

**Poseidon's Response to Staff's "Overarching Concern" Re: The Inclusion of a "Specific Mitigation Alternative" in the Marine Life Mitigation Plan**

The Executive Officer Summary Report prepared for the February 11, 2009 California Regional Water Quality Control Board, San Diego Region ("Regional Board") meeting stated the following: "Staff's overarching concern, which remains unsatisfied, is that the MLMP fails to include a specific mitigation alternative as the Board required."

Poseidon Resources Corporation ("Poseidon") has prepared the following information from the record of the April 9, 2008 Regional Board meeting to evaluate whether there was direction from the Regional Board and/or staff that compelled Poseidon to focus exclusively on a single mitigation site while preparing its mitigation plan. This memorandum summarizes those documents and provides specific excerpts of relevant language, which indicate that the Regional Board requested a multiple site review as part of the plan.

**A. Background**

Poseidon's mitigation plan has been prepared as an amendment to Poseidon's Flow, Entrainment and Impingement Minimization Plan ("Minimization Plan"), which in turn was required pursuant to Poseidon's National Pollutant Discharge Elimination System ("NPDES") permit issued in 2006, Order No. R9-2006-0065, NPDES Permit No. CA0109223 ("Permit"). Of relevance to the mitigation plan, the Permit states:

"The Discharger shall submit a Flow, Entrainment and Impingement Minimization Plan within 180 days of adoption of the Order. The plan 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. The plan shall be subject to the approval of the Regional Water Board and shall be modified as directed by the Regional Water Board."

Permit, Section IV.C.2(e).

The second sentence of Section IV.C.2(e) requires Poseidon to "assess the feasibility of site-specific plans, procedures and practices." Alternatively, or in addition, the Permit requires Poseidon to assess the feasibility of mitigation measures in the Minimization Plan. The Permit provision specifically does not indicate that site-specific mitigation measures are required, or that Poseidon shall prepare a single-site mitigation plan. Nor was there any interpretation during the permitting phase to that effect.

Poseidon's amendment to the Minimization Plan is called the "Marine Life Mitigation Plan," or MLMP. The California Coastal Commission required Poseidon to prepare the MLMP pursuant to a Coastal Development Permit ("CDP") for the desalination plant. The relevant CDP provision was issued in November 2007. Since the purpose of both the Regional Board-ordered mitigation plan and the Coastal Commission's MLMP is to address the potential intake of marine organisms during desalination operations, Poseidon prepared one combined plan called the MLMP.

**B. Status of Mitigation Planning**

Poseidon is seeking the Regional Board's approval of the MLMP. The Coastal Commission approved the plan on August 6, 2008, stating in pertinent part:

**“implementation of the Plan will ensure the project's entrainment-related impacts will be fully mitigated and will enhance and restore the marine resources and biological productivity of coastal waters . . . .”** (Emphasis in original.)<sup>1</sup>

Approval of the MLMP is an important interim step towards selection of the final mitigation site or sites. It does not prejudice the Regional Board's ability to have an important, continuing role in site selection, and plan implementation. *See* our comments submitted to the Regional Board, January 23, 2008, posted on the agency's website. Nor does it leave the status quo without adequate, present mitigation, as the Poseidon plant does not exist today and will not be operational until late 2011 or early 2012. Approval of the MLMP now, however, is very important to Poseidon's ability to move forward with its project, including the mitigation component.

**C. Regional Board Resolution No. R9-2008-0039 (April 9, 2008)**

On April 9, 2008, the Regional Board conditionally approved Poseidon's Minimization Plan in Resolution No. R9-2008-0039 (the "April Resolution"). The April Resolution required Poseidon to develop an amendment to the Minimization Plan that included a proposal for a mitigation plan. The April Resolution states: "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 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."

While the April Resolution required "a specific proposal for mitigation of impacts," there is no language in the April Resolution requiring that the mitigation plan provide for mitigation at a "single site." In fact, by explicitly requiring Poseidon to address those concerns expressed in the Regional Board's February 19, 2008 letter, the April Resolution implies the opposite, as examined more fully below.

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<sup>1</sup> California Coastal Commission Revised Condition Compliance Findings (Item W16a). Condition Compliance for CDP No. E-06-013 – Poseidon Resources (Channelside), LLC; Special Condition 8: Submittal of a Marine Life Mitigation Plan, November 21, 2008, available at <http://documents.coastal.ca.gov/reports/2008/12/W16a-12-2008.pdf>.

**D. February 19, 2008 Letter from Regional Board to Poseidon**

On February 19, 2008, the Regional Board sent Poseidon a letter commenting on the latest version of the Minimization Plan, which had been submitted by Poseidon on July 2, 2007.<sup>2</sup>

Among other things, the February 19, 2008 letter required Poseidon to add a discussion of possible mitigation opportunities in Agua Hedionda Lagoon to its plan in order to address the Regional Board's concerns. Specifically, item number 5, page 2, raised the concern that Poseidon's submittal did not "identify and evaluate the possible mitigation projects located within the same watershed [Agua Hedionda Lagoon], prior to proposing the out of watershed mitigation in San Dieguito." This statement implies that the Regional Board was interested in the evaluation of additional sites beyond simply the San Dieguito site proposed by Poseidon.

**E. March 7, 2008 Poseidon Response and Updated Revised Minimization Plan**

In response to the February 19, 2008 Regional Board letter, Poseidon met with Regional Board staff members on March 4, 2008 to receive input on Poseidon's proposed revisions to the Minimization Plan. At this meeting, Regional Board staff requested that Poseidon include additional sites in its mitigation planning.

On March 7, 2008, after consultation with Regional Board staff, Poseidon submitted a detailed letter ("Response"), responding to each specific point brought forth by the Regional Board, and attaching an updated Minimization Plan.<sup>3</sup> Both of these documents provide further illustration of Poseidon's understanding of Regional Board staff's direction to review multiple mitigation sites.

The Response did not propose a "single site" mitigation plan and expressly stated that multiple sites would be evaluated in the final submittal. Items 5, 6, and 7 of Poseidon's Response all indicated that there would be later specific mitigation proposals discussing mitigation "sites," including, but not limited to, Agua Hedionda, e.g. "Identification of specific creation, restoration, or enhancement measures that will be used at *each site*, including grading and planting plans, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the *sites* are meeting performance criteria"; "Identification of contingency measures that will be implemented should any of the mitigation *sites* not meet performance criteria"; "Annual monitoring reports for no less than five years or until the *sites* meet performance criteria" (emphasis added).

Additionally, the updated Minimization Plan, which was revised in response to the February 19, 2008 Regional Board letter and input received at the March 4, 2008 meeting, demonstrates that the review of multiple sites was contemplated. Pursuant to the direction of Regional Board staff at the March 4, 2008 meeting, Chapter 6 of the Minimization Plan was specifically amended to include the contemplation of multiple mitigation sites. See pages 6-9 and 6-10 of the updated Minimization Plan which state that there would be a subsequent submittal of a Restoration Project Implementation Plan that would provide for identification of

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<sup>2</sup> The relevant portions of the February 19, 2008 are attached hereto as Exhibit 1.

<sup>3</sup> The relevant portions of the March 6, 2008 Minimization Plan and March 7, 2008 Response are attached hereto as Exhibit 2.

“specific creation, restoration, or enhancement measures that will be used at *each site*” and “identification of contingency measures that will be implemented should any of the mitigation *sites* not meet performance criteria (emphasis added).” Also, as-built plans “for *each site* included in the Restoration Project” are required under the Minimization Plan (emphasis added). These provisions of the Minimization Plan make clear that Poseidon was intending to submit a plan discussing multiple sites as part of a specific mitigation proposal.

Regional Board had adequate time and ability to respond to these statements if it felt Poseidon had inaccurately captured its preferred method for the development of the mitigation plan, including more than a month before the April 9, 2008 hearing as well as at the hearing itself. Neither staff nor any of the Board members expressed dissatisfaction with the mention of multiple site review in both the Response and the updated Minimization Plan. In fact, this was the version that was adopted conditionally by the Regional Board on April 9, 2008.

**F. April 4, 2008 Regional Board, Central Watershed Unit Technical Report**

The Central Watershed Unit released a Technical Report<sup>4</sup> several days prior to the April 9, 2008 approval of the Order, which stated: “The proposed process seems to favor a pre-determined outcome (i.e. mitigation in San Dieguito Lagoon). Other mitigation alternatives (e.g. kelp bed enhancement and artificial reef construction) should be considered and evaluated equally as viable mitigation possibilities.” This critique further indicates that Regional Board staff did not want a plan focused on one specific site, and instead Poseidon should consider and evaluate “other mitigation alternatives.”

Additionally, the Technical Report stated: “Poseidon has identified eight alternatives to be considered and further evaluated for selection in their final preferred specific mitigation alternative.” Through this comment, Regional Board staff appears to be acknowledging, with apparent approval, that Poseidon was considering mitigation at several possible sites, including those expressly enumerated: Frazee State Beach, Loma Alta Lagoon and Buena Vista Lagoon, in addition to Agua Hedionda Lagoon and San Dieguito Lagoon.

Finally, had Regional Board staff not wanted multiple sites analyzed as part of the MLMP, this would have been stated here. Instead, staff requests still more additional alternatives for inclusion in the MLMP: “The CWU staff conclude that Poseidon should include these additional alternatives for evaluation as part of their proposed process for the selection of a specific mitigation alternative.”

**G. April 9, 2008 Transcript**

It is also clear from the April 9, 2008 transcript of the Regional Board meeting that the Regional Board itself considered the possibility of multiple mitigation alternatives.<sup>5</sup> Emphasizing the need for a “full evaluation of the mitigation alternatives,” Regional Board Chairman Wright stated on page 41: “It sounds like there’s a lot more that needs to be done before you have full evaluation of the mitigation alternatives.” This statement indicates that

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<sup>4</sup> The Central Watershed Unit Technical Report is attached hereto as Exhibit 3.

<sup>5</sup> The transcript of the April 9, 2008 Regional Board meeting is attached hereto as Exhibit 4.

Chairman Wright was open to the prospect of multiple mitigation alternatives, and in fact, thought it necessary for the mitigation plan to include a “full evaluation” of such alternatives.

In addition, Poseidon understood both Regional Board and staff to be directing it to review multiple sites. In summing up the proceedings before the Regional Board, Peter MacLaggan stated on page 40: “We will be working – we’ve decided we will be working with the Regional Board Staff, Coastal Commission Staff, and other resource agencies to meet and reach consensus on the mitigation goals and objectives identifying what may have been overlooked in *Agua Hedionda and other opportunities*. This will lead to selection of a preferred mitigation site plan [and] finalize project scope *locations* implementation. Bring all of that back to you in the next six months; set up future meeting date, and we’ll also be going back to the Coastal Commission” (emphasis added).

Taken together, these statements demonstrate that an approach based on multiple mitigation sites was being contemplated by both the Regional Board and Poseidon, as well as the other agencies with which Regional Board directed Poseidon to coordinate in order to develop the MLMP.

**H. Draft Agenda for May 1 and 2, 2008 Interagency Meeting Regarding Poseidon’s Mitigation Plan**

In addition, after the Regional Board had given direction to Poseidon to work with additional state, federal and local agencies to develop the plan, the draft agenda for the May 1 and 2 interagency meeting<sup>6</sup> specifically requested the proposal of additional mitigation sites: “Please come prepared to discuss the following: If proposing marine life mitigation, describe the type and *location* of potential mitigation *sites*, and describe how restoration or creation of this particular habitat/vegetation would mitigate for impacts associated with the desalination facility’s impacts to marine life in *Agua Hedionda*” (emphasis added). This language makes clear that multiple sites would be taken into consideration during the interagency process of developing the plan.

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<sup>6</sup> Attached hereto as Exhibit 5.

# **EXHIBIT 1**



# California Regional Water Quality Control Board

## San Diego Region



Linda S. Adams  
Secretary for  
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

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<http://www.waterboards.ca.gov/sandiego>

Item 7, Supporting Document 3  
April 9, 2008

February 19, 2008

**CERTIFIED – REGISTERED MAIL**

7006 2760 0000 1615 6960

Mr. Peter M. MacLaggan  
Senior Vice President  
Poseidon Resources Corporation  
501 W. Broadway, Suite 840  
San Diego, CA 92101

In reply refer to:  
**NCR: 02-1429.02:ebecker**

Dear Mr. MacLaggan:

**Revised Flow, Entrainment and Impingement Minimization Plan & Coastal Habitat Restoration and Enhancement Plan, Order No. R9-2006-0065, NPDES Permit No. CA0109223, The Poseidon Resource Corporation, Carlsbad Desalination Project**

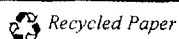
On February 13, 2007, Poseidon submitted a Flow, Entrainment, and Impingement Minimization Plan dated February 12, 2007 (Plan) in compliance with Section VI.C.2.(e) of Order R9-2006-0065. Subsequently, in response to Regional Board and interested parties' comments, Poseidon submitted a revised plan (dated June 29, 2007) on July 2, 2007. To supplement this Plan, Poseidon has also submitted both a Coastal Habitat Restoration and Enhancement Plan (CHREP) dated October 2007 and a revised CHREP dated November 2007.

The Regional Board has the following comments from the review of the Plan and CHREP (referenced above):

**General Comments:**

1. The Plan does not yet integrate all the elements of the statutory requirements of California Water Code (CWC) Section 13142. The proposed project only includes "mitigation", while the statute CWC Section 13142.5(b) also requires that dischargers implement best available technology and mitigation measures. The Plan does not appear to include technology measures for the intake structure to reduce impingement and entrainment (I&E).
2. The Plan provides an evaluation of impacts based upon one year of data, 2004-05 with record rainfall, but does not explicitly evaluate the on-going impacts from Poseidon's operations.

*California Environmental Protection Agency*



3. The Carlsbad desalination project's (CDP) listing of impacts appears to omit specific impacts to target invertebrates.
4. The proposed mitigation project does not appear to account for all pertinent impacts resulting from impingement of invertebrates, entrainment of invertebrates, discharges of brine, etc.
5. The CHREP did not identify and evaluate the possible mitigation projects located within the same watershed, prior to proposing the out of watershed mitigation in San Dieguito Lagoon. The best mitigation for impacting the lagoon would be to replace lost functions by restoring current upland acreage to the historic wetland condition, or by creating new wetlands where there were none historically.
6. The proposed mitigation ratio of 1.1:1.0 isn't fully supported. The Plan should be revised to include an evaluation of other mitigation options that may be available within the watershed. The proposed mitigation ratio appears inadequate in light of several factors generally considered by the Regional Board:
  - a. The proposed mitigation project is located within a different watershed (the San Dieguito Lagoon) instead of the Agua Hedionda Lagoon. A higher ratio may be appropriate for this project because the referenced mitigation project is out-of-kind (i.e., discharger is not actually replacing the lost resources and functions).
  - b. It is not clear that the proposed one-time mitigation is adequate to compensate for the long-term ongoing impacts to beneficial uses, resources, and functions present in Agua Hedionda Lagoon.
  - c. The mitigation project is for restoration of coastal wetland habitat, rather than the lagoon habitat impacted by the operation of the CDP.
7. Poseidon might benefit from convening a joint meeting with the resources agencies (including California Dept Fish and Game, US Fish and Wildlife Service, Army Corps of Engineers, National Marine Fisheries) to discuss the impacts to beneficial uses, resources, and functions by the proposed project, and on the preferred mitigation project so they can discuss agency concerns/comments.

#### **Specific Comments on the Plan**

8. The assessment should address the seasonal and/or daily variations in impingement impacts.
9. The assessment needs to include results of an impingement study for target invertebrates. Table 3.2 includes only results for fish during 2004-05.



10. The assessment states that: "The total amount of impinged organisms for the individual sampling events is presented in Table 3-2" (p.19). The Plan, however, does not clearly identify individual sampling events. The interpretation of the results is hampered by the absence of a presentation of results for impinged organisms (including invertebrates) with dates, times, and flow rates of sampling events.
11. The assessment states that, "The daily biomass of impinged fish during normal operations is 0.96 kgs/day (1.92 lbs/day) for an intake flow of 304 MGD" (p.19). The text discussion should clarify how this figure is determined and how the total impingement results were adjusted to an intake flow of 304 MGD. Also, there is a conversion discrepancy since 0.96kgs converts to 2.12lbs, not 1.92 lbs as indicated in the Plan.
12. The assessment of impacts from entrainment assessment appears to include larval fish but does not clearly include impacts to fish eggs and invertebrates. It is the understanding of the Regional Board that the 2004-05 study was to include monitoring of (at least) entrained Cancer crab megalops and lobster larvae, but the assessment does not appear to include these data. Also, it is unclear that sampling followed a protocol approved by the Regional Board as stated (p.22).
13. The Plan does not clearly identify the supporting data or an explanation of underlying assumptions and calculations that were used to estimate proportional mortality values for larval fish as presented (p.23) in the Plan. Therefore, the Regional Board could not objectively evaluate the validity of the estimated proportional entrainment mortality (12.2%) presented in the Plan.
14. Impacts are based upon the few most commonly entrained (most abundant) species. It is unclear how much more severe impacts may be when populations are small.
15. The Regional Board has the following comments regarding the estimated number of lagoon acres impacted, as presented in the plan since:
  - a. The estimate of the number of lagoon acres used by the three most commonly entrained species is based on a 2000 Coastal Conservancy Inventory (Table 4-2, p.23). It is unclear if this document is accurate or appropriate for the purpose of determining such an important component of the area of habitat production forgone (APF). The reference document (Attachment 4, Table 2), includes the footnote caveat "... This information is not suitable for any regulatory purpose and should not be the basis for any determination relating to impact assessment or mitigation." An accurate delineation of lagoon habitats should be used for this critical component of the APF.

- b. The estimate of the number of lagoon acres used by the three most commonly entrained species appears to exclude salt marsh and brackish/freshwater acreage (p.23). Excluding these intertidal habitats may result in the analysis underestimating this component of the APF.
  - c. The calculation of the APF (p.23) appears to use values for mortality and lagoon acreage that are not fully supported.
  - d. The text should be revised to include a clear explanation of how the estimated lagoon acreage for commonly entrained species was adjusted to include only impacts associated with operations of CDP, rather than impacts from operation of the Encina Power Station.
16. The evaluation concludes that the small fraction of marine organisms lost to entrainment would have "no effect on the species' ability to sustain their population" and goes on to describe the natural rates of high mortality (p. 24). But the argument that that there are "excess" larvae appears to omit an important consideration. Besides contributing to marine food webs, the naturally high production of larvae serves as a buffer against catastrophic and cumulative impacts to populations. These are important 'ecological services' that must not be taken lightly or given away without adequate mitigation.
17. The Regional Board prefers that the evaluation of the impact be presented as a rate (loss of x-amount of organisms per year, or impact/year). The proposed mitigation is a fixed amount (\$3 to \$4 million). It seems unlikely that a fixed amount would adequately compensate for a loss that is a rate over multiple, future years. It appears more likely that a proposed fixed amount really only accounts for mitigation for just one year of operation. The Regional Board may find a fixed amount to be acceptable, provided that:
- a. The average annual impact could be reasonably determined and reasonably translated into a dollar amount, and that amount (or correct share) is paid every year of operation – but that is not what is proposed in the Plan or the CHREP.
  - b. A fixed amount might also be reasonable if the CDP mitigates its share by increasing lagoon acreage via restoration or creation. Such in-kind mitigation would (if functional) replace the productivity lost to the operation of the CDP, and the impact would be fully mitigated.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence please

Mr. Peter M. MacLaggan  
Poseidon Resources Corporation  
Revised Flow, Entrainment, and Impingement Plan

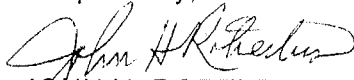
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February 19, 2008

include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding the above, please contact Mr. Eric Becker at (858) 492-1785, or at [Ebecker@waterboards.ca.gov](mailto:Ebecker@waterboards.ca.gov)

Respectfully,

  
JOHN H. ROBERTUS  
Executive Officer

cc:

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cc : (See Enclosed Interested Parties List)

*California Environmental Protection Agency*



*Recycled Paper*

**Interested Parties**

**Order No. R9-2006-0065**

**NPDES Permit No. CA0109223**

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**Order No. R9-2006-0065**

**NPDES Permit No. CA0109223**

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# **EXHIBIT 2**

P O S E I D O N R E S O U R C E S

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

March 7, 2008

10:49 AM - 7 A 11:45

Mr. Eric Becker  
San Diego Regional Water Quality Control Board  
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San Diego, CA 92123-4353

RE: NCR: 02-1429.02:cbecker

Dear Mr. Becker:

Enclosed are the Carlsbad Desalination Project revised Flow, Entrainment and Impingement Minimization Plan (Plan) dated March 6, 2008, as well as Poseidon's detailed responses to your comment letter dated February 19, 2008. Poseidon respectfully requests that the Regional Board review and approve the revised Plan pursuant to Order R9-2006-0065.

If you have any questions please feel free to contact me at (619) 595-7802.

Sincerely,



Peter M. MacLaggan  
Senior Vice President

**Poseidon Resources Corporation**

501 West Broadway, Suite 840, San Diego, CA 92101, USA  
619-595-7802 Fax: 619-595-7892

Project Office: 4600 Carlsbad Boulevard, Carlsbad, CA 92008

10:49 03/10/2008

**Poseidon Resources March 7, 2008 Response  
San Diego Regional Water Quality Control Board Letter dated February 19, 2008  
(NCR: 02-1429.02ebecker**

**1. The Plan does not yet integrate all the elements of the statutory requirements of California Water Code (CWC) Section 13142. The proposed project only includes "mitigation", while the statute CWC Section 13142.5(b) also requires that dischargers implement best available technology and mitigation measures. The Plan does not appear to include technology measures for the intake structure to reduce impingement and entrainment (I&E).**

**Response:** Water Code Section 13142.5(b) requires industrial facilities using seawater for processing to use the best available site, design, technology, and mitigation feasible to minimize impacts to marine life. The Plan has been reorganized so to sequentially analyze the steps that have been take by Poseidon to address each of these provisions:

- o Chapter 2 identifies best available site feasible to minimize Project related impacts to marine life;
- o Chapter 3 identifies best available design feasible to minimize Project related impacts to marine life;
- o Chapter 4 evaluates identifies best available technology feasible to minimize Project related impacts to marine life;
- o Chapter 5 quantifies the unavoidable impacts to marine life; and
- o Chapter 6 identifies best available mitigation feasible to minimize Project related impacts to marine life

**2. The Plan provides an evaluation of impacts based upon one year of data, 2004-05 with record rainfall, but does not explicitly evaluate the on-going impacts from Poseidon's operations.**

**Response:** As described in Chapter 5 of the Plan, the potential entrainment impacts from Poseidon's seawater intake were explicitly assessed using the facility's permitted intake flows of 304 MGD and the potential impingement impacts were assessed assuming these reduced flows and discontinued power plant heat treatment effects.

**3. The Carlsbad desalination project's (CDP) listing of impacts appears to omit specific impacts to target invertebrates.**

**Response:** The requested information has been included in Chapter 5 and Attachments 2 and 5 of the revised Plan.

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CONTROL BOARD



**Poseidon Resources March 7, 2008 Response**  
**San Diego Regional Water Quality Control Board Letter dated February 19, 2008**  
**(NCR: 02-1429.02ebecker)**

**4. The proposed mitigation project does not appear to account for all pertinent impacts resulting from impingement of invertebrates, entrainment of invertebrates, discharges of brine, etc.**

**Response:** Poseidon is using all feasible methods to minimize or reduce its entrainment and impingement impacts. These methods are likely to reduce the Project related impacts to marine life well below the levels identified in Chapter 5 of the Plan. To minimize unavoidable Project related impacts to marine life, Poseidon has voluntarily committed to a state-agency coordinated process to identify the best available mitigation feasible. The objective of the mitigation portion of this plan is to identify mitigation needs, set forth mitigation goals, and present a plan and approach for achieving the goals.

As shown in Chapter 6, the proposed mitigation strategy includes the implementation of project a coastal wetlands restoration plan that will be developed pursuant to the state-agency coordinated process; long-term preservation of Agua Hedionda Lagoon; and/or other activities which will benefit the coastal environment in San Diego County. The proposed restoration plan will be enforceable through conditions of approval of the project and the program's success will be monitored through performance standards, monitoring and reporting.

**5. The CHREP did not identify and evaluate the possible mitigation projects located within the same watershed, prior to proposing the out of watershed mitigation in San Dieguito Lagoon. The best mitigation for impacting the lagoon would be to replace lost functions by restoring current upland acreage to the historic wetland condition, or by creating new wetlands where there were none historically.**

**Response:** Investigations to date have not identified any mitigation opportunities within Agua Hedionda Lagoon (see Section 6.5) that meet the goals of the program. As a result, the proposed mitigation plan includes a core offsite mitigation program that meets the plan goals and objectives that is being developed in parallel with Poseidon's continued effort to identify feasible mitigation opportunities in Agua Hedionda Lagoon.

Poseidon recognizes the Regional Board would prefer to see mitigation in Agua Hedionda Lagoon if feasible. Accordingly, while Section 6.6 of this plan identifies a core offsite mitigation project, the mitigation plan also presents an implementation action schedule that includes additional coordination activities to either (1) confirm the lack of opportunities, or (2) identify if new mitigation options exist within Agua Hedionda Lagoon.

Poseidon and will be contacting the Department of Fish & Game to more fully assess the potential for restoration opportunities in Agua Hedionda Lagoon. If subsequent Agua Hedionda Lagoon mitigation is determined to be feasible, Poseidon will coordinate with

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regulatory agencies to implement such mitigation. If Agua Hedionda Lagoon mitigation is confirmed as infeasible, Poseidon will implement the proposed offsite mitigation project.

