

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

**TENTATIVE RESOLUTION NO. R9-2014-0125
APPROVING**

**THE REVISED PROPOSED MITIGATION SITE AND DRAFT FINAL RESTORATION
PLAN FOR THE OTAY RIVER ESTUARY RESTORATION PROJECT TO MITIGATE
FOR ENTRAINMENT AND IMPINGEMENT IMPACTS FROM THE CARLSBAD
DESALINATION PROJECT, POSEIDON RESOURCES CORPORATION,
CARLSBAD, SAN DIEGO COUNTY**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) finds that:

1. On May 13, 2009, the San Diego Water Board adopted Order No. R9-2009-0038, amending Order No. R9-2006-0065 (National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, *Waste Discharge Requirements for the Poseidon Resources Corporation (Poseidon) Carlsbad Desalination Project (CDP) Discharge to the Pacific Ocean via the Encina Power Station Discharge Channel*. The amendment approved Poseidon's *Flow, Entrainment and Impingement Minimization Plan* (Minimization Plan) dated March 27, 2009. The Minimization Plan included a *Marine Life Mitigation Plan* (2009 MLMP) to address mitigation for the entrainment and impingement impacts caused by operation of the CDP.
2. Finding 43 of Order No. R9-2009-0038 states that Poseidon must submit the proposed wetland mitigation site(s) and corresponding preliminary wetland restoration plan(s) prior to development and implementation of a final wetland mitigation plan. The proposed wetland mitigation site(s) and corresponding preliminary wetland restoration plan(s) are subject to review and approval by the California Coastal Commission and the San Diego Water Board.
3. Poseidon provided an update to the 2009 MLMP titled *Poseidon Resources Marine Life Mitigation Plan Supplemental Alternatives Analysis of California Coastal Commission Standards and Objectives*, dated January 2011, in which they evaluated nine wetland mitigation sites including the Otay River Floodplain mitigation site within the U.S. Fish and Wildlife Service's San Diego Bay National Wildlife Refuge (NWR) near the City of Imperial Beach. Based on the 2009 MLMP minimum standards, objectives, and other criteria, Poseidon determined that the Otay River Floodplain Site was the most suitable wetland mitigation site.
4. On February 9, 2011, the California Coastal Commission approved Poseidon's mitigation site selection and a preliminary restoration plan for the Otay River Floodplain Wetland Mitigation Site.

5. The San Diego Water Board reviewed the proposed Otay River Floodplain Wetland Mitigation Site and corresponding Preliminary Wetland Restoration Plan¹ and found the requirements of the 2009 MLMP and Order No. R9-2009-0038 had been met.
6. On March 9, 2011, the San Diego Water Board adopted Resolution No. R9-2011-0028 approving the selection of the Otay River Floodplain Wetland Mitigation Site and the Preliminary Wetland Restoration Plan that addresses mitigation for the entrainment and impingement impacts caused by operation of the CDP.
7. As part of the Preliminary Wetland Restoration Plan implementation, Poseidon began to develop restoration alternatives for the mitigation project. Results from two different site specific studies suggested that the mitigation footprint at the Otay River Floodplain Site should be smaller to avoid hazardous soil contamination and cultural resource discoveries. The first study, a cultural resource survey of the Otay River Floodplain Wetland Mitigation Site, revealed significant Native American artifacts in the northeastern corner of the site. The second study, a more detailed soil characterization analysis, found significant soil contamination from dichlorodiphenyltrichloroethane, chlordane and polychlorinated biphenyls in the eastern portion of the Otay River Floodplain Wetland Mitigation Site, east of Nestor Creek.
8. In response to the discovery of soil contamination and cultural resources at the Otay River Floodplain Wetland Mitigation Site, Poseidon proposed to revise the mitigation site and the preliminary restoration plan. The Revised Proposed Mitigation Site includes two restoration areas: 1) the Otay River Floodplain area, and 2) the Pond 15 area, located in the northeast corner of the South San Diego Bay unit of the San Diego Bay National Wildlife Refuge.
9. On November 22, 2013, the California Coastal Commission approved Poseidon's Revised Proposed Mitigation Site and the Revised Preliminary Wetland Restoration Plan. In response to this approval, Poseidon incorporated changes requested by the California Coastal Commission and prepared a *Draft Final Restoration Plan for the Otay River Estuary Restoration Project* (Draft Final Restoration Plan), dated May 2014.
10. Poseidon has provided the Revised Proposed Mitigation Site and Draft Final Restoration Plan for San Diego Water Board approval. The Draft Final Restoration Plan proposes to provide at least 66.4 acres of estuarine habitat mitigation. The Draft Final Restoration Plan decreases the mitigation footprint at the Otay River Floodplain area, thereby avoiding impacts to cultural resources and soil contamination and expanding the mitigation footprint to incorporate the restoration of the Pond 15 area. This revision is consistent with

¹ Poseidon Resources Marine Life Mitigation Plan Supplemental Alternatives Analysis of California Coastal Commission Standards and Objectives, January 2011, Nordby Biological Consulting; Technical Memorandum Poseidon Tidal Wetland Restoration Plan, January 17, 2011; and Proposed Backup Site - Poseidon Resources Wetland Mitigation, January 2011

the 2009 MLMP requirement that Poseidon creates or substantially restores tidal wetland habitat at up to two restoration sites.

11. The San Diego Water Board has reviewed the Revised Proposed Mitigation Site and Draft Final Restoration Plan and finds that the site revisions and the restoration plan meet the requirements of the 2009 MLMP and Order No. R9-2006-0065 as amended by Order No. R9-2009-0038.
12. This action does not constitute approval of a water quality certification pursuant to Clean Water Act section 401 for the mitigation project associated with the Draft Final Restoration Plan.
13. The San Diego Water Board has notified all known interested parties of its intent to adopt this Resolution.
14. This action is exempt from the requirement of preparation of environmental documents under the California Environmental Quality Act (Public Resources Code, division 13, chapter 3, section 21000 et seq.) in accordance with California Water Code section 13389.
15. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY RESOLVED:

The San Diego Water Board approves the Revised Proposed Mitigation Site and Draft Final Restoration Plan dated May 2014 to address mitigation for the entrainment and impingement impacts caused by operation of the CDP.

I, David W. Gibson, Executive Officer, do hereby certify that this Resolution is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on **November 12, 2014**.

TENTATIVE
DAVID W. GIBSON
Executive Officer