

**SETTLEMENT AGREEMENT AND RELEASE  
REGARDING WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL  
AND ESTUARINE WATERS FOR POWER PLANT COOLING  
BETWEEN STATE WATER RESOURCES CONTROL BOARD AND DYNEGY**

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into by and between Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC (collectively “Dynegy”) and the State Water Resources Control Board (“State Water Board”), as of the last date executed below (“Execution Date”), referred to herein collectively as the “Parties” and each individually as a “Party.”

**RECITALS**

A. WHEREAS, on May 4, 2010, the State Water Board approved Resolution 2010-0020 adopting the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (the “Policy”) and related Substitute Environmental Document (“SED”) for the Policy. The State Water Board subsequently amended the Policy on October 1, 2010, July 19, 2011, and June 18, 2013. A copy of the Policy, as subsequently amended, is attached to this Agreement as Exhibit A. The Policy applies to California thermal power plants that currently use a single pass cooling system also known as once-through cooling;

B. WHEREAS, the Policy requires owners and operators of existing power plants subject to the Policy to comply with “Track 1” or “Track 2” compliance alternatives as defined in section 2 of the Policy;

C. WHEREAS, the Track 1 compliance alternative contained in Policy section 2.A.(1) specifies that the intake flow rate at each unit is to be reduced, at a minimum, to a level commensurate with that which can be attained by a closed-cycle wet cooling system. The Policy, in relevant part, identifies that reduction as a minimum 93% reduction in intake flow rate for each unit, compared to the unit’s design intake flow;

D. WHEREAS, the Track 2 compliance alternative contained in Policy section 2.A.(2) is available when a plant owner or operator demonstrates that the Track 1 compliance alternative is not feasible at an existing power plant. Track 2 includes a number of provisions, but two provisions allow for monitoring to demonstrate that reductions in impingement mortality and entrainment are at a comparable level to the reductions required under Track 1. The Policy defines “comparable level” as “a level that achieves at least 90 percent of the reduction[s]” required under Track 1. As a result, Track 2 compliance can be achieved by an 83.7% or greater reduction in impingement mortality and entrainment, pursuant to Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii). The 83.7% reduction is an absolute minimum that must be achieved under Track 2’s “comparable level” provisions, so plants seeking compliance pursuant to this language must be designed and operated to achieve required reductions under the Policy;

E. WHEREAS, Dynegy Moss Landing, LLC and Dynegy Morro Bay, LLC own and operate, respectively, the Moss Landing Power Plant (“Moss Landing”) and the Morro Bay Power Plant (“Morro Bay”), each of which is subject to the Policy;

F. WHEREAS, the California Regional Water Quality Control Board, Central Coast Region previously issued a Federal Water Pollution Control Act (“Clean Water Act”) National Pollutant Discharge Elimination System (“NPDES”) permit for the operation of Moss Landing with units 1 and 2 utilizing combined-cycle technologies. As part of the Clean Water Act and related permitting associated with the construction of units 1 and 2, the facility’s operator made a seven million dollar (\$7,000,000.00) deposit for the benefit of the Elkhorn Slough Foundation;

G. WHEREAS, on or about October 27, 2010, Dynegy, together with four other owners and operators of power plants utilizing once-through cooling technologies, filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the State Water Board in the Superior Court of California for the County of Sacramento (the “Court”), Case No. 34-2010-80000701 (the “Action”) (as used in this Agreement, “Action” refers to Dynegy’s claims against the SWRCB);

H. WHEREAS, Dynegy’s claims in the Action relate to disputes over whether the State Water Board’s adoption of the Policy and SED was within the State Water Board’s discretion and legal authority and, in particular, whether the State Water Board’s actions complied with the Clean Water Act, the Porter-Cologne Water Quality Control Act, the Administrative Procedure Act, the California Environmental Quality Act, the United States and California Constitutions, and other federal and state regulations as alleged in the Action;

I. WHEREAS, on April 1, 2011, Dynegy Moss Landing, LLC submitted, pursuant to the Policy, an Implementation Plan for Moss Landing, which documents Dynegy Moss Landing, LLC’s position that compliance with Track 1 of the Policy is not feasible at Moss Landing and identifies steps that Dynegy Moss Landing, LLC will undertake to comply with the Policy, including compliance with Track 2;

