

**RESPONSE TO PUBLIC COMMENTS ON THE DRAFT DETERMINATION TO APPROVE MITIGATION MEASURES
FOR EL SEGUNDO GENERATING STATION TO COMPLY WITH REQUIREMENTS OF THE WATER QUALITY
CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING
(ONCE-THROUGH COOLING POLICY)**

Comment letter	Commenter	Submitted by
Comment letters submitted by December 21, 2015 comment deadline		
1	California Coastkeeper Alliance	Sean Bothwell
2	Heal the Bay	Steven Johnson Rita Kampalath Sarah Abramson Sikich
3	Natural Resources Defense Council	Elizabeth Murdock Jenn Eckerle
4	Surfrider Foundation	Jennifer Savage

Comment letter	Comment	Response
1.1	<p>The determination does not meet the OTC Policy's requirements.</p> <p>The Determination does not meet the legal requirements of the OTC Policy. In recent public hearings, the State Water Board did not consider ESP's past mitigation as eligible under Option A of the interim mitigation section. Any past mitigation should only apply to the preceding 11 years of OTC operations, not the marine life impacts occurring from October 1st, 2015 through December 31st, 2015. And ESP's mitigation fees were spent on studies, not on mitigation efforts directed at restoring and supporting marine life lost as a result of ongoing OTC operations.</p>	<p>The objective of the public meeting on August 18, 2015 was to consider adoption of Resolution 2015-0057, which delegates authority to the Executive Director of the State Water Resources Control Board (State Water Board) to approve, on a case-by-case basis, mitigation measures that owners or operators of once-through cooling (OTC) power plants will undertake to comply with the OTC Policy's requirements for interim mitigation. The purpose of the public meeting was not to evaluate the mitigation measures proposed by each individual power plant. Although State Water Board staff discussed two well-known examples of power plants proposing to utilize existing mitigation efforts to fulfill interim mitigation requirements for the OTC Policy, this was not an official listing of power plants that would be "eligible" for this option.</p> <p>El Segundo Power's (ESP's) \$1 million payment to the Santa Monica Bay Restoration Commission (SMBRC), was originally part of a condition of certification for a license from the California Energy Commission (CEC) to repower units for OTC in El Segundo, but the CEC rescinded this requirement in 2010. As such, ESP's \$1 million payment was not credited toward mitigation for OTC impacts over any specific time period.</p> <p>The commenter is correct in stating that ESP's \$1 million payment to the SMBRC funded studies and projects, not direct habitat restoration. As described in the 2005 CEC decision regarding ESGS, the funding requirement was to be used by the SMBRC to improve the understanding of biological dynamics of Santa Monica Bay and to improve the health of this habitat.</p>

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		While studies of this nature may not directly result in habitat restoration or increased marine life, improved knowledge of biological dynamics within Santa Monica Bay can indirectly result in the protection of marine life.
1.2	<p>At the State Water Board’s August 18th, 2015 hearing, we raised substantive concerns regarding the lack of guidance or criteria for determining whether an OTC facility would be eligible for applying past mitigation to its interim mitigation requirements. Additionally in our written comments, we specifically noted that ESP would attempt to argue its past mitigation should be applied to mitigate its current OTC impacts. However, our concerns went unaddressed because the State Water Board believed only two OTC facilities were eligible for applying past mitigation – those two facilities did not include ESP.</p> <p>When we raised our concerns regarding past mitigation at the August hearing, Chair Marcus asked staff how many projects would be eligible for applying past mitigation to the interim mitigation requirements. The response from staff was they knew of only two facilities that would be eligible for applying past mitigation to the interim mitigation requirements: San Onofre Nuclear Generating Station (SONGS) and Moss Landing Power Plant. The Board members relied upon staff’s assertion, and concluded that additional guidance was moot and unnecessary since all past mitigation had been decided.</p> <p>The State Water Board has materially changed its position regarding which facilities are eligible for applying past mitigation to its interim mitigation. Our organization, the Board Members, and other stakeholders relied on staff’s assertion that they would only allow two facilities to use past mitigation. The State Water Board’s ESP Determination</p>	<p>During the August 18, 2015 public meeting, Chair Marcus inquired if there were many OTC power plants, similar to SONGS, which have prior mitigation that would be considered as fully satisfying the interim mitigation requirements of the OTC Policy. As the commenter notes, staff replied that they knew of two power plants that would fall under this scenario: SONGS and Moss Landing Power Plant (MLPP). These are the most well-known power plants that have indicated that they intend to comply by interim mitigation option A. This is because the SONGS mitigation projects were discussed during meetings of the State Water Board Review Committee for Nuclear Fueled Power Plants and because MLPP’s fulfilled interim mitigation was part of the 2014 settlement agreement between State Water Board and Dynegy. The discussion of SONGS and MLPP during the August 18, 2015 public meeting was not intended to be an official listing of power plants that are “eligible” to comply by interim mitigation option A. Furthermore, in the response to comments released on August 17, 2015 for draft Resolution 2015-0057, staff did not dispute the commenter’s written comment that stated six power plants were likely to request credit for existing mitigation efforts. Several power plants indicated in their Implementation Plans that they intended to comply by interim mitigation option A, but staff was unable to evaluate the proposed mitigation efforts for each of these plants prior to the August 18, 2015 public meeting.</p>

