

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

RESOLUTION NO. R9-2008-0039

CONDITIONAL APPROVAL OF
REVISED FLOW, ENTRAINMENT, AND IMPINGEMENT MINIMIZATION PLAN
FOR
POSEIDON RESOURCES CORPORATION
CARLSBAD DESALINATION PROJECT

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. On August 11, 2006, the Regional Board adopted Order R9-2006-0065 NPDES No. CA0109223 (Order No. R9-2006-0065) establishing waste discharge requirements for Poseidon Resources Corporation (Poseidon) to discharge up to 57 million gallons per day (MGD) of a combined waste stream comprised of concentrated saline waste seawater and filter backwash wastewater from the Carlsbad Desalination Project (CDP) into the Pacific Ocean via the Encina Power Station's (EPS) cooling water discharge channel.
2. As proposed in Poseidon's Report of Waste Discharge for Order No. R9-2006-0065, the CDP will operate in conjunction with the EPS and will draw upon cooling water discharges by EPS for its intake requirements in the production of fresh potable water. As recognized in Section VI.C.2(e) of Order No. R9-2006-0065, CDP's intake requirements may, at times, exceed the volume of seawater being discharged by the EPS during times when EPS temporarily ceases operating to generate electricity. During these periods, EPS will operate its intake structures to produce intake water sufficient to meet CDP's intake needs.
3. The operations at the CDP are not subject to the statutory requirements of section 316(b) of the Clean Water Act as that section pertains only to impacts from intake of seawater for the purpose of power generation.
4. CDP is, however, a new industrial installation that is subject to California Water Code Section 13142.5 which requires use of best available site design, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life.
5. Section VI.C.2(e) of Order No. R9-2006-0065 requires Poseidon to submit (within 180 days of adoption), a Flow, Entrainment and Impingement Minimization Plan ("Plan") that "shall assess the feasibility of site-specific plans, procedures, and practices to be implemented and/or mitigation measures to minimize the impacts to marine organisms when the CDP intake requirements exceed the volume of water

being discharged by the EPS." Thus, Poseidon is required to submit a plan to minimize these impacts to marine organisms under conditions of operation in conjunction with the Encina Power Station (EPS), as described in Finding II.B of Order No. R9-2006-0065. Approval of the Plan is currently not a condition for commencement of the discharge from the CDP.

6. On March 7, 2008, Poseidon submitted an updated Revised Flow, Entrainment, and Impingement Minimization Plan (Plan) to address best available site design, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life and Order No. R9-2006-0065 Section VI.C.2(e) requirements.
7. As submitted, the Plan does not include a specific mitigation alternative but instead sets forth a process to be used for evaluating and selecting a specific mitigation alternative that will compensate for impacts, to beneficial uses of Agua Hedionda Lagoon, from entrainment and impingement of marine organisms by operations at the CDP. An amendment to the Plan containing a specific mitigation alternative must be submitted to the Regional Board for approval.
8. The Plan, including any amendments subsequently approved by the Regional Board, is of limited duration and is applicable only to Poseidon's current cooperative operation with EPS. Upon Poseidon's proposal to operate CDP independent of EPS or when EPS permanently ceases power generation operations, it may be necessary to further evaluate appropriate mitigation and/or minimization of impacts to marine organisms of CDP's operations.
9. This action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Water Code section 13389 (see *County of Los Angeles v. California State Water Resources Control Board*, (2006) 143 Cal.App.4th 985, 50 Cal.Rptr. 3d 619), and this action of the Regional Board does not have the potential to cause a significant effect on the environment. (See Title 14, California Code of Regulations, section 15061.)

THEREFORE, BE IT RESOLVED THAT:


1. The Plan, dated March 6, 2008, does not include specific implementation provisions as required in Section VI.C.2.(e) of Order No. R9-2006-0065 and does not as yet resolve the concerns noted in the Regional Board's February 19, 2008 letter to Poseidon Resources.
2. The San Diego Water Board hereby conditionally approves the Plan.
3. Within six months of adoption of this resolution, Poseidon shall submit to the Regional Board Executive Officer, for approval by the Regional Board, an amendment to the Plan that includes a specific proposal for mitigation of the impacts, by impingement and entrainment upon marine organisms resulting from the

RF

intake of seawater from Agua Hedionda Lagoon, as required by Section VI.C.2(e) of Order No. R9-2006-0065; and shall resolve the concerns identified in the Regional Board's February 19, 2008 letter to Poseidon Resources, and the following additional concerns:

- a) Identification of impacts from impingement and entrainment;
 - b) Adequate monitoring data to determine the impacts from impingement and entrainment;
 - c) Coordination among participating agencies for the amendment of the Plan as required by Section 13225 of the California Water Code;
 - d) Adequacy of mitigation; and
 - e) Commitment to fully implement the amendment to the Plan.
4. Poseidon's Plan, including any amendments that are subsequently approved by the Regional Board, are of limited duration and are applicable only to CDP's current cooperative operation with EPS. When Poseidon proposes to operate independent of EPS or EPS permanently ceases power generation operations, EPS's cessation of power generation operations, would be necessary to further evaluate appropriate mitigation and/or minimization of impacts to marine organisms of CDP's operations.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on April 9, 2008.



