that seawater use be done in a way that minimizes intake and mortality of marine life. Along with that requirement, the policy should also address the similar provisions of Coastal Act Sections 30230 and 30231 that require marine resources be maintained, enhanced, and restored, and that uses be carried out in a way that sustains biological productivity.²

In addition, to ensure consistency and to avoid potential conflicts, the policy should address the broader scope of state guidance that directs the development of California's water supplies. This includes the Department of Water Resources' latest *California Water Plan Update 2009*, which provides a specific recommendation for facilitating desalination, stating that "[d]esalination should be considered, where economically and environmentally appropriate, as an element of a balanced water supply portfolio, which also includes conservation and water recycling to the maximum extent practicable"³. We note that the above-referenced Desal Task Force report also includes a similar recommendation. The broader scope of policies also includes Porter-Cologne Act Section 13142.5(e), which emphasizes the use of recycled water for coastal water supply needs, and Coastal Act Section 30231, which provides a similar preference for reclaimed

² Coastal Act Section 30230 states: "*Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*"

Coastal Act Section 30231 states: "*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*"

³ See *California Water Plan Update 2009, Volume 2, Chapter 9 – Desalination, "Recommendations to Facilitate Desalination in California"*, page 9-14.

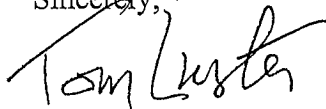
water. The policy should additionally reflect the state's goal established in 2010 to reduce per capita water consumption by 20% by 2020.⁴ Together, these policies and guidelines provide a coherent state position on water supply and desalination that should be integrated into the Board's eventual policy.

We also recommend the Board's policy development incorporate another area of state policy, that of CEQA, and specifically its definition of mitigation methods.⁵ The different methods are generally applied in sequence – i.e., first avoid potential impacts, then minimize them, etc. The overall policy should be consistent with this approach, though it is particularly important with the in-lieu fee being considered for inclusion in the policy. If included, the policy should clarify that the fee is meant to address only the entrainment effects that remain after a desalination facility first applies other feasible mitigation measures that avoid and reduce those effects. This would allow consistency not only with the mitigation sequencing approach taken by most agencies, but would also align with the above-referenced Porter-Cologne and Coastal Act policies requiring minimization of entrainment and its effects.

- 3) **There should be a comprehensive technical basis for the policy:** We recommend the policy be based on a more comprehensive range of technical information than has so far been included. In preparing for the initial stages of this policy development, the Board's expert review panels looking into intake and discharge issues reviewed a limited number of relevant documents; however, there are a substantial number of relevant peer-reviewed technical documents that have not yet been incorporated into the policy discussion. We recognize that the panels have had limited time and money to conduct their initial assessments; however, ongoing policy development should be based on incorporating a more comprehensive set of peer-reviewed documents into the process.

Again, we appreciate the opportunity to comment and look forward to working with you. Please contact me at 415-904-5248 or Tom.Luster@coastal.ca.gov if you have any questions.

Sincerely,



Tom Luster
Energy, Ocean Resources, and Federal Consistency Division

⁴ See the Department of Water Resources February 2010 *20X2020 Water Conservation Plan* at: <http://www.water.ca.gov/wateruseefficiency/sb7/docs/20x2020plan.pdf>

⁵ Section 15370 of the CEQA Guidelines defines mitigation as including:
“(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.”