

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
OCTOBER 4, 2011**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED ORDER REGARDING A PETITION OF BACKCOUNTRY AGAINST DUMPS, THE PROTECT OUR COMMUNITIES FOUNDATION, EAST COUNTY COMMUNITY ACTION COALITION, AND DONNA TISDALE (RECONSIDERATION OF CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ORDER FOR SAN DIEGO GAS AND ELECTRIC COMPANY SUNRISE POWERLINK PROJECT [FILE NO. SB09015IN] AND U.S. ARMY CORPS OF ENGINEERS [FILE NO. 2007-00704-SAS]) (SWRCB/OCC FILE A-2152)

DISCUSSION

On November 9, 2010, the State Water Resources Control Board's (State Water Board) Executive Officer issued a water quality certification for the Sunrise Powerlink Project (Project). The Project is to construct, operate, and maintain approximately 115 miles of transmission lines from the El Centro area to northwestern San Diego County, near the City of Poway. The Project will have the capacity to import up to 1,000 megawatts of electricity and would be needed to ensure electricity reliability to the area, to reduce energy costs, and to allow San Diego Gas & Electric Company (SDG&E) to meet its obligations to purchase certain amounts of energy from renewable generation resources.

A number of non-profit entities (Petitioners) have filed a petition for reconsideration of the Executive Director's issuance of a water quality certification. The Petitioners' allegations focus on the State Water Board's alleged failure to comply with the California Environmental Quality Control Act (CEQA).¹ In a series of related arguments, the Petitioners claim that the State Water Board should have required the California Public Utilities Commission (CPUC) to prepare a supplemental environmental impact report due to modifications made to the Project's route and methods by which the Project will be constructed and that the CPUC's final environmental impact report (FEIR) was flawed and the State Water Board erred in relying on the FEIR in issuing the water quality certification.

The CPUC's FEIR contained over 120 mitigation measures, many of which required avoidance and minimization of environmental effects. After the FEIR's adoption, SDG&E completed the engineering and design of the Project. In compliance with the FEIR's mitigation measures, the Project's route and construction methods were altered in order to avoid or minimize environmental impacts. SDG&E submitted these changes to the CPUC in a Project Modification Report (PMR) on May 14, 2010. Though not required, the CPUC publicly noticed and accepted comments on the PMR. The CPUC published its final analysis of the PMR in a Project Modifications Report Memorandum (Memorandum) in September 2010. The Memorandum analyzed each modification, both collectively and individually, and concluded that no supplemental environmental review was necessary.

¹ Pub. Resources Code, § 21000 et seq.

The Division of Water Quality staff reviewed and considered the FEIR, the PMR, and the Memorandum along with numerous other documents when it drafted the water quality certification and recommended it be signed by the Executive Officer. In response to the petition for reconsideration, the Office of Chief Counsel and Division of Water Quality staff have again reviewed the administrative record in this matter, along with the Petitioners' allegations. Staff have concluded that the petition for reconsideration does not raise any substantial issues appropriate for review by the State Water Board.

POLICY ISSUE

Should the State Water Board adopt the proposed order declining reconsideration of the water quality certification for the Project?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Adopt the draft order.

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2011-

In the Matter of the Petition of

**BACKCOUNTRY AGAINST DUMPS, THE PROTECT OUR COMMUNITIES FOUNDATION,
EAST COUNTY COMMUNITY ACTION COALITION, AND DONNA TISDALE**

For Reconsideration of Clean Water Act Section 401 Water Quality Certification for the
San Diego Gas and Electric Company, Sunrise Powerlink Project [File No. SB09015IN] and
U.S. Army Corps of Engineers [File No. 2007-00704-SAS]

Issued by the
State Water Resources Control Board,
Executive Director

SWRCB/OCC FILE A-2152

BY THE BOARD:

On November 9, 2010, the State Water Resources Control Board's (State Water Board) Executive Officer issued a water quality certification for the Sunrise Powerlink Project (Project). The Project is to construct, operate, and maintain approximately 115 miles of transmission lines from the El Centro area to northwestern San Diego County, near the City of Poway. The Project will have the capacity to import up to 1,000 megawatts of electricity and is needed to ensure electricity reliability to the area, to reduce energy costs, and to allow San Diego Gas & Electric Company (SDG&E) to meet its obligations to purchase certain amounts of energy from renewable generation resources.

A number of non-profit entities and an individual (Petitioners) have filed a petition for reconsideration of the Executive Director's issuance of a water quality certification.¹ The Petitioners' allegations focus on the State Water Board's alleged failure to comply with the California Environmental Quality Control Act (CEQA).² In a series of related arguments, the Petitioners claim that the Executive Director's issuance of the water quality certification was in

¹ The Petitioners also requested a stay during the State Water Board's reconsideration of this matter. Additionally, whether Petitioners timely filed their petition in accordance with California Code of Regulations, title 23, section 3867, subdivision (c) is in dispute. Because the matter is being dismissed, neither of these issues will be addressed.

² Pub. Resources Code, § 21000 et seq.

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error, because it was done on reliance of a flawed, insufficient environmental impact report and that the State Water Board should have required the California Public Utilities Commission (CPUC) to prepare a supplemental environmental impact report due to modifications made to the Project's route and methods by which the Project will be constructed.

The CPUC's final environmental impact report (FEIR) contained over 120 mitigation measures, many of which required avoidance and minimization of environmental effects. After the FEIR's adoption, SDG&E completed the engineering and design of the Project. In compliance with the FEIR's mitigation measures, the Project's route and construction methods were altered in order to avoid or minimize environmental impacts. SDG&E submitted these changes to the CPUC in a Project Modification Report (PMR) on May 14, 2010. Though not required, the CPUC publicly noticed and accepted comments on the PMR. The CPUC published its final analysis of the PMR in a Project Modifications Report Memorandum (Memorandum) in September 2010. The Memorandum analyzed each modification, both collectively and individually, and concluded that no supplemental environmental review was necessary.

The Division of Water Quality staff reviewed and considered the FEIR, the PMR, and the Memorandum along with numerous other documents when it drafted the water quality certification and recommended it be signed by the Executive Officer. In response to the petition for reconsideration, the Office of Chief Counsel and Division of Water Quality have again reviewed the administrative record in this matter, along with the Petitioners' allegations and SDG&E's response to the petition. The State Water Board has complete discretion to determine whether a petition raises substantial issues that are appropriate for review, and to dismiss petitions that fail to raise such issues.³ We have concluded that the petition for reconsideration does not raise any substantial issues appropriate for review.

³ Cal. Code Regs., tit. 23, § 3869, subd. (a)(1); See also, *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177 & *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1114 [discussing comparable review authority in Water Code section 13320].

D R A F T

ORDER

IT IS HEREBY ORDERED that the petition of Backcountry Against Dumps, the Protect our Communities Foundation, East County Community Action Coalition, and Donna Tisdale for reconsideration of Clean Water Act, section 401 water quality certification for the SDG&E, Sunrise Powerlink Project (SWRCB/OCC File A-2152) is dismissed for failure to raise any substantial issues appropriate for review.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 4, 2011.

Jeanine Townsend
Clerk to the Board