

**CALIFORNIA STATE
LANDS COMMISSION**

JOHN GARAMENDI, *Lieutenant Governor*
JOHN CHIANG, *Controller*
MICHAEL C. GENEST, *Director of Finance*



EXECUTIVE OFFICE
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, Executive Officer
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922

**RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION REGARDING
THE TAKING OF MARINE MAMMALS AND SEA TURTLES INCIDENTAL TO
POWER PLANT OPERATIONS OF CERTAIN ONCE-THROUGH COOLING POWER
PLANTS IN CALIFORNIA**

WHEREAS, a cornerstone of the value and uniqueness of California's 1,100 mile coastline and adjacent coastal waters is the richness and diversity of marine life, including fish, marine mammals, birds and plants; and

WHEREAS, the California State Lands Commission has jurisdiction over the state-owned tide and submerged lands from the shoreline out three nautical miles into the Pacific Ocean, as well as the lands underlying California's bays, and navigable lakes and rivers; and

WHEREAS, the Commission is charged with managing these lands pursuant to the Public Trust Doctrine, a common law precept that requires these lands be protected for public use and needs including commerce, navigation, fisheries, water related recreation and ecological preservation; and

WHEREAS, the Commission has aggressively sought correction of adverse impacts on the biological productivity of its lands including litigation over contamination off the Palos Verdes Peninsula and at Iron Mountain, the adoption of best management practices for marinas, and litigation to restore flows to the Owens River; and

WHEREAS, California has a significant number of power plants that use once-through cooling (OTC), the majority of which are located on bays and estuaries where sensitive fish nurseries for many important species are located; and

WHEREAS, the environmental costs of persistent entrainment and impingement from once-through cooling to marine and coastal life and ecosystems are high; and

WHEREAS, OTC harms the environment by killing large numbers of wildlife, including fish, marine mammals, and sea turtles, as well as larvae and eggs, as they are drawn through fish screens and other parts of the power plant cooling system; and

WHEREAS, regulations adopted under Section 316(b) of the federal Clean Water Act recognize the adverse impacts of OTC by effectively prohibiting new power plants from using such systems and requiring existing power plants to reduce OTC impacts; and

WHEREAS, the Second Circuit U.S. Court of Appeals ruled that restoration measures do not minimize the impacts of once-through cooling and cannot be used to comply with Clean Water Act section 316(b); and

WHEREAS, the California State Water Resources Control Board is currently developing a state policy to implement Clean Water Act Section 316(b), which, in the draft released for public comment, will require the phase out of OTC technology at coastal power plants; and

WHEREAS, the National Marine Fisheries Service (NMFS) is evaluating applications, necessitated by the pernicious impacts of OTC, from thirteen power generating stations located in California requesting authority for incidental take of marine mammals and seven applications from power generating stations in California requesting permits for incidental take of sea turtles; and

WHEREAS, the Commission has imposed conditions on its leases to reduce the impact of OTC and is seriously concerned about the environmental consequences of the proposed incidental take of marine animals as a result of OTC; and

WHEREAS, alternative cooling methods such as repowering older power plants are readily available and used nationwide, and can eliminate OTC and its attendant environmental impacts and reduce the greenhouse gas emissions currently associated with fossil fuel power generation; now, therefore, be it

Resolved by the California State Lands Commission that it urges the NMFS to: (1) make any incidental take permit consistent with phasing out OTC, and at the minimum, include a clause requiring expiration of the permit if OTC is no longer permitted at the requesting facility or generally within the state; (2) deny any incidental take permit for power plants that have discontinued use of OTC; (3) require that information regarding historical and anticipated take be substantiated and made available to the Commission and the public prior to the issuance of any incidental take permit, and referenced in any draft and/or final permit; and (4) require, if an incidental take permit is issued, that stringent controls be implemented to eliminate or prevent to the maximum extent possible the take or harassment of marine wildlife; and be it further

Resolved, that the State Lands Commission supports OTC alternatives, such as repowering projects, that eliminate OTC, reduce greenhouse gas emissions and other environmental impacts, and are part of an overall plan that moves the state towards increased use of renewables and energy conservation; and be it further

Resolved, that the Commission's Executive Officer transmit copies of this resolution to the President and Vice President of the United States, to the Governor of California, to the Majority and Minority Leaders of the United States Senate, to the Speaker and Minority Leader of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the National Marine Fisheries, to the National Oceanic and Atmospheric Administration, to the United States Environmental Protection Agency, to the United States Supreme Court to the Chairs of the State Water Resources Control Board, to the California Energy Commission, to the Public Utilities Commission, to the California Coastal Commission, to the California Air Resources Board, to the California Independent Systems Operator, and to the California Ocean Protection Council, all grantees, and all current lessees of public trust lands that utilize OTC.

Adopted by the California State Lands Commission on May 5, 2008.