J. WHEREAS, on April 1, 2011, Dynegy Morro Bay, LLC submitted, pursuant to the Policy, an Implementation Plan for Morro Bay, which documents Dynegy Morro Bay’s position that compliance with Track 1 of the Policy is not feasible at Morro Bay and identifies steps that Dynegy Morro Bay, LLC will undertake to comply with the Policy, including compliance with Track 2;

K. WHEREAS, on February 5, 2014, Dynegy Morro Bay, LLC retired Morro Bay, well in advance of its December 31, 2015 final compliance date in the Policy;

L. WHEREAS, the Parties wish to compromise, resolve, settle, and terminate any and all of the disputes or claims in the Action on terms and conditions set forth herein (the “Settled Disputes and Claims”);

M. WHEREAS, after extensive negotiation, the Parties have agreed upon a revision to the Policy with respect to the final compliance date for Moss Landing that the Parties support. Because the current Policy reflects a quasi-legislative exercise of power by the State Water Board, consistent with the Clean Water Act, the Porter-Cologne Act, and other applicable laws, the provisions of the Agreement pertaining to the final compliance date cannot be directly implemented, but instead must be carried out through further public proceedings of the State Water Board that are consistent with applicable laws. Only the settlement provision pertaining to the

Moss Landing final compliance date is required to go through public proceedings of the State Water Board in order to be implemented. Dynegy acknowledges that the State Water Board cannot commit to implementing the revised final compliance date proposed in this Agreement, but instead must consider all the evidence and testimony presented during further public proceedings of the State Water Board to revise the current Policy;

N. WHEREAS, the Parties represent that they understand they are waiving significant legal rights by signing this Agreement, each Party in no way concedes any positions taken in the Action, and this Agreement is made in a spirit of compromise for the sole purpose of avoiding the uncertainties and expenses of litigation with respect to the Settled Disputes and Claims;

NOW, THEREFORE, in consideration of the foregoing and the following, the Parties agree as follows:

## **AGREEMENT**

1. Recitals Incorporated. The recitals set forth above, including all definitions therein, are expressly incorporated as terms of this Agreement.

2. Terms of Settlement.

2.1 Moss Landing Power Plant

2.1.1. Interim Mitigation. The prior seven million dollar (\$7,000,000.00) contribution to the Elkhorn Slough Foundation satisfies the requirements under Policy section 2.C.(3)(a) from October 1, 2015 through the December 31, 2020 final compliance date for all Moss Landing units.

2.1.2. Infeasibility Demonstration. Track 1 is not feasible, as defined in Policy section 5, at Moss Landing under Policy section 2.A.(2) and Dynegy Moss Landing, LLC may comply pursuant to Track 2 as provided in paragraph 2.1.3, below.

2.1.3. Track 2 Compliance.

a. Dynegy Moss Landing, LLC may achieve Track 2 compliance under Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii), including application of the prior flow reduction credit provided in Policy section 2.A.(2)(d) to Moss Landing units 1 and 2.

b. Track 2 compliance can be achieved by an 83.7% or greater reduction in impingement mortality and entrainment, pursuant to Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii).

c. The required Track 2 reduction in impingement mortality and entrainment may be achieved by: (1) use of prior flow reduction credit provided in Policy section 2.A.(2)(d), calculated and applied as described below in paragraph 2.1.4 for Moss Landing units 1 and 2; (2) use of operational controls to further reduce flow; and (3) reductions in impingement mortality and entrainment through installation of technology controls, which can be calculated based on total numbers of fishes and other meroplankton.

The percent reductions in entrainment achieved by the technology controls may also be based on calculations of the numbers of fishes and other meroplankton of a specific age or size class that have been protected from the effects of entrainment for the species selected for analysis. As used in this Agreement, the term “fishes and other meroplankton” means ichthyoplankton and meroplankton as identified in the Policy at section 2.A.(2)(b)(ii).

d. Compliance with the required Track 2 reductions can be computed, after application of the credit for Moss Landing units 1 and 2, by combining the percent reduction from design flow achieved through flow control or operational measures with the reductions in impingement mortality and entrainment through the installation of technology controls, which can be calculated in accordance with paragraph 2.1.3.c.

e. The location of measurement and monitoring points will be consistent with the following: (1) entrainment may be measured at one location for the two Moss Landing intake structures, which are separated by approximately 800 feet (244 meters), to estimate source water concentrations of fishes and other meroplankton during the baseline studies, and (2) the impingement monitoring for the baseline studies will occur at both intakes due to the differences in the design of the two intake structures. These and other details of the baseline studies will be described in the study design proposal to be submitted to the State Water Board as needed.