**6. The proposed mitigation ratio of 1:1 isn't fully supported. The Plan should be revised to include an evaluation of other mitigation options that may be available within the watershed. The proposed mitigation ratio appears inadequate in light of several factors generally considered by the Regional Board:**

**Response:** See the response to the previous comment regarding Poseidon's plans to further investigation restoration opportunities in the Agua Hedionda Lagoon watershed. Poseidon recognizes that the degree of mitigation required will be dependent on mitigation ratio requirements of the various regulatory agencies. As a result the proposed Plan (Chapter 6) provides for additional coordination with the regulatory agencies to finalize agency-mandated acreage requirements. Poseidon intends to prepare and submit a restoration project implementation plan to the Executive Director of the Regional Board: for review and approval which will contain the following:

- Goals, objectives, performance criteria and maintenance and monitoring to ensure the success of the proposed Restoration Plan.
- Identification of specific creation, restoration, or enhancement measures that will be used at each site, including grading and planting plans, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the sites are meeting performance criteria.
- Identification of contingency measures that will be implemented should any of the mitigation sites not meet performance criteria.
- As-built plans for each site included in the Restoration Project.
- Annual monitoring reports for no less than five years or until the sites meet performance criteria.
- Legal mechanism(s) proposed to ensure permanent protection of each site – e.g., conservation easements, deed restriction, or other methods.

**6. a - The proposed mitigation project is located within a different watershed (the San Dieguito Lagoon) instead of the Agua Hedionda Lagoon. A higher ratio may be appropriate for this project because the referenced mitigation project is out-of-kind (i.e., discharger is not actually replacing the lost resources and functions).**

**Response:** See responses 5 and 6 above.

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**6.b It is not clear that the proposed one-time mitigation is adequate to compensate for the long-term ongoing impacts to beneficial uses, resources, and functions present in Agua Hedionda Lagoon.**

**Response:** As described in Chapter 6, the primary objective of the restoration plan is to create or restore coastal habitat similar to that of Agua Hedionda Lagoon, which will provide measurable long term environmental benefits adequate to fully mitigate unavoidable impingement and entrainment impacts associated with CDP operations. The restoration plan will rely on well-established methods, techniques and technologies for development and nurturing of coastal habitat of high productivity and long-term sustainability. The restoration plan will target coastal restoration and enhancement activities with clearly defined methodology to measure performance and success.

**6.c The mitigation project is for restoration of coastal wetland habitat, rather than the lagoon habitat impacted by the operation of the CDP.**

**Response:** As indicated previously, the intent of the restoration plan is to create habitat comparable to that in Agua Hedionda Lagoon.

**7. Poseidon might benefit from convening a joint meeting with the resources agencies (including California Dept Fish and Game, US Fish and Wildlife Service, Army Corps of Engineers, National Marine Fisheries) to discuss the impacts to beneficial uses, resources, and functions by the proposed project, and on the preferred mitigation project so they can discuss agency concerns/comments.**

**Response:** Chapter 6 of the revised Plan includes an action plan and schedule for coordinating with regulatory and resource agencies to finalize locations and acreages selected for the proposed mitigation. Additionally, Poseidon intends to prepare and submit a restoration project implementation plan to the Executive Director of the Regional Board and the Coastal Commission for review and approval which will contain the following:

- Goals, objectives, performance criteria and maintenance and monitoring to ensure the success of the proposed Restoration Plan.
- Identification of specific creation, restoration, or enhancement measures that will be used at each site, including grading and planting plans, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the sites are meeting performance criteria.
- Identification of contingency measures that will be implemented should any of the mitigation sites not meet performance criteria.

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- As-built plans for each site included in the Restoration Project.
- Annual monitoring reports for no less than five years or until the sites meet performance criteria.
- Legal mechanism(s) proposed to ensure permanent protection of each site – e.g., conservation easements, deed restriction, or other methods.

***Specific Comments on the Plan***

**8. The assessment should address the seasonal and/or daily variations in impingement impacts.**

**Response:** The results of impingement surveys are summarized in Table 5-1 and the weekly sampling data has been included in Attachment 2 of the revised Plan. These survey data are used in conjunction with intake flows coincident with each that is recorded by the power plant in order to interpolate impingement effects between each of the weekly surveys. These weekly totals are summarized for the annual totals by species including impinged invertebrate species of a size that could be identified in the field. Samples of unknown or unrecognizable impinged species were collected for laboratory verification.

Impingement survey results not only reflect the presence of impingeable fish and invertebrates in the area of the intake screens, but also reflect the variability in their susceptibility to impingement. Many factors, such as debris on the intake screens, turbidity and local currents influence the potential impingement of each species. The majority of these factors have little or no weekly periodicity only a mild seasonality.

**9. The assessment needs to include results of an impingement study for target invertebrates. Table 3.2 includes only results for fish during 2004-05.**

**Response:** Attachment 2 contains all impingement data for invertebrates collected during the 2004/2005 impingement study. Review of the this data indicates that both the number and the total weight of impinged invertebrates was less than 0.1 kgs/day.

**10. The assessment states that: "The total amount of impinged organisms for the individual sampling events is presented in Table 3-2" (p.19). The Plan, however, does not clearly identify individual sampling events. The interpretation of the results is hampered by the absence of a presentation of results for impinged organisms (including invertebrates) with dates, times, and flow rates of sampling events.**

**Response:** Attachment 2 of the Plan includes the requested information.

## CHAPTER 6

### MITIGATION

#### INTRODUCTION

Pursuant to Water Code Section 13142.5(b), this Chapter establishes a state-agency coordinated process for identification of the best available mitigation feasible to minimize Project related impacts to marine life..

- *Section 6.1 describes the proposed approach to mitigation.*
- *Section 6.2 describes the assessment of the impacted area.*
- *Section 6.3 provides an assessment of the wetlands restoration needed to compensate for entrainment impacts of the desalination facility stand-alone operations.*
- *Section 6.4 describes the restoration plan development and related benefits.*
- *Section 6.5 describes opportunities for restoration and preservation of Agua Hedionda Lagoon.*
- *Section 6.6 describes opportunities for an offsite restoration program in San Dieguito Lagoon.*
- *Section 6.7 describes the regulatory assurances that are in place to insure the adequacy of the restoration plan.*

#### 6.1 PROPOSED MITIGATION APPROACH

Poseidon is using all feasible methods to minimize or reduce its entrainment impacts. These methods are likely to reduce the Project related impacts to marine life well below the levels identified in Chapter 5. To minimize unavoidable Project related impacts to marine life, Poseidon has voluntarily committed to a state-agency coordinated process to identify the best available mitigation feasible. The objective of the mitigation portion of this plan is to identify mitigation needs, set forth mitigation goals, and present a plan and approach for achieving the goals.

Recognizing that mitigation opportunities in Agua Hedionda Lagoon may be limited, Poseidon proposes a comprehensive but flexible approach for mitigating potential impacts. This approach is based on:

- Conservatively estimating maximum potential impacts (see Section 6.2),

- Identifying goals and objectives of the mitigation program (see Section 6.4.1),
- Identifying any available mitigation opportunities in Agua Hedionda Lagoon that meet the goals and objectives (see Section 6.5),
- Identifying additional offsite mitigation that meets the mitigation goals (see Section 6.6).
- Developing an action plan and schedule for coordinating with regulatory and resource agencies to finalize locations and acreages selected for the proposed mitigation.

Investigations to date have not identified any mitigation opportunities within Agua Hedionda Lagoon (see Section 6.5) that meet the goals of the program. As a result, the proposed mitigation plan includes a core offsite mitigation program that meets the plan goals and objectives that is being developed in parallel with Poseidon's continued effort to identify feasible mitigation opportunities in Agua Hedionda Lagoon.

Poseidon recognizes the need and priority of implementing mitigation in Agua Hedionda Lagoon if feasible. Poseidon also recognizes that mitigation requirements and regulations of the various review agencies differ, and additional agency coordination is required to insure that needs of all applicable agencies are addressed.

Accordingly, while this plan identifies a core offsite mitigation project, the mitigation plan also presents an implementation action schedule that includes additional coordination activities to either (1) confirm the lack of opportunities, or (2) identify if new mitigation options exist within Agua Hedionda Lagoon.

Under the proposed plan, if subsequent Agua Hedionda Lagoon mitigation is determined to be feasible, Poseidon will coordinate with regulatory agencies to implement such mitigation.

If Agua Hedionda Lagoon mitigation is confirmed as infeasible, Poseidon will implement the proposed offsite mitigation project. Further, it is recognized that the degree of mitigation required will be dependent on mitigation ratio requirements of the various regulatory agencies. As a result, the proposed plan provides for additional coordination with the regulatory agencies to finalize agency-mandated acreage requirements.

Table 6-1 summarizes the implementation action schedule for the proposed plan.

**Table 6-1  
Mitigation Implementation Approach and Schedule**

Element	Actions/Objectives	Schedule
Submittal of draft Minimization Plan to Regional Board	<ul style="list-style-type: none"> <li>Public and agency review of revised draft Plan</li> </ul>	March 2008
Regional Board consideration of Minimization Plan	<ul style="list-style-type: none"> <li>Approval of Plan</li> <li>Regional Board provides directions on Plan implementation</li> </ul>	April 2008
Contacts with California Department of Fish & Game to assess mitigation opportunities in Agua Hedionda Lagoon	<ul style="list-style-type: none"> <li>Assess mitigation opportunities for saltwater marsh creation in Agua Hedionda Lagoon via dredging</li> </ul>	March 2008
Supplemental contacts with other resource agencies	<ul style="list-style-type: none"> <li>Identify (or confirm lack of) additional mitigation opportunities in Agua Hedionda Lagoon</li> </ul>	April 2008
Convene meeting of resource agencies; Regional Board and Coastal Commission.	<ul style="list-style-type: none"> <li>Identify (or confirm lack of) additional mitigation opportunities in Agua Hedionda Lagoon</li> <li>If applicable, address agency requirements for Agua Hedionda Lagoon mitigation and determine overall implementation feasibility</li> <li>Address mitigation rations/requirements for core offsite mitigation project in San Dieguito Lagoon</li> </ul>	April 2008
Finalize and distribute mitigation program implementation details	<ul style="list-style-type: none"> <li>Agency review of implementation details</li> </ul>	May 2008
Modify/finalize implementation program details (if applicable)	<ul style="list-style-type: none"> <li>Agency review and approval</li> <li>May involve additional inter-agency coordination meeting</li> </ul>	June 2008
Coastal Commission consideration of mitigation project(s)	<ul style="list-style-type: none"> <li>Coastal Commission approval of mitigation project</li> </ul>	July 2008

Ten years after the lease is issued, that the CDP will be subject to further environmental review by the State Lands Commission (SLC) to analyze all environmental effects of facility operations and alternative technologies that may reduce any impacts found. SLC may require additional requirements as are reasonable and as are consistent with applicable state and federal laws and regulations.

This approach will insure that the stand-alone CDP operations continue to use the best available site, design, technology and mitigation feasible to minimize Project related impacts to marine life.

## 6.2 CONSERVATIVE ASSESSMENT OF IMPACTED AREA

The assessment of the impacted area due to the desalination facility operation is based on a conservative assumption that the CPD will cause 100 percent mortality to the marine organisms in the seawater diverted from Agua Hedionda Lagoon. This approach to establishing the impact of the desalination plant operation is extremely conservative in that it ignores the design and technology features that have been incorporated in the proposed Project. The following design and technology features are expected to substantially lessen the impacts to marine life.

- **EPS once-through cooling system is expected to continue operating indefinitely.** The magnitude of the entrainment losses identified in Chapter 5 is estimated for continuous operation of the desalination plant on a stand-alone basis notwithstanding the fact that the EPS generating units will be available for service indefinitely. Cal-ISO would ultimately determine when they are no longer needed for grid reliability. In the meantime, seawater pumping by the EPS would likely meet a substantial portion of the CPD flow requirements (e.g., 61 percent in 2007), resulting in a comparable reduction of entrainment and impingement impacts attributable to the CDP.
- **Desalination facility impacts reduced impacts due to modified use of existing facilities.** Potential entrainment mortality that occurs within the existing power plant screens, pumps and condensers upstream of the desalination facility intake would be substantially reduced due to the relatively lower temperature, volume, velocity and turbulence of the desalination operations compared to that of the power plant.
- **Two-thirds of the water is returned to the ocean without further processing.** Only 35 percent of the seawater (104 MGD) actually enters the desalination plant and is subjected to additional processing that would potentially add to the entrainment mortality. The remainder of the seawater (200 MGD) bypasses the desalination facility and is returned to the ocean.
- **Desalination facility incorporates technology to capture marine organisms and return them to the ocean unharmed.** Eighty percent of the marine organisms in the seawater that enters the desalination plant retained by the micro-screens and returned to the ocean. The remaining marine organisms that pass through the micro-screens



are subsequently rejected by the pretreatment filters and returned to the ocean. A substantial number of the organisms that are returned to the ocean are expected to survive.

### 6.3 ESTABLISHING RESTORATION REQUIREMENT

Poseidon is proposing to compensate for the unavoidable impact of stand-alone CDP operation by replacing or restoring comparable marine habitat. The proposed restoration plan is based on the Empirical Transport Model described in Chapter 5 that estimated the portion of the larvae of each target fish species at risk of entrainment with the intake source water. Multiplying the average percent of populations at risk by the physical area from which the fish larvae might be entrained, yields an estimate of the amount of habitat that must be restored to replace the lost fish larvae. This estimate is referred to as the area (acreage) of habitat production foregone (APF).

In order to calculate the APF, the number of lagoon habitat acreage occupied by the three most commonly entrained lagoon fish larvae<sup>1</sup> was multiplied by the average Proportional Entrainment Mortality (PM) for the three lagoon species identified in Chapter 5 (12.2 percent). The estimated acres of lagoon habitat for these species are based on a 2000 Coastal Conservancy Inventory of Agua Hedionda Lagoon habitat shown in Table 6-1.<sup>2</sup>

**TABLE 6-1  
WETLAND PROFILE: AGUA HEDIONDA LAGOON**

**Approximate Wetland Habitat Acreage**

Habitat	Acres	Vegetation Source
Brackish / Freshwater	3	Cattail, bulrush and spiny rush were dominant
Mudflat / Tidal Channel	49	Not specified / Estuarine flats
Open Water	253	Eelgrass occurred in all basins
Riparian	11	Not specified
Salt Marsh	14	
Upland	61	
<b>TOTAL</b>	<b>391</b>	<i>(Riparian not included)</i>

<sup>1</sup> Ninety-eight percent of the fish larvae that would be entrained by the CDP stand-alone operations are gobies, blennies and hypsopops.

<sup>2</sup> The actual acreage will be confirmed through a survey of the lagoon habitats that will be conducted during the final design of Poseidon's Coastal Habitat Restoration and Enhancement Program. To the extent that the lagoon habitat acreage established in the survey is higher or lower than that included in the 2000 Inventory, The wetlands restoration plan would be proportional adjusted to account for the actual acreage identified in the survey.

The areas of Agua Hedionda Lagoon that have potential to be impacted by the CDP operations are those habitats occupied by the three most commonly entrained lagoon fish larvae. These habitats include 49 acres of mudflat/tidal channel and 253 acres of open water. It is not appropriate to include the other lagoon habitats in the APF calculation, such as brackish/freshwater, riparian, salt marsh or upland habitats that are not occupied by the impacted species.

By definition, the APF equals the acres of the lagoon habitat that have the potential to be impacted by the intake operations (302 acres) times the average PM:

$$APF = 302 \text{ acres} \times 0.122 = 36.8 \text{ acres.}$$

Thus, entrainment effect of the stand-alone operation of the desalination plant extends over 12.2 percent, or 36.8 acres of Agua Hedionda Lagoon. The restoration area needed to fully mitigate the stand-alone CDP entrainment losses is 36.8 acres.<sup>3</sup> The restoration requirement is estimated under worst-case conditions when the power plant is no longer operating and the existing pumps are operated solely to deliver 304 MGD of seawater for the operation of the desalination plant.

It is generally accepted that this approach results in an overestimate of the number acres that would be necessary to fully mitigate the CDP entrainment and impingement effects, resulting in a net enhancement of the coastal habitat. This is because the restored habitat provides significant environmental benefits that extend well beyond compensating for the entrainment impacts. For example, the APF calculation does not take into account the enormous ecological value of the restored acreage that will accrue to valuable wetland species completely unaffected by the intake, such as the numerous riparian birds, reptiles, benthic organisms and mammals that will utilize the habitat for foraging, cover and nesting. Nor does the calculation consider the myriad of phytoplankton, zooplankton and invertebrate species that are largely unaffected by the intake operations and benefit directly from the restored wetlands.

Similar to the approach taken throughout this assessment, the APF calculation is also based on a number of very conservative assumptions:

- **Assumes 100 percent mortality of all marine organisms entering the intake.** As indicated previously, this assumption does not take into consideration any of the design and technology features that would be incorporated in the project to avoid impact to marine life. The actual impact to marine life is expected to be substantially lower.

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<sup>3</sup> The methodology used to determine the area impacted by the stand-alone desalination facility operation is based on the recommendation from the Coastal Commission that Poseidon follow the approach used by the California Energy Commission for establishing mitigation requirements for the entrainment effects associated with the operation of the AES Huntington Beach power generation plant.

- **Assumes 100 percent survival of all fish larvae in their natural environment.** In fact, over 90 percent of the fish larvae are lost to predators and do not ever reach adulthood.
- **Assumes species are evenly distributed throughout the entire depth and volume of the water body.** This assumption is very conservative for the site-specific conditions of Agua Hedionda Lagoon because it is well known that some impacted species (i.e., garibaldi) mainly inhabit the rocky area near the entrance to the power plant intake.
- **Assumes the entire habitat from which the entrained fish larvae may have originated is destroyed.** This approach to identifying the restoration requirement for the stand-alone desalination facility assumes that the area of production forgone (APF) is an area of lost habitat for all marine species inhabiting this area. This assumption is extremely conservative because only a small portion of the species inhabiting Agua Hedionda Lagoon would actually enter the power plant intake.

#### **6.4 RESTORATION PLAN DEVELOPMENT**

The main objective of the restoration plan is to implement one or more activities which preserve, restore and enhance existing wetlands, lagoons or other high-productivity near-shore coastal areas located in the vicinity of Agua Hedionda Lagoon and/or elsewhere in San Diego County. Examples of types of activities that may be included in the restoration plan include:

- Wetland Restoration;
- Coastal Lagoon Restoration;
- Restoration of Historic Sediment Elevations to Promote Reestablishment of Eelgrass Beds;
- Marine Fish Hatchery Enhancement;
- Contribution to a Marine Fish Hatchery Stocking Program;
- Artificial Reef Development;
- Kelp Bed Enhancement.

##### **6.4.1 Key Goals and Objectives**

The main objective of the restoration plan is to implement one or more activities which preserve, restore and enhance existing wetlands, lagoons or other high-productivity near-shore coastal areas located in the vicinity of Agua Hedionda Lagoon and/or elsewhere in

San Diego County. The key restoration plan goals are:

- Creation or Restoration of Coastal Habitat. The primary objective of the restoration plan is to create or restore coastal habitat similar to that of Agua Hedionda Lagoon, which will provide measurable long term environmental benefits adequate to mitigate potential impingement and entrainment impacts associated with CDP operations.
- Development of Technically Feasible Project. The restoration plan will rely on well-established methods, techniques and technologies for development and nurturing of coastal habitat of high productivity and long-term sustainability.
- Stakeholder Acceptance for the Selected Project. Implementation of project(s) with a well-defined scope and high priority for the host community and resource agencies and organizations in charge of coastal habitat preservation, restoration development.
- Ability to Measure Performance. The restoration plan will target coastal restoration and enhancement activities with clearly defined methodology to measure performance and success.

#### **6.4.2 Identification of Alternatives**

In order to identify suitable coastal habitat enhancement alternatives, on August 31, 2007, Poseidon issued a request for expression of interest (REI) for development and implementation of coastal habitat restoration project associated with the Carlsbad. To date, Poseidon has received eight Statements of Interest for coastal restoration and enhancement projects in response to the REI issued in August 2007. Seven of these proposals include specific coastal enhancement opportunities listed below:

1. San Dieguito Coastal Habitat Restoration;
2. City of Oceanside Loma Alta Lagoon Restoration;
3. Aqua Hedionda Lagoon – Land Acquisition for Expansion of Ecological Reserve;
4. Aqua Hedionda Lagoon – Eradication of Invasive Exotic Plants and Restoration of Native Vegetation;
5. Carlsbad Aquafarm at Agua Hedionda Lagoon – Abalone Stock Enhancement;

6. Buena Vista Lagoon Ecological Reserve – Completion of Restoration/Enhancement Plan Environmental Analysis;
7. Frazee State Beach – Coastal Bluff Habitat Restoration.

A summary of the scope and key benefits of each of the seven coastal habitat enhancement projects was submitted to the Regional Board in October 2007.<sup>4</sup>

#### **6.4.3 Key Restoration Project Benefits**

The habitat restoration will not only compensate for the unavoidable entrainment and impingement impacts, but will also enhance the coastal environment. The proposed Restoration Plan will create pelagic and benthic habitat, salt marsh and uplands habitat, thereby extending the benefits from the proposed mitigation measure far beyond the area of actual impact of the desalination plant operations. The proposed restoration project will yield the following key benefits:

- Restore coastal wetlands habitat comparable to that found in and around Agua Hedionda Lagoon; and
- Provides sustainable, comprehensive environmental benefits for water quality, habitat diversity for species abundance and for sensitive and endangered species.

#### **6.4.4 Project Deliverables**

Poseidon intends to prepare and submit the following deliverables to the Coastal Commission and the Executive Director of the Regional Board: for review and approval of this restoration plan:

- Restoration Project Implementation Plan which will contain the following:
  - Goals, objectives, performance criteria and maintenance and monitoring to ensure the success of the proposed Restoration Plan.
  - Identification of specific creation, restoration, or enhancement measures that will be used at each site, including grading and planting plans, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the sites are meeting performance criteria.
  - Identification of contingency measures that will be implemented should any of the mitigation sites not meet performance criteria.

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<sup>4</sup> Poseidon Resources, *Coastal Habitat Restoration and Enhancement Project*, October 2007.

- As-built plans for each site included in the Restoration Project.
- Annual monitoring reports for no less than five years or until the sites meet performance criteria.
- Legal mechanism(s) proposed to ensure permanent protection of each site – e.g., conservation easements, deed restriction, or other methods.

## **6.5 OPPORTUNITIES FOR RESTORATION AND PRESERVATION OF AGUA HEDIONDA LAGOON**

### **6.5.1 Agua Hedionda Lagoon Restoration Opportunities**

Poseidon has made a considerable effort to identify a restoration project in Agua Hedionda Lagoon. We sent our August 2007 Request for Expressions of Interest to a number of the organizations and individuals that are involved with the Carlsbad Watershed Network (CWN), as well as Carlsbad Aqua Farm, Hubbs Research Institute and the Agua Hedionda Lagoon Foundation. Three proposals were received from Agua Hedionda Lagoon interests:

#### **1. Expansion of Agua Hedionda Lagoon Ecological Reserve**

##### **Project Proponent**

The proponent for this project is the Agua Hedionda Lagoon Foundation.

##### **Project Scope**

This project includes the acquisition and preservation of land near the Agua Hedionda Lagoon's Ecological Reserve to serve as a coastal habitat for wildlife and migratory birds. The land is located on the north side of Agua Hedionda Lagoon.

##### **Project Benefits and Merits**

This project will provide a means for protecting and increasing habitat for migrating birds and endangered species. It also will help insure that nearby archeological sites will remain undisturbed and adjacent Ecological Reserve is maintained as useful wildlife habitat. Foot trails through the Reserve will be proposed to the Department of Fish & Game in exchange for adding land to the Reserve. Enhancing the quality of the Agua Hedionda Lagoon Ecological Reserve will also boost eco-tourism in the area. The project is planned to be completed by the end of year 2010.

#### **2. Agua Hedionda Lagoon – Eradication of Invasive Exotic Plants and Restoration of Native Vegetation**

##### **Project Proponent**

The proponent for this project is the Agua Hedionda Lagoon Foundation.

**Project Scope**

The density, biomass and diversity of invasive plant species in the Agua Hedionda Lagoon Watershed are so extensive, that the ability of the natural plant communities to treat nutrients and contaminants from surface runoff into the lagoon has been diminished significantly. The scope of this project is to remove exotic invasive plant species and replace these species with appropriate native plants to restore the protective function of the lagoon watershed vegetation. The project is planned to be completed by December 2009.

**Project Benefits and Merits**

This project aims to restore the native vegetation in the Agua Hedionda Watershed, which is an essential step towards re-establishing the hydrologic and ecological functions of these riparian and coastal wetland habitats. The project is expected to boost the natural ability of the native riparian and wetland plant habitats to sequester contaminants carried to the lagoon by surface runoff, to reduce flooding and bank erosion, and diminish sediment transport thereby increasing the biological productivity of the Agua Hedionda Lagoon.

**3. Agua Hedionda Lagoon – Abalone Stock Enhancement**

**Project Proponent**

The proponent for this project is Carlsbad Aquafarm.

**Project Scope**

This project will create a stock of 100,000 abalone at the Carlsbad Aquafarm located in the Agua Hedionda Lagoon and use this stock to replenish the population of abalone near the intake to the lagoon and the project discharge area. Carlsbad Aquafarm is currently concentrating its efforts on commercial farming of the Green Abalone and also culturing both Red and Pink Abalone. The farm is well equipped with the facilities and personnel to spawn and raise abalone, as well as experienced divers familiar with abalone biology and ecology to manage and monitor the success of the project. The abalone stock enhancement project can be completed by 2011.

**Project Benefits and Merits**

Abalone is a key part of the Southern California coastal ecosystem. However, aggressive harvesting of this aquatic resource has resulted in stock depletion and the recent closure of both commercial and recreational fisheries for all abalone species in this region. This project will help replenish and sustain the abalone stock in the area of the Agua Hedionda Lagoon.

### **6.5.2 Investigation of Additional Restoration Opportunities in Agua Hedionda Lagoon**

Investigations to date have not identified any mitigation opportunities within Agua Hedionda Lagoon that meet the goals of the program. As a result, the proposed mitigation plan includes a core offsite mitigation program that meets the plan goals and objectives that is being developed in parallel with Poseidon's continued effort to identify feasible mitigation opportunities in Agua Hedionda Lagoon.

Poseidon recognizes the Regional Board would prefer to see mitigation in Agua Hedionda Lagoon if feasible. Accordingly, while Section 6.6 of this plan identifies a core offsite mitigation project, the mitigation plan also presents an implementation action schedule that includes additional coordination activities to either (1) confirm the lack of opportunities, or (2) identify if new mitigation options exist within Agua Hedionda Lagoon.

