

CALIFORNIA COASTAL COMMISSION

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April 8, 2005

Eric Gillies, Project Manager
 California State Lands Commission
 100 Howe Avenue, Suite 100-South
 Sacramento, CA 95825

RE: Comments on Draft Environmental Impact Report (EIR) for Disposition of Offshore Cooling Water Conduits at San Onofre Nuclear Generating Station (State Clearinghouse #2004061092)

Dear Mr. Gillies:

Thank you for the opportunity to comment on the above-referenced draft EIR. The document evaluates several options for removing all or part of two currently unused conduits offshore of the San Onofre Nuclear Generating Station (SONGS) or keeping the conduits in place.

3.7.1

The proposed project is largely within the retained jurisdiction of the Coastal Commission and will require a coastal development permit from the Commission. We are submitting the comments below so our concerns can be addressed during your CEQA review and also to provide guidance as to what might be expected during our review of the proposed project's coastal development permit application. We will likely have more specific comments and questions about the proposed project when we receive the application for that permit.

3.7.2

The project alternatives most likely to conform to applicable Coastal Act provisions are those that emphasize removal of the conduit materials, despite the relatively substantial but short-term impacts of those alternatives. This differs from some of the conclusions in the EIR, in part due to differences between considerations used in those analyses and the considerations used to determine conformity to the Coastal Act, as described below.

Comments:

3.7.3

1) Consideration of the conduits as "habitat": The EIR states in several places (e.g., the discussion of Essential Fish Habitat on page 4.1-42, the Alternatives discussion on page 4.1-51, etc.) that removing all or part of the hard structure associated with the conduits would cause a loss of "habitat". Please note that the Coastal Commission has in numerous past actions determined that structures such as these, whose express purpose is to serve as intake/outfall lines for SONGS, do not constitute habitat. Although the Commission acknowledges that structures such as pipelines, pilings, or similar hard-surfaced objects placed in the water column may provide incidental benefits to marine life, those benefits do not constitute habitat for purposes of the Commission's environmental review and analysis. During environmental review, these incidental benefits are not incorporated into impact analyses or into mitigation considerations -- for example, if an underwater pipeline proposed to be removed acts as a substrate for kelp, the Commission has not required the applicant to mitigate for the loss of any kelp that may be attached to the pipeline.

3.7.3 { We therefore strongly urge that the alternatives and impact analyses in the EIR that assign habitat value to the conduit's hard structures be revised so that these incidental values are not considered in the analyses and do not serve as part of the basis for retaining or removing the structures.

3.7.4 { 2) Coastal Act policies related to the placement of fill in coastal waters: Some of the proposed project alternatives would involve placing and redistributing some amount of fill in coastal waters. Coastal Act Section 30233(a)¹ requires that there be no feasible less environmentally damaging alternative to filling coastal waters, that such placement include all feasible mitigation measures to minimize adverse environmental effects, and that the purpose of the fill fall within any of eight allowable use categories. Some of the proposed project alternatives that involves placing or redistributing "fill" at the project site do not appear to fall within one of the Coastal Act's eight allowable uses of fill. Additionally, the proposed "artificial reef" alternatives would have to meet several other standards, such as the requirements of the state's artificial reef program related to location, acceptable materials, and other design components.

3.7.5 { We recommend therefore that the EIR be revised to assess whether the project alternatives involving fill placement meet the requirements of this Coastal Act policy and the requirements of the state's artificial reef program.

¹ Section 30233(a): The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource dependent activities.

3.7.6 { 3) Leaving the conduits in place for potential future uses: The EIR includes among the project alternatives the option of keeping the conduits in place, based primarily on the potential that they might be used at some future date by a desalination facility. This potential use is one of the reasons for selecting the "No Project Alternative" as the "Environmentally Superior Alternative". However, the EIR does not describe in detail any aspects of this potential future proposed use that need to be considered before reaching such a conclusion. We therefore recommend either that this potential future use not be used as a basis for the analyses or that if used, the effects of such a use be more fully evaluated.