2.1.4. Prior Reduction Credit. Moss Landing shall receive a credit for the prior reduction of 224 million gallons per day (“MGD”) achieved by the replacement of prior units 1-5 with combined-cycle units 1 and 2 as provided in Policy section 2.A.(2)(d). The entire 224 MGD will be credited towards compliance for Moss Landing units 1 and 2, which may then achieve compliance with Track 2 by additional reductions in impingement mortality and entrainment to meet the required Track 2 reduction pursuant to Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii).

2.1.5. Moss Landing Compliance Date Extension. The State Water Board staff and the Parties, except the State Water Board, shall advocate to the State Water Board that it extend the final compliance date for all units at Moss Landing to December 31, 2020, using the process and procedure specified in paragraph 2.3, below.

2.1.6. Moss Landing Compliance Schedule Plan.

a. Within thirty (30) days after the Execution Date, Dynegy Moss Landing, LLC will submit an update to its Implementation Plan, previously submitted on April 1, 2011.

b. Within thirty (30) days after the Execution Date, Dynegy Moss Landing, LLC will begin implementing operational control measures to reduce flow.

c. Starting in 2015, by March 1 of each year, Dynegy Moss Landing, LLC will provide the State Water Board with an annual update on the status of (1) operational or other supplemental measures undertaken in the previous calendar year to reduce entrainment or

impingement mortality, and (2) any studies undertaken in the previous calendar year to determine compliance options to meet Track 2 requirements.

d. By December 31, 2016, Dynegy Moss Landing, LLC will install and operate variable speed drive controls on circulating water pumps serving Moss Landing units 1 and 2.

e. Beginning December 31, 2016 through the final compliance date of December 31, 2020, Dynegy Moss Landing, LLC will achieve 83.7% or greater reduction in impingement mortality and entrainment from design flow using flow control and operational measures. Percentage reductions in impingement mortality and entrainment achieved through flow control will be directly proportional to reductions in flow relative to design flow. For purposes of this provision, compliance will be determined as an annual average over the period December 31, 2016 to December 31, 2020.

f. By December 31, 2020, Dynegy Moss Landing, LLC will install supplemental control technology at Moss Landing units 1 and 2 to complement the operational control measures and achieve compliance pursuant to Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii).

g. By December 31, 2020, Dynegy Moss Landing, LLC will achieve compliance with Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii) at Moss Landing units 6 and 7 or, subject to Policy section 2.B.(2), cease operations of such unit(s) until such time as compliance is achieved.

h. Reservation of Right to Repower Moss Landing. Notwithstanding any other provision herein, Dynegy Moss Landing, LLC, reserves the right to repower Moss Landing with a technology that does not utilize once-through cooling.

#### 2.1.7. Track 2 Studies and Compliance Determination.

a. Baseline Studies. Dynegy Moss Landing, LLC will conduct baseline studies pursuant to Policy sections 4.A.(1) and 4.B.(1) at Moss Landing to provide data to support the Compliance Tracking Tool, described below in paragraph 2.1.7.b. Dynegy Moss Landing, LLC will seek State Water Board approval of study designs for baseline studies as needed. The State Water Board shall respond promptly in accordance with the procedures described in paragraph 2.1.7.e., below.

b. Baseline Study Report. No later than six (6) months after completion of the baseline studies, Dynegy Moss Landing, LLC shall submit a Baseline Study Report to the State Water Board for approval which shall provide: (1) results of the baseline studies for impingement and entrainment; (2) the representative species, including sensitive species, proposed to be used to determine compliance; and (3) the measured densities of the representative species by seasonal and diel periods. The State Water Board shall respond promptly in accordance with the procedures described in paragraph 2.1.7.e., below. Following approval of the Baseline Study Report, these data will be used with data on plant

cooling water flows to implement a program ("Compliance Tracking Tool") to track and demonstrate compliance with the required reductions in the Policy and this Agreement.