Poseidon and will be contacting the Department of Fish & Game to more fully assess the potential for restoration opportunities in Agua Hedionda Lagoon. If Agua Hedionda Lagoon mitigation is determined to be feasible, Poseidon will coordinate with regulatory agencies to implement such mitigation. If Agua Hedionda Lagoon is confirmed to be infeasible, Poseidon will implement the proposed offsite mitigation project (Section 6.6).

### **6.5.3 Agua Hedionda Lagoon Preservation Opportunities**

As shown in Figure 6-3, Agua Hedionda Lagoon currently supports a wide range of beneficial uses, including recreational activities, such as fishing, and water contact recreation. Nearly all of these uses are directly or indirectly supported by seawater flow and exchange created by circulation of seawater in the lagoon. The existing tidal exchange renews the Lagoon's water quality and flush nutrients, sediment and other watershed pollution, particularly from the Lagoon's upper reaches. In addition, the inflow of fresh supplies of ocean carry waterborne supplies of planktonic organisms that nourish the many organisms and food chains of the Lagoon, including the White Sea Bass restoration program of the Hubbs Sea World Research Institute and the aquaculture operations in the outer Lagoon.

The Lagoon is connected to the Pacific Ocean by means of a manmade channel that is artificially maintained. Seawater circulation throughout the outer, middle and inner lagoons is sustained both by routine dredging of the manmade entrance to prevent its closure. The name, Agua Hedionda, which means "stinking water" in Spanish, reflects a former stagnant condition that existed prior to the dredging of the mouth of the Lagoon.

To avoid this significant loss of highly productive marine habitat, in the absence of the ongoing operations of the EPS, Poseidon has committed to maintain circulation of the seawater, continue routine dredging of the entrance to the lagoon to prevent its closure, and deposit the sand dredged from the lagoon on adjacent beaches so as to maintain,



restore and enhance habitat for grunion spawning and to maintain, restore and enhance opportunities for public access and recreation along the shoreline and within the coastal zone. To help ensure the long-term health and vitality of Agua Hedionda Lagoon and the surrounding watershed, Poseidon is funding watershed education programs at the Agua Hedionda Lagoon Foundation Discovery Center.

## **6.6 OFFSITE MITIGATION PROGRAM**

One proposal was received that meets or exceeds the restoration plan objectives is the proposed San Dieguito Wetland Restoration Plan. The proponent of the project is the San Dieguito River Park Joint Powers Authority (JPA). The JPS's proposal is one part of a larger restoration project that has already been approved by the Coastal Commission, on October 12, 2005.<sup>5</sup> Additionally the San Dieguito Wetland Restoration Plan was the subject of a Final Environmental Impact Report that was prepared and certified by the San Dieguito River Park Joint Powers Authority and U.S. Fish and Wildlife Service.

Pursuant to the requirements of the Coastal Commission,<sup>6</sup> Southern California Edison (SCE) is creating 115 acres of tidal wetlands at San Dieguito and will keep the river mouth open in perpetuity. The San Dieguito Wetlands Restoration Project includes a new deep water lagoon on the west side of I-5, extensive finger channels on the east side of I-5 north of the river, California least tern nesting sites and berms along the river to keep the water in the riverine channel flowing to the sea without dropping sediment or flooding the newly created wetlands under normal conditions.

The proponent for Poseidon's proposed restoration project is San Dieguito River Park Joint Powers Authority (local government agency in partnership with the San Dieguito River Valley Conservancy (501 (c) (3) organization). The JPA is the agency responsible for creating a natural open space park in the San Dieguito River Valley, which will one day extend from the ocean at Del Mar to Volcan Mountain, just north of Julian.

The San Dieguito Lagoon is located approximately 12.5 miles south of Agua Hedionda Lagoon, and has been historically one of the largest lagoons in San Diego County. All property within the proposed restoration project is in public ownership. The JPA is responsible for implementing the San Dieguito River Park Master Plan. Features of the Park Master Plan include trails and interpretive programs, enhancement of the lagoon ecosystem through creation of associated native grassland and coastal sage scrub habitat, expansion of tidal wetlands beyond the SCE project limits, and creation of a series of water quality treatment ponds. The JPA is responsible for maintaining the project area and precluding any uses not consistent with the conservation of wetland habitat.

Poseidon's proposed wetlands restoration project would expand the number of acres of functional wetlands and associated habitat in San Dieguito Lagoon, by supplementing the 115-acre SCE Wetlands Restoration Project. The proposed restoration project will

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<sup>5</sup> CDP # 6-04-88

<sup>6</sup> Id.

create at approximately 37 acres of marine wetlands and seasonal marsh habitat from what is now entirely disturbed land. The current state of the land chosen for this project, results from decades of fill, grading and/or agricultural use, rendering it unsuitable for supporting native species that rely on freshwater/intertidal marsh or upland habitat.

Poseidon's proposed Restoration Project would provide approximately 37 acres of coastal wetland habitat in San Dieguito Lagoon above and beyond what is included in the ongoing SCE Wetland Restoration Project. The majority of the coastal habitat will be marine wetlands located at or below the elevation of the mean high tide for this area. As shown in Figures 1 and 2, the key elements of the project are excavation and grading to create new tidal wetlands (Parcel 1), including sub-tidal, intertidal, transitional, and seasonal salt marsh habitats east of I-5.

The central feature of the proposed restoration project is the conversion of disturbed land to more valuable tidal salt marsh or open water wetland which will become a productive in-kind habitat for species similar to those impacted by impingement and entrainment related to the stand-alone desalination plant operations (i.e., gobies, blennies, etc.). All of the acreage that will be converted to tidal wetland habitat is currently disturbed upland that supports weedy, generally non-native (ruderal) vegetation. After restoration to tidal salt marsh, these habitats will be subject to tidal action throughout the year, which will enable salt marsh plants to be healthier and with higher productivity. These goals will be accomplished by grading the site to substantially create an area that is subject to regular tidal inundation.

The restoration site will be graded to match subtidal and the low tidal salt marshes of the San Dieguito Lagoon Restoration Project being constructed by Southern California Edison. Since the new wetlands will be connected to the existing tidal basin through the existing Dieguito River channel, the tidal exchange will maintain the physical and chemical conditions in these wetlands such that marine and tidal salt marsh species (such as gobies and blennies) will be able to inhabit, disperse and persist in the wetlands created by the Poseidon's restoration project. Since Southern California Edison has already committed to maintain the mouth of the lagoon open in perpetuity, tidal circulation in the proposed new wetlands will be unrestricted.

Based on the biological survey of the existing tidal wetlands of the San Dieguito Lagoon completed as a part of the Southern California Edison Restoration Project,<sup>7</sup> these wetlands are of the same type of habitat that would be impacted by desalination plant operations (i.e., gobies, blennies, anchovy, topsmelt, white croaker, etc.). Therefore, the implementation of the proposed restoration project will create in-kind replacement habitat, which has 1:1 restoration value. The 1:1 restoration ratio of the proposed project is consistent with the methodology used by the California Energy Commission for establishing mitigation requirements for the entrainment effects associated with the operation of the AES Huntington Beach and Morro Bay power generation plants.

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<sup>7</sup> SCE, *San Dieguito Wetlands Restoration Project, Final Restoration Plan*, November 2005

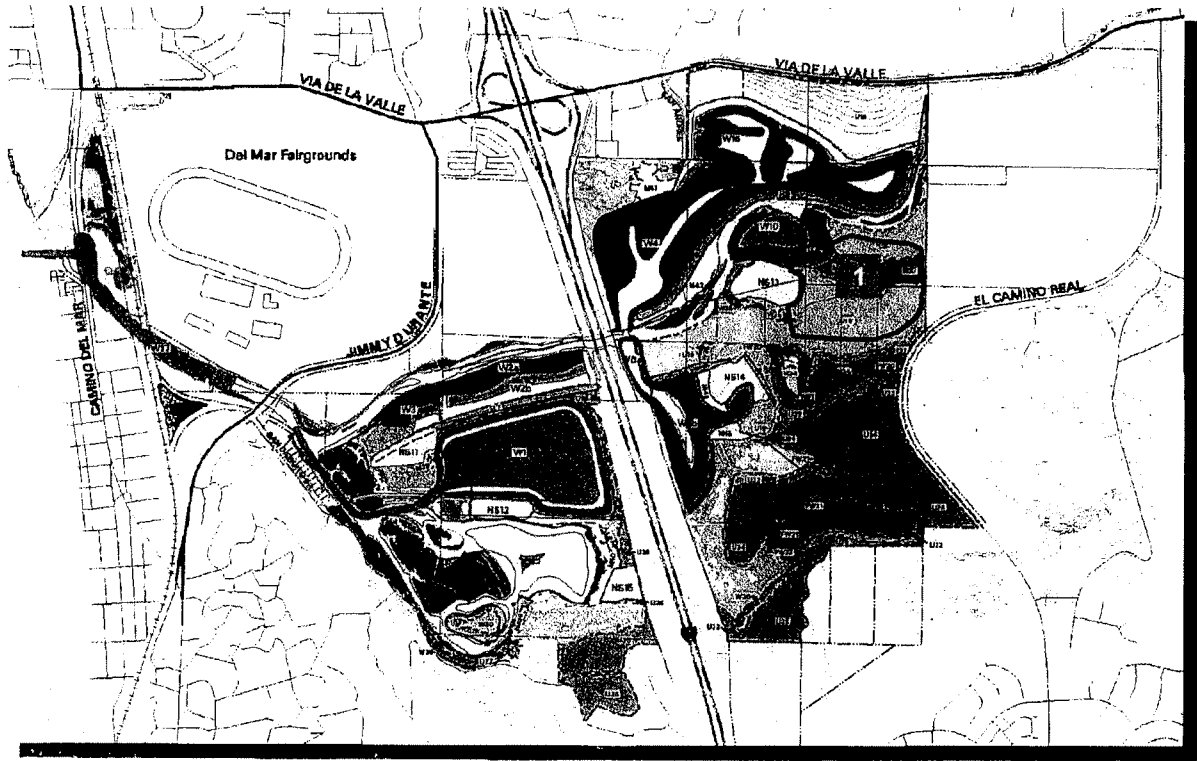


Figure 6-1 – San Dieguito Wetlands Restoration Project

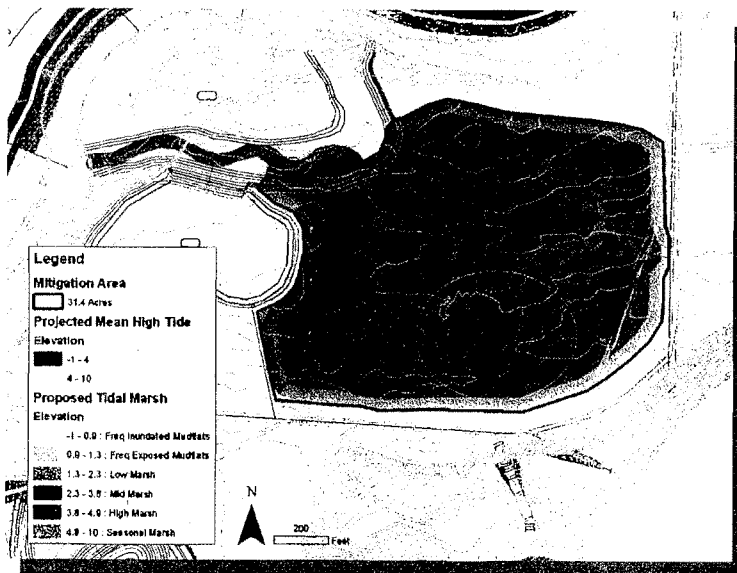


Figure 6-2 – Proposed Restoration Site

The Coastal Commission found this location to be acceptable for mitigation of the entrainment and impingement impacts of the San Onofre Nuclear Generating Station which is 45 miles away from San Dieguito Lagoon and is impacting open water fish species that don't necessarily reside in a lagoon environment. The proposed desalination facility is much closer to the proposed mitigation site (12 miles) and Poseidon is proposing to replace tidally exchanged coastal lagoon habitat with in-kind habitat.

## **6.7 REGULATORY ASSURANCE OF RESTORATION PLAN ADEQUACY**

There are a number of regulatory assurances in place to confirm the adequacy of the proposed restoration plan. The Regional Board, Coastal Commission and State Lands Commission have ongoing jurisdiction over the proposed Project to insure the adequacy of the proposed restoration plan.

### **6.7.1 Regional Board**

The Regional Board is insuring that Poseidon will provide adequate mitigation consistent with Water Code Section 13142.5(b) through the imposition of Special Condition 12 in the draft Lease Amendment for the proposed project.<sup>8</sup>

- b. California Water Code Section 13142.5(b) Applicability. Water Code Section 13142.5(b) requires industrial facilities using seawater for processing to use the best available site, design, technology, and mitigation feasible to minimize impacts to marine life. The CDP is planned to operate in conjunction with the EPS by using the EPS cooling water discharge as its source water. When operating in conjunction with the power plant, the desalination plant feedwater intake would not increase the volume or the velocity of the power station cooling water intake nor would it increase the number of organisms impinged by the Encina Power Station cooling water intake structure. Recent studies have shown that nearly 98 percent of the larvae entrained by the EPS are dead at the point of the desalination plant intake. As a result, a de minimis number of organisms remain viable which potentially would be lost due to the incremental entrainment effect of the CDP operation. Due to the fact that the most frequently entrained species are very abundant in the area of the EPS intake, Agua Hedionda Lagoon and the Southern California Bight, species of direct recreational and commercial value would constitute less than 1 percent of all the organisms entrained by the EPS. As a result, the incremental entrainment effects of the CDP operation in conjunction with the EPS would not trigger the need for additional technology or mitigation to minimize impacts to marine life. However, in the event that the EPS were to cease operations, and the discharger were to independently operate the seawater intake and outfall for the*

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<sup>8</sup> Regional Board Order R9-2006-0065 at F-49.

*benefit of the CDP, such independent operation will require additional review pursuant to Water Code Section 13142.5(b). The Regional Water Board review and approval of the Flow Minimization, Entrainment and Impingement Minimization Plan will address any additional review required pursuant to Water Code Section 13142.5(b).*

With the October 2006 approval Order R9-2006-0065, the Regional Board has ongoing jurisdiction over the Project to insure Poseidon is using the best available design, technology, and mitigation measures at all times consistent with Water Code Section 13142.5(b).

### **6.7.2 State Lands Commission**

The State Lands Commission is insuring that Poseidon will provide adequate mitigation consistent with Public Resources Code 6370, et seq. through the imposition of Special Condition 12 in the draft Lease Amendment for the proposed project:<sup>9</sup>

12. *Poseidon Resources shall use the best available design, technology, and mitigation measures at all times during which this Lease is in effect to minimize the intake (impingement and entrainment) and mortality of all forms of marine life associated with the operation of the desalination facility as determined by the San Diego Regional Water Quality Control Board or any other federal, state, or local entity.*

With the approval of the approval the draft lease for the Project, the State Lands Commission reserves the right to terminate the lease if Poseidon is not using the best available design, technology, and mitigation measures at all times as determined by the San Diego Regional Water Quality Control Board or any other federal, state, or local entity.

### **6.7.3 Coastal Commission**

The Coastal Commission is insuring that Poseidon will provide adequate mitigation consistent with applicable Coastal Act provisions through the imposition of Special Condition 8:<sup>10</sup>

- 1) *Marine Life Mitigation Plan: PRIOR TO ISSUANCE OF THE PERMIT, the Permittee shall submit to and obtain from the Commission approval of*

<sup>9</sup> State Lands Commission draft Amendment of Lease PRC 8727.1.

<sup>10</sup> See Coastal Commission Recommended Revised Findings Coastal Development Permit for Poseidon Carlsbad Desalination Project, page 91 of 108; <http://documents.coastal.ca.gov/reports/2008/3/W25a-3-2008.pdf>

*a Marine Life Mitigation Plan in the form of an amendment to this permit that includes the following:*

- a) Documentation of the project's expected impacts to marine life due to entrainment and impingement caused by the facility's intake of water from Agua Hedionda Lagoon. This requirement can be satisfied by submitting a full copy of the Permittee's Entrainment Study conducted in 2004-2005 for this project.*
- b) To the maximum extent feasible, the mitigation shall take the form of creation, enhancement, or restoration of aquatic and wetland habitat*
- c) Goals, objectives and performance criteria for each of the proposed mitigation sites. It shall identify specific creation, restoration, or enhancement measures that will be used at each site, including grading and planting plans, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the sites are meeting performance criteria. The Plan shall also identify contingency measures that will be implemented should any of the mitigation sites not meet performance criteria.*
- d) "As-built" plans for each site and annual monitoring reports for no less than five years or until the sites meet performance criteria.*
- e) Legal mechanism(s) proposed to ensure permanent protection of each site – e.g., conservation easements, deed restriction, or other methods.*

With the approval of the Coastal Development permit for the proposed project conditioned as described above the Coastal Commission is insuring that Poseidon will provide the mitigation needed to address Project related impacts in a manner consistent with applicable Coastal Act provisions.

## **6.8 SUMMARY AND CONCLUSIONS**

Poseidon is using all feasible methods to minimize or reduce its entrainment impacts. These methods are likely to reduce the Project related impacts to marine life well below the levels identified in Chapter 5. To minimize unavoidable Project related impacts to marine life, Poseidon has voluntarily committed to a state-agency coordinated process to identify the best available mitigation feasible. The objective of the mitigation portion of this plan is to identify mitigation needs, set forth mitigation goals, and present a plan and approach for achieving the goals.

As shown in Table 6-2, the proposed mitigation strategy includes the implementation of project a coastal wetlands restoration plan that will be developed pursuant to the state-agency coordinated process; long-term preservation of Agua Hedionda Lagoon; and/or

other activities which will benefit the coastal environment in San Diego County. The restoration plan will be enforceable through conditions of approval of the project and the program's success will be monitored through performance standards, monitoring and reporting.

Additionally, ten years after the lease is issued, that the CDP will be subject to further environmental review by the State Lands Commission (SLC) to analyze all environmental effects of facility operations and alternative technologies that may reduce any impacts found. SLC may require additional requirements as are reasonable and as are consistent with applicable state and federal laws and regulations.

This approach will insure that the stand-alone CDP operations continue to use the best available site, design, technology and mitigation feasible to minimize Project related impacts to marine life.

<b>Category</b>	<b>Feature</b>	<b>Result</b>
1. Mitigation	Implementation of project mitigation plan developed pursuant to a state-agency coordinated process described in Chapter 6.	Compensate for the unavoidable entrainment and impingement impacts and enhance the coastal environment.
2. Mitigation	Preservation of Agua Hedionda Lagoon through continued maintenance dredging and Lagoon stewardship.	Preserve and protect 388 acres of highly productive marine habitat; maintain and enhance opportunities for public access and recreation; provide sand for beach replenishment and grunion spawning habitat; maintain adequate water quality to support aquaculture, fish hatchery and natural fish habitat; and provide San Diego County with a new high-quality drinking water supply.
3. Mitigation	Funding watershed education programs at the Agua Hedionda Lagoon Foundation Discovery Center	Helps ensure the long-term health and vitality of Agua Hedionda Lagoon and the surrounding watershed

## CHAPTER 7

### CONCLUSION

#### 7.1 PLAN PURPOSE

The San Diego Regional Water Quality Control Board (Regional Board) adopted Order No. R9-2006-0065 (Permit) for Poseidon Resources Corporation's (Poseidon) Carlsbad Desalination Project (CDP) discharge to the Pacific Ocean via the existing Encina Power Station (EPS) discharge channel. The CDP is planned to operate in conjunction with the EPS by using the EPS cooling water discharge as its source water whenever the power plant is operating.

In the event that the EPS were to cease operations, and Poseidon were to independently operate the seawater intake and outfall for the benefit of the CDP, such independent operation will require additional review pursuant to Water Code Section 13142.5(b). Water Code Section 13142.5(b) requires industrial facilities using seawater for processing to use the best available site, design, technology, and mitigation feasible to minimize impacts to marine life.

This Flow, Entrainment and Impingement Minimization Plan (Plan) is developed in fulfillment of the above-stated requirements and contains site-specific activities, procedures, practices and mitigation plans which Poseidon proposes to implement to minimize impacts to marine organisms when the Carlsbad Desalination Project intake requirements exceed the volume of water being discharged by the EPS.

#### 7.2 PLAN COMPLIANCE

As shown in Table 7-1, the Plan addresses each of the provisions of Water Code Section 13142.5(b):

- Identifies the best available site feasible to minimize Project related impacts to marine life;
- Identifies the best available design feasible to minimize Project related impacts to marine life;
- Identifies the best available technology feasible to minimize Project related impacts to marine life;
- Quantifies the unavoidable impacts to marine life; and
- Establishes a state-agency coordinated process for identification of the best available mitigation feasible to minimize Project related impacts to marine life.



<b>Table 7-1 Design, Technology and Mitigation Measures to Minimize Impacts to Marine Life</b>		
<b>Category</b>	<b>Feature</b>	<b>Result</b>
1. Site	Proposed location at Encina Power Station (EPS)	Best available site for the project, no feasible and less environmentally damaging alternative locations.
1. Design	Use of EPS discharge as source water	Sixty-one percent reduction of entrainment and impingement impacts attributable to the CDP
2. Design	Reduction in inlet screen velocity	Reduction of impingement of marine organisms
3. Design	Reduction in fine screen velocity	Reduction of impingement of marine organisms
4. Design	Ambient temperature processing	Eliminate entrainment mortality associated with the elevated seawater temperature
5. Design	Elimination of heat treatment	Eliminate mortality associated with heat treatment.
1. Technology	Installation of VFDs on CDP intake pumps	Reduce the total intake flow for the desalination facility to no more than that needed at any given time, thereby minimizing the entrainment of marine organisms.
2. Technology	Installation of micro-screens	Micro-screens (120 $\mu$ ) minimize entrainment and impingement impacts to marine organisms by screening the fish larvae and plankton from the seawater.
3. Technology	Installation of low impact prefiltration technology	UF filtrations system minimizes entrainment and impingement impacts to marine organisms by screening the small plankton from the seawater.
4. Technology	Return to the ocean of marine organisms captured by the screens and filters	Minimize entrainment and impingement impacts to marine organisms captured by the screens and filters by returning the organisms to the ocean.
5. Technology	After ten years of operation, State Lands Commission (SLC) to analyze environmental effects of facility and the availability of alternative technologies that may reduce any impacts.	SLC may require Poseidon install additional technology as are reasonable and as are consistent with applicable state and federal laws and regulations. This ensures that the CDP operations at that time are using technologies that the SLC determines may reduce any impacts and are appropriate in light of environmental review.
1. Mitigation	Implementation of project mitigation plan developed pursuant to a state-agency coordinated process described in Chapter 6.	Compensate for unavoidable entrainment and impingement impacts and enhance the coastal environment.
2. Mitigation	Preservation of Agua Hedionda Lagoon through continued maintenance dredging and Lagoon stewardship.	Preserve and protect highly productive marine habitat; maintain and enhance opportunities for public access and recreation; provide sand for beach replenishment and grunion spawning habitat; maintain adequate water quality to support aquaculture, fish hatchery and natural fish habitat; and provide a new high-quality water supply.
3. Mitigation	Fund watershed education programs at the AHL Foundation Discovery Center.	Helps ensure the long-term health and vitality of Agua Hedionda Lagoon and the surrounding watershed.

### 7.3 PROPOSED MITIGATION APPROACH

Poseidon is using all feasible methods to minimize or reduce its entrainment impacts. These methods are likely to reduce the Project related impacts to marine life well below the levels identified in Chapter 5. To minimize unavoidable Project related impacts to marine life, Poseidon has voluntarily committed to a state-agency coordinated process to identify the best available mitigation feasible. The objective of the mitigation portion of this plan is to identify mitigation needs, set forth mitigation goals, and present a plan and approach for achieving the goals.

Recognizing that mitigation opportunities in Agua Hedionda Lagoon may be limited, Poseidon proposes a comprehensive but flexible approach for mitigating potential impacts. This approach is based on:

- Conservatively estimating maximum potential impacts
- Identifying goals and objectives of the mitigation program
- Identifying any available mitigation opportunities in Agua Hedionda Lagoon that meet the goals and objectives
- Identifying additional offsite mitigation that meets the mitigation goals
- Developing an action plan and schedule for coordinating with regulatory and resource agencies to finalize locations and acreages selected for the proposed mitigation.

Investigations to date have not identified any mitigation opportunities within Agua Hedionda Lagoon that meet the goals of the program. As a result, the proposed mitigation plan includes a core offsite mitigation program that meets the plan goals and objectives that is being developed in parallel with Poseidon's continued effort to identify feasible mitigation opportunities in Agua Hedionda Lagoon.

Poseidon recognizes the need and priority of implementing mitigation in Agua Hedionda Lagoon if feasible. Poseidon also recognizes that mitigation requirements and regulations of the various review agencies differ, and additional agency coordination is required to insure that needs of all applicable agencies are addressed.

Accordingly, while this plan identifies a core offsite mitigation project, the mitigation plan also presents an implementation action schedule that includes additional coordination activities to either (1) confirm the lack of opportunities, or (2) identify if new mitigation options exist within Agua Hedionda Lagoon.

Poseidon will be contacting the Department of Fish & Game to more fully assess the potential for restoration opportunities in Agua Hedionda Lagoon. If subsequent Agua Hedionda Lagoon mitigation is determined to be feasible, Poseidon will coordinate with regulatory agencies to implement such mitigation.

If Agua Hedionda Lagoon mitigation is confirmed as infeasible, Poseidon will implement the proposed offsite mitigation project.

Table 7-2 summarizes the implementation action schedule for the proposed mitigation plan.