3.7.7 { We note, too, that this potential future use of these conduits may not conform to Coastal Act policies. Review of proposed desalination facilities will need to ensure that the biological productivity of marine waters is maintained, enhanced, and restored, and that entrainment impacts be minimized; however, the conduits are located in an area with nearby hard bottom habitat, kelp, and other characteristics that suggest relatively high levels of biological productivity, and future operation of an open water intake structure at this location is likely to result in adverse entrainment effects to the local or regional marine biological community. There are likely to be feasible and less environmentally damaging locations for a desalination intake, and there are likely to be less environmentally damaging options than the use of this open water intake to provide source water for a desalination facility. Additionally, the conduits are far larger than needed for any of the desalination facilities being proposed along the California coast. They were built to provide several hundred million gallons per day of ocean water to cool a nuclear generating unit, while the desalination proposals being considered at the site would use far less water. Any use of these conduits by a desalination facility, even at much lower flow rates than their original design capacity, would be subject to the previously referenced Coastal Act provisions related to protection of the marine environment, and it will likely be difficult to find that the proposed use of the conduits for desalination conforms to these requirements. At the very least, the conduits would likely need to be substantially modified to minimize their effects on marine organisms.

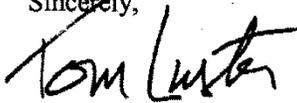
3.7.8 { We therefore recommend that the EIR delete consideration of future use by a desalination facility as a project purpose. If the EIR instead continues to base the alternative of keeping the conduits in place on potential future use for possible desalination facility, we then recommend the document fully evaluate the effects associated with this potential future use and its relationship to applicable Coastal Act provisions.

3.7.9 { 4) Replacing the Lease Agreement with a Lease Termination/Abandonment Agreement: The draft EIR states that leaving all or part of the conduits in place would require changing the existing Lease Agreement to a Lease Termination/Abandonment Agreement. Please describe the requirements and conditions of such an agreement and provide examples of other similar agreements, if they are available. Please also describe any short- or long-term environmental effects that may arise from these requirements and conditions along with how those effects might be mitigated – for example, the EIR should describe what mechanisms would be in place to address any long-term environmental damage or liability that could result from the continued presence of the conduits.

- 3.7.10 { 5) Caulerpa survey: In the discussion of marine biological resources at Section 4.1 of the document (page 4.1-30), please note that proposed work at the project site will likely require a survey for *Caulerpa taxifolia* pursuant to the protocols developed by the Southern California *Caulerpa* Action Team (SCCAT). Please add this likely requirement to the EIR.
- 3.7.11 { 6) Applicable regulations: Please add the Coastal Act to the list of applicable state regulations in Section 4.3.2 – Regulatory Setting (at page 4.3-11).

Thank you again for the opportunity to comment. Please contact me at 415-904-5248 or tluster@coastal.ca.gov if you have questions or would like additional information.

Sincerely,



Tom Luster
Energy and Ocean Resources Unit

1 **3.7 California Coastal Commission, April 8, 2005**

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3 3.7.1 The CSLC acknowledges that a coastal development permit will be required
4 from the California Coastal Commission (CCC) for any project configuration
5 approved by the CSLC.

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7 3.7.2 Comment and observation noted.

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9 3.7.3 The use of the word “habitat” with respect to “manmade” structures in the
10 Draft EIR should have been better explained and placed in its proper context.
11 While the CEQA does not define man-made structures as part of the
12 environment, except for objects of historical significance (section 15360 of the
13 State CEQA Guidelines), such structures as the commentor notes, “may
14 provide incidental benefits to marine life..” The text of the EIR (see lines 32-
15 33, page 4.1-42 and lines 9-10, page 4.1-51) has been revised.

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17 3.7.4 Comment acknowledged. We acknowledge that the Complete Removal
18 Alternative, the Onshore Removal Alternative, or the Crush Conduits
19 Alternative would dredge substantially more material than would the
20 Proposed Project and would also require the import and placement of
21 additional fill material. Certainly any ultimate consideration of alternatives by
22 decision makers must incorporate considerations of feasibility (see section
23 15364 of the State CEQA Guidelines), which would include requirements
24 cited by the commentor. As noted in the DEIR, lines 13-16, page 1-1, the
25 CSLC lease for the affected facilities requires removal of “the offshore cooling
26 water conduits in their entirety..” The lease also requires the area be returned
27 to the conditions existing prior to installation of the conduits. Such would also
28 be the case with respect to implementation of any relevant alternative. The
29 CCC would have the wherewithal to determine whether the end result of such
30 an alternative falls within the intent of section 30233(a)(6) of the Coastal Act.