c. Technology Evaluation and Verification. Dynegy Moss Landing, LLC will evaluate technology control(s) to be installed at Moss Landing by conducting a pilot study after completion of baseline studies and evaluation of the results of baseline studies and operational controls.

i. Dynegy Moss Landing, LLC will seek State Water Board approval of the pilot study designs as needed. The State Water Board shall respond promptly in accordance with the procedures described in paragraph 2.1.7.e., below.

ii. After completion of the pilot study, Dynegy Moss Landing, LLC will report the results to the State Water Board including: (1) specific details of the planned technology(ies) to be installed; (2) the representative site-specific species, including sensitive species, identified in the Baseline Study Report that will be used in determining compliance with Track 2 impingement mortality and entrainment reductions; and (3) an estimate of the supplemental reductions in impingement mortality and/or entrainment through installation of technology control(s), which can be calculated based on total numbers of fishes and other meroplankton. For entrainment, the percent reduction in entrainment achieved by the technology controls may also be based on calculations of the numbers of fishes and other meroplankton of a specific age or size class that have been protected from the effects of entrainment for the species selected for analysis.

iii. Upon installation of technology control(s), Dynegy Moss Landing, LLC will verify that the technology(ies) performs as expected.

d. Compliance Determination. After the Track 2 controls are implemented and after the December 31, 2020 final compliance date, Policy sections 4.A.(2) and 4.B.(2) specify the need for another study to confirm Track 2 compliance. For Moss Landing, the following provisions will satisfy the requirements of Policy sections 4.A.(2) and 4.B.(2). This provision does not affect responsibilities at the end of each NPDES permit term under Policy sections 4.A.(3) and 4.B.(3).

i. Compliance shall be monitored utilizing a Compliance Tracking Tool that relies on: (1) data on the densities of representative site-specific species as approved in the Baseline Study Report, described above, which will allow the calculation of the percent reduction in impingement mortality and entrainment<sup>1</sup>; (2) actual records of cooling water flow; and (3) technology performance as verified in paragraph 2.1.7.c.iii., above.

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<sup>1</sup> For Moss Landing units 1 and 2, the baseline annual loss shall be calculated using estimates of density from the baseline studies multiplied by the design flow for units 1 through 5 and assuming a mortality rate of 100%. For Moss Landing units 6 and 7, the same calculation will be made using the design flow for those units. The actual annual loss following implementation of operational and other measures shall be calculated as the baseline density adjusted for any applied technology multiplied by the actual plant flow and assuming an entrainment mortality of 100% and impingement mortality as adjusted by any applied technology (such as a fish return system).

ii. Compliance shall be determined based on the average annual reduction calculated across each NPDES permit term.

e. Annual Updates and Other Reports and Approvals. Dynegy Moss Landing, LLC will provide the State Water Board with updates annually, as described above in paragraph 2.1.6.c., on its implementation of the Policy. In addition, Dynegy Moss Landing, LLC will submit, from time to time, study designs, results, and other information regarding compliance approaches and progress related to the Policy, including but not limited to the Baseline Study Design, Baseline Study Report, pilot study designs and technology verification reports. Whenever Dynegy Moss Landing, LLC submits information to the State Water Board and requests the State Water Board's confirmation or approval, the State Water Board will respond promptly with an approval or an explanation for disapproval, including any additional information needs, but in any event no later than sixty (60) days after receipt of the information and request. In the event the State Water Board requests additional information or other amendment, the State Water Board shall provide a decision not later than thirty (30) days after receipt of the information or amendment. These deadlines may be extended by mutual agreement. The provisions of this paragraph pertain only to Dynegy Moss Landing, LLC's compliance with the Policy, and do not impose obligations on the State Water Board unrelated to Dynegy Moss Landing's compliance with the Policy.

f. Intake Flows for Study Purposes. The State Water Board recognizes that it may be necessary to continue intake flows even when not directly engaging in power-generating activities or critical system maintenance for short time periods while performing baseline, pilot, and/or verification studies. Dynegy Moss Landing, LLC shall include proposed testing schedules in the development of baseline, pilot and technology study plans and coordinate the study designs with the State Water Board with the goal of minimizing the impacts on the biological community from the effects of the studies. Upon State Water Board confirmation of the relevant study, Dynegy Moss Landing, LLC shall be deemed to have demonstrated to the State Water Board that a reduced minimum flow is necessary for operations pursuant to Policy section 2.C.(2).