**Table 7-2  
Mitigation Implementation Approach and Schedule**

Element	Actions/Objectives	Schedule
Submittal of draft Minimization Plan to Regional Board	<ul style="list-style-type: none"> <li>Public and agency review of revised draft Plan</li> </ul>	March 2008
Regional Board consideration of Minimization Plan	<ul style="list-style-type: none"> <li>Approval of Plan</li> <li>Regional Board provides directions on Plan implementation</li> </ul>	April 2008
Contacts with California Department of Fish & Game to assess mitigation opportunities in Agua Hedionda Lagoon	<ul style="list-style-type: none"> <li>Assess mitigation opportunities for saltwater marsh creation in Agua Hedionda Lagoon via dredging</li> </ul>	March 2008
Supplemental contacts with other resource agencies	<ul style="list-style-type: none"> <li>Identify (or conform lack of) additional mitigation opportunities in Agua Hedionda Lagoon</li> </ul>	April 2008
Convene meeting of resource agencies; Regional Board and Coastal Commission.	<ul style="list-style-type: none"> <li>Identify (or confirm lack of) additional mitigation opportunities in Agua Hedionda Lagoon</li> <li>If applicable, address agency requirements for Agua Hedionda Lagoon mitigation and determine overall implementation feasibility</li> <li>Address mitigation rations/requirements for core offsite mitigation project in San Dieguito Lagoon</li> </ul>	April 2008
Finalize and distribute mitigation program implementation details	<ul style="list-style-type: none"> <li>Agency review of implementation details</li> </ul>	May 2008
Modify/finalize implementation program details (if applicable)	<ul style="list-style-type: none"> <li>Agency review and approval</li> <li>May involve additional inter-agency coordination meeting</li> </ul>	June 2008
Coastal Commission consideration of mitigation project(s)	<ul style="list-style-type: none"> <li>Coastal Commission approval of mitigation project</li> </ul>	July 2008

#### **7.4 REGULATORY ASSURANCE OF PLAN ADEQUACY**

There are a number of regulatory assurances in place to confirm the adequacy of the proposed restoration plan. The Regional Board, Coastal Commission and State Lands Commission have ongoing jurisdiction over the proposed Project to insure the adequacy of the proposed restoration plan.

Additionally, ten years after the lease is issued, that the CDP will be subject to further environmental review by the State Lands Commission (SLC) to analyze all environmental effects of facility operations and alternative technologies that may reduce any impacts found. SLC may require additional requirements as are reasonable and as are consistent with applicable state and federal laws and regulations.

This approach will ensure that the stand-alone CDP operations continue to use the best available site, design, technology and mitigation feasible to minimize Project related impacts to marine life.

# **EXHIBIT 3**



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
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## TECHNICAL REPORT

**TO:** John H. Robertus  
Executive Officer  
**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

**FROM:** Chiara Clemente, Senior Environmental Scientist, Central Watershed Unit  
Deborah Woodward, PhD, Environmental Scientist  
Michael Porter, Engineering Geologist

**DATE:** April 4, 2008

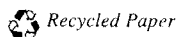
**SUBJECT:** Review of Carlsbad Seawater Desalination Plant Flow, Entrainment, and Impingement Minimization Plan, Poseidon Resources Corporation, dated March 6, 2008

### Executive Summary

On March 7, 2008, Poseidon submitted a revised version of the subject Plan, and written responses to the Regional Board's comments from a letter dated February 19, 2008. The revised Plan includes an assessment of impacts from impingement and entrainment of marine organisms, and a process for the selection of a specific mitigation alternative. The Central Watershed Unit (CWU) has reviewed the subject plan, focusing on the validity of the assessment of impacts, and suitability of the mitigation process proposed, and alternatives reviewed. In summary, the CWU staff conclude that adoption of the Plan, as currently drafted, would be premature for the following reasons:

1. The proposed plan does not describe a process for agency approval of the calculations and variables used to assess impacts from impingement and entrainment.
2. The proposed mitigation process does not clearly identify the method for the final selection and agency concurrence of the preferred mitigation alternative.
3. There is insufficient sampling data to accurately determine the impacts of impingement and entrainment.
4. The proposed process seems to favor a pre-determined outcome (i.e. mitigation in San Dieguito Lagoon). Other mitigation alternatives (e.g. kelp bed enhancement and artificial reef construction) should be considered and evaluated equally as viable mitigation possibilities.

*California Environmental Protection Agency*



## **I. Assessment of Impacts**

### **A. Sampling Data**

Impacts to marine resources attributable to the Carlsbad Desalination Plant (CDP) are described in Chapter 5 of the Plan. Impact calculations are based on results from a one-year sampling program of impingement and entrainment at the Encina Power Station (EPS). This sampling set is likely to be skewed because it does not account for annual variability and the data were collected during a year that was atypical with regards to rainfall.

It is important that ecological impacts are correctly determined because the Empirical Transport Model (used to estimate larval mortality rates) and calculation of Acres Production Foregone (used to establish the mitigation requirement) directly rely on the sampling results. If impacts are underestimated due to sampling during an atypically wet year, then subsequent modeling and calculations will lead to underestimated mortality and mitigation requirements.

### **B. Calculations**

The Acres of Production Foregone (APF) is an estimate used by Poseidon to calculate the amount of acreage that would compensate for the entrainment loss of fish larvae (and other planktonic organisms) due to operation of the CDP. Its derivation is discussed in Chapter 6 of the Plan. However, the data used to derive this calculation are preliminary, and lack statistical power. Further justification for the values selected to calculate the Acres Production Foregone (APF) is warranted, and, after proper validation of these inputs, the APF should be recalculated. The Plan currently estimates that the restoration area needed to fully mitigate the CDP contribution to entrainment is 36.8 acres.

## **II. Assessment of Mitigation Process**

Poseidon's Plan describes a process to follow for evaluating mitigation alternatives that will compensate for impacts to beneficial uses of Agua Hedionda Lagoon from entrainment and impingement of marine organisms by operations at the CDP. Poseidon's proposed process contains a schedule of actions to identify the appropriate type and amount of mitigation. One of these actions is to convene a meeting with the relevant resource and regulatory agencies, prior to finalizing their specific mitigation alternative. The proposed process is unclear as to how additional alternatives (not currently listed in the Plan) will be considered or what the agency approval mechanism would be for the final selection of the specific mitigation alternative. The Plan does state that if Alternatives 2 through 8 are deemed infeasible, Poseidon will proceed with implementation of Alternative 1 (i.e. Offsite Mitigation Program – San Dieguito Lagoon), described below.

### **III. Assessment of Proposed Mitigation**

The main objective of the mitigation will be to implement one or more activities that will preserve, restore and enhance existing wetlands, lagoons or other high-productivity near-shore coastal areas located in the vicinity of Agua Hedionda and/or elsewhere in San Diego County.

#### **A. Types of Mitigation Alternatives**

Poseidon's proposed Plan states that types of activities that may be included in their final specific mitigation alternative include:

1. Wetland Restoration.
2. Coastal Lagoon Restoration.
3. Restoration of Historic Sediment Elevation to Promote Reestablishment of Eelgrass Beds.
4. Marine Fish Hatchery Stocking Program.
5. Artificial Reef Development.
6. Kelp Bed Enhancement.

Each of these activities has the *potential* to compensate for the direct loss of fish, larvae, and eggs.

#### **B. Habitat Restoration Goals:**

Poseidon's proposed habitat restoration plan goals are:

1. Creation or restoration of coastal habitat.
2. Development of a technically feasible project.
3. Stakeholder acceptance for selected project.
4. Ability to measure performance.

These goals are typical of plans developed to mitigate impacts to beneficial uses of surface waters resources.

#### **C. Alternatives:**

Poseidon has identified eight alternatives to be considered and further evaluated for selection in their final preferred specific mitigation alternative. These alternatives include:

1. San Dieguito Lagoon Coastal Habitat Restoration.  
This mitigation would be out-of-watershed and includes the restoration of 37-acres of tidal prism and salt water marsh in San Dieguito Lagoon. This restoration would be good for San Dieguito Lagoon, but would provide very limited compensation for impacts to fish, larvae, and eggs in Aqua Hedionda Lagoon – which is located 12-miles north of San Dieguito Lagoon.



2. City of Oceanside Loma Alta Lagoon Restoration.  
This mitigation would be out-of-watershed and Poseidon did not provide the Regional Board with any details on this alternative. This restoration potentially could create positive effects on Loma Alta Lagoon located approximately 5 miles north of Aqua Hedionda Lagoon. The project would provide very limited compensation for impacts to fish, larvae, and eggs in Aqua Hedionda Lagoon.
3. Agua Hedionda Lagoon – Land Acquisition for Expansion of an Ecological Reserve.  
This mitigation alternative includes the “acquisition and preservation of land near the Agua Hedionda Lagoon’s Ecological Reserve to serve as coastal habitat for wildlife and migratory birds.” This mitigation alternative would benefit the waterfowl population, but potentially reduce the amount of fish and larvae due to increased waterfowl predation.
4. Agua Hedionda Lagoon – Eradication of Invasive Plants and Restoration of Native Vegetation. The mitigation alternative proposes to “remove exotic, invasive (terrestrial) plant species and replace these species with appropriate native plants to restore the protective function (surface water quality cleansing) of the lagoon watershed vegetation.” Removing exotic, invasive plant species from a watershed is always desirable. However, it is unclear that the increased amount of biomass in the Lagoon from slightly improved water quality would adequately compensate for the biomass loss from impingement and entrainment by operations at the CDP.
5. Carlsbad Aquafarm at Agua Hedionda Lagoon – Abalone Stock Enhancement.  
This mitigation alternative proposes to “create a stock of 100,000 abalone at the Carlsbad Aquafarm located in the Agua Hedionda Lagoon and the use the stock to replenish the population of abalone near the intake to the lagoon and project discharge area.” With respect to improving the near shore ecosystem, abalones are known to consume algae on rocks and reefs, potentially creating habitat opportunities for less competitive species. Juvenile, attached abalones are also a food source for octopus, Cabazon, and Ling cod. This mitigation would directly benefit the abalone population but do nothing to mitigate for the hundreds of other species that suffer mortality from operations at the CDP.
6. Buena Vista Lagoon Ecological Reserve – Completion of Restoration/Enhancement Plan Environmental Analysis.  
This mitigation would be out-of-watershed and Poseidon did not provide the Regional Board with any details on this mitigation alternative. Completion of an Analysis would have limited compensation for impacts to fish, larvae, and eggs in

Aqua Hedionda Lagoon – which is located approximately 5-miles south of Buena Vista Lagoon.

7. Frazer State Beach – Coastal Bluff Habitat Restoration. Poseidon did not provide any details on this alternative.
8. Additional Agua Hedionda Lagoon Restoration Opportunities. Poseidon's Plan indicates they investigated additional mitigation alternatives, but reportedly did not find any opportunities. Based on this conclusion, Poseidon appears to favor Mitigation Alternative No.1 – the San Dieguito Lagoon Coastal Habitat Restoration. This is unfortunate because the alternatives that are best suited to directly mitigate impacted ecological functions are normally located within the same area (watershed). In addition, the proposed mitigation ratio is lower than that normally accepted for out-of-watershed mitigation projects.

Additional alternatives (e.g. artificial reef development, kelp bed enhancement, marine fish hatchery stocking, or reestablishment of eelgrass in Agua Hedionda Lagoon) that have been found suitable and viable for mitigation of similar impacts elsewhere, do not appear to be included for consideration in the current version of the Plan. The CWU staff conclude that Poseidon should include these additional alternatives for evaluation as part of their proposed process for the selection of a specific mitigation alternative.

# **EXHIBIT 4**

1 San Diego, California, Wednesday, April 9, 2008  
2 (Partial transcript)

3

4 MR. WRIGHT: I would also say the same thing for  
5 the other organized presentations. And I know you'll do  
6 everything in organized presentations to keep comments  
7 brief and lacking representations. So at this point,  
8 let's hear staff presentation. And approximately how much  
9 time?

10 MR. KELLEY: Probably 15 minutes.

11 MR. WRIGHT: No more than 15 minutes.

12 MR. KELLEY: Mr. Chairman, members of the board,  
13 my name is Brian Kelley. I'm a senior water resource  
14 control engineer in charge of the new core regulatory  
15 unit. And the purpose of this item is to consider  
16 approval of a revised flow entrainment and impingement  
17 minimization plan dated March 6, 2008 as required by Order  
18 Number R9-2006-0065; MPDS number CA0109223 for the  
19 Poseidon Resources Corporation Carlsbad desalination or  
20 desal project. Because of the voluminous amount of  
21 information regarding this matter, I would first like to  
22 provide a brief list of items that are included in your  
23 agenda materials.

24 You have in your first agenda packet for this  
25 item the executive officer summary report project location

1 map and the flow schematic. Copy of order number  
2 R9-2006-0065; copy of a regional board comment letter  
3 dated February 19, 2008 regarding the original flow  
4 entrainment and impingement minimization plan. A copy of  
5 Poseidon's revised flow entrainment and impingement  
6 minimization plan dated March 6, 2008; including  
7 attachments, which is the plan that you will be  
8 considering for adoption today. And also copies of the  
9 four comment letters that we received through March 28,  
10 which was the first mail out of agenda material to the  
11 Regional Board.

12 Then in the second agenda mailing sent on April  
13 four, you have a supplemental executive officer summary  
14 report. A tentative resolution number R9-2008-0039; a  
15 regional board technical report dated April 4, 2008, and  
16 copies of additional comments received since the date of  
17 the first agenda mailing up until the deadline for written  
18 comments, which was the close of business on Wednesday,  
19 April 2, 2008. Two letters, one from the San Diego County  
20 Farm Bureau and one from the Santa Fe Irrigation District,  
21 who inadvertently left out both agenda mailings. Copies  
22 of these have been handed out to you today.

23 I would now like to provide a brief description  
24 of the proposed Carlsbad Desalination Project and the  
25 background of the Regional Board's regulation of water

1 quality aspects of the project.

2           The proposed project would need approximately  
3 304 million gallons per day for MGD of seawater on the  
4 Encina Power Station once through cooling water system  
5 affluent. The Encina Power Station intake is located in  
6 the southwest corner of the Agua Hedionda Lagoon. Can you  
7 see it's right in here. The powerplant is here. This is  
8 the opening to the lagoon. And then here's the discharge  
9 channel. The Carlsbad desalination facility would produce  
10 up to 50 MGD of potable water, up to 57 MGD of combined  
11 concentrated saline waste water and filter backwash waste  
12 water from the facility of with commingle of at least 200  
13 MGD of pass through cooling water from the powerplant, and  
14 the combined flow would be discharged to the Pacific Ocean  
15 via the current Encina Power Station discharge channel  
16 across the beach. So you can see the intake structure  
17 here coming back down through the desalination plant. The  
18 50 MGD will go into the potable water and the remaining  
19 backwash and filter will come up this way and come back  
20 into here. Commingle with the remaining discharge through  
21 the powerplant and then be discharged to the ocean.

22           As originally proposed, the Encina Power Station  
23 seawater intake cooling flows needs would have far  
24 exceeded that of the Carlsbad Desal Facility, the 304 MGD.  
25 More recently however it appears that the flow needed for

1 power generation has been less than the 304 MGD needed for  
2 the desal facility. Last year, based on flow data from  
3 the power station, the cooling water intake flow volume  
4 dropped below the 304 MGD approximately 40 percent at a  
5 time. Regarding regional board regulation of the Carlsbad  
6 desal project, on August 16, 2006, the Regional Board  
7 adopted order Number R9-2006-0065 for the discharge of  
8 waste water from the Poseidon Carlsbad Desal Facility with  
9 the effective date of October 1st, 2006 and an expiration  
10 date of October 1st, 2011, a five year permit.

11 Section 6C2E of the order required Poseidon to  
12 submit for approval by the Regional Board a flow  
13 entrainment and impingement minimization plan within 180  
14 days of adoption of the order. This plan was required in  
15 order to comply with California Water Code Section  
16 13142.5, which mandates that new or expanded industrial  
17 installations used best available site, design,  
18 technology, and mitigation measures feasible to minimize  
19 the intake and mortality; in other words, entrainment and  
20 impingement of all forms of marine life. Approval of this  
21 specific plan, however, is currently not a condition in  
22 the permit for commencement of the discharge from the  
23 Carlsbad Desal Facility. I would also like to point out  
24 that the permit does not provide for the situation when  
25 the desal project is operating in absence of the

1 powerplant operations. The current permit would need to  
2 be modified or a new permit would need to be issued to  
3 incorporate requirements for stand-alone operation of the  
4 desal project.

5           For reference, the Encina Power Station intake  
6 and discharge are regulated under order number  
7 R9-2006-0043, and PDES number CA 0001350, which was  
8 adopted on the same day as the Carlsbad desal permit on  
9 August 16, 2006. And both permits have the same  
10 expiration date of October 1st, 2011. The order contains  
11 a flow rate limitation of 864 MGD. Since the powerplant  
12 has a thermal discharge, it is subject to the requirements  
13 of Section 316B of the Clean Water Act. This requires  
14 that the location design, construction, and capacity of  
15 cooling water intake structures reflect the best available  
16 technology for minimizing adverse environmental impact.

17           Unlike the water Code Section 13142.5B, the  
18 Clean Water Act Section does not include mitigation as a  
19 measure to minimize impacts.

20           On February 13, 2007, Poseidon submitted the  
21 first version of the flow entrainment and impingement  
22 minimization plan. Following regional board and other  
23 interested parties comments on the first plan, Poseidon  
24 submitted a revised plan dated June 29, 2007. To  
25 supplement this plan, Poseidon also submitted a coastal



1 habitat restoration and enhancement plan dated November  
2 2007 as required by the California Coastal Commission.

3 The reason the board sent a letter to Poseidon  
4 dated February 19, 2008 identifying seven general comments  
5 and ten specific comments on the plans submitted up to  
6 that date.

7 On March 7, 2008 Poseidon, submitted a revised  
8 minimization plan dated March 6, 2008. As I mentioned,  
9 this is the plan that's being considered for approval  
10 today. Page six, dash, three of the revised plan contains  
11 a table showing an implementation approach and schedule.  
12 Following regional board approval of the plan the proposed  
13 schedule includes elements for contacting the California  
14 Department of Fish and Game. Contacts with other resource  
15 agencies, convening meetings with all agencies,  
16 distribution of mitigation program details, modification  
17 and finalization of the mitigation program, and final  
18 consideration and approval of the mitigation project or  
19 projects by the coastal provision in July 2008.

20 Furthermore, as stated on Page six, dash, 18,  
21 the State Land's Commission refers the right to terminate  
22 the lease if Poseidon is not using best available design,  
23 technology of mitigation measures at all times as  
24 determined by the regional board or any other federal,  
25 state, or local entity.

1           Based on regional board staff review of the  
2 revised plan and as described in the technical report from  
3 Kiara Clemente, senior environmental scientist for the  
4 central water unit John Robertus dated 2008 resolve  
5 concerning the data and calculations used to determine the  
6 impacts to marine life. The conclusions derived and the  
7 process for agency approval of impact assessment and final  
8 litigation alternative or alternatives. Written comments  
9 have been received from several interested parties, and  
10 copies of these comments are included in your agenda  
11 packet as previously mentioned. The comments from the  
12 California Assembly Member Martin Garrett, the City of  
13 Coronado, and the California State Land's Commission were  
14 received after the written comment deadline. And I have  
15 copies of those letters, if the board would like to accept  
16 them for consideration. Two of the letters are one page  
17 in length mostly promoting--urging the board to move  
18 forward with this project. The other one is four pages  
19 and has some specific issues regarding the revised plan.

20           I can hand those out if you would like to  
21 receive them.

22           MR. RAY: I'd like to see them.

23           MR. WRIGHT: If you would. Would you also  
24 provide a copy of that table. Is it in here.

25           MR. KELLEY: That is not in here. We prepared

1 that after the materials. And we can provide that to you  
2 too.

3 Finally, a copy of tentative resolution  
4 R9-2008-0039 has been prepared for your consideration of  
5 adoption. And as currently worded, the resolution would  
6 approve the revised flow entrainment and impingement  
7 minimization plan dated March 6, 2008 with conditions.

8 The first condition is that Poseidon would be  
9 required to submit an amendment to the plan subject to the  
10 approval of the Regional Board Executive Officer. That  
11 includes a specific proposal for mitigation of the impacts  
12 on marine organisms resulting from the intake of seawater  
13 from Agua Hedionda Lagoon, and resolves the concerns  
14 identified by the Regional Board to date.

15 And the second condition would be that the plan  
16 and any amendments approved by the executive officer are  
17 of limited duration until such time as the Encina Power  
18 Station ceases operations, and the Carlsbad Desal Facility  
19 becomes a stand-alone project. At that time minimization  
20 measures including mitigation need to be re-evaluated for  
21 appropriateness.

22 That concludes my formal presentation. If you  
23 have any questions regarding the plan, I can refer those  
24 to the appropriate regional board staff person, if I can't  
25 answer them myself. Otherwise, I'm available to answer

1 any questions the board may have for me at this time.

2 MR. WRIGHT: Board members, do you have any  
3 questions of Mr. Kelley at this time? Thank you.

4 Let's move to the presentation first by Poseidon  
5 Mr. MacLaggan, Mr. Jenkins, Mr. Mayer, Mr. Nordby, and  
6 Mr. Garrett.

7 Before you begin your presentation,  
8 Mr. MacLaggan, Mr. King had a couple of questions staff.

9 MR. KING: I had a question, Ms. George, in  
10 terms of the condition that's imposed upon us whether or  
11 not there would be work done by Mr. Robertus to see  
12 whether the subsequent submissions resolve the concerns  
13 identified in the February 19th letter. If the subsequent  
14 acts by John Robertus are going to be ministerial, and  
15 we've got a duty that's defined as resolving concerns, do  
16 we need to do that with a little more specificity? And if  
17 we need to start working on an amendment so more specific  
18 language right now that sets forth exactly what he is  
19 going to checklist off rather than leaving something that  
20 sounds discretionary and vague, I would rather refine  
21 that. And if we need to make an amendment, go ahead and  
22 have that language prepared as we're talking through all  
23 this.

24 MS. GEORGE: well, I think that you can allow  
25 the executive officer. He has delegated authority from

1 the Regional Board to undertake variety of action. But it  
2 would certainly be appropriate to have more specificity in  
3 terms of what he would be -- what the criteria would be  
4 that he would use to evaluate whether the condition has  
5 been met. So we could work on some language to that  
6 effect.

7 MR. KING: Is this something we can be working  
8 on right now that we can get some language with more  
9 specificity, cause that is the concern that I'd rather  
10 raise now than raise later in the show.

11 MR. KELLEY: I think we could work on some  
12 language, maybe some bullet items, that would be a little  
13 bit more specific than the generalities start that.

14 MR. KING: Thank you.

15 MR. WRIGHT: The assumption is we would go along  
16 with this language provides by the executive officer may  
17 very well be or another alternative would be that we would  
18 decide we don't want that to happen. That the board  
19 itself would then take on that role--final approval.

20 MR. ROBERTUS: Is that a possibility?

21 MS. GEORGE: Yes. The permit conditions  
22 specifies the plan should be submitted for regional board  
23 approval so that's what the permit says. The executive  
24 officer can carry out that function. If you want to  
25 reserve that specifically for the board, that's certainly

1 your prerogative.

2 MR. KING: In order to define this as a  
3 ministerial duty as clear -- we want that as an option to  
4 be able to leave it in the hands of the executive officer.  
5 My preference would be to have more specificity within  
6 that particular condition. We can go any number of ways  
7 in regarding to making our final decisions on resolution  
8 before us here. But in terms of where we're going, I  
9 would rather have some language ready to be able to kick  
10 that around.

11 MS. SCHNEIDER: I agree with that. But I do  
12 think for the sake of being efficient that if we could get  
13 the language and we could approve the conditions that he  
14 signs off on after our approval that would be more  
15 efficient probably. So I agree with your approach.

16 MR. WRIGHT: Mr. Robertus.

17 MR. ROBERTUS: Yes, I would like to point out  
18 that what I envision that if you delegate to me the work  
19 to continue on the plan after this date, the board will  
20 approve the plan. The plan is essentially a process by  
21 which the mitigation -- the mitigation determination  
22 resulted from that process. And as it's been presented to  
23 us by Poseidon, in order to initiate the plan, the board  
24 has to take an approval action. It's not clear in the  
25 order that the approval of the plan to initiate

1 implementation of the plan enclosed the approval by the  
2 board of the actual mitigation. I can oversee that  
3 process and do that on your behalf, or I can oversee that  
4 process and when the determination is made with the  
5 decision on the mitigation bring it to you for the part of  
6 the approval along with the other agency.

7 The question there would be to what extent would  
8 the approval of the board by your decision today be a  
9 condition of the approval of the mitigation itself. I  
10 could -- whether you want to delegate that to me or bring  
11 that back to you.

12 MR. WRIGHT: Just for sake of efficiency, if you  
13 can follow Mr. King's suggestion.

14 All right. Now Mr. MacLaggan.

15 MR. MACLAGGAN: Good afternoon, Mr. Chairman,  
16 members of the board. Peter MacLaggan, Poseidon  
17 Resources.

18 It's a pleasure to be back before you with  
19 respect to the Carlsbad desalination project eight years  
20 in the making. It's a critically needed supply element  
21 for the region, and this is one project that we all can be  
22 proud of.

23 Let me just say right up-front with respect to  
24 the discussion you just had, Mr. Chairman, board members,  
25 is our understanding with the respect to the proposed

1 tentative resolution that it does require the final plan  
2 to come back before you for approval. You're in support  
3 of that position. And if there's interest in adding  
4 additional specificity as a board member King had  
5 suggested to clarify exactly what it is that needs to be  
6 done now, and then we also are in favor of that  
7 recommendation.

8 And, Mr. Chairman, with respect to your request  
9 that we contain our presentation to 15 minutes, I will do  
10 everything humanly possible to do so. I'm going to skip  
11 over some matters. I've asked some of our speakers on the  
12 speaker slips before you also to waive their time. So  
13 that stack of cards will diminish as a result.

14 Let me jump right into --

15 MR. WRIGHT: Thank you.

16 MR. MACLAGGAN: There are eight matters that  
17 we're going to discuss. And I'm going to skip over Item  
18 one project summary in an effort to move this along.  
19 We'll discuss why the matter is before the board. What  
20 the plan entails. Why it is a conservative approach. Why  
21 the plan is responsive to the permit requirements. And  
22 the water code requirements. What are the environmental  
23 benefits. And the next steps, our recommendation.