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32 3.7.5 Please see above response with respect to “fill” under the Coastal Act. The
33 placement of concrete sections on the seabed under the Artificial Reef
34 Alternative would need to comply with the State’s artificial reef program,
35 e.g., the location of the reef, the suitability of the concrete sections for use as
36 an artificial reef, and other reef design and permitting considerations. If this
37 Alternative were to be selected, the Applicant would prepare a detailed plan

1 for the reef that would comply with the State's artificial reef program. It should
2 be noted, however, that the Applicant, in its letter of comment on the Draft
3 EIR, requested that it be allowed to remove and dispose of, as within the
4 Proposed Project, the dismantled terminal structures. Such action would
5 render the Artificial Reef Alternative moot as the reef depends on the use of
6 the concrete sections to augment the existing riprap and thereby create a
7 larger reef.

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9 3.7.6 A potential future reuse of the conduits is mentioned in the Draft EIR (ES-3,
10 Section 2.3.11, and other references) in consideration and disclosure of
11 comments received during the scoping process for the document. Please
12 also note the comment letters from Assemblymember Mimi Walters, the San
13 Diego County Water Authority, the Municipal Water District of Orange County,
14 and the U.S. Marine Corps, Camp Pendleton within this section. The DEIR
15 states at lines 26-27, page ES-3, that, "...the No Project Alternative would
16 avoid all environmental effects and would be the Environmentally Superior
17 Alternative." As indicated, this conclusion is based solely on environmental
18 factors. However, due to the information provided to the Lead Agency during
19 the scoping process, it is appropriate for the document to indicate how such
20 information relates to the Proposed Project and relevant alternatives. Section
21 2.2.11 of the DEIR appropriately indicates that the analysis of the Proposed
22 Project and relevant alternatives does not encompass any future reuse of the
23 conduits because any such proposal is speculative. Any such proposal would
24 be subject to the CEQA and the Coastal Act should a specific project be
25 developed.

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27 3.7.7 Comment noted. Please refer to the last sentence of the above response.

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29 3.7.8 Please refer to Response 3.7.6.

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31 3.7.9 Examples of facilities covered by CSLC Lease Termination/Abandonment
32 Agreements include the Chevron Estero Marine Terminal in Morro Bay, San
33 Luis Obispo County, and Southern California Edison Mandalay Marine
34 Terminal at Mandalay Beach, Ventura County. These Agreements authorize
35 the Lessee to remove/abandon facilities subject to certain conditions, which
36 can be numerous depending on the facility being removed/abandoned.
37 However, common to all of these Agreements, or any other CSLC Lease

1 Agreements, is that the Lessee must comply with the mitigation measures
2 adopted by the CSLC as part of the environmental document. Also part of
3 these Agreements is that the Lessee remains responsible for observing all
4 rules and regulations of any agency(ies) having jurisdiction in the area of the
5 abandoned facilities and all liability associated with the abandoned facilities.

6 There have not been any long-term environmental issues or liabilities
7 identified for the Proposed Project from the continued presence of the
8 conduits beneath the seafloor; however, conditions in the Lease
9 Termination/Abandonment Agreement provide the means for addressing any
10 future problems that may arise. The nature and scope of any remedial
11 actions necessary to resolve a future problem, e.g., potential hazard to health
12 and safety, would determine whether potential environmental effects could
13 result. However, such would be assessed and permitted at that future time.
14 The conditions or requirements in the Agreement would not presently cause
15 any short- or long-term environmental effects in the project area.

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17 3.7.10 The commentor is correct and the text is revised to indicate the conduct of a
18 *Caulerpa* survey. Please see page 4.1-31 of Section 4 herein.

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20 3.7.11 Comment acknowledged. The Coastal Act, and a discussion of its provisions
21 that pertain to Marine Water Quality, has been added to the Regulatory
22 Setting of this section of the document. Please see page 4.3-13 in Section 4
23 herein.

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