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	<p>directly conflicts with the assertions made at the August 18th hearing; we therefore request this draft Determination be either revised to deny past mitigation, or schedule this issue for a Board hearing.</p>	
1.3	<p>As specified in the OTC Policy, the compliance deadline for ESP is December 31, 2015. ESP has requested to comply through interim mitigation option A, and has requested to use a previous \$1 million payment to satisfy the OTC Policy's interim mitigation requirements for ESP. However, this payment was for impacts that occurred at the time of the California Energy Commission (CEC) licensing requirement, not impacts that are happening now, between October 1st and their compliance deadline.</p> <p>ESP's past mitigation is for impacts occurring over the last 11 years. In 2005, the California Energy Commission (CEC) required ESP to provide up to \$5 million in funding to the Santa Monica Bay Restoration Commission (SMBRC) as part of a condition of certification for a license to repower units for OTC in El Segundo. ESP paid \$1 million of its required \$5 million mitigation payment before the CEC rescinded the mitigation requirement due to ESP's repowering. Regardless of whether the CEC rescinded the \$5 million, ESP has been causing marine life mortality for 11 years since the CEC relicensed the facility. The \$1 million payment is de minimus compared to the marine life impacts that have been occurring at El Segundo for the last 11 years since the CEC approved ESP's relicensing.</p>	<p>As stated in response to comment 1.1, ESP's \$1 million payment has not been formally credited toward mitigation for OTC impacts over any specific time period. State Water Board staff has determined it would be suitable to credit this previous payment toward the interim mitigation period for ESGs. Furthermore, ESP's \$1 million payment dwarfs what would be paid through the fee-based interim mitigation option B, which would use the default method for calculating the entrainment fee set forth in Resolution 2015-0057.</p>
1.4	<p>The OTC Policy provides a preference for mitigation directed towards increasing marine life lost as a result of ongoing OTC use. We acknowledge that interim mitigation Option A (past mitigation) is vague regarding how one shall demonstrate compliance, which was the basis for our concerns in our July comments, and at the August hearing,</p>	<p>See response to comment 1.1. Also, although the SMBRC projects funded by ESP's \$1 million payment were not performed during ESGs's interim mitigation period, nevertheless the studies have contributed to the current understanding of biological dynamics in Santa Monica Bay.</p>