24 So I'd like to take you to Page seven of your  
25 handout, if you will. And we will start there with the



1 question of why this matter is before the board. And your  
2 staff has correctly indicated that the plan is not  
3 required as a precondition of Poseidon's ability to  
4 commence the discharge. It's absolutely right. However,  
5 what's important to us is that the permit does require  
6 that the Regional Water Quality Control Board approve the  
7 plan as a pre-condition of the signs and building to  
8 access seawater when the powerplant is not operating. And  
9 in particular as mentioned by staff due to the  
10 intermittent operation of the powerplant. Action by the  
11 Regional Water Quality Control Board is necessary at this  
12 time to specify the conditions under which Poseidon will  
13 be able to access seawater under the permit.

14           Additionally, State Land's Commission has  
15 delayed its approval of Poseidon's lease for use of the  
16 existing intake and outfall until the Regional Water  
17 Quality Control Board approves the plan.

18           Both the City of Carlsbad and the Coastal  
19 Commission have evaluated the impacts of the project  
20 without the operation of the Encina Power Station and  
21 approved conditions for this mode of operation. An  
22 approval of the plan that's before you, conceptual  
23 approval, that it's being considered at this afternoon  
24 will facilitate ongoing coordination of uninterested state  
25 agencies and ensure that the Regional Water Quality

1 Control Board's requirements are being addressed.

2 Purpose of the plan. An anticipation that the  
3 powerplant might not always satisfy the desalination  
4 facility source water needs. Regional board required to  
5 sign and prepare a flow entrainment and impingement  
6 minimization plan to assess the feasibility of site  
7 specific plans and procedures, practices, implementations  
8 and/or mitigation measures taken together to minimize the  
9 impacts to marine organism when the project requirements  
10 exceed the volume of water being discharged by the Encina  
11 Power Station. This is the question that's before you.  
12 The adequacy of this plan and whether or not it meets the  
13 objective--the permit requirements. Again, it's a  
14 feasibility study of basic investigation of key elements  
15 of the water code, site design, technology, and mitigation  
16 to minimize the impacts to marine organisms.

17 With respect to development, this plan has been  
18 under development now for 13 months. We've been through  
19 three drafts and 13 months of public review and comment  
20 period. There was initial 45 day of comment period  
21 followed by a nine month comment period and the most  
22 recent draft has been out for 30 days. The point here is  
23 that there's been a lot of activity over the extended  
24 period of time, and we think that the plan has addressed  
25 the basic requirements of the water code, which is to

1 identify the best available site, design, technology to  
2 estimate the unavoidable impacts after taking into  
3 consideration those measures confirmed that mitigation is  
4 feasible, which we have established a state agency  
5 coordinated process for that identification of a preferred  
6 mitigation plan. In terms of the best available site  
7 requirement, this site has been given extensive scrutiny  
8 by both the City of Carlsbad and the Coastal Commission is  
9 the one site that has compatible zoning and land use; the  
10 least environmental impact; the least disruption to the  
11 community. And both the Coastal Commission and the  
12 Carlsbad EIR concluded that there are no feasible less  
13 environmentally damaging sites available for the proposed  
14 project.

15           With respect to design features, there are  
16 several that have been included. But the first and  
17 foremost is that we will use the discharge of the  
18 powerplant as the source water to the extent it is  
19 available, which eliminates the impacts altogether. In  
20 2007, 61 percent of our water would have come from the  
21 powerplant leaving the desalination plant needing to pump  
22 the remaining 39 percent. For its purposes under which  
23 case we would initiate the efforts to minimize through  
24 design features the mortality of marine life related to  
25 reduction of flow, temperature of the seawater, slowing

1 down the velocity of that water moving through the plant.  
2 All of those minimize the mortality of the marine  
3 organisms, who will be eliminated to keep treatment  
4 processes associated with the powerplant operations.  
5         With respect to technology, we have included a  
6 variety of technology measures to provide a broad means of  
7 minimizing the impacts. And rather than going to the  
8 specific details, let me point out for you the conclusion  
9 that the Coastal Commission reached last November on our  
10 Coastal Development Permit; wherein they found that  
11 Poseidon is using all feasible methods to minimize the  
12 reduces impact to marine organisms. With respect to  
13 impingement, the Coastal Commission found that the impacts  
14 were diminimus and insignificant. And then we considered  
15 a number of opportunities to modify the intake to the  
16 powerplant and look at alternative intakes such as  
17 subsurface wells. We've considered four types of wells.  
18 And we looked at these systems from every possible angle.  
19 And here again the alternative intake systems were  
20 determined by the City of Carlsbad as well as the Coastal  
21 Commission not to be the environmentally preferred  
22 alternative. And in the interest of brevity here, I'm  
23 going to leave it at that point. We have more details to  
24 share with you if there's any questions as to how we reach  
25 that conclusion. The point here is that these systems

1 will not work for a facility this size or anything close,  
2 and they have been given careful scrutiny and that  
3 conclusion has been reached by two separate regulatory  
4 bodies.

5           In terms of the plant itself, we think it's an  
6 extremely conservative look at how to address this  
7 problem. In that we have overestimated the entrainment  
8 and impingement impact associated with the project and  
9 accounting for how much mitigation we would require. And  
10 the reason why we did that is we decided it will take all  
11 of the use of the powerplant water. Assume it didn't  
12 happen. Assume that the technology features and the  
13 design features to slow down the water to lessen the  
14 impacts are not providing any benefit. And we assume that  
15 all of the water needed to be moved by the desalination  
16 facility, and that there will be 100 percent mortality to  
17 all the organisms in that water. This is a two, three,  
18 four-fold overestimate of the actual impacts of the  
19 project. And the significance here is for the purposes of  
20 establishing the mitigation requirement, we estimated the  
21 level of impact is considerably greater than anything that  
22 would actually occur. It's very conservative. It piles a  
23 worse case, upon worse case, upon worse case.

24           Moving on to the mitigation approach itself, we  
25 view this as a two-step process. The first step is to

1 take that conservative estimate of the impact we just  
2 described and consider where we might be able to do the  
3 mitigation. Both in Agua Hedionda Lagoon and offsite  
4 mitigation were considered. This is what I refer to as  
5 the feasibility step that is in the plan before you. The  
6 purpose of that plan again being to conduct a feasibility  
7 assessment. We last August issued a request for proposals  
8 for weapons restoration opportunities, and we canvassed  
9 the entire San Diego County community of interested folks  
10 and organizations and professionals and regulators, city  
11 governments, and so on to help us shape this plan. And  
12 they came back with eight proposals. We had a stated  
13 preference that Agua Hedionda Lagoon was our preferred  
14 sites since that's the side of the project where we'd like  
15 to do the restoration. Unfortunately, none of the  
16 projects that came back related to Agua Hedionda Lagoon.  
17 We're looking at (inaudible) high tide line. And our  
18 obligation to restore wetlands is to create a marine  
19 organisms comparable to those that we impact the operation  
20 of the intake. And so we concluded that at this juncture  
21 there was no feasible opportunities in Agua Hedionda  
22 Lagoon and begin looking offsite.

23 But we are about to embark with your staff and  
24 with the Coastal Commission, State Land's Commission  
25 staff, Fish and Game, other resource agencies on step two

1 beneficial uses that have been there for the last 55  
2 years.

3           We are not waiting for the plant to step into  
4 our role as a steward. We are already in the process of  
5 working with the Agua Hedionda Lagoon Foundation. Created  
6 an educational program for the third and fourth graders.  
7 It's called the Agua Hedionda Lagoon Foundation and  
8 Academy for Environmental Science, and we're educating  
9 school kids year round on how to protect a watershed. And  
10 absent ongoing stewardship that we committed to after the  
11 powerplant shuts down we think that this lagoon will  
12 revert back to something far less than it is in its  
13 current state. So this is, in our view, part of the  
14 overall mitigation plan that's before you. A commitment  
15 to preserve this resource regardless of whether or not we  
16 do any restoration at this site or whether we do it  
17 elsewhere.

18           We firmly believe that the plan is responsive to  
19 your permit. I've asked our experts to share with you  
20 briefly why that's the case. Address some of the  
21 questions in the staff report. We have first Dr. Scott  
22 Jenkins from Scripps Institute of Oceanography. Just so  
23 you understand his expertise and involvement on this  
24 project, Dr. Jenkins has been with Scripps Institute of  
25 Oceanography since 1967. Shortly after receiving his Ph.D

1 in 1980, he began conducting studies on Agua Hedionda  
2 Lagoon. He's conducted numerous studies since then right  
3 up to the present. He's been working with Poseidon on  
4 analyzing our project related impacts and management of  
5 the resource since 2000.

6           Following Scott will be David Mayer. David  
7 Mayer is the foremost expert on the west coast on  
8 entrainment and impingement studies. He basically wrote  
9 the book on how to conduct these studies. Has been  
10 involved in virtually every entrainment and impingement  
11 studies that's been conducted up and down the west coast  
12 since 1979.

13           David will be followed by Chris Nordby. Chris  
14 is environmental wetlands restoration specialist. For  
15 many years he was the manager of the Gasteren (sic)  
16 Research Lab at San Diego State University. He's been  
17 actively involved in the restoration projects down in the  
18 Tijuana River Valley and the Biona (sic) wetlands. And  
19 he's been brought on board here with us at Poseidon to  
20 help us identify our weapons restoration program in how we  
21 would implement such a project.

22           I'm going to turn it over to them and then just  
23 a few brief closing remarks when they get done, Mr.  
24 Chairman.

25           MR. MACLAGGAN: Mr. Jenkins.



1           MR. WRIGHT: He already used up 15 minutes, so  
2 next speakers please keep your comments brief.

3           MR. JENKINS: I'm going to address a concern in  
4 the staff report regarding the entrainment study, which  
5 started in '04 and went to '05. And a large portion of  
6 that study was conducted in water year 2005. And the  
7 staff report expressly concerns that 2005 was a year of  
8 abnormally high rainfall. And the implied worry in that  
9 comment was that the high rainfall produced in at a normal  
10 lagoon environment that was unsuitable to sustain the salt  
11 water organisms the entrainment study was targeting. I  
12 want to explain why that's not the case in this particular  
13 lagoon. There's two fundamental reasons for it. Number  
14 one it's a very small water shed. Number two, the Agua  
15 Hedionda Lagoon holds a very large volume of seawater.  
16 Now, in the upper portion of this figure, this table three  
17 of Page nine of the Tetra (sic) Tech study recently  
18 completed on the Agua Hedionda water shed. And the  
19 numbers for 2005 appear across the top. I'm going to take  
20 the maximum daily discharge measured in 2005 from the Agua  
21 Hedionda creek, and I'm going to apply that maximum daily  
22 discharge against the delusion capacity of this lagoon and  
23 show you that the resulting change of the salinity of the  
24 lagoon is very small. So then taking the 144 cubic feet  
25 per seconds maximum flow rate of the creek and applying it

1 over a day that would be an influx of 285 acre feet of  
2 storm water into the lagoon. Now, it's a very deep  
3 lagoon. There's over 1700 acre feet below tide of  
4 seawater in this lagoon. In addition, there's an  
5 additional 1750 feet of high (inaudibly) exchange. That  
6 would be additional water between low tide and high tide.  
7 So the total salt water volume of the lagoon is over 3,450  
8 acre feet. So even the worse case scenario in 2005 the  
9 maximum daily discharge will only result in eight percent  
10 of lagoon water being comprised of storm water. That  
11 would depress the salinity only down to about 30.75 parts  
12 per thousand. That's about a 2.7 part per thousand  
13 depression in salinity. Now, the fluctuation of salinity  
14 in the ocean reaches those levels many times as well in  
15 the coastal ocean around the lagoon.

16 So in conclusion, the lagoon was not transformed  
17 into a fresh water lagoon during the 2005 rainy period.  
18 It still remained a predominantly seawater body.

19 I'm now going to pass the presentation off to  
20 Dr. David Mayer, who's going to explain whether these  
21 kinds of salinity depressions during the 2005 peak runoff  
22 were significant, and he will also show you how his  
23 analysis method of the entrainment losses is independent  
24 of the fluctuations of the population of these seawater  
25 organisms.

1           MR. MAYER: Thank you, Dr. Jenkins.  
2           David Mayer. And board members and Chairman  
3 Wright. My background is marine biology and fishery  
4 science trained at the University of Washington.  
5           Some decade ago I was doing work at the Yellow  
6 River and where I was using a model there to help assess  
7 entrainment affects of a powerplant that were being  
8 proposed. And the model was called Empirical Transport  
9 Model. It occurred to me at that time that it might be  
10 useful on the Pacific Coast we're looking at entrainment  
11 affects from our coastal powerplants, which are ongoing  
12 rivers, but the Pacific Ocean being regarded in some  
13 places as river flowing past these large intakes. So I  
14 imported this model into the Regional Water Quality  
15 Control Board and later the CC comprehension mission  
16 process of looking at assessing entrainment affects. And  
17 that model over these past ten years has been developed by  
18 a number of renowned university professors in mathematics  
19 and statistics at University of Washington and Santa  
20 Barbara. Most currently Dr. Amundi (sic), that I've  
21 worked with over there a long period of time at U.C. Santa  
22 Cruz, continues to work on this model. There's just some  
23 background to the kind of work that ended up to generate a  
24 number that will later be discussed by Mr. Nordby on how  
25 this mitigation fits together with offsetting the

1 entrainment losses.

2           Scott Jenkins told you our study again in 2004,  
3 and continued for a year on a monthly basis. We collected  
4 samples that are wide number of locations in both the  
5 upper and middle and lower lagoons and the open ocean.  
6 When we sample, we sample over 24 hour basis so we're able  
7 to capture the kinds of larval fish that we're focusing on  
8 a very long-term and very intensive basis.

9           Our findings basically lead us--and you probably  
10 heard this before. The nine percent of all the larval  
11 fish that are entrained at the existing seawater intake  
12 for the powerplant are made up by three species. And the  
13 most of one is a very small species of fish called a gobie  
14 that lives in various tiny mud burrows. The adult gobie  
15 never gets any bigger than about an inch long. It's not  
16 surprising to think that the enormous number of mud flats  
17 in the upper lagoon that those products of their  
18 reproduction are carried down into the lower lagoon where  
19 the intakes located. None of the entrained species are a  
20 major threatened that we found in none of them. Less than  
21 one percent catalase are supported commercial interest  
22 from importance. And the project has no impact on the  
23 species' ability to maintain populations but the loss of  
24 these larvae going through the powerplant we recognize as  
25 something that could be mitigated, and that's what's being

1 proposed, is to create a body or an acreage of wetlands or  
2 habitat that the fish in those areas of new production  
3 will create larvae to offset the losses through the  
4 project and partly. Question.

5 MR. ANDERSON: What were the other two species?

6 MR. MAYER: A blenie, which is again a very  
7 small fish. Probably get's no bigger than about two  
8 inches long. We believe that 90 percent of its population  
9 is found in the aquaculture pet set up in front of the  
10 intake where they're growing muscles and oysters. And  
11 these are fish that live in those little crevices.

12 And the third one is the garaboley (sic), which  
13 is the large fish you see bright yellow on reefs. They  
14 apparently have learned to live in large numbers on the  
15 rocky reef of the breakwater right in front of the intake.  
16 There's a very, very large population there. So those two  
17 species are actually there sort of an artificial habitat  
18 setting.

19 So we look at the entrainment side what's going  
20 through a very small to the powerplant and the proposed  
21 desal project. We use the result of those to scale up to  
22 the proposed volume of the desal project. We use that in  
23 a modeling to come to our conclusions. We also looked at  
24 fish and other ordinances that are actually screened out  
25 by these existing screens and the screens that we use

1 during the Poseidon operation, and that's known as  
2 impingement. We came to very similar conclusions at the  
3 Coastal Commission. We are finding that the losses due to  
4 this are diminimus and insignificant.

5 In general, we believe our results from this  
6 model I described to you, the ETM, its result is used as a  
7 portion to find an estimate of how many acres of habitat  
8 need to be replaced in order to offset the entrainment  
9 losses.

10 As I mentioned earlier, Dr. Amundi, who has  
11 worked with us throughout this decade in Santa Cruz  
12 continues to do so. He conceived of an idea of taking our  
13 result from this model and using the estimated acreages of  
14 habitat--and I'll be heading on as an example where we did  
15 this. And we've done this in many other places along the  
16 coast now--to come up with a number of acres. And this is  
17 referred to a perry (phonetic) production foregone. It's  
18 not that habitat is being destroyed out there. Is that if  
19 we were to try to create habitat to create enough larval  
20 fish that are being entrained that we're assuming 100  
21 percent of them are lost. They're not all lost, but we  
22 assume that for conservatism. How many acres would we do?  
23 So we came up with a result of using this method of 37  
24 acres. This would completely offset 100 percent of all  
25 the entrained larval fish.

1           What I want to leave this spot with you before I  
2 turn it over to Mr. Nordby is that we are focused on  
3 larval fish. We assume 100 percent of those are lost  
4 going through the intake. Along with every 100 gallons of  
5 water going in there's one larval fish for every 100  
6 gallons of water. But along with those larval fish there  
7 are thousand -- tenths of thousand frankly of zoea  
8 planktons, which are crustaceans. And there's nearly  
9 millions of phytoplankton that go through essentially  
10 untouched because they are a hard body, have very hard  
11 shells. Unlike larval fish, they are kind of naked going  
12 through. So in that sense all of that goes through  
13 unharmed yet this new marsh or restoration acres will  
14 produce more zoea plankton and phytoplankton. And I'm not  
15 sure what amounts but in very large quantities, so you  
16 have kind of a doubling of that affect. We're offsetting  
17 something that isn't really being affected. As well as  
18 many other animals that will be described that utilize  
19 these weapons that aren't even affected by any of the  
20 project intakes, seawater intake.

21           Any questions?

22           MR. WRIGHT: I appreciate all the expertise  
23 that's coming before us. But I just want to remind all  
24 the speakers that a mitigation plan is not before us.  
25 That's something that is supposed to be produced at a

1 later time.

2 Chris.

3 MR. GARRETT: I was here to talk about the  
4 environmental benefits of the restoration plan, and I'll  
5 skip right to it since it's not supposed to be before you  
6 today.

7 We have come up as Peter said Poseidon did look  
8 extensively for restoration potential at Agua Hedionda.  
9 We're unable to come up with any viable alternatives.  
10 Looking offsite we saw an opportunity to compliment the  
11 ongoing restoration of San Dieguito Lagoon currently being  
12 constructed by Southern California Edison. And one of the  
13 places we've identified as potentially creating this 37 or  
14 38 acres of weapons is this magenta line that you see  
15 here. I want to stress that this is a conceptual level  
16 mitigation. We'll bring it back before you if you endorse  
17 our attempts to take it forward. And here is our  
18 conceptual restoration. Again, I want to stress that this  
19 is conceptual. It has been modeled hydraulically. It's  
20 shown to be feasible and complimentary with the Southern  
21 California Edison project, and I hope you support it for  
22 further development.

23 And with that I'll turn it over to Chris Garrett  
24 to discuss some legal implications.

25 I want to go through this quickly. I think this



1 fits in the framework of why this is in front of you. As  
2 we have consistently said to all the agencies that have  
3 voted on this project, this board is the agency that the  
4 State and the Water Code and the Coastal Act give primary  
5 jurisdiction to deal with the issues of entrainment and  
6 impingement. It's under water Code 13142.5B. So we agree  
7 with the number of the opposition letters you received.  
8 This is the statute that you should look to. And in your  
9 consideration today, you should make sure that the plan is  
10 being presented responsive to the condition and the permit  
11 approval we got in 2006 to develop a feasibility  
12 discussion of the plan that would meet water Code  
13 13142.5B.

14 So you have primary jurisdiction. Mr. MacLaggan  
15 mentioned a number of other agencies which have taken  
16 action on this. But I want to stress it's your board not  
17 the Coastal Commission, and not the City of Carlsbad, not  
18 State Land's Commission, which has given the authority  
19 under state law to implement and enforce 13142.5B under  
20 the Coastal Act. The Coastal Commission under 3412B, the  
21 Coastal Act is told to defer to the Regional Board and the  
22 State board on this issue.

23 The other thing I would say is when you hear  
24 from the opponents today, you received a number of  
25 letters, they simply disagree with the plan, but they have

1 not presented any evidence of their own or feasible sites,  
2 designs, or mitigation measures. And it is within the  
3 purview of your board to consider those issues. They have  
4 been considered by other agencies as well, and we hope you  
5 reach the same conclusion that we have the best available  
6 site, design, technology, and mitigation measures provided  
7 for in the plan that's in front of you today.

8           The other thing I want to say is that this  
9 is -- approval of this plan provides a framework for  
10 coordination with other agencies. We agree with the  
11 executive officer's recommendation today. It does allow  
12 you to coordinate with the other agencies, but it is this  
13 board which has the final decision-making authority under  
14 this issue under state law, and you will exercise that  
15 through the subsequent approval of the final mitigation  
16 plan that the executive officer provided for in the  
17 tentative offer -- order in front of you.

18           I'm going to skip over. Very briefly I think  
19 our speakers today have addressed the issues that were  
20 raised by your staff in the central water shed unit  
21 technical report. The data that we used is not atypical  
22 even though there was a higher rainfall when the data was  
23 collected. I think Dr. Jenkins addressed that. We do  
24 provide for final recalculation of the ATF, which was  
25 another question that your staff had in some of the

1 comments.

2           Another comment from your central water shed  
3 unit was what was the agency approval mechanism for final  
4 selection of specific mitigation alternative. And I  
5 believe it's been answered by your executive officer. The  
6 agency approval mechanism will be the approval of the  
7 final mitigation plan consistent with the plan you're  
8 approving today that will be back in front of you when we  
9 submit it within the next six months. We believe the plan  
10 that we put in front of you does provide for full  
11 evaluation mitigation alternatives.

12           In conclusion, your decision today is not a  
13 re-vote on whether the project should receive approval  
14 from the Regional Board. We received that in 2006. That  
15 decision by the way was appealed by all the number of the  
16 opponents in the room today. That appeal was rejected by  
17 the State Board. Their lawsuit against the City of  
18 Carlsbad for approving the project was also rejected by  
19 the courts. They still have pending a lawsuit against the  
20 Coastal Commission. But there's nothing in any of that  
21 litigation that precludes you from moving forward today.

22           The other thing I want to stress is we agree  
23 with the executive officer that the approval of this  
24 framework plan today is not a final vote on the mitigation  
25 plan. Perhaps in an ideal world it would make sense to

1 try to have a set of ministerial conditions that only the  
2 executive officer would need to check off and comply would  
3 not have to come back to the board. But I think given all  
4 the facts and issues that are in front of you, the  
5 comments of your staff, and the primary jurisdiction that  
6 the Board has on this issue, we endorse executive  
7 officer's tentative order, which would provide for the  
8 final plan to come back to this board.

9 MR. KING: Mr. Garrett, I think I misread the  
10 condition here in terms of describing in as the subsequent  
11 ministerial duty. But do you agree that it would still be  
12 helpful in terms of, you know, right now we've got a  
13 dispute over a domaining of the San (inaudible)  
14 feasibility analysis. Wouldn't it still be more helpful  
15 to go through the February 19th letter and identify  
16 exactly which concerns we want you to come back and  
17 address?

18 MR. GARRETT: It certainly wouldn't hurt. More  
19 clarification would be better. But we would say we feel  
20 first of all that we're in accordance with the staff  
21 recommendation. And secondly, the February 19th letter is  
22 fairly specific. And we do feel that we have addressed  
23 all those specific items or will be able to where the  
24 staff has any lingering questions. For example, this  
25 question about the reciprocity of the data 2005 that was

1 one of the specific questions that was raised in their  
2 February letter, and we feel we'll be able to address that  
3 as we have today.

4 MR. WRIGHT: Thank you.

5 Mr. MacLaggan, somehow you squeezed out your 30  
6 minutes and more I might add.

7 MR. MACLAGGAN: I think we have several speakers  
8 who will not be addressing this so hopefully we'll make up  
9 for lost time.

10 Mr. Chairman, let me just jump to what's going  
11 to happen after today.

12 We will be working -- we've decided we will be  
13 working with the Regional Board Staff, Coastal Commission  
14 Staff, and other resource agencies to meet and reach  
15 consensus on the mitigation goals and objectives  
16 identifying that may have been overlooked in Agua Hedionda  
17 and other opportunities. This will lead to selection of a  
18 preferred mitigation site plan finalize project scope  
19 locations implementation. Bring all of that back to you  
20 in the next six months; set up future meeting date, and  
21 we'll also be going back to the Coastal Commission.

22 So with that let me just conclude and state that  
23 you asked us to go out and prepare a feasibility state,  
24 look at site specific plans procedures, methodologies to  
25 be implemented and/or mitigation opportunities the

1 feasibility thereof minimizing (inaudible) organisms. We  
2 believe we addressed that requirement per the permit  
3 conditions, and we respectfully request that the Board  
4 adopt the resolution that's before you. We thank you.

5 MR. WRIGHT: Can you go back to the previous  
6 illustration. In Item 1A through E, it seems like what  
7 you're saying is very different than what Mr. Garrett says  
8 when he indicated that the plan finds for full evaluation  
9 of mitigation alternatives. And you have -- here it's not  
10 what you're saying. It sounds like there's a lot more  
11 that needs to be done before you have a full evaluation of  
12 the mitigation alternatives.

13 MR. MACLAGGAN: We are not aware of any other  
14 opportunities. But we have heard from your staff; we've  
15 heard from the staff of other entities that they want to  
16 make sure we take a hard look at Agua Hedionda to ensure  
17 we haven't overlooked an opportunity. That's the purpose  
18 of the meeting that will be taking place next month with  
19 all of the state agencies together in one room. We're  
20 actually going to meet at the lagoon there in Agua  
21 Hedionda to see if there isn't something that had been  
22 overlooked as part of the solution.

