



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

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California Energy Commission
Attn: Chairman William Keese and All Commissioners
1516 Ninth Street
Sacramento, California 95814-5512

Re: NOAA Fisheries Comments On El Segundo PMPD (Docket # 00-AFC-14)

Dear Chairman Keese and Commissioners:

The National Marine Fisheries Service (NOAA Fisheries) has reviewed the California Energy Commission's (CEC) Presiding Members' Proposed Decision (PMPD) regarding the El Segundo Power Redevelopment Project. NOAA Fisheries has commented on this project previously in letters dated April 8, 2002, June 28, 2002, and October 4, 2002, and also provided written testimony in response to direct testimony in February, 2003. Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), NOAA Fisheries offers the following comments regarding the PMPD.

The first issue of concern to NOAA Fisheries is the environmental baseline that the PMPD chose to use for evaluating the significance of environmental impacts. CEQA Guidelines state that the "physical environmental conditions . . . as they exist at the time [the Application for Certification is filed] or . . . the environmental analysis is commenced . . . will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." Title 14, CCR, Section 15125(a). As done in other power plant licensing cases, the five-year period prior to the filing of the AFC would typically serve as the average physical condition by which impacts of significance are determined. However, CEC Staff justifiably argue in their Opening Brief that the appropriate cooling water baseline should now be considered "zero", due to the fundamental change in the facts and law concerning the project, that being the cessation of a valid South Coast Air Quality Management District permit to operate the generating units under question.

Despite the well-developed argument presented in CEC Staff's Opening Brief, the PMPD chose neither of the baselines described above. Instead, the PMPD suggests using the cooling water intake volumes occurring three years prior to AFC filing (1998-2000) and two years thereafter (2001 and 2002) as the baseline condition. The suggested rationale for this method of selective averaging is that these conditions are more accurately reflective of the El Segundo Generating Station (ESGS) as a merchant facility in the current "deregulated" market. However, this rationale appears quite arbitrary given that the more accurate, current condition of this merchant facility includes the time period after January 1, 2003, where no



sea water is withdrawn for cooling purposes because of the lack of air quality permits (i.e., the CEC Staff's proposed "zero" baseline).

Second, NOAA Fisheries is concerned that the PMPD omits a complete account of the position of other agencies and interveners in this case. More specifically, the recommendations and opinions provided by the California Coastal Commission, California Department of Fish and Game, Santa Monica Baykeeper, Heal the Bay, City of Manhattan Beach, and the Murphy/Perkins interveners were not addressed or adopted in the PMPD. We are particularly concerned that the requirements of the California Coastal Commission have not been met, but we defer to the Coastal Commission itself to address this issue in specific detail. It is worth noting that all the parties mentioned above support similar recommendations to those suggested by CEC Staff.

The final issue of concern to NOAA Fisheries is the PMPD's omission of all specific concerns and recommendations we provided earlier in the siting process. Once NOAA Fisheries learns of a Federal or state project that may have an adverse effect on Essential Fish Habitat, NOAA Fisheries is required to develop EFH Conservation Recommendations for the project under Section 305(b)(4)(A) of the MSFCMA. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects to EFH. As stated in our previous letters, NOAA Fisheries believes the proposed project will have an adverse impact on Essential Fish Habitat for fish species managed under the Coastal Pelagic and the Pacific Groundfish Fishery Management Plans. To address these impacts, NOAA Fisheries offered EFH Conservation Recommendations in letters dated April 8, 2002, and October 4, 2002, which were supportive of CEC Staff's recommendations. NOAA Fisheries believes that our agency's recommendations should, at the minimum, be described and discussed in the PMPD.

NOAA Fisheries encourages the Energy Commission to address the comments we have presented above in its Final Decision in this matter. NOAA Fisheries continues to maintain the recommendations provided in our letter dated October 4, 2002. If you have any questions regarding these comments, please contact Bryant Chesney at 562-980-4037 or Bryant.Chesney@noaa.gov.

Sincerely,



Valerie L. Chambers
Assistant Regional Administrator
for Habitat Conservation