## 2.2 Morro Bay Power Plant.

2.2.1. Dynegy Morro Bay, LLC permanently retired Morro Bay on February 5, 2014, well in advance of its December 31, 2015 final compliance date in Table 1, section 3.E of the Policy, achieving early compliance with the Policy in consideration of the terms of this Agreement.

2.2.2. Reservation of Right to Repower Morro Bay. Notwithstanding any other provision herein, Dynegy Morro Bay, LLC, reserves the right to repower Morro Bay with a technology that does not utilize once-through cooling.

## 2.3 Policy Amendments to Implement Schedule Changes at Moss Landing

2.3.1. Within three (3) months of the Execution Date, the State Water Board staff shall propose a Policy amendment to change the final compliance date in Table 1, section

3.E of the Policy for all units at Moss Landing to December 31, 2020. (“Proposed Policy Amendment”).

2.3.2. The State Water Board shall take action on the Proposed Policy Amendment promptly, and in any event no later than within six (6) months of the Execution Date.

2.3.3. The State Water Board staff and Dynegey shall advocate in support of the Proposed Policy Amendment by doing at least the following:

a. Preparing and submitting relevant written comments in support of the Proposed Policy Amendment;

b. Speaking in support of the Proposed Policy Amendment at any applicable hearing, workshop, or meeting held by the State Water Board to consider the amendment; and

c. By using all reasonable efforts to defend any challenge, including opposition raised in the administrative proceeding or a legal challenge brought in court, to the Proposed Policy Amendment.

2.4 NPDES Permit. Upon amendment of the Policy to extend the final compliance date for Moss Landing to December 31, 2020 following the process and procedure specified in paragraph 2.3, above, the reissuance of an NPDES permit, and its associated monitoring program, for Moss Landing will incorporate provisions necessary to implement the terms of this Agreement pertaining to Moss Landing contained in Section 2.1 and the finalized Policy amendment.

### 3. Implementation of Settlement.

#### 3.1. Stay or Stipulated Dismissal without Prejudice.

3.1.1. It is the Parties’ intent that Dynegey’s claims in the Action shall be stayed while the Parties take the necessary actions to implement the terms of this Agreement. Further, it is the Parties’ intent that, in the event of a breach of this Agreement, or in the event that the substantive terms of this Agreement are not incorporated into the NPDES permit for Moss Landing as provided in paragraph 2.4 of this Agreement, the stay of the Action will be lifted and the Action may then proceed.

a. Within twenty-one (21) days of the Execution Date, Dynegey will seek to have the Action stayed in order to allow the Parties’ intentions and the terms of this Agreement to be implemented. The State Water Board will support any motion to stay the Action in accordance with this paragraph 3.1.1.

b. In the event that the Parties are unable to obtain a stay of the Action, the Parties will stipulate to dismiss the Action without prejudice and with the right of Dynegey to re-open the Action as set forth in paragraphs 3.1.1.d. and 5. The Parties shall enter this stipulation within twenty-one (21) days of being informed by the Court that it will not stay the Action. A dismissal without prejudice under this Section will serve to toll any



applicable statutes of limitation, filing, statute of repose, laches defense, claim of waiver or estoppel, or other similar defense or claim that is applicable to any of the claims or causes of action asserted by Dynegy in the Action.

c. The stay described in paragraph 3.1.1.a. or the tolling specified in paragraph 3.1.1.b. will run so long as the Parties are pursuing the necessary steps to implement the terms of this Agreement.

d. In the event that the NPDES permit for Moss Landing does not contain the provisions necessary to implement Section 2.1 of this Agreement as provided in paragraph 2.4, or to the extent that the State Water Board is otherwise in breach of this Agreement, the State Water Board stipulates that Dynegy can lift the stay, reactivate or reinstate the Action, and Dynegy can amend the original Action to include additional claims or causes of action consistent with applicable statutes of limitations. The tolling period provided by paragraph 3.1.1.b. shall not apply to additional claims or causes of action not asserted in the Action.

3.2 Dismissed with Prejudice. Upon amendment of the Policy to extend the final compliance date for Moss Landing to December 31, 2020 and the reissuance of an NPDES permit to Moss Landing that adopts the provisions of the Policy and this Agreement, Dynegy will file a voluntary dismissal of the Action with prejudice, or if the Action has already been dismissed pursuant to paragraph 3.1.1.b., then Dynegy shall not be entitled to reopen or reinstate the claims or causes of action contained in the Action and those claims are subject to the release of paragraph 3.3.

3.3 Release. Upon the conditions of paragraph 3.2, Dynegy fully and forever releases the State Water Board from any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, costs or expense, including attorneys fees, of any kind or nature whatsoever, in law, equity or otherwise, which it may now have as a result of the adoption of the Policy and the Proposed Policy Amendment. The release provided by this paragraph does not extend to any subsequent actions of the State Water Board that modify the Policy in a way that imposes additional obligations on Dynegy or any subsequent action by the State Water Board that is in breach of this Agreement.

4. Effect on State Water Board Authorities. Except as specifically agreed to herein, nothing in this Agreement limits the authority of the State Water Board to exercise its powers provided under state and federal law, including to issue or enforce orders.

5. Default and Remedies. In the event of an alleged breach, the non-breaching Party agrees to give written notice of the alleged breach to all other Parties and to consult with the Parties within fifteen (15) days of the written notice of the alleged breach, unless otherwise agreed in writing, for the purpose of attempting in good faith to resolve any disputes prior to the initiation of litigation or court proceedings. If the Parties are unable to resolve the dispute, the non-breaching Party can move to re-open the Action, and can amend the original Action to include a claim for breach of this Agreement.

6. Attorneys Fees and Costs. All Parties agree to bear their own fees and costs associated with the Action or any challenges by any non-party to this Agreement and related implementing documents and processes.

7. Superior Court to Enforce Agreement. The Parties agree and acknowledge that this Agreement shall be deemed to have been entered into by and between the Parties in the County of Sacramento, State of California. The Parties agree that the Superior Court of California for the County of Sacramento, in which forum the Action was filed, shall be the judicial forum for purposes of jurisdiction should any Party seek to enforce the terms of this Agreement.

8. No Admission. This Agreement and its provisions and any proceedings taken hereunder are for settlement purposes only and are not intended to be, and shall not in any event be construed or deemed to be, an admission or concession on the part of the Parties, or any of them, of any liability or wrongdoing whatsoever. This Agreement is predicated upon unique facts which exist between the Parties and none of the Parties intend this Agreement to be a waiver of any right or position in regards to any third party. Neither this Agreement nor any negotiations or proceedings in pursuance of this Agreement shall be offered or received in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of the Parties, or any of them, or anyone acting on their respective behalves.

9. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and assigns. No Party may assign its rights under this Agreement without the prior written consent of the other Parties.

10. No Third Party Beneficiaries. This Agreement is between the Parties and is not intended to confer upon any person other than the Parties any rights or remedies.

11. Notices. All communications and notices to be given to any Party under this Agreement shall be sufficiently given for purposes hereunder if in writing and delivered by hand, courier or overnight delivery service, or certified or registered mail return receipt requested with appropriate postage prepaid, with an additional copy provided by electronic mail, and directed to the addresses below:

As to State Water Board:

Michael A.M. Lauffer, Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814  
michael.lauffer@waterboards.ca.gov

As to Dynegy:

Elizabeth P. Ewens, Esq.  
Ellison, Schneider & Harris L.L.P  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
epe@eslawfirm.com

and

Dynegy Moss Landing, LLC and Dynegy Morro Bay, LLC  
601 Travis Street, Suite 1400  
Houston, TX 77002  
Attention: General Counsel  
Catherine.Callaway@dynegy.com

11.1 Any Party may change its notice recipient or address for providing notice to it by notifying the other Party(ies) in writing setting forth such new notice recipient or address.

12. Further Cooperation. The Parties, and each of them, agree to do all things reasonably necessary to implement this Agreement, including, but not limited to, executing such additional writings as may be reasonably required to carry out the intent of this Agreement. The Parties will reasonably cooperate, each with the other, to effectuate the purpose of this Agreement, to protect and defend its integrity and do what may be necessary to verify its existence and operation in such matters as may be relevant.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. There are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter of this Agreement.

14. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

15. Mutual Preparation. The Parties each cooperated in the drafting and preparation of this Agreement and thus it shall be deemed drafted by all Parties to the Agreement. The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any Party as the drafter thereof.

16. Authority. Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute and enter into this Agreement and bind said Party to the terms hereof.

17. Counterparts. This Agreement may be executed by facsimile and in counterparts, and each counterpart shall be considered an original, and all of which, taken together, shall constitute one and the same instrument; provided, however, that original signatures will also be provided to all counsel by mail.

18. Captions. The captions contained herein are intended solely for convenience and shall not be construed as full or accurate descriptions of the terms hereof.

19. Independent Investigation. Each Party has made such investigation of the facts pertaining to this Agreement and of all matters pertaining thereto as it deems necessary.

20. Governing Law. This Agreement has been executed and delivered in the State of California and its validity, interpretation, performance, and enforcement shall be governed by the laws of the State of California.

21. Severability. If any portion or portions of this Agreement are held by a court of competent jurisdiction to conflict with any federal, state, or local laws, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining portions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portions had not been included herein.

22. Force Majeure. No Party to this Agreement shall be deemed in violation of it if it is prevented from performing any of the obligations hereunder by reason of boycotts, labor disputes, embargoes, shortage of material, act of God, strikes, lockouts, labor troubles, inability to procure labor or materials, fire, accident, laws or regulations of general applicability, act of superior governmental authority, weather conditions, sabotage, or any other cause or circumstances for which it is not responsible and beyond its control (financial inability excepted). Any Party intending to assert force majeure shall notify the other Party(ies) in writing as soon as practicable following the date the Party first knew, or by the exercise of reasonable diligence should have known, of the force majeure event.

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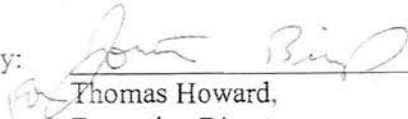
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23. Voluntary and Knowing Execution. Each Party respectively represents and warrants to each other Party that it has thoroughly read and considered all aspects of this Agreement, that it understands all provisions of this Agreement, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Agreement without duress or coercion of any kind.

SO AGREED:

Dated: ~~September~~ 9, 2014      STATE WATER RESOURCES CONTROL BOARD  
*October*

By:   
Thomas Howard,  
Executive Director

Dated: September \_\_\_\_, 2014      DYNEGY MOSS LANDING, LLC

By: \_\_\_\_\_  
Robert C. Flexon  
President and Chief Executive Officer  
Dynergy Moss Landing, LLC

Dated: September \_\_\_\_, 2014      DYNEGY MORRO BAY, LLC

By: \_\_\_\_\_  
Robert C. Flexon  
President and Chief Executive Officer  
Dynergy Morro Bay, LLC

23. Voluntary and Knowing Execution. Each Party respectively represents and warrants to each other Party that it has thoroughly read and considered all aspects of this Agreement, that it understands all provisions of this Agreement, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Agreement without duress or coercion of any kind.

SO AGREED:

Dated: September \_\_\_\_, 2014 STATE WATER RESOURCES CONTROL BOARD

By: \_\_\_\_\_  
Thomas Howard,  
Executive Director

Dated: September \_\_\_\_, 2014  
October 8, 2014 DYNEGY MOSS LANDING, LLC

By: Mark W. Daley  
~~Robert C. Flexon~~ Mark W. Daley  
President and Chief Executive Officer Vice President  
Dynergy Moss Landing, LLC & General Mgr.

Dated: September \_\_\_\_, 2014  
October 8, 2014 DYNEGY MORRO BAY, LLC

By: Mark W. Daley  
~~Robert C. Flexon~~ Mark W. Daley  
President and Chief Executive Officer Vice President  
Dynergy Morro Bay, LLC & General Mgr.