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	<p>requesting better guidance and criteria regarding past mitigation. The OTC Policy states that Option A can be achieved 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.” ESP is not compensating for 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. The OTC Policy requires Option A mitigate current OTC impacts through existing mitigation – something ESP cannot demonstrate.</p>	
1.5	<p>The State Water Board should look to its own preference as guidance for the adequacy of past mitigation under Option A. The State Water Board states a preference “for mitigation projects directed toward increases in marine life associated with the State’s Marine Protected Areas.” ESP’s mitigation payment did not achieve increasing marine life. Funding from ESP was used by the Santa Monica Bay Restoration Commission (SMBRC) “to improve the understanding of biological dynamics of Santa Monica Bay” by funding several projects:</p> <ul style="list-style-type: none"> • Economic valuation study; • Rocky reef assessment; • County-wide funding feasibility study; • Support for the SMBRC Marine Technical Advisory Committee; • Bight '08 rocky reef survey; and • Dolphin study. <p>The State Water Board incorrectly determined that ESP’s payment for Santa Monica Bay-wide studies aligns with the OTC Policy’s requirement to compensate for interim impacts. While the studies were positive contributions to our understanding of the marine environment, none of the</p>	<p>See response to comment 1.1. The OTC Policy states a preference for mitigation projects directed toward increases in marine life associated with the state’s marine protected areas (MPAs), but it does not provide an all-inclusive list of the types of projects that would meet this condition. Direction provided by Board members during the August 18, 2015 public meeting demonstrates that there is a broader interpretation of the types of projects that would be considered as increasing marine life in the state’s MPAs. In addition to the option of funding habitat restoration projects through the California Coastal Conservancy, Board members requested that staff investigate options to direct the OTC Policy’s interim mitigation funds toward enforcement and MPA monitoring through the Department of Fish and Wildlife Marine Region and the Ocean Science Trust respectively. These two options may not result in a direct and immediate increase in marine life in MPAs, but over time, they can produce this indirect effect. Similarly, the SMBRC projects funded by ESP’s \$1 million payment may not have directly resulted in increased marine life, but the</p>

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	<p>studies mitigated OTC impacts by increasing marine life. The State Water Board should not consider past mitigation for studies that did not result in the increase of marine life as appropriate interim mitigation for ESP – or any other OTC facility that has not come into compliance by October 1st, 2015.</p>	<p>studies and increased understanding of biological dynamics in the Santa Monica Bay will likely result in a future indirect effect.</p>
1.6	<p>The ESP Determination approving past mitigation to count towards current interim OTC impacts should not be approved. ESP should not be eligible for past mitigation given the State Water Board’s August 18th statements that only two OTC facilities – neither of which is ESP – are eligible under Option A. Furthermore, past mitigation does not mitigate the impacts of OTC operations occurring since October 1st, 2015. And lastly, ESP’s mitigation payment was used for marine studies – not projects to increase marine life as a result of OTC activities. Therefore, <u>we request the State Water Board deny ESP’s draft Determination; and require ESP comply with its interim mitigation requirements through either Option B or C. If staff is unwilling to deny the determination, we request a formal hearing to bring this issue before the full Board’s consideration.</u></p>	<p>See responses to comments 1.1-1.5.</p>
1.7	<p>The determination sets a dangerous precedent for remaining OTC facilities.</p> <p>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 thirteen 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</p>	<p>See responses to comments 1.1 and 1.2.</p> <p>Per the 2014 settlement agreement between the State Water Board and NRG, no additional interim mitigation is necessary for Pittsburg Generating Station (PGS). PGS is satisfying the interim mitigation requirements of the OTC Policy through the use of variable frequency drives, fee payments to the Department of Fish and Wildlife, and measures consistent with federal and state species permits. Additionally, per the 2014 settlement agreement with NRG, interim mitigation for Mandalay Generating Station and Ormond Beach Generating Station will be based on a per-million-</p>