23 MR. WRIGHT: Thanks.

24 And in all the alternatives -- and I think it  
25 came up before and you told me the answer and I still want

1 to make sure it's still not a possibility that I think in  
2 the analysis that they ask you to use reclaim waters as  
3 superior alternative to seawater. There's no way to get  
4 reclaimed water to your --

5 MR. MACLAGGAN: To our facility?

6 This project -- you might be aware of this being  
7 a grower in Carlsbad. Carlsbad is piped throughout with  
8 recycled water. Carlsbad is actually the most aggressive  
9 user of recycled water in this county. Where 20 percent  
10 of their water supply comes from that system. This  
11 project is intended to provide potable drinking water as  
12 supplement to that program. So it's part of the solution.  
13 Conservation, recycling, and the desalination project are  
14 intended to ensure that the full compliment of water uses  
15 of Carlsbad are commute from reliable locally generated  
16 sources.

17 Thank you, Mr. Chairman.

18 MR. WRIGHT: We have a number of elected  
19 officials who have been very patient waiting their turn.  
20 We'll start out with Mayor Lewis. Mr. Lewis is the mayor  
21 of the City of Carlsbad. Welcome.

22 MR. LEWIS: Thank you, Mr. Chairman, I  
23 appreciate being here this afternoon. My name is Bud  
24 Lewis. I'm a member of the City of Carlsbad. I'm here to  
25 speak on behalf of my 100,000 plus residence of our city.

1 As a current vice chair of the City Water Authority and a  
2 former member of the Metropolitan Water Board of  
3 Directors, I've spent 14 years working on this regional  
4 water issue, and tentative has been on desalination.

5 I notice when you gentlemen mentioned that  
6 you're concerned about loss of your hair. I've already  
7 lost mine. I think my eyebrows might be short as we keep  
8 going into this.

9 The water delivery system is unreliable. I'm  
10 sure you're all aware of that. I want to supply  
11 (inaudible) drought; above all restrictions global climate  
12 change, and intense competition for water resources.  
13 Seawater desalination offers San Diego County the most  
14 viable opportunity to create a local supply of water.  
15 This local supply is more dependable than the water we  
16 currently receive from the Delta or the Colorado River.  
17 And I'm sure you're well aware of what's happened to the  
18 Colorado River, and what's happened to the Delta next to  
19 the federal judge up there. We intentionally located the  
20 desalination project next to the powerplant at Agua  
21 Hedionda Lagoon because it is the most available and  
22 environmentally preferred location. Carlsbad is the only  
23 city in the state that had really good (inaudible) within  
24 its boundaries. We recognize that our lagoon is  
25 environmentally and recreational treasures and that the



1 long time stageability is crucial to our citizen's quality  
2 of life. And Poseidon is also (inaudible) safe as  
3 ourselves. This plan that we have before you today is  
4 comprehensively addressed to the needs to protect the  
5 Pacific Ocean and Agua Hedionda Lagoon and ecological  
6 system. And once again, we rely totally upon our staff  
7 and the reports they have as far as getting this  
8 information to you.

9 I personally take you, too, with the repeated  
10 opposition to the project from the staff of the California  
11 Coast Commission and certain representatives of the  
12 Environmental Community.

13 Three years ago I was at a conference with Peter  
14 Douglas in Santa Barbara on desalination. I've known  
15 Peter for a long time, and after the presentation, which  
16 was very negative, we had a discussion. And his basic  
17 thought pattern was this. Number one, we want no more  
18 migration in California. Number two, we want no more jobs  
19 because jobs create migration. So the real issue is not  
20 so much to me what is being discussed here to a degree,  
21 but it's more or less a personal attitude that's taken  
22 place. And Peter was very open about this. If you ask  
23 him about it, he'll tell you. But my family is second,  
24 and third, fourth generation Californians, and we need  
25 jobs for my children, my grandchildren, and those coming

1 after.

2           So if we bound to all these regulatory agencies  
3 without looking at the prospects -- because I've been in  
4 government for 38 years as a local official, and I know  
5 what -- if a staff takes a very strong position with the  
6 few -- the board members one way or the other -- the thing  
7 is dead. I've seen it in the city government all the way  
8 through. I've seen it on the county level all the way  
9 through. So to me you do the best for the most. And this  
10 is what this project is all about. Because I, as a policy  
11 maker, am partially responsible for bringing new jobs,  
12 number one; maintaining the jobs that we have, number two;  
13 and number three, being able to rise above these areas to  
14 keep our folks here in California. Water is the name of  
15 the game. You folks pay a major reason. Some of you are  
16 elected officials on City Council. You know the  
17 importance of water. And so the idea that a small group  
18 can hamper the mast majority, I think that it is something  
19 you have to look at very, very closely.

20           MR. WRIGHT: Mr. Lewis, if you can summarize.  
21 Thank you very much.

22           MR. LEWIS: Thank you very much.

23           MR. WRIGHT: Councilwoman Ann Kulchin from the  
24 City of Carlsbad.

25           MS. KULCHIN: Mr. Chairman and members of the

1 board, hello, my name is Ann Kulchin. I've had the  
2 privilege of serving on the Carlsbad City Council for 28  
3 years. I'm not as old as the mayor. He refers to me as a  
4 kid and I really like it.

5           During my tenure on the city council, I've  
6 worked diligently to assure that the Carlsbad desalination  
7 project before you today would provide a dependable local  
8 source of water to our region while meeting all applicable  
9 environmental regulations.

10           For its beginning the 1998 to today the  
11 desalination project has had ten years of study and public  
12 debate.

13           Today I'm here before you speaking in support of  
14 the proposed minimization plan for the Poseidon  
15 desalination project. As your staff report says, this has  
16 been a controversial project. And that controversy has  
17 created an environment where strong emotions rather than  
18 good science have often become the center attention. We  
19 are all stewards of the Public Trust, Council Members,  
20 Regional Board Members, State Land's commissioners, and  
21 Coastal Commissioners. We cannot let our feelings or  
22 emotions guide the public debate or the decisions that we  
23 as representatives of the public must make. We public  
24 officials find that emotions is brought into the equation  
25 from many sources; including ourselves, our staff, and

1 even our consultants. Sorting through what is fact and  
2 what is opinion is a complex and time consuming process;  
3 particularly when you are dealing with something as  
4 complex as this project. And although this is a complex  
5 project, the plan before you was submitted in February of  
6 2007.

7 Your staff has done much analysis in providing  
8 many comments on the plan. The public has reviewed the  
9 plan and provided many comments. And the opponents of the  
10 project have reviewed the plan and provided many comments.  
11 And the plan has been amended to reflect these comments.

12 After more than a year review and comment, it is  
13 time for this board to take action based on the facts.  
14 The plan before you comprehensively addresses the  
15 feasibility of the best available site, the best design,  
16 the best technology, and the necessary mitigation for  
17 protection of the Pacific Ocean and the Agua Hedionda  
18 Lagoon.

19 It is time for action. I urge you to support  
20 the plan. Thank you for hearing me.

21 MR. WRIGHT: Thank you for focusing your  
22 comments.

23 Councilwoman Julie Nygaard also from the City of  
24 Carlsbad.

25 MS. NYGAARD: Thank you, chairman and members of

1 the board.

2 I'm Julie Nygaard, and I've been a member of the  
3 Carlsbad City Council for over 13 years. I've also served  
4 as a member of the Water Quality Control Board so it's  
5 kind of nice to be home with all of you. And I do  
6 understand what you're being asked to do and with regard  
7 to this project.

8 My comments to you today are perhaps from a  
9 slightly different perspective than most of the speakers  
10 that you'll hear.

11 I want to address success that Carlsbad and the  
12 powerplant operator have had over the past 60 years in  
13 being stewards of the Agua Hedionda Lagoon.

14 Long before the Regional Water Quality Control  
15 Board existed, San Diego Gas & Electric built a powerplant  
16 on the coast in Carlsbad. Agua Hedionda Lagoon did not  
17 exist in its current form. Its natural state is a mud  
18 flat that was filled with stinking water, and because of  
19 that it's called stinking water Agua Hedionda. Agua  
20 Hedionda is manmade, and it's been maintained by a private  
21 power company that's part of the operation for almost 60  
22 years. The healthy echo system you see in the lagoon  
23 today is a result of good stewardship by a private power  
24 company and a local government; not the result of mandates  
25 by state boards and commissions. Carlsbad has been

1 approved -- has a proven track record as a stewardship  
2 with regard to the Agua Hedionda. As an example of this  
3 when the Agua Hedionda was threatened with caulerpa  
4 taxifolia, it was Carlsbad and the power company that  
5 stepped forward to protect the environment and heal the  
6 lagoon.

7 The annual dredging of the outer lagoon, which  
8 is essential to the health of the whole lagoon system, has  
9 been provided by the power company all these years.

10 Two lagoons are proposed to be managed by the  
11 state agency--Buena Vista and Batiguitos has suffered from  
12 neglect and have received little or no maintenance effort  
13 on the part of state agencies responsible for their  
14 health. And we see no hope of change in that attitude in  
15 the near future.

16 Before you today is a project that can help  
17 continue the health and vitality of the Agua Hedionda  
18 Lagoon echo system. The once through cooling of Encina  
19 Power Station will eventually cease. The need for  
20 dredging is part of an operation of the powerplant will  
21 cease, and the responsibility for maintenance of the  
22 lagoon will fall upon the state. With a less and stella  
23 record, state agencies have the stewardship of the lagoon.  
24 This prospect is very disturbing to all of us on the  
25 council and in our community as well.

1           I understand the importance of the minimization  
2 plan. I also understand the eliminating one through  
3 cooling and replacing the existing system with reduced  
4 impact of the desalination plant will only improve the  
5 quality of the lagoon echo system. And the desalination  
6 plant will provide the necessary stewardship of the lagoon  
7 that has historically been provided by the powerplant  
8 operator.

9           You have an opportunity to take a leadership  
10 position to protect the long-term health of the Agua  
11 Hedionda Lagoon by approving this plan. I urge you to  
12 take heart and move forward with it, and thank you for  
13 your consideration.

14           MR. WRIGHT: Thank you.

15           Mr. Jerome Kern and council member from the City  
16 of Oceanside.

17           MR. KERN: Good afternoon. Thank you for your  
18 time. My name is Jerry Kern. I'm council member of the  
19 City of Oceanside. As an elected official of the third  
20 largest city in San Diego County, I have the obligation to  
21 provide water to 175,000 people. And to fulfill this  
22 obligation, the City of Oceanside has become the newest  
23 partner in the desal partner project.

24           Last month I toured Colorado and witnessed the  
25 tremendous stress that Colorado is undergoing. And as you

1 all aware the quantifications limited agreement will limit  
2 the water that we get from the Colorado River, and it will  
3 cap the amount of water we receive.

4           The state water project is also under enormous  
5 strain both environmentally and through regulation.  
6 Casting a doubt over how much water we can consistently  
7 expect from the Delta. All of these challenges make the  
8 Carlsbad desalination project crucial in diversifying our  
9 water supply. In fact, it's probably the most important  
10 water infrastructure power tech in San Diego in recent  
11 (inaudible). The project will produce about 56,000 acre  
12 feet of water of reliable high quality water at a cost  
13 that is assured. This is enough for 300,000 San Diegians,  
14 about ten percent of the current population. The Carlsbad  
15 desalination project is a positive step in the right  
16 direction in our region for future water supply. Poseidon  
17 Resources has demonstrated that their project will be  
18 environmentally responsible and proactive in minimizing  
19 any potential impacts. The longer this project is delayed  
20 the further we go down the road of endangering all our  
21 water supply in California. We need this immediately.

22           On behalf of the City of Oceanside, I urge you  
23 to approve the resolution before you this afternoon.  
24 Thank you.

25           MR. WRIGHT: Thank you for your brevity.



1 Mitch Beauchum chairman of the Sweetwater  
2 Authority. And where is your hip helmet?

3 MR. BEAUCHUM: I left it back there. Thank you,  
4 members of the board. My name is Mitch Beauchum. I'm the  
5 chairman of the Sweetwater Authority Board of Directors.

6 Sweetwater currently provides water service  
7 approximately to 180,000 people in National City and the  
8 western part of Chula Vista. Sweetwater has recently been  
9 named the most reliable waterage in San Diego County  
10 because of the diversity of our water supply. While we  
11 have instituted many conservation measures with our  
12 customer, we believe that seawater desalination is an  
13 important part of the solution in the region long-term  
14 water reliability need.

15 As a member of the San Diego desal partners,  
16 nine of us now in Oceanside, our agreement to purchase  
17 water from the Carlsbad project will increase Sweetwater's  
18 Authority drought tolerance supply to 36 percent by 2010.  
19 You may ask why a water agency 50 miles from this plant is  
20 involved. We see benefit to the region that we're  
21 participating in that it also benefits us as an agency, so  
22 we're stepping forward as the other partners have done so.  
23 This new water supply will replace for a one point basis  
24 the water we currently import through the San Diego County  
25 water Authority over the hill from catastrophes or from

1 Colorado.

2           Poseidon Resources desalination project can gain  
3 enthusiastic support from the water agencies, cities,  
4 businesses, residence, and elected officials including our  
5 entire, our entire state and federal delegation. Had you  
6 been at the Coastal Commission hearing, you couldn't  
7 believe it. I couldn't believe that that consensus was  
8 there. But the entire organization is behind us.

9           We appreciate the due diligence that regulatory  
10 agencies have taken to ensure that this is the most  
11 environmentally benign project possible. We believe that  
12 it has been thoroughly vented, as you saw from the  
13 technicians that presented their story here, and utilizes  
14 every possible avenue for reducing impact to the marine  
15 environment. Every step of the way some within the  
16 regulatory community have attempted to delay the project,  
17 that's been mentioned today already. If they had been  
18 successful, we would be many years, not months, away from  
19 the completion of this project. Thankfully they have been  
20 largely unsuccessful because their arguments do not hold  
21 water.

22           The Sweetwater Authority Board of Directors ask  
23 you to make the right decision -- sorry -- the correct  
24 decision and approve the tentative resolution for the flow  
25 entrainment and impingement minimization plan for the

1 Carlsbad desal plant. Thank you for your time.

2 MR. WRIGHT: Mr. Beauchum, thanks for your  
3 brevity.

4 Again, I'd just like to urge or let the speakers  
5 know that all members of this board are very sensitive to  
6 the needs for augmenting our local water supplies through  
7 reclamation, desalination, conservation, and so on. So we  
8 don't need to focus on that as much as you would like to  
9 perhaps. But I don't think you need to sell -- I guess  
10 what I'm saying is I don't think you need to sell the  
11 Regional Board on the importance of increasing our local  
12 water supplies.

13 with that I'd like to hear from Gail Newton.

14 MS. NEWTON: Good afternoon, Chairman Wright and  
15 board members. I'm Gail Newton. I'm the chief of the  
16 division of environmental planning and management for the  
17 State Land's Commission. And I came down today to make  
18 sure that our letter was in your record, and I heard it  
19 just got admitted, so I will be brief. I will not read  
20 it. I also want to start off with I'm neither in support  
21 of opposition. I filled out a green card. You didn't  
22 have a beige neutral card.

23 My commission has not taken the final action on  
24 this issue yet. My staff is still reviewing materials  
25 provided by Poseidon and others. And more importantly

1 we're still involved in the inter agency cooperation with  
2 the commission, your staff, and the resource agencies. So  
3 some of the high points in the letter, we're still looking  
4 at minimization efforts to make sure that all  
5 minimizations efforts have been taken. And that's item  
6 number one of our letter.

7           And breezing through this. We're very concerned  
8 about the adequacy of mitigation and that it truly  
9 mitigate once they get there for the impacts. Those  
10 impacts are adequately quantified. We're working with the  
11 Coastal Commission Staff, and they have hired an expert to  
12 review the calculations and look more deeply into detail  
13 of this.

14           We're concerned about the speed with which we've  
15 gone to offsite mitigation as opposed to on site within  
16 the local lagoon, and adopt the mitigation ratios. So  
17 we're concerned that usually typically a two to one is  
18 usually used and we're down already to one to one  
19 basically.

20           And probably lastly is to reiterate that all the  
21 agencies are meeting on May first and second down here in  
22 San Diego to go through all the information and to come to  
23 a consensus on exactly what should be happening with  
24 minimization and with all the litigation on site.

25           So with that also I will make sure that my staff

1 includes the recommendation or action you take today in  
2 our staff's report to our commission, and that would be  
3 heard fairly soon within the next couple months.  
4 Thanks.

5 MR. WRIGHT: Thank you for your letter and your  
6 presentation.

7 And I would like to especially thank the State  
8 Land's Commission for being engaged in the quality of  
9 water down in San Diego. I was trying to figure out what  
10 side of the fence you were on. I couldn't figure out from  
11 your letter.

12 MS. NEWTON: We are concerned about our public  
13 trust responsibilities.

14 MR. WRIGHT: I understand.

15 Just raising the issues many of which have been  
16 brought out in other letters as well.

17 Mr. Eric Dietz representing Assemblyman George  
18 Plusher.

19 Rachel Solorzano. Field representative for  
20 assembly member Mary Salice.

21 MS. SOLORZANO: Good afternoon. Thank you for  
22 the opportunity to be here. I'm representing assembly  
23 member Mary Salice. And I'll read a very condensed  
24 version of the letter of support that she has.

25 MR. WRIGHT: would you correct your name for me.

1 MS. SOLORZANO: Solorzano.

2 MR. WRIGHT: Solorzano. Thank you.

3 MS. SOLORZANO: This letter is to inform you of  
4 my support for the Carlsbad desalination plan, and request  
5 that you finalize the discharge permit by approving the  
6 key permit conditions that requires the project to  
7 minimize marine impacts.

8 I am pleased to support Sweetwater Authority who  
9 provides water to thousands of my constituents and their  
10 bid to increase their drop tolerance supplies of 36  
11 percent by 2010 and be less depended on imported water.

12 In 2006, Sweetwater Authority contracted  
13 Poseidon Resources to purchase 2400 acre feet of water  
14 annually. It will be produced at the Carlsbad  
15 desalination plant. This water will account for  
16 approximately ten percent of Sweetwater's annual gain  
17 almost by enough water for about 4800 families each year.  
18 The water produced will give the highest quality meeting  
19 or exceeding all drinking water regulatory standards under  
20 the law. It is also guaranteed never to cost more than  
21 the rate set by the San Diego County Water Authority.  
22 Ensuring that Sweetwater will pass up exceedingly high  
23 water rates to their customers. And this is from the  
24 vigorous passing of public scrutiny to ensure that the  
25 plant will be environmentally friendly and efficiently

1 operated. The project developers made every effort by the  
2 state and federal environmental regulations and has long  
3 since approved their project will not harm the Agua  
4 Hedionda or ocean. In fact, their proposal proposed the  
5 mitigation measures or resources of 37 acres of wetlands  
6 habitat, and will provide for the annual maintenance of  
7 the lagoon.

8 I am proud to support the successful public  
9 private partnership between Poseidon Resources with the  
10 City of Carlsbad, and I urge you to approve this project.  
11 Thank you.

12 MR. WRIGHT: Thank you.

13 Cameron Durckel Director of the San Diego office  
14 of the governor.

15 MR. DURCKEL: Good afternoon. It's a pleasure  
16 to be here and thank you for your service. My name is  
17 Cameron Durckel. I'm with the governor's office here in  
18 San Diego. I'll be very brief.

19 The governor supports desal as a critical  
20 component of the state's water plan. Specifically the  
21 public private partnership in Carlsbad here. And I will  
22 stave off my comments on public private partnerships and  
23 jobs. But please keep this in context. A very important  
24 project to move forward with in an environmentally  
25 sensitive manner.

1           And again, thank you for your time in addressing  
2 this matter.

3           MR. WRIGHT: Thank you for your time. And thank  
4 you to the governor.

5           Mr. Jonathan Hardy. Where is Mr. Hardy?

6           He's a district representative in the office of  
7 Senator Dick Chaney. We have a letter from the senator.

8           Ken Wiseberg or Weinberg. Couldn't read your  
9 writing.

10          MR. WEINBERG: Oh, it's very poor. The kids do  
11 a better job than I do.

12          Thank you, Chairman Wright. I will be brief.

13          I'm Ken Weinberg. I'm the director of Water  
14 Resources for the San Diego County Water Authority. And I  
15 was going to remark on some of the supply issues before  
16 you, but Chairman Wright really hit on the first three  
17 things that are really on the top of our list for local  
18 supply development; conservation, recycling, and seawater  
19 desalination.

20          I'd like to thank your board for your past  
21 support of local supply development. It's very important  
22 to this region. And I think what I will stress is that we  
23 are doing all three of those things. We are doing them  
24 all aggressively, but there is a sense of urgency. I  
25 mean, some of the previous speakers spoke about the



1 federal decision that limits pumping through the Delta.

2           These next several years are going to be  
3 extremely precarious for us in terms of supply  
4 reliability. And we were counting on this project to be  
5 online by 2011 or so. So there is a sense of urgency  
6 here. It's going to take years for the state to work  
7 through the issues in the Delta and fix the Delta.  
8 Through the course of my career, last almost 20 years, the  
9 state's been working on that issue.

10           So, yes, we need this for supply reliability,  
11 but there is a pressing need, and our board would really  
12 urge the Regional Board to continue to support this  
13 project and to move it forward through the process. Thank  
14 you.

15           MR. WRIGHT: Thanks very much.

16           Marcela Escobar. President of Atlantis Group.

17           MS. ESCOBAR: Thank you, Chairman Wright. And I  
18 will keep my comments brief. I also have a letter.

19           I'm here today before you requesting that you  
20 support the plan as presented by your staff. As a former  
21 planning director for the City of Carlsbad and as a  
22 Carlsbad resident, I have over 21 years experience as a  
23 regulator enforcing wetland use matters.

24           When I worked for the City of Carlsbad, I  
25 experienced firsthand how important this project would be,

1 not just for our city but for all of the region in order  
2 to be able to meet our daily water supplies. We examined  
3 all of the alternatives very closely, and we feel that the  
4 project before you is an environmentally responsible  
5 solution to meet the needs for the region. That's why we  
6 can be comfortable that the plan that is before you that  
7 is being recommended by your staff with those conditions  
8 is one that will be able to be approved consistent with  
9 all of the regulations.

10 And there are other comments in my letter, but I  
11 wanted to try to keep it brief. Thank you.

12 MR. ANDERSON: Excuse me. Could you identify  
13 yourself.

14 MS. ESCOBAR: Marcela Escobar.

15 MR. WRIGHT: We have a number of speakers  
16 representing water districts. We've already heard from  
17 elected officials. We have a number of -- can't tell for  
18 sure whether Mr. Munoz is from the Agua Hedionda Lagoon  
19 Foundation. I'll hold off on that one.

20 Oh, I'm sorry. You're already there so go  
21 ahead. I was trying to lump like groups together here and  
22 make this more organized. Go ahead, though.

23 MR. MUNOZ: Thank you very much for allowing me  
24 to jump up at that half opportunity there.

25 I'm president of the Agua Hedionda Lagoon

1 Foundation. We've been around since 1989, 1990. But in  
2 the past couple years we've really expanded our growth  
3 about three or four times over, and we've gotten a lot of  
4 visibility in the community. We are very supportive of  
5 the desalination project, and specifically with what's  
6 before you this afternoon, the plan.

7           This plan required for Poseidon to look at  
8 feasibility mitigation, and they've done that. This is a  
9 milestone. We think this milestone should be approved at  
10 this point. While they did look offsite, believe me no  
11 one would like the mitigation to occur in our lagoon more  
12 than our group. And sometimes on these complexed  
13 situations we need to look at things two or three times.  
14 Well, by approving this plan, we'll get that second chance  
15 because we're going to have a major meeting, as was noted  
16 to you earlier, to look again and exhaust any  
17 possibilities for mitigation in our lagoon or closer to  
18 home, if you will. And this is something that we're all  
19 very excited about. We're going to participate very  
20 aggressively in this.

21           The last call or solicitation to look at this  
22 mitigation plan last August, you know, it had some limited  
23 success. But we think with this new round there's going  
24 to be some new things that could be uncovered. There's  
25 been some opportunities at the regional level with RP's

1 that have just gone out in the last handful of weeks that  
2 we add new components and new opportunities for us to  
3 mitigate within public urinals and closer to the site of  
4 the desalination project.

5           Having said that, I do want to point out for  
6 those who have been around the county and the area for  
7 more than 15 years or so offsite mitigation is not a total  
8 failure. Batiguitos Lagoon would not be restored as it is  
9 today if it were not for the impacts at the Port of Los  
10 Angeles, and that's 90 miles away. Here we're talking  
11 about nine miles away. So I think you have enough to show  
12 that they met the feasibility for the mitigation plan and  
13 allow us to take a second look and make sure there's  
14 nothing closer to home that we can find out as far as the  
15 mitigation plan that can then come to you later as well.  
16 If you need a progress report before then or something,  
17 that might be fine. But we think it's important to take  
18 advantage of the balance point right now as other speakers  
19 have mentioned, elected officials, times passing, and  
20 that's creating issues. The time that has past me allow  
21 more mitigation options to surface, and then if not you  
22 can go forward with what's been laid out.

23           So we think you're at a balance point and the  
24 Lagoon Foundation is very much in support as our council  
25 members have spoken were being supportive in a parallel

1 manner and urge you to approve what's before you today so  
2 that the mitigations can go from feasibility to a final  
3 plan.

4 MR. WRIGHT: Will you identify yourself for the  
5 court reporter and spell your last name.

6 MR. MUNOZ: Eric Munoz, M-u-n-o-z. President of  
7 the Agua Hedionda Lagoon Foundation.

8 MR. WRIGHT: Thank you.

9 Mr. Michael Barden. While Mr. Barden is coming  
10 forward. I don't see him.

11 I know Dennis is here. Dennis Bostad. While  
12 Dennis is coming forward, Rua Petty, Gary Arant, and  
13 William Rucker if you'd be ready.

14 MR. BOSTAD: Dennis Bostad, general manager of  
15 Sweetwater Authority. I have nothing further to add other  
16 than to urge you to pass the resolution. Thank you.

17 MR. WRIGHT: Wow, thank you.

18 Hard to follow.

19 MR. PETTY: Rua Petty. I'm president of the  
20 rainfall Municipal Water District and also on the board of  
21 directors of the San Diego County Water Authority. I'll  
22 abbreviate my comments to the fact that my agency is part  
23 of the agencies that are under contract with Poseidon.  
24 Seventy percent of our water is agricultural. And right  
25 now you're looking at an individual that is living the

1 problem of our water supply here in California. If you're  
2 not aware of it, the agricultural community has cut back  
3 30 percent here in San Diego.