JOHN H. ROBERTUS
Executive Officer

Interested Parties
Order No. R9-2006-0065
NPDES Permit No. CA0109223

Ms. Mary Salas
Assemblymember, 79th District
Assembly California Legislature
678 Third Avenue, Suite 105
Chula Vista, CA 91910

Mr. Bill Horn
Supervisor, Fifth District
San Diego County Board of
Supervisors
1600 Pacific Highway, Room
335
San Diego, CA 92101

Ms. Denise Moreno Ducheny
Senator, 40th District
California State Senate
637 3rd Avenue, Suite A-1
Chula Vista, Ca 91910

Mr. Mark Wyland
Senator, 38th District
California State Senate
1910 Palomar Point Way, Suite 105
Carlsbad, CA 92008

Mr. Martin Garrick
Assemblymember, 74th District
Assembly California Legislature
P.O. Box 942849
Sacramento, CA 94249-074

Ms. Shirley Horton
Assemblymember, 78th District
Assembly California Legislature
7144 Broadway Avenue
Lemon Grove, CA 91945

Christine Kehoe
Senator, 39th District
California State Senate
2445 5th Avenue, Suite 200
San Diego, CA 92101

Honorable Claude A. "Bud" Lewis,
Mayor
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Gary Broomell, President
Valley Center Municipal Water
District
29300 Valley Center Road
Valley Center, CA 92082

R. Mitchel Beauchamp, Board
Chairman
Sweetwater Authority
P.O. Box 2328
Chula Vista, CA 91912-2328

Robert M. "Bud" Irvin, President
Santa Fe Irrigation District
5920 Linea del Cielo
Rancho Santa Fe, CA 92067

Honorable Jim Wood, Mayor
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054

Diana L. Towne, President
Rincon del Diablo Municipal Water
District
1920 North Iris Lane
Escondido, CA 92026-1399

Susan J. Varty, President
Olivenhain Municipal Water District
1966 Olivenhain Road
Encinitas, CA. 92024

Rua M. Petty, President
Rainbow Municipal Water District
3707 Old Highway 395
Fallbrook, CA 92028

RF

Interested Parties

Order No. R9-2006-0065

NPDES Permit No. CA0109223

Timothy M. Shell
President, Vallecitos Water District
201 Vallecitos de Oro
San Marcos, CA 92069

Stephen N. Arakawa
Manager, Water Resources
Management
MWD
700 N. Alameda Street
Los Angeles, CA 90012

Maureen Stapleton
General Manager
San Diego County Water
Authority
4677 Overland Avenue
San Diego, CA 92123

Ted Owen
President & CEO
Carlsbad Chamber of Commerce
5934 Priestly Dr
Carlsbad, CA 92008

Scott D. Alevy
Vice President
San Diego Chamber of
Commerce
402 West Broadway, Suite 1000
San Diego, CA 92101

Eric Munoz, President
Agua Hedionda Lagoon
Foundation
1580 Cannon Road
Carlsbad, CA 92008

Rick Polischuk
Shapery Enterprises
402 West Broadway, Suite 1220
San Diego, CA 92101

Dick Bobertz
Executive Director
San Dieguito River Valley
Regional Open Space Park
18372 Sycamore Creek Road
Escondido, CA 92025

Steve Aceti
California Coastal Coalition
1133 Second Street, Suite G
Encinitas, CA 92024

Julie Meier Wright
President & CEO
San Diego Regional Economic
Development Corporation
530 B Street, Seventh Floor
San Diego, CA 92101

Tom Lemmon
San Diego County Building &
Construction Trades Council,
AFL-CIO
3737 Camino del Rio South,
Suite 202
San Diego, CA 92108

Robert Simmons, Esq.
P.O. Box 19932
San Diego, CA 92519

Gary Knight
President & CEO
San Diego North Economic
Development Council
100 N. Rancho Santa Fe Road, Suite
124
San Marcos, CA 92069

Patti Krebs
Executive Director
Industrial Environmental
Association
701 B Street, Suite 1040
San Diego, CA 92101

Andrew Davis
Carlsbad Aquafarm
4600 Carlsbad Blvd.
Carlsbad, CA 9208

Interested Parties

Order No. R9-2006-0065

NPDES Permit No. CA0109223

Gabriel Solmer
SD Coast Keeper
2924 Emerson Street, Suite 220
San Diego, CA 92106

Ms. Valerie L. Chambers
Assistant Regional Administrator
for Habitat Conservation
United State Department of
Commerce
National Marine Fisheries
Service
Southwest Region
501 West Ocean Boulevard,
Suite 4200
Long Beach, CA 90802-4213

Mr. Benjamin Frater
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009

Mr. Stephen L. Jenkins
Assistant Chief
Division of Environmental Planning and
Management
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Mr. David Lloyd
Secretary
Cabrillo Power I LLC
4600 Carlsbad Blvd.
Carlsbad, CA 92008

Mr. Steven Aceti, J.D.
Executive Director
California Coastal Coalition
1133 Second Street, Suite G
Encinitas, CA 92024

Mr. Mark McCabe
Environmental Health Specialist III
Department of Environmental
Health
Hazardous Material Division
P.O. Box 129261
San Diego, CA 92112-9261

Mr. Joseph D. Panetta
President and CEO
BIOCOM
4510 Executive Drive, Plaza One
San Diego, CA 92121

Sarah Abramson
Heal the Bay
1444 9th Street
Santa Monica, CA 90401

Mr. Donald B. Kent
President
Hubbs-Sea World Research
Institute
2595 Ingraham Street
San Diego, CA 92109

Mr. Robert Hawkins
Law Offices of Robert C.
Hawkins
110 Newport Center Drive, Suite
200
Newport Beach, CA 92660

Leslie Mintz
Legislative Director
Heal the Bay
3220 Nebraska Avenue
Santa Monica, CA 90404

Carey L. Cooper, Esq.
Klinedinst Attorneys at Law
501 W. Broadway, Suite 600
San Diego, CA 92101

Mr. Mark Chomyn, AICP
Land Planning Supervisor
San Diego Gas and Electric
8315 Century Park Court
San Diego, CA 92123-1548

Marco A. Gonzalez
Coast Law Group
169 Saxony Road
Suite 204
Encinitas, CA 92024

RF

Interested Parties

Order No. R9-2006-0065

NPDES Permit No. CA0109223

Southern California Watershed
Alliance
C/O Mr. Conner Everts
Environment Now
2515 Wilshire Blvd
Santa Monica, CA 90403

Mr. David Hogan
Desert Rivers Coordinator
Center for Biological Diversity
P.O. Box 7745
San Diego, CA 92167

Mr. Ed Kimura
Sierra Club, San Diego
Chapter
6995 Camino Amero
San Diego, CA 92111-7667

Mr. James Peugh
Conservation Chair
San Diego Audubon Society
4891 Pacific Highway, Suite #112
San Diego, CA 92110

Mr. Bruce Reznik
Executive Director
San Diego Baykeeper
2924 Emerson Street, Suite 220
San Diego, CA 92106

Kevin Thomas, CEP
Environmental Services Manager
RBF CONSULTING
40810 County Center Drive, Suite
100
Temecula, CA 92591-6022

Ms. Heather Allen
Policy Director
Friends of the Sea Otter
125 Ocean View Blvd. #204
Pacific Grove, CA 93950

Ms. Jane DeLay
Executive Director
Save Our Shores
345 Lake Ave Suite A
Santa Cruz, CA 95062

Deborah Sivas
Stanford Legal Clinics
559 Nathan Abbott Way
Stanford, CA 94305-8610

California Coastal Protection
Network
906 Garden Street
Santa Barbara, CA 93101

Mr. Christopher Garrett
Latham & Watkins
600 W. Broadway
San Diego, CA 92101

Josh Basofin
Environment Now
2515 Wilshire Blvd.
Santa Monica, CA 90403

National Marine Fisheries Service
501 W. Ocean Blvd.
Long Beach, CA 90802-4213

Joe Geever
Surfrider Foundation
8117 W. Manchester Ave #297
Playa del Rey, CA 90293

COMPLETE THIS SECTION

Items 1, 2, and 3. Also complete Restricted Delivery if desired. Write name and address on the reverse side and return the card to you. Attach this card to the back of the mailpiece, front if space permits.

Addressed to:

Peter MacLaggan,
501 Broadway, Suite 840
San Diego, CA 92101

COMPLETE THIS SECTION (NON DELIVERY)

A. Signature Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

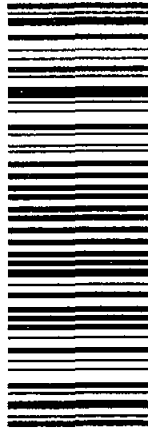
Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Number (from service label) 7007 3020 0001 0040 7096

February 11, 2004 Domestic Return Receipt 102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS; FOLD AT DOTTED LINE
CERTIFIED MAIL™



7007 3020 0001 0040 7096

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$.58
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.38

Postmark Here

Sent To
Mr. Peter MacLaggan
Street, Apt. No., or PO Box No. 501 W. Broadway, Suite 840
City, State, ZIP+4 San Diego, CA 92101

PS Form 3800, August 2006 See Reverse for Instructions

4/18/2008