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	<p>or partial credit for existing mitigation activities. In our July 13th, 2015 comment letter, we warned the State Water Board that these facilities will attempt to evade interim mitigation requirements by claiming past mitigation. Yet with this knowledge, they stated at the August 18th hearing that only two facilities would be eligible under Option</p>	<p>gallon fee, as recommended in the final report from the Expert Review Panel on Intakes.</p> <p>As for Encina Power Station and Huntington Beach Generating Station, staff is still in the process of reviewing their proposed mitigation efforts and has not completed draft determinations for them.</p>
1.8	<p>If the ESP Determination is approved, other OTC facilities will similarly claim an exemption from their interim mitigation obligations. For example, the Huntington Beach power plant owner-operator has previously paid mitigation fees for re-tooling Units 3 and 4. This is an example of a facility that may request exemption from the new mitigation fee or credit for fees paid in the past. Moreover, it is likely the Huntington mitigation fees may be used as credit for the proposed Poseidon-Huntington seawater desalination facility – which is sited and designed with the expressed purpose to utilize the existing cooling water intake structure well into the future. Huntington Beach is just a continuing example of our concerns regarding crediting past mitigation approved by other agencies for the “interim measures” that must employ stricter standards to be consistent with recent decisions by the State Board to ensure replacement values and adequate compensation. It is also an example of concerns that the past decisions may carry on well into the future if other project proponents using seawater for industrial processes rely on those past decisions.</p>	<p>See response to comment 1.1.</p> <p>Staff is still reviewing the proposed mitigation efforts for Huntington Beach Generating Station. Nevertheless, it is important to distinguish how the mitigation requirements differ between the OTC Policy and the Desalination Amendment. The Desalination Amendment sets a specific, detailed process to determine and implement mitigation, whereas Section 2.C(3) of the OTC Policy requires owners or operators of existing power plants to implement measures to mitigate the interim impingement and entrainment impacts resulting from the cooling water intake structure(s) during the period of October 1, 2015 and until such time as the plant comes into final compliance. The Desalination Amendment defines mitigation in section 2.e. as the replacement of all forms of marine life or habitat that is lost due to the construction and operation of a desalination facility after minimizing intake and mortality of all forms of marine life through best available site, design, and technology. This is consistent with the clear statutory requirement in Water Code section 13142.5(b) that any new or expanded industrial installation using seawater for cooling, heating or industrial processing use the best site, design, technology and mitigation measures feasible to minimize the intake and mortality</p>

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		<p>of all forms of marine life. Furthermore, brine discharges from desalination facilities have impacts on marine life, which do not occur with OTC power plants. Because of these technical and regulatory differences between the OTC Policy and Desalination Amendment, approaches to mitigation are not interchangeable between the two.</p> <p>The commenter has neither identified nor explained recent State Water Board decisions that would require “stricter standards” for interim mitigation to compensate for impingement and entrainment in the draft determination at issue.</p>
1.9	<p>The State Water Board should deny the draft determination and submit a new determination with proper data to verify the mitigation fee calculation.</p> <p>ESP’s Determination provides inadequate public information for assessing the accuracy of the State Water Board’s mitigation calculation. ESP’s Determination states that “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 provide to the public.</p> <p>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 our July 13th comment letter, we recommended that the State Water Board request that</p>	<p>To estimate interim mitigation fees, staff used the average cost of entrainment, as set forth in Resolution 2015-0057. Staff relied on data provided in a letter from ESP dated July 6, 2015 to calculate an estimate of the entrainment fee for ESGS. ESP stated that the maximum intake flow for the interim mitigation period of October 1 to December 31, 2015 would be 18,407 million gallons. To estimate the entrainment fee, staff multiplied the intake flow by the \$4.60/million gallon average cost of entrainment set forth in Resolution 2015-0057.</p> <p>18,407 million gallons X \$4.60/million gallons = \$84,672.20</p> <p>Staff estimated the impingement fee using the value for fishes estimated from catch totals and the average indirect economic value of the fisheries as determined in the Expert Review Panel II final report (\$0.80 per pound) and the 2008 impingement and entrainment report for ESGS, which stated an impingement mass</p>

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	<p>plant owners and operators provide their future projections as well as detailed information about steps already taken to minimize intake volumes pursuant to OTC Policy interim compliance. 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.</p> <p>Since we were not given 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 is just the entrainment value, it does not include the impingement fee nor the project management and monitoring fee. We therefore are left suspect as to how the State Water Board came to a \$100,000 mitigation fee. To avoid future questioning of the adequacy of interim mitigation fees, we again request the State Water Board <u>provide the public with the data necessary to verify interim mitigation calculations</u>. We also request the State Water Board <u>show its work when calculating the mitigation fee – rather than providing only a final total</u>.</p>	<p>of 473 pounds for Units 3 and 4. The impingement mass actually should be lower for this calculation because only Unit 4 at ESGS still needs to come into compliance with the OTC Policy.</p> <p>$\\$0.80/\text{pound} \times 473 \text{ pounds} = \\378.40</p> <p>Staff estimated the management and monitoring fee by taking twenty percent of the sum of the entrainment and impingement fees.</p> <p>$0.20 \times (\\$84,672.20 + \\$378.40) = \\$17,010.12$</p> <p>Staff took the sum of the fees for entrainment, impingement, and management and monitoring to get the total estimate of approximately \$100,000 for the interim mitigation fee for ESGS.</p> <p>$\\$84,672.20 + \\$378.40 + \\$17,010.12 = \\$102,060.72$</p> <p>In future draft determinations that involve estimates of mitigation fees, staff will be sure to show calculations that were performed and to indicate sources of data used in the calculations.</p>
2.1	<p>Taken directly from the State Water Board's OTC Policy document, the amended Policy "requires owners and operators of existing power plants to implement measures to mitigate interim impingement and entrainment impacts resulting from the cooling intake structures." To our understanding the goal of this Policy is to directly reduce the detrimental effects OTC power plants have on the ocean environment that are currently ongoing (i.e., in the case of ESP, between October 1st and December 31st 2015) as power plants work to get in compliance with the State Water</p>	<p>See responses to comments 1.1, 1.3, 1.4, and 1.5.</p>

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	<p>Board's Policy. Indeed, the OTC Policy further states that Option A for mitigation can be achieved that demonstrating that the facility is compensating for interim impacts through "existing" mitigation activities. In this sense we fail to understand how funds provided by El Segundo Power, LLC on the request of the California Energy Commission over five years ago work to do this. Further, the activities that were funded through this payment, while valuable, were individual studies and analyses, not existing projects that would result in compensation for the marine life lost through OTC operations of the plant.</p>	
2.2	<p>We believe allowing a years-old payment to substitute for present day mitigation would undermine the goals that the State Water Board is trying to establish in two ways. First, it implies that the interim mitigation funds should be considered a fine or financial penalty directed at the power plant operators. This is not what we believe the Board actually intends, instead we understand the intent of interim mitigation to be a way to curtail the ongoing damage to our coastal resources while the power plant comes into compliance.</p>	See responses to comments 1.1 and 1.3.
2.3	<p>Second, by allowing this past payment made by the El Segundo Generating Station to become a substitute for fees towards mitigation, a precedent to all the remaining power plants who have yet to attain compliance will be set. We are concerned that this precedent will encourage other power plants to scour through past funding projects to accommodate their requirements. The State Water Board must take particular care with El Segundo Generation Station as this is the first individually evaluated power plant since the Board's OTC Policy was established. What the Board asks for in this particular instance will set the tone for all future power plants not in compliance. The Board needs to ask itself as early as possible in this endeavor whether its</p>	See responses to comments 1.1, 1.7, and 1.8.

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	measures are truly about lessening the environmental impact the power plants are having on our state coastal waters or merely financially penalizing the plants for doing it.	
2.4	Finally, due to the lack of explanation or supporting data provided to demonstrate how the Board's mitigation calculations were completed, it is impossible to review or verify the accuracy of the calculation. We therefore additionally request that the Board provide a clear basis for the maximum fee of \$100,000 that is cited in the Draft Determination.	See response to comment 1.9.
3.1	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 <i>in the interim timeframe between October 1st and the OTC compliance deadline</i> . 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." ESP's proposal will not 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	See responses to comments 1.1, 1.3, and 1.4.

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	<p>OTC use.</p> <p>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.</p>	
3.2	<p>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.</p> <p>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.</p>	See responses to comments 1.7 and 1.8.
3.3	<p>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,</p>	See response to comment 1.9.

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	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
4.1	The draft determination does not meet the OTC Policy’s	See responses to comments 1.1-1.4.