4           And my comment is that time is of the essence.  
5 Jobs are five billion dollar industry here in San Diego is  
6 at risk, and part of that is because of our lack of water.  
7 So I'm here to urge you to support moving forward post  
8 taste because providing water here in San Diego is not an  
9 easy task. Thank you.

10           MR. WRIGHT: Thank you.

11           Mr. Arant.

12           MR. ARANT: Gary Arant, Valley Center Municipal  
13 Water District. I'm the general manager of that agency.  
14 I'm also a director from the San Diego County Water  
15 Authority Board of Directors. And I'm formerly a member  
16 of this body. I served from 1983 to 1997. I don't want  
17 to discourage you when I tell you that in the 14 years  
18 I've served on this board and the 11 years since then the  
19 Tijuana River pollution, the Regional Board restructuring,  
20 and under funding the Regional Board programs, and the  
21 San Diego Bay cleanup, and how we are going to get the  
22 Port Authority involved were issues that we dealt with my  
23 entire time on the board. You do have some new things,  
24 and I'm kind of jealous. And that is you're not dealing  
25 with expandable diapers and bird waste removal from

1 beaches, so that's interesting.

2 But you're also dealing with this desal project,  
3 and as a rural points out Valley Center is an agricultural  
4 agency. And knowing what I know about water and the sound  
5 of the chainsaws moving the avocado trees and citrus  
6 trees, we have a serious water problem right now. Not two  
7 years from now or three years from now, but we have a  
8 water problem right now.

9 As one of the nine agencies under contract with  
10 the desal water, I can't emphasize how important this is.  
11 You all know that it's been explained that your adoption  
12 of this resolution today is not a parallel effort, but  
13 it's in the critical path of moving this project forward.

14 So with that I will urge you to adopt resolution  
15 R9-2006-0065. Thank you very much.

16 MR. WRIGHT: Thanks very much.

17 William Rucker.

18 MR. RUCKER: Yes, I am William Rucker. The  
19 general manager with Vallecitos Water District with about  
20 30 years service at Vallecitos. And we serve a little  
21 over 81,000 people. We're one of the nine member agencies  
22 that have entered into long-term contract to meet 44  
23 percent of our demand.

24 We would urge you to adopt this minimization  
25 plan and keep this thing moving forward. Thank you.

1 MR. WRIGHT: Thank you.

2 Mr. Robert Simmons.

3 MR. SIMMONS: Mr. Chairman and members of the  
4 board, will somebody give me a verbal cue when I'm about  
5 30 seconds away from running out of time.

6 MR. WRIGHT: I'll do that, sir.

7 MR. SIMMONS: Thank you very much.

8 My name is Robert Simmons. I'm former chief  
9 trial lawyer for the Sierra Club in a number of federal  
10 court litigation matters over the years that concerns  
11 water supply and the protection of coastal marine recovery  
12 agencies on issues that are very similar to those before  
13 you now. In addition to that over the last 20 years, I've  
14 emphasized environmental and water issues both as  
15 professor of law as well as environmental attorney.

16 I feel incompetent to stand here and express my  
17 strong support for the Poseidon plan. I think it responds  
18 soundly and directly to the request you've made, the  
19 conditions that you've expressed after your last hearing.  
20 It complies with all applicable laws. It's a good plan,  
21 and I urge you to endorse it today.

22 I know that there are a number of opponents.  
23 Colleagues of mine or at least former colleagues of mine  
24 in the environmental community who will soon come up  
25 before you and argue that you shouldn't take action today.



1 You should postpone consideration by some future date. I  
2 just want to remind you that these are the same people who  
3 have been actively opposing the entire project for the  
4 past five years in and out of court every step of the way  
5 until today, and they failed each step because they have  
6 not had any good sound legal as well as factual arguments.  
7 I know that they're not in the mainstream of the  
8 environmental community. I know where that community is.  
9 I know that the majority of environmentalists in this  
10 economy as well as the overwhelming majority of the public  
11 in this area agree with me, and that is that reasonable  
12 impacts to coastal geniuses is not inconsistent. Doesn't  
13 conflict with the production of new water supply to serve  
14 this water starving area.

15 I know, Mr. Chairman, you don't want me to talk  
16 about water supply, but let me approach it briefly from  
17 this perspective.

18 And that is this. The Poseidon plant will  
19 produce water that will serve 110,000 families in this  
20 region, and we need it as soon as possible.

21 MR. WRIGHT: Mr. Simmons, you have 30 seconds.

22 MR. SIMMONS: Beyond that there's a critical  
23 long-term need to divorce ourselves from the near total  
24 dependance upon imported water. Water conservation alone  
25 nor with water recycling; they won't accomplish this goal.

1 But add desalination to the other two strategies and we  
2 can achieve this dream of goal of water self sufficiency.

3 Gentlemen and ladies, maybe not in bylaw tact,  
4 but certainly yours in the lifetimes of our children. If  
5 we move fast, we need to do that. And I appeal you to  
6 endorse this plan today and move that certainty along so  
7 that we can rely upon it. Thank you.

8 MR. WRIGHT: Next we have Steve Cedie followed  
9 by Douglas Metz, Bill Clavenger, Bill Smith.

10 Is Mr. Cedie here? Mr. Metz.

11 MR. METZ: Thank you, Chairman Wright and  
12 members of the board. My name is Douglas Metz, M-e-t-z.

13 I appear in my capacity as a member of the  
14 infrastructure committee of the San Diego Regional Chamber  
15 of Commerce.

16 I urge that the board without further delay  
17 approve Poseidon's proposed flow entrainment and  
18 impingement plan. This decision will be amply supported  
19 by several findings. I'll summarize only three in my one  
20 page as submission.

21 First of all, the project sponsors and local  
22 governments have exercised due diligence in undertaking  
23 environmental studies evidencing minimal adverse impact.  
24 In particular the plan has been under review for 12 months  
25 and was extensively revised on two occasions in response

1 to the comments received from the board staff and the  
2 public. The plan assures, utilizes rather, best available  
3 site design, technology, and mitigation measures.

4 Second, the plan assures maintenance of the  
5 water quality of a well functioning lagoon and of the  
6 surrounding marine habitat, and is augmented by mitigation  
7 measures to be implemented subsequently.

8 Last and very important of equal by preceding  
9 speaker, time is of the essence. And I urge that the  
10 project after over eight years in the making not be  
11 further delayed by being burdened with conditions  
12 requiring experimentation with untested water intake and  
13 discharge technologies. Thank you very much.

14 MR. METZ: Thank you Mr. Metz. Bill  
15 Clavenger.

16 MR. KING: If I can disclose for the record Doug  
17 King Law Group. This is completely individual capacity  
18 that he is here. We're not representing any individual  
19 clients on this matter.

20 MR. WRIGHT: Mr. Schmidt.

21 MR. SCHMIDT: Chairman and members, Jim Schmidt,  
22 retired banker attorney. I've served in three positions  
23 in the state government, and I now serve on four public  
24 boards all without pay by the way.

25 Anyway, an overriding issue I think is that we

1 must have more sources of water you've heard that. The  
2 opponents -- one thing about growth, which I know the  
3 opponents oppose growth. The reason we're growing is  
4 besides foreign immigration people are living too long,  
5 that's one of the reasons. There's births over deaths.  
6 So are they going to oppose the use of prescription drugs.  
7 I'm worried about that. Because my cholesterol is way  
8 down 100 points because of prescription drug, if you want  
9 to cut down drug.

10           Anyway, we face a water shortage. It's not just  
11 Carlsbad; as indicated it's Sweetwater and other areas.

12           In my article I gave you, which I wrote last  
13 year before I testified, I talked about the horror stories  
14 of Monterey, and Santa Barbara the horror stories. I'll  
15 never will forget in Monterey and Carmel--I left there  
16 about 30 years--ago every place you went to a men's room  
17 and above the urinal it said do not flush. You can't  
18 forget things like that.

19           Now the Coastal Commission and the same  
20 opponents you'll have today, the same people, but labor  
21 business were there, Chamber of Commerce, local government  
22 all in favor. The night of three voting included both  
23 members of the San Diego City area. Both members of  
24 San Diego were in favor. This will be the 11th plant in  
25 California. Not the first one, the 11th plant. The

1 governor is pushing it, and again all the assembly  
2 members, all the state senators, all the members of  
3 congress support this.

4           So I would just urge you very strongly to  
5 support this. Make it happen.

6           We have to have water. I want to be able to  
7 water my lawn. That is one of the things I saw up in  
8 Santa Barbara. My friends told me they couldn't water  
9 their lawns. The company that sprays lawns green made a  
10 lot of money. That's unfortunate. Thank you very much.

11           MR. WRIGHT: Thank you.

12           Chuck Badger followed by Mike Madigan, Gary  
13 Knight and an Angelika Villagrana.

14           MR. BADGER: Good afternoon, Chairman Wright and  
15 other board members. My name is Chuck Badger,  
16 B-a-d-g-e-r. I'm a third generation citrus farmer from  
17 the North County.

18           My grandfather first came here in 1922, and he  
19 came here to farm. He soon realized that water was going  
20 to be his most important challenge. He also started the  
21 Santa Fe irrigation district. He also served on the  
22 Metropolitan Water Board.

23           My father continued to farm and be involved in  
24 water. In fact, he served on this board a few years ago  
25 and the seat is now being occupied by Mr. Anderson.

1           Eric Larson our executive director sent you a  
2 letter. In that he details the drought in the Colorado  
3 River you already know about. The couple of the  
4 regulatory drought at the Delta, and of course the 30  
5 percent cut back that you've already heard about.

6           One thing I haven't heard discussed a lot about  
7 today is the failure of our state legislators to put any  
8 water bonds on ballots this year that will help bring us  
9 need of water. But really that's why it's very important  
10 for local government agencies and regulatory agencies to  
11 help us with water here in San Diego. You know that we  
12 need the water.

13           I was making decisions today on which lemon  
14 groves not to water and which ones should get water  
15 because of the drought. It's been very difficult for a  
16 lot of us.

17           All I want to do is conclude by saying if we  
18 want agriculture in San Diego to continue to provide  
19 abundant local products for San Diegans as well as  
20 providing viable open space we need reliable water. My  
21 father and grandfather worked hard to secure water for my  
22 future, and I'm working hard to secure water for my  
23 children's future. So I hope that you can help by  
24 approving this resolution. Thank you.

25           MR. WRIGHT: Congratulations on your position as

1 president of the Farm Bureau.

2 MR. ANDERSON: I need to disclose that I'm a  
3 member of the Farm Bureau Board.

4 MR. WRIGHT: Mr. Madigan.

5 MR. MADIGAN: Thank you, Mr. Chairman. My name  
6 is Mike Madigan. I'm a past chair of the San Diego  
7 County Water Authority Board. I'm a past chair of the  
8 California Water Commission, and for seven years chairman  
9 of the Bay Delta advisory council to the CalFed process.

10 I'm here to do two things. First, I have  
11 letters in support from Senator Mark Whiland, Assembly  
12 Member Shirley Martin, Assembly Member George Plusher, and  
13 Assembly Member Martin Garrett whose staff members were  
14 here earlier and not able to stay. I'd like to deliver  
15 these to your staff, if that's acceptable. Thank you.

16 Secondly, to urge you to approve this plan in  
17 support of which I will offer you the following four  
18 reasons. One, obviously you have asked for this plan, and  
19 it is now submitted to you as requested, and it identifies  
20 that multiple mitigation plans are feasible.

21 Two, your action on this item today will bring  
22 you into alignment with the current status of the  
23 desalination project of both the Coastal Commission and  
24 the City of Carlsbad, and will allow you to both exercise  
25 your statutory role on entrainment mitigation and work

1 jointly with those other agencies on the selection for the  
2 final mitigation plan.

3           Three, a continuance, a delay will only serve  
4 the cause of delay.

5           And four, for all the reasons which you well  
6 understand this project is even more important today than  
7 it was when it was first brought to you.

8           Thank you for listening.

9           MR. WRIGHT: Thank you.

10           Mr. Gary Knight.

11           MR. KNIGHT: Chairman Wright and all board  
12 members, cut my comments about why we need water you know  
13 why. The point I want to make this day is there will be  
14 no project that we can put forward to you that will have  
15 zero impacts. We know desalination projects running and  
16 operating throughout the world. I presented Monday to a  
17 trade delegation from Sweden. When I told them about  
18 these meetings and other meetings occurring on this, they  
19 looked at me and asked why can't you get it done. The  
20 rest of the world has been able to.

21           So we look at this project as being submitted to  
22 you for the impacts. They have minimized it by using best  
23 practices, and they provide the mitigation as requested.  
24 we would urge you that you approve this resolution and  
25 help us get the water that we already know we need. Thank



1 you.

2 MR. WRIGHT: Angelika Villagrana.

3 MS. VILLAGRANA: Thank you, Mr. Chairman and  
4 members of the board, Mr. Robertus. My name is Angelica  
5 Villagrana representing the San Diego Regional Chamber of  
6 Commerce; our 3,000 member companies and their 400,000  
7 employees.

8 Water reliability for our region has always been  
9 one of our most important goals. And therefore, we're  
10 very interested in any alternative that minimizes our  
11 dependence of imported water and diversifies our water  
12 supply portfolio. We believe desalination is one such  
13 alternatives and a good one. In our opinion, Poseidon  
14 Resources has designed a project with minimal  
15 environmental impacts. We believe by preparing the flow  
16 entrainment and impingement minimization plan Poseidon  
17 Resources has provided a road map as to how the project  
18 can move forward using the best available site, design,  
19 technology, and mitigation feasible to minimize impacts on  
20 marine life. Reliable new water needed and the  
21 development of local supply makes sense.

22 Additional infrastructure for importing more  
23 water could cost lots and lots of money with limited  
24 assurance of water supply reliability. At the time when  
25 the entire state in south were suffering from drought in

1 environmental water supply issues, we have the opportunity  
2 to bring online an environmentally responsible source of  
3 drinking water right here in our backyard. Let's not  
4 waste that opportunity. It is in all of our interest to  
5 move this important water supply alternative forward,  
6 (inaudible) water supply in your support.

7 And our letter of support is in your agenda  
8 package. And if I may, Mr. Chairman, (inaudible) wanted  
9 to be here in support, but they are in Sacramento at a  
10 legislative meeting. Mr. Joe (inaudible) President and  
11 chairman, and he has asked me to supply you with a letter  
12 of their support, if that's permissible. And for your  
13 information by Derrick 550 life sciences companies here in  
14 the San Diego region, I have copies of the letter for you.  
15 Thank you very much.

16 MR. WRIGHT: Thank you.

17 Lanie Lutar, Kevin Sharrar, Evelyn Peterson, and Gina  
18 McBride.

19 MS. LUTAR: Good afternoon. My name is Lani  
20 Lutar. I represent the San Diego County Taxpayer's  
21 Association.

22 The Board of the Taxpayer's Association stands  
23 strongly in support of the Carlsbad desalination project.  
24 What is most appealing to our organization is the fact  
25 that this project is being billed as a public/private

1 partnership between the Poseidon and the nine San Diego  
2 County Public Water agencies. The private sector's  
3 involvement has ensured that the region to taxpayers have  
4 been insulated from postulated cost increases and the risk  
5 associated with permitting a multifaceted infrastructure  
6 project.

7           Additionally, the 30 year contract signed by the  
8 public water agencies guaranteed a price of water accounts  
9 and will never exceed what the rate pairs with otherwise  
10 paid for imported water. This is a significant protection  
11 and will guarantee rate pairs are not subject to price  
12 fluctuation, and it's very important to the Taxpayer's  
13 Association.

14           After ten years in the process, we believe it's  
15 time to approve Carlsbad desalination plan and would urge  
16 you for your support. Thank you very much.

17           MR. WRIGHT: Ted Owen followed by Kevin  
18 Sharrar.

19           MS. MCBRIDE: Good afternoon, Mr. Chairman and  
20 members, I'm not Ted Owen. Ted apologizes he had to  
21 leave. I am Gina McBride. I am chair elect of the  
22 Carlsbad Chamber of Commerce. Ted is the president and  
23 CEO.

24           I'm here to speak for our chamber in support of  
25 the Carlsbad desalination project. We represent more than

1 75,000 workers in our 1700 member organizations across the  
2 area.

3           The plan to minimize environmental impacts that  
4 is before you today meets all of the requirements of the  
5 permit this board issued nearly two years ago. The  
6 chamber believes that developing an environmentally  
7 responsible solution to the region's water need is a key  
8 component to achieving our goal of water reliability.  
9 This is why we support the City of Carlsbad public private  
10 partnership with Poseidon Resources to build an operated  
11 desalination plant at no risk to the city or its  
12 taxpayers.

13           For the City of Carlsbad, the desalination  
14 project is a water supply, water storage environment, and  
15 enhancement project. The Agua Hedionda Lagoon is a vital  
16 resource for our city. Many companies and individuals  
17 depend on the Lagoon and nearby beaches including a  
18 thriving agricultural farm, help SeaWorld Research  
19 Institute, and several water recreational facilities. In  
20 fact, the entire business community has a stake in  
21 preserving the natural habitat and the coastal environment  
22 that make north county a great place to visit or do  
23 business.

24           The business community along with the state and  
25 congressional delegation, public water agencies,

1 environmental group, and everyday rate payers including  
2 according to a public opinion poll 81 percent of the  
3 San Diego County registered voters standing united in  
4 support of moving forward on the Carlsbad desalination  
5 project.

6 Finally, the Chamber recently awarded their  
7 first ever Environmental and Spirit Award to Poseidon  
8 Resources because of the projects demonstrated commitment  
9 to the environment; especially to the Agua Hedionda  
10 Lagoon.

11 We need to move forward on this project now, and  
12 we urge your approval today. Thank you for your  
13 consideration.

14 MR. WRIGHT: Kevin Sharrar.

15 MR. SHARRAR: Thanks for the opportunity to  
16 speak to you today. My name is Kevin Sharrar, and this is  
17 my eleven year old daughter Savannah.

18 MR. WRIGHT: Welcome Savannah.

19 MR. SHARRAR: Savannah and her brother and  
20 mother and I are very fortunate enough to live in which I  
21 believe is the greatest community in the country and  
22 that's in Carlsbad. We have beaches and lagoons and we  
23 can all see today the flower fields, and so many other  
24 places to enjoy our national environment. My family  
25 really loves it here. My wife and I hope that when

1 Savannah and her brother Braden go off to college and find  
2 themselves families that they come home and call Carlsbad  
3 their home as well. Quite honestly I worry about  
4 San Diego County and some of the challenges we face in the  
5 future that holds for my daughter and my son. The  
6 devastating wildfires last year reminded all of us that we  
7 certainly have our fair share of challenges.

8 I don't believe that enough attention is paid to  
9 our water supply. Something too many of us I think take  
10 for granted. Our water supply depends on outside sources  
11 and that the Colorado River and Northern California. We  
12 don't have enough water supply to call our own. To be  
13 candid, we just can't continue to keep our heads in the  
14 sand collectively. I acknowledge that this board's  
15 commitment to that. That being said, we can't just go on  
16 hoping everything will be okay. It's up to all of us now  
17 to fix these problems so that future generations like  
18 Savannah's will be afforded to live in the San Diego that  
19 we all come to enjoy. We need a water supply that's  
20 dependable and environmentally sensitive. The longer we  
21 wait the worse the situation will get.

22 I believe Savannah has something to ask of you  
23 today.

24 MS. SAVANNAH SHARRAR. I respectfully ask you to  
25 please approve the Carlsbad water project today. Thank

1 you.

2 MR. WRIGHT: Savannah, I thank you for your  
3 presentation.

4 Evelyn Peterson.

5 MS. PETERSON: Good afternoon, members of the  
6 board. I'm Evelyn Peterson. I'm here representing the  
7 Industrial Environmental Association, the IEA, which  
8 endorsed the Carlsbad desalination project in 2005.

9 The IEA promotes environmental responsibility  
10 through effective communication and interaction with our  
11 members, government regulatory agencies, business, and the  
12 community. Our members endeavor to achieve a balanced  
13 relationship between environmental protection, public  
14 health, and economically sustainable growth. We believe  
15 that an affordable and reliable supply of water is  
16 imperative to the future of San Diego's industrial  
17 community, which provides jobs for thousands of San  
18 Diegans.

19 In October 2006, your board issued a discharge  
20 permit for this project but required a flow entrainment  
21 and impingement minimization plan be submitted to provide  
22 additional regulatory safeguard. We believe that the plan  
23 before you today prepared by Poseidon clearly meets the  
24 requirements under the permit you issued. Approval from  
25 your board is necessary to move the project forward to the

1 State Land's Commission and the California Coastal  
2 Commission for the final project approval. San Diego  
3 water supply conditions continue to worsen and time is not  
4 on our side. We cannot afford further delays.

5 The IEA strongly urges you to approve the  
6 tentative resolution and allow this project to move  
7 forward. Thank you.

8 Gina McBride.

9 MR. WRIGHT: At this time I'd like to take a ten  
10 minute break. And we need to give our court reporter some  
11 rest. I think all of us need to stretch.

12 (Brief Recess.)

13 MR. WRIGHT: Meeting to order.

14 We have an organized presentation whereby  
15 Gabriel Solmer, Joe Geever, and Livia Borak. I don't know  
16 if Ed Kimura is a part of that. He's not.

17 But seating time the organized presentation, and  
18 I assume Ed Kimura, Lori Porter, Sara Craisha, Bruce  
19 Resnick, Connor Revrick, Dan Hortell, Jerod Griswald, Lana  
20 McGuire, Jill Hickman, Julie Truhn, Ben McCue, Christin  
21 Mendosa, Angelina Callahan, Rachel Dorfman, Ellen Chuhn,  
22 and Marty Benson.

23 Okay. Ms. Solmer, we're ready for you. How  
24 much time do you need?

25 MS. SOLMER: We just request 15 minutes for the



1 presentation.

2 MR. WRIGHT: Fifteen minutes is fine.

3 MS. SOLMER: Thank you so much. I thank you for  
4 your patience today. It's been a long day. Thank you for  
5 granting this ordinance presentation. I think is the best  
6 way to get information across to you. As you've heard,  
7 we've had 20 people exceed their time to this  
8 presentation; groups like wild Coast Desal Response Group,  
9 Residence for Responsible Desalination, and all the  
10 individuals that you've heard. We've all joined San Diego  
11 Coastkeeper and Surfrider today.

12 I will start off this organized presentation,  
13 and I'll give it over to Joe Geever from the Surfrider  
14 Foundation to tell you a little bit more about our  
15 concerns with the plan. We're not going to go into the  
16 project today. I think you've had more than enough  
17 information on that issue.

18 Then we'll go to Livia Borak to talk about some  
19 of the legal ramifications of today's decision, and then  
20 I'll come back up to wrap up.

21 So I think in the fever to get to the new  
22 sources of water we've gotten ahead of ourselves. And so  
23 let's just go through some facts that are before you.

24 You have a mandate of Section 13225 of Port of  
25 Cologne to coordinate with other agencies, and we think

1 that that's very important for that reference to be  
2 provided in the presentation as well. There's an agency  
3 coordination meeting. You've heard this again scheduled  
4 for May first and May second where these issues are going  
5 to be discussed. That's why it's a little perplexing to  
6 us why you are poised to make a decision two weeks -- two  
7 and a half weeks before that meeting occurs. You need to  
8 coordinate not just because of the mandate of Port of  
9 Cologne but to take advantage of the agency resources and  
10 expertise on this issue. We certainly don't support the  
11 overly restrictive proposal within the plan itself of how  
12 you should move forward. We think that how you move  
13 forward should be decided in consultation with the other  
14 agencies. And again that plan and any proposals within it  
15 are not before you. They certainly weren't noticed for  
16 this agenda, so we don't need to get into that. And with  
17 all due respect, that proposed schedule would only take  
18 affect if you approve to the plan sort of closing the barn  
19 doors after the cow has already been out.

20           You've heard arguments a lot today about  
21 prejudice to citizens, to the applicant if you wait on  
22 this issue. Let me make it clear, you don't have a valid  
23 plan that has been adequately noticed before you to vote  
24 on. Even if, as we all do, we would want to move ahead on  
25 a legally noticed plan, that's not before you today. So

1 there's nothing that you can do today to slow or speed up  
2 the process in anyway, so those comments really shouldn't  
3 come into your decision-making. Again, you're not slowing  
4 down the process by not moving through today no matter how  
5 other people would like to spin that.

6 Just on a practical matter, I think most of you  
7 have heard that the Coastal Commission has canceled its  
8 June meeting where they were to decide some of these  
9 issues, so again you have plenty of time to bring this  
10 issue back before you, if you did want to legally notice  
11 the plan for your approval before we get to the Coastal  
12 Commission and before any of this gets held up.

13 And indeed it does make sense to wait to that  
14 time since there is a lot of new information. I don't  
15 know how many of you have seen the state board scoping  
16 document and its policy for intake on powerplants. That  
17 certainly goes to the heart of the matter of these intake  
18 issues. There's a lot of useful information. Those  
19 workshops are taking place this and next month; certainly  
20 direct your attention to that process.

21 Again, before turning it over to Joe Geever, I  
22 just want to talk a little bit about the public review of  
23 this process. This plan, and I think we should all be  
24 clear about what we are talking about, the flow  
25 impingement and entrainment minimization plan has not been

1 available to you for a year. It's been available to you  
2 for just about a month in its revised form.

3           And the technical report that is on the agenda  
4 today that is before you, although we certainly agree with  
5 its conclusion that says the plan is lacking in a number  
6 of areas, it was only written on Friday, five days ago,  
7 and wasn't available to the public until after the public  
8 comment period had closed.

9           So given the emphasis that you gave on the last  
10 issue, if you can remember back to issue six on your  
11 agenda, that you wanted to make sure that all responses to  
12 comments were before this board before it acted. We're  
13 perplexed that you consider an issue where not only do we  
14 not have responses from the staff to our comments; we  
15 weren't even able to comment on what's before you today.

16           So I'll turn it over to Joe Geever for more  
17 detail on our underlying concerns and be back up for a  
18 wrap up. Thank you.

19           MR. GEEVER: Chairman Wright and board members,  
20 thank you very much. My name is Joe Geever I'm a  
21 California policy coordinator for Surfrider Foundation. I  
22 hope you've had a chance to read our comment letter of  
23 April first that outlined our concerns about the substance  
24 of the draft revised plan. I just note that we have not  
25 yet received a response to those comments.

1           I think the race to get this item on the agenda  
2 has resulted in a confusing set of documents what's  
3 conflicting language in the staff's document entitled  
4 technical report and the tentative resolution. Language  
5 in the agenda didn't help because it said you will be  
6 considering only the technical report. The technical  
7 report dated April fourth recommends against approving the  
8 plan, if the resolution recommends approving the draft  
9 plan and delegating final approval for the executive  
10 director.

11           As you've heard State Land's Commission Staff,  
12 Coastal Commission Staff, and your staff recommend against  
13 prematurely approving this draft plan. We are also very  
14 concerned about the board prematurely voting to approve  
15 this draft plan. By its own admission, the plan as a  
16 regard to compensatory restoration project is still a  
17 draft proposal not ready for approval. It also seems as  
18 if the vote today would approve other aspects of the plan  
19 that may be considered final. For example, the plan seems  
20 final in its conclusions about technologies to reduce the  
21 intake and mortality of marine life. However, the  
22 technologies discussed in the plan have not been subject  
23 to review and are unproven. More disturbing, this draft  
24 plan seems to be final in its conclusion that after the  
25 fact restoration is both legally sufficient and the only

1 feasible alternative. We disagree. In fact, the draft  
2 plan identified alternative intake systems that eliminate  
3 the intake and mortality of marine life. They just refuse  
4 to pay for them.

5           Given the staff's conclusion that the plan is  
6 insufficient, we're left wondering what it is that you're  
7 voting to approve. What is gained by your action today?  
8 Again, today is the first we've heard that this is not a  
9 vote on the technical report as stated in the agenda.

10           So is this a final vote on the conclusions about  
11 the best available design and technology to minimize  
12 intake and mortality of marine life. Is it a vote that  
13 assumption studies and conclusion in the draft plan are  
14 final. We want to remind you that any decision today  
15 cannot be possibly be a final decision that after the fact  
16 restoration is legal. That would be patently incongruent  
17 with Port of Cologne. Set of timeless process of the not.  
18 We recommend that you grant Poseidon an extension of the  
19 deadline prescribed in the MPDES permit, that seems  
20 prudent. We wouldn't oppose an extension of time to  
21 complete a coordinated multi agency review in fact we  
22 believe an extension will likely result in a quicker  
23 process towards final approval of the project by the  
24 several agencies.

25           Therefore, once again we employ you to postpone

1 any decision on the revised plan until the several  
2 agencies have coordinated their actions. We are only  
3 talking about a couple of months delay. Thank you very  
4 much.

5 MS. BORAK: Good afternoon. I'm Livia Borak  
6 with San Diego Coastkeeper. And to build upon what Joe  
7 said there has been a lot of confusion today. To be  
8 clear, I'm going to be referencing the plan, the  
9 impingement and entrainment flow minimization plan. It's  
10 not clear if this plan is an assessment of impact or what  
11 it's assessing or what's being approved today. But we  
12 should be clear about what the permit, MPS (sic) permit,  
13 that's been granted to Poseidon actually says. And that  
14 permit requires to assess the feasibility of sites,  
15 specific plans, procedures, practices to implement or  
16 mitigation members to minimize impact marine organisms.

17 Now, this is different from Port of Cologne.  
18 Port of Cologne requires minimization of entrainment and  
19 impingement. This is different. We need to be clear  
20 about the difference between mitigation and minimization.  
21 Port of Cologne requires minimization and mitigation as  
22 well as best technology, best design, and best site are  
23 all ways to minimize impacts.

24 As you've heard, the State Water Board has  
25 acknowledged the difference between 316B and Port of

1 Cologne. And we acknowledge that they are different. And  
2 one thing we are all in agreement staff, the state board,  
3 and Poseidon is that Port of Cologne applies to this  
4 project. And this has to be assessed. The state board --  
5 this board has the duty to assess whether or not Poseidon  
6 has minimized intake mortality, not minimize impacts, not  
7 minimize mitigation. As Poseidon states and as staff  
8 states in the letter to Poseidon from Regional Board  
9 Staff, it's not clear that this plan has even addressed  
10 Port of Cologne and addressed minimization. And it's  
11 clear from Poseidon's response that they feel they don't  
12 need to do that. That they've addressed best available  
13 site, design, technology to minimize project related  
14 impacts. That's not the dictate -- that's not what's  
15 dictated by Port of Cologne. And just to reiterate,  
16 mitigation is not the same as minimization. One is before  
17 the fact and one is after the fact. Minimization happens  
18 before. Mitigation is supposed to be something that takes  
19 care of all the impacts after the fact, after all  
20 minimization has been done that is feasible. There is no  
21 analysis like this that is contained in this plan. So  
22 that's a separate requirement from what Poseidon is  
23 telling you. And as far as what analysis is required,  
24 it's not supposed to be fragmented and sequential as it is  
25 in Poseidon's letter states that they sequentially



1 analyzed the steps that have been taken by Poseidon to  
2 address the provision that they feel they need to address.  
3 They've fragmented the whole process. Port of Cologne  
4 requires a holistic approach to inviting impact. Not  
5 putting a horse before the cart or a cart before the  
6 horse. The plan basically says this is our site. We need  
7 to produce this much water we require 300 for MGD, so this  
8 is what we can afford and this is what we're going to do  
9 to mitigate not mandate the Port of Cologne. And that  
10 basically takes the mandate of Port of Cologne and turns  
11 it on its head allowing a project proponent to choose what  
12 exactly they what to mitigate and say for us this is not  
13 the best, that's not what best available means. Legally  
14 defensible plan will not only meet the requirement that  
15 you've imposed on Poseidon and the MPS permit for this  
16 plan, but also meet the mandate for Port of Cologne, which  
17 has not been done. As the Regional Board, you require  
18 this information, you deserve all this information, not  
19 only because it's required but also you need to analyze  
20 impact of the project. You need to analyze what is  
21 possible for the project to minimize impact before you can  
22 decide what mitigation actually is.

23           One other speaker said we can't put our head in  
24 the sand. I think that's true. And what we would like to  
25 say is nobody should put their head in the sand about what

1 impacts or what minimization is required by this project.  
2 Everything needs to be analyzed before anything can be  
3 approved. And I would like to now turn over the rest of  
4 the presentation for conclusion by Ms. Gabriel Solmer.  
5 Thank you.

6 MS. SOLMER: Thanks so much Livia.

7 Just to wrap up and just to make sure that it's  
8 absolutely clear, I think I didn't realize Coastkeeper was  
9 a mainstream environmental organization. And certainly  
10 that hasn't been my experience. But, you know, I think  
11 that the environmental groups have been a little more  
12 aligned in this process.

13 We don't have an objection to a legally  
14 sufficient plan moving forward. If that was sufficient  
15 today, you know you wouldn't hear any objection from us  
16 except for maybe on the noticing issue, which we do think  
17 is a problem. But let's just be clear. The future and  
18 the timetable is in Poseidon's hands. They were directed  
19 to give you a legal sufficient plan that hadn't happened  
20 yet. When that happens, we have no reservations with you  
21 correctly noticing that, giving adequate time to comment  
22 on it, and then voting on it. We certainly will stand by  
23 those points.

24 Just to wrap up quickly, again the revised plan  
25 is still incomplete. I think you've heard that from a

1 number of people. Even in Poseidon's own words it is not  
2 right for final approval. They want you to approve this  
3 intermediary process. Which they're calling a plan,  
4 proponents call it a plan, but it's not the same as this  
5 plan called for in your permit.

6           And again, contrary to the argument that this  
7 delay today will reduce delays with the final project, we  
8 think it's only going to create more delay. It's going to  
9 create more confusion on this project.

10           Just again to finally correct some apprehensions  
11 made. I won't go through all of them. But an important  
12 one is you heard a lot of people say this project has been  
13 approved by a number of different agencies. Any time that  
14 you've heard the words that the Coastal Commission has  
15 found anything. That's not accurate. The Coastal  
16 Commission is voting on revised findings next month. So  
17 until they do that, unless anyone can see the future, it's  
18 not correct to say that the Coastal Commission made those  
19 findings.

20           In conclusion, we would urge your very careful  
21 and consideration on all these issues. Again, we very  
22 specifically did not get into the permits of desal and the  
23 project, the underlying project. But please consider how  
24 and when to act for the best use of all of us. Thanks.

25           MR. WRIGHT: Questions of Ms. Solmer.

1 MR. ANDERSON: Yes, I do.

2 I was kind of curious about the Riverkeeper  
3 case, and I think I understand the context as the focus  
4 should be on minimization of impacts. But do you mind  
5 providing the board with the actual judgment or ruling so  
6 we can kind of analyze it and make sure it's in context.

7 MS. SOLMER: Did you want a summary of it now or  
8 actual --

9 MR. ANDERSON: Either one. Maybe executive  
10 summary with the rulings.

11 MS. SOLMER: We can certainly give you the  
12 ruling. If you'd like the summary, I'll have Livia Borak,  
13 who's our president give you a 30 second review if you'd  
14 like on how that impacts your decision today. But I can  
15 certainly get you the rule itself.

16 MR. ANDERSON: I'll leave the other part to the  
17 chair's discretion.

18 MR. WRIGHT: Do you have a question of  
19 Ms. Solmer and Ms. Borak?

20 MR. RAYFIELD: In your written comments, I  
21 believe you mention Coastkeeper was planning on  
22 contracting with an outside expert to review the plan. Is  
23 that still the idea or are you still -- is Coastkeeper  
24 still going to go ahead and do that?

25 MS. SOLMER: Yeah, that's a joint project

1 between Coastkeeper and Feder (inaudible) Foundation. We  
2 have a contract with that contractor in Colorado.

3 MR. RAYFIELD: That was my next question.

4 MS. SOLMER: And Joe Geever can provide you  
5 specific information about that contractor. But  
6 specifically we were concerned that they didn't have the  
7 time to look at the revised plan, the one that was  
8 submitted just a month ago.

9 MR. RAYFIELD: Do you have a completion date  
10 since you've already contracted with whatever  
11 organizations?

12 MS. SOLMER: Yeah, I think we're in the weeks to  
13 months range. Not any longer than that. But Joe can give  
14 you something more specific.

15 MR. RAYFIELD: I'd appreciate a more definitive  
16 time frame. Thank you.

17 MR. WRIGHT: Mr. Geever.

18 MR. GEEVER: Yeah, we've been talking with --  
19 I'll try to answer both of your questions, if that's okay.  
20 we've been talking with the consulting firm that worked  
21 with USCPA on the 316B rule. They are going to be  
22 reviewing the documents and the plan and the mitigation  
23 proposal. And that's why they haven't gotten engaged in  
24 reviewing the mitigation proposal because there is none.  
25 There is nothing to review. And so giving a date on when

1 that review would be final is just kind of hard. I think  
2 it's almost the same thing as approving this plan right  
3 now. There is no plan to approve and there is no plan for  
4 us to review. But I can tell you that they're awaiting  
5 that. They are going to turn around as quickly as  
6 possible. We want that for -- you know, cause these other  
7 agencies are going to be coming right behind you so we  
8 need that in preparation for everyone's decision. But  
9 until we have a mitigation proposal in front of us it's  
10 impossible to review.

11 Briefly about the Riverkeeper case. We agree  
12 with Poseidon that Riverkeeper applies only to cooling  
13 water intakes. And that's because the federal law only  
14 deals with cooling water intakes. But the state law deals  
15 with cooling, heating, any industrial use of ocean water.  
16 But it does include cooling. So the decision in the  
17 Riverkeeper case the rule that EPA had promulgated  
18 included exclusions from what they call their performance  
19 standards, which was to reduce entrainment by 90 percent,  
20 reduce these standards that they were using for minimizing  
21 entrainment and impingement. A lot of that rule got  
22 remanded back to USCPA to rewrite it. But a couple of the  
23 provisions in there were strictly prohibited from the  
24 remand. So using a cost benefit analysis was thrown out.  
25 And they can't put that back in the rule according to

1 Riverkeeper two. And using after the fact restoration was  
2 also thrown out. And a lot of what this plan kind of  
3 relies on is using after the fact restoration and then  
4 using a cost benefit analysis to show that any of the  
5 other alternative intakes are infeasible or whatever.  
6 Port of Cologne doesn't distinguish between cooling,  
7 heating, or any other industrial process. So if you take  
8 the ruling from Riverkeeper two, apply it to cooling water  
9 in Port of Cologne or anything else, there's no  
10 distinction between cooling, heating, and industrial  
11 processes for Port of Cologne. So arguably that ruling in  
12 Riverkeeper two applies for Port of Cologne as well.  
13 Which would prohibit them from using cost benefit analysis  
14 or after-the-fact restoration.

15 Does that get it what you're --

16 MR. WRIGHT: Ms. Borak, you have 30 seconds  
17 worth of clarity for us.

18 MS. BORAK: Yeah, just to add to what Joe said,  
19 I would just add Riverkeeper two though it does apply to  
20 Clean water Act 316B. The facts that they -- Clean water  
21 Act also is a technology enforcing statute of 316B and it  
22 requires best available technology. And in the decision  
23 the court basically said that EPA was defined a beacon, as  
24 you will, of what the technology is. And in doing that  
25 costs benefit analysis was not appropriate. And in

1 finding that whatever the best technology is, that is cost  
2 effectiveness can be utilized after that in finding out  
3 what kind of rages for technology that EPA can have as a  
4 substitute for this best technology. The best performing  
5 technology is it. So the best available technology is  
6 what is the best technology that can be reasonably born by  
7 the industry. And that would lend courts for interpreting  
8 Port or Cologne kind of an analysis to go by.

9 MR. WRIGHT: Mr. MacLagan, you have three  
10 minutes.

11 MS. SOLMER: I'm sorry. I believe you have one  
12 more speaker. He'd still like to speak.

13 MR. WRIGHT: I'm sorry, I didn't realized he was  
14 here.

15 MR. KIMURA: I raised my hand. My name is Ed  
16 Kimura with the Sierra Club San Diego Chapter.

17 Chairman Wright and members of the board, we  
18 reviewed the Poseidon Resource flow minimization and  
19 pension plan and we find totally inadequate, and I can  
20 explain the reason.

21 First as I explained in my letter nor in their  
22 fish management Group, as well as the State of California  
23 Marine Life Management Act now requires a holistic  
24 approach to evaluate the impacts on the marine life. And  
25 in order to ensure the protection of the health of the



1 marine resources. The equal systems approach evaluates  
2 the many interaction in the like various marine organisms  
3 when subjected to stresses human or natural. This  
4 holistic approach is the departure from the past, which is  
5 directed to the evaluation of stress on individual  
6 species. This time it's taken the whole group of impacts.

7 Now, here are some of the objections. First the  
8 plan fails to follow this equal system approach. The  
9 impingement and entrainment plan not only focuses  
10 primarily on the fish and fish larval, it fails to  
11 integrate the interactions among all the marine organisms  
12 from the bottom of the food chain all the way up to the  
13 top. And when they are subjected to losses from  
14 impingement and entrainment, the plan concludes that the  
15 impingement and losses are, quote, diminimus in deciding  
16 that this amounts to 2.1 pounds of fish per day. However,  
17 it fails to point out that in the yearly basis there are  
18 over 19,000 fishes and over 96 species that were killed by  
19 impingement. The plan provides very little information on  
20 other important marine organisms besides fish larval and  
21 entrain.

22 Second, the plan fails to provide a  
23 comprehensive monitoring program that evaluates the  
24 current health of the marine equal systems within the  
25 impacted area, as well as a reference area not impacted by

1 the seawater intakes.

2 Third, the plant proposes they micro screen to  
3 minimize entrainment losses, but it has no plan on how  
4 they're going to evaluate this or when they were going to  
5 implement it.

6 And fourth, the proposed mitigation plan not  
7 only focuses on fish but fails to off set the losses of  
8 the rest of the marine organisms. The powerplant diverts  
9 seawater from Agua Hedionda which contains both residence  
10 species of marine organisms as well as non residence that  
11 come in from the coastal areas. The plan provides no  
12 information on these marine organisms such as the species  
13 and abundance. Without this information, we doubt whether  
14 any mitigation plan can succeed. So we ask you not to  
15 approve of this plan, and we have some real concerns about  
16 the proposed alternative condition requirements  
17 resolution. Thank you.

18 MR. WRIGHT: Thank you Mr. Kimura.

19 Mr. McLaggan, do you have some brief comments?

20 MR. GARRETT: Within Mr. McLaggans time, I just  
21 want to take 30 seconds to address two points that we just  
22 heard. One is the notice question and the second is a  
23 river key Port of Cologne what legal standards are you  
24 looking at question.

25 On the notice question, I'm looking at the board

1 agenda. I think it's very clear the plan in front of you  
2 is the plan that was dated March 6, 2008, that's what the  
3 agenda says. Which your staff report said was submitted  
4 to the staff on March seventh, that's the plan you are  
5 approving, that's what was agendized. It seems like many  
6 other people who spoke on the project had no trouble  
7 understanding what plan was in front of the board for your  
8 approval today. Again, this is a plan that has been  
9 available that we revised in response to staff questions,  
10 and it has been available for several months if not years.  
11 And since the board established the condition which  
12 required the plan, I think the opponents have been on  
13 notice that this type of plan was going to be in front of  
14 the board. And they've had two years since 2006 to hire  
15 whatever experts they wanted on whatever alternative plan  
16 they wanted to have the board adopt.

17           On the Riverkeeper question, I agree with Joe  
18 Geever. I'm not sure Joe Geever agrees with everybody  
19 else that presented. Riverkeeper doesn't apply here. One  
20 of the issues in 2006 was the whole question about rules  
21 for powerplants, the 316B rules, and Riverkeeper, which is  
22 a federal court case interpreting federal rules for  
23 powerplant intakes. Do those apply to a desalination  
24 plan? The answer from your board at that time was no they  
25 do not. Instead Port of Cologne Section 13142.5 does

1 apply. Your staff had a very nice chart showing the two  
2 different regulatory regiments in pointing out the  
3 differences between Riverkeeper and the federal statutes  
4 and 316B and the Port of Cologne Act 13142.5. That  
5 section of the water code, which again gives you primary  
6 jurisdiction over all other agencies to decide issues on  
7 impingement and entrainment does provide for balancing.  
8 You are to be looking at the framework which is put forth  
9 in our plan as to best available technology and a feasible  
10 mitigation. Those are the standards that are at Port of  
11 Cologne. They're not necessarily in Riverkeeper or 316B.

12 MR. WRIGHT: Mr. MacLaggan, he used part of your  
13 time.

14 MR. MACLAGGAN: Very briefly, Mr. Chairman, I  
15 thank you for your patient this afternoon.

16 Just by way of rebuttal to the Surfrider  
17 Coastkeeper presentation. A few points.

18 First of all, Mr. Geever stated that Poseidon  
19 ruled out service intake solely due to cost reason and  
20 that's absolutely incorrect. There are three reasons.  
21 Cost being one of the three but the other two being more  
22 important. First of all, we don't have adequate sediment  
23 cover offshore to put sub-service intakes in the area that  
24 Carlsbad plant. Consequently, we would have to dig up  
25 hundreds of acres of sea floor; basically, kelp bed, hard

1 bottom, habitat land to the sea floor plumbing system that  
2 looks like a reverse leech field, cover that with sand and  
3 pump water on that and process marine destroying several  
4 hundred acres of offshore habitat, valuable habitat, as  
5 well as putting pump stations on the beach--several;  
6 either ten or 20 pump stations. All of which were  
7 concluded at the Coastal Commission as well as the City of  
8 Carlsbad. Not to be the most environmentally responsible  
9 alternative. The existing intake or use of the existing  
10 intake both entities found to be most environmentally  
11 responsible preferred alternative.

12           Second point, the comment was made that the  
13 Surfrider Coastkeepers only had 30 days to review the  
14 draft plan. I will remind you that the second draft plan  
15 was not on the Regional Board's website for nine months.  
16 We received no comments whatsoever except from your staff.  
17 And the third draft was responsive to those comments in  
18 the fashion we simply added more information, more  
19 details. So the plan itself has not changed for almost a  
20 year now. There was ample opportunity for comment, and  
21 all we did was boast on what was there. So if it was fine  
22 before adding more information, not changing the substance  
23 of the recommendation shouldn't change the acceptability  
24 of that plan. We see no reason for delay. The plan  
25 before you is not contrary to your permit requirements as

1 suggested. We met the feasibility requirement of our  
2 charge under the permit. We have an opportunity to  
3 prepare now a final mitigation plan that will be back  
4 before you in the months ahead. If we wait for a perfect  
5 solution, we will never see the benefits of this water  
6 supply project. This is precisely why the Port of Cologne  
7 Act is referred to as a balancing statute. Your charge as  
8 a board is to look at the environmental impacts and the  
9 need to support the economy and housing and all the other  
10 beneficial uses of water supply and balance those two and  
11 come to a reasonable decision that protects both. You  
12 need to support human life in the area along with the need  
13 to protect environment. We think we struck a balance in  
14 that regard if the plan moves in that direction.

15 Consistent with Port of Cologne 13142.5B has a  
16 feasibility component, and it provides for mitigation  
17 after you've exhausted your feasible technology measures.  
18 Our plan has exhausted the feasible technology measures.  
19 City of Carlsbad EIR, the Coastal Commission decision  
20 agree with that. They said there are no additional  
21 feasible measures be taken. We are now all focused on  
22 mitigation. So what you do by your action today by  
23 approving the draft resolution, you bring your staff to  
24 the same point with the other two entities are as we move  
25 forward with this joint statewide coordination. You say

1 to your staff by conceptionally approving this plan we're  
2 pass the mitigation design components. We're focusing our  
3 attention now on how we mitigate, and make sure we have  
4 enough mitigation. We've got the right site. The  
5 implementation scheduled the planning consistent with --

6 MR. WRIGHT: Will you wrap up, Mr. MacLaggan.

7 MR. MACLAGGAN: Yes, Mr. Chairman, we  
8 respectfully request that the board approve resolution.  
9 The resolution is before you. Thank you very much.

10 MR. WRIGHT: Mr. King has a question.

11 MR. KING: A question for Mr. Garrett. Did you  
12 have a black line comparison to the second and third draft  
13 of the plan?

14 MR. GARRETT: No, I don't.

15 MR. MACLAGGAN: Mr. MacLaggan. Just a comment  
16 on the black line. Black line will not be helpful because  
17 one of the comments we got from your staff was to provide  
18 greater clarity as to how we addressed each of the  
19 elements on statute. We did a wholesale reorganization on  
20 the plan breaking it down into new chapter format. So if  
21 I did a black line it would look like it's an entirely  
22 different report. It's just we took information and  
23 reorganized it in its presentation. Well, there isn't a  
24 tremendous amount of new information. I can highlight  
25 what's new between the two drafts if that would be

1 helpful. If you did a side by side black line, it would  
2 look like we did a wholesale rework of the report. It's  
3 just reorganization is what that amounted to.

4 MR. ANDERSON: Just a real quick question.

5 On your analysis you analyzed an awful lot of  
6 minimization technologies and some of those are new. As  
7 this process moves forward, you may discover some actually  
8 more feasible at a later date. I would encourage you to  
9 consider using them as they become feasible.

10 My second thing, some analysis of the reclaim  
11 water option would make me feel a lot happier, but  
12 everything else it generally supports.

13 MR. MACLAGGAN: May I just make one quick point  
14 regarding Dr. Anderson's comment about future  
15 technologies?

16 MR. WRIGHT: You're pushing limits here.

17 MR. MACLAGGAN: I understand. I just want to  
18 make sure the board understands.

19 What your staff is working on is an interim  
20 solution on the powerplant continues to operate. We are  
21 inherently limited under those conditions. The powerplant  
22 ceases altogether all the new technologies are back before  
23 you, and your staff has full authority to require of us.

24 MR. WRIGHT: Another question, Mr. MacLaggan.

25 MR. RAYFIELD: Yeah, I'm sorry.



1           That's the way I understood the report. And I  
2 learned today that you're Guaranteeing the price or  
3 someone is guaranteeing the price of the water produced by  
4 the plant to be the same as imported water cost. And I  
5 find those two statements that, you know, that we are back  
6 to ground zero and technology and the like when the  
7 powerplant shuts down, but yet you have a financial cap,  
8 if you will, on the cost of the produced water. How do  
9 you do that?

10           MR. MACLAGGAN: That's our inherent risk as a  
11 developer of this project to make sure we continue to  
12 produce water at an affordable price. If the technology  
13 is required of us ten years from now is deemed available  
14 and feasible, presumably it has a reasonable cost to  
15 implement as well and we won't be able to afford to do it.  
16 Recognizing again that this statute has feasibility  
17 component. Part of that is cost. Part of it is that does  
18 the technology work? Is it environmental --

19           MR. RAYFIELD: Sure. Lots of issues there.

20           MR. MACLAGGAN: We think that that's part of the  
21 question that will be before you when you require us of  
22 that. Is it affordable in a reasonable sense. That  
23 doesn't mean our enterprise has to continue to be one that  
24 is profitable from your perspective.

25           MR. RAYFIELD: As I understand the conditions.

1           MR. MACLAGGAN: There is an upper limit as to  
2 what the cost would be we consider feasible.

3           MR. RAYFIELD: As part of that guarantee, if you  
4 will, competitive price for your water versus the imported  
5 water? Is there a substantiation in there from your group  
6 that helps with that?

7           MR. MACLAGGAN: There is. And just so you  
8 understand. What we have committed to do is never charge  
9 more for the water. The price of the awarded purchase of  
10 imported water plus an increment of \$250 per acre foot  
11 that is available to our customers from the Metropolitan  
12 water District to offset a demand on the imported water  
13 systems and substantiate to encourage things just like we  
14 are trying to do.

15          MR. RAYFIELD: So the matter is substantive into  
16 the \$250 per feet.

17          MR. MACLAGGAN: For the first 25 years of  
18 operation.

19          MR. RAYFIELD: So when we are talