



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92009

In Reply Refer To:
FWS-SD-1872.4

MAR 2 2005

Alex P. Mayer
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100

Re: SWRCB/OCC FILES A-1679 and A-1679a: Waste Discharge Requirements Order No. R9-2004-0154 [NPDES Permit No. CA0001368] for Duke Energy South Bay Power Plant

Dear Mr. Mayer:

This letter is in response to the State Water Resources Control Board's request for comments on: 1) an existing dissolved oxygen water quality objective for San Diego Bay, and 2) future site-specific dissolved oxygen water quality objective for South San Diego Bay. The U.S. Fish and Wildlife Service previously provided comments to the San Diego Regional Water Quality Control Board (Regional Board) on both of these issues.

In our February 22, 2002, letter to John H. Robertus (Enclosure 1) regarding NPDES Permit No. CA0001368, we stated:

"Per discussion with Hashim Navrozali of your staff, it is our understanding that the subject permit does not include an effluent limitation for dissolved oxygen because a dissolved oxygen water quality objective does not exist in the Water Quality Control Plan for the San Diego Basin for enclosed bays. However, we believe the Basin Plan infers a water quality objective for dissolved oxygen for enclosed bays. Further, Table C-1, page C-4 of the San Diego Basin Plan lists the following dissolved oxygen objective for bays and estuaries:

"Shall not be less than 5.0 mg/L with designated MAR [Marine Habitat].
The annual mean DO shall not be less than 7 mg/L more than 10% of the time."

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John H. Robertus (FWS-SD-1872.4)

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Therefore, we recommend that an effluent limitation using the Basin Plan's dissolved oxygen objective be incorporated in the subject permit to ensure protection of the designated beneficial uses of the San Diego Bay."

Because of the importance of dissolved oxygen to various aquatic life forms, we consider it essential to have a dissolved oxygen objective that protects the designated beneficial uses of South San Diego Bay. Therefore, we believe it is appropriate that the subject permit, as well as other permits issued in San Diego Bay, include an effluent limitation using the Basin Plan's dissolved oxygen objective to ensure protection of the designated beneficial uses of the San Diego Bay.

With regards to any future site-specific dissolved oxygen objective for San Diego Bay, in our May 16, 2002, letter to John H. Robertus (Enclosure 2) regarding NPDES Permit No. CA0001368, we stated:

"Two separate products should be requested of Duke Energy regarding the dissolved oxygen. One product should be an updated dissolved oxygen assessment of the bay and the impact of their discharge on the dissolved oxygen levels in the bay. The other product should be a technical document which clearly provides the justification for site specific dissolved oxygen water quality objective and the rationale and basis for deriving the site specific water quality objective. We believe at a minimum this should include a Use Attainability Analysis."

We believe this statement is still applicable to any consideration of whether a site-specific dissolved oxygen objective is warranted for San Diego Bay.

San Diego Bay offers resting and foraging areas for a diverse assemblage of birds, as well as habitat for a variety of fish, marine invertebrates, and other aquatic and terrestrial organisms. South San Diego Bay (South Bay) is particularly important because it includes San Diego Bay's largest remaining expanse of intertidal mudflat habitat, as well as its largest remaining area of coastal salt marsh. The mudflats alone support tens of thousands of migratory and wintering shorebirds that travel annually along the Pacific Flyway. In addition, the salt marsh areas provide habitat for two federally listed endangered species, the light-footed clapper rail (*Rallus longirostris levipes*) and salt marsh bird's beak (*Cordylanthus maritimus*), and one State listed endangered species, the Belding's savannah sparrow (*Passerculus sandwichensis beldingi*). Extensive eelgrass beds in the South Bay provide important fish habitat, while also supporting a resident population of the federally listed threatened East Pacific green turtles (*Chelonia mydas*).

Much of the South Bay has been incorporated into the San Diego Bay National Wildlife Refuge (see Enclosure 3 map) for the purpose of protecting, managing, and restoring federally listed

endangered and threatened species and migratory birds. Other federally listed species occurring in the South Bay include the endangered California least tern (*Sterna antillarum browni*), California brown pelican (*Pelecanus occidentalis californicus*), and the threatened western snowy plover (*Charadrius alexandrinus nivosus*). In addition, the South Bay supports nineteen species identified by the Service as Birds of Conservation Concern. Regionally significant seabird nesting habitat is also provided on the salt pond levees in the South Bay where seven species of seabirds annually nest. These species include the Caspian tern (*Sterna caspia*), elegant tern (*Sterna elegans*), royal tern (*Sterna maxima*), gull-billed tern (*Sterna nilotica vanrossemi*), Forster's tern (*Sterna forsteri*), black skimmer (*Rynchops niger*), and California least tern. The western snowy plover also nests in this area.

In recognition of the importance of the habitats within the South Bay to migratory shorebirds, the South Bay has been designated as a Western Hemisphere Shorebird Reserve Network Site. The area is also recognized as a Globally Important Bird Area by the American Bird Conservancy because the site provides habitat for globally significant numbers of nesting gull-billed terns and continentally significant numbers of surf scoters (*Melanitta perspicillata*), Caspian terns, and western snowy plovers. All of these resources may be affected by the subject permit.

The Regional Board recognizes the biological significance of San Diego Bay by including the following as designated beneficial uses of the waters of the bay that are to be achieved and protected:

- a) Preservation of Biological Habitats of Special Significance (BIOL);
- b) Estuarine Habitat (EST);
- c) Wildlife Habitat (WILD);
- d) Rare, Threatened, or Endangered Species (RARE);
- e) Marine Habitat (MAR); and
- f) Migration of Aquatic Organisms (MIGR).

Demonstration of the achievement and protection of these uses will ensure that the biological resources utilizing the bay are protected. Having a dissolved oxygen water quality objective in the San Diego Basin Plan and adopting that objective into permits is essential if dischargers are going to demonstrate that they are not adversely impacting the designated beneficial uses of San Diego Bay. //

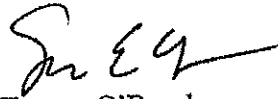
We appreciate the opportunity to comment on this important petition and look forward to working with the State Water Resources Control Board and the Regional Boards to protect our Nation's natural resources. Should you have questions or require further clarification, please

John H. Robertus (FWS-SD-1872.4)

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contact Scott Sobiech, Chief, Environmental Contaminants Division, or Carolyn Lieberman, Ecological Services, at 760 431-9440, extensions 248 and 240, respectively.

Sincerely,


for Therese O'Rourke
Assistant Field Supervisor

Enclosures

cc: John H. Robertus, SDRWQCB
Hashim Navrozali, SDRWQCB
Mendel Stewart, San Diego Refuge Complex
Brian Collins, San Diego Refuge Complex
Victoria Touchstone, San Diego Refuge Complex
Bob Hoffman, NOAA-NMFS
Denise Klimas, NOAA
William Paznokas, CDFG
Albert Huang, EHC