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	<p>requirements.</p> <p>The draft Determination does not meet the legal requirements of the OTC Policy. In recent public hearings, the State Water Board did not consider ESP’s past mitigation as eligible under Option A of the interim mitigation section. Any past mitigation should only apply to the preceding 11 years of OTC operations, not the marine life impacts occurring from October 1, 2015 through December 31, 2015. And ESP’s mitigation fees were spent on studies, not on mitigation efforts directed at restoring and supporting marine life lost as a result of ongoing OTC operations.</p> <p>1. ESP’s past mitigation was not identified as eligible for interim mitigation.</p> <p>2. Past mitigation does not mitigate the impacts of OTC operations occurring since October 1st.</p> <p>3. ESP’s past mitigation did not increase marine life to mitigate ongoing OTC operations.</p>	
4.2	<p>The OTC Policy provides a preference for mitigation directed towards increasing marine life lost as a result of ongoing OTC use. Interim mitigation Option A (past mitigation) is vague regarding how one shall demonstrate compliance, but the OTC Policy states that Option A can be achieved 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.”¹ ESP is not compensating for 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. The OTC Policy requires Option A mitigate current OTC impacts through existing mitigation – something ESP cannot demonstrate.</p>	See responses to comments 1.1 and 1.4.

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4.3	<p>The State Water Board should look to its own preference as guidance for the adequacy of past mitigation under Option A. The State Water Board states a preference “for mitigation projects directed toward increases in marine life associated with the State’s Marine Protected Areas.” ESP’s mitigation payment did not achieve increasing marine life. Funding from ESP was used by the Santa Monica Bay Restoration Commission (SMBRC) “to improve the understanding of biological dynamics of Santa Monica Bay” by funding several projects:</p> <ul style="list-style-type: none"> • Economic valuation study; • Rocky reef assessment; • County-wide funding feasibility study; • Support for the SMBRC Marine Technical Advisory Committee; • Bight '08 rocky reef survey; and • Dolphin study. <p>The State Water Board incorrectly determined that ESP’s payment for Santa Monica Bay-wide studies aligns with the OTC Policy’s requirement to compensate for interim impacts. While the studies were positive contributions to better understanding the marine environment, none of the studies mitigated OTC impacts by increasing marine life. The State Water Board should not consider past mitigation for studies that did not result in the increase of marine life as appropriate interim mitigation for ESP – or any other OTC facility that has not come into compliance by October 1st, 2015.</p>	See responses to comments 1.1 and 1.5.
4.4	<p>The draft determination sets a dangerous precedent for remaining OTC facilities.</p> <p>ESP’s Determination sets a dangerous precedent for future interim mitigation determinations. A review of OTC facilities’</p>	See responses to comments 1.1, 1.2, and 1.7

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	<p>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.</p>	
4.5	<p>If the ESP Determination is approved, other OTC facilities will similarly claim an exemption from their interim mitigation obligations. For example, the Huntington Beach power plant owner-operator has previously paid mitigation fees for re-tooling Units 3 and 4. This is an example of a facility that may request exemption from the new mitigation fee or credit for fees paid in the past. Moreover, it is likely the Huntington mitigation fees may be used as credit for the proposed Poseidon-Huntington seawater desalination facility – which is sited and designed with the expressed purpose to utilize the existing cooling water intake structure well into the future. Huntington Beach is just a continuing example of our concerns regarding crediting past mitigation approved by other agencies for the “interim measures” that must employ stricter standards to be consistent with recent decisions by the State Board to ensure replacement values and adequate compensation. It is also an example of concerns that the past decisions may carry on well into the future if other project proponents using seawater for industrial processes rely on those past decisions.</p>	See responses to comments 1.1 and 1.8.
4.6	<p>The State Water Board should deny the draft determination and submit a new Determination with proper data to verify the mitigation fee calculation.</p> <p>ESP’s Determination provides inadequate public information</p>	See response to comment 1.9.

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	<p>for assessing the accuracy of the State Water Board’s mitigation calculation. ESP’s Determination states that “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 provide to the public.</p> <p>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.</p> <p>To avoid future questioning of the adequacy of interim mitigation fees, we again request the State Water Board provide the public with the data necessary to verify interim mitigation calculations. We also request the State Water Board show its work when calculating the mitigation fee – rather than providing only a final total.</p>	

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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. 2014.

http://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/energy_comp/settlement_dynegy_2014.pdf

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 NRG. 2014.

http://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/energy_comp/settlement_nrg%20_2014.pdf

State Water Board public meeting – August 18, 2015.

http://www.waterboards.ca.gov/board_info/media/aug2015/swrcb_brdmtg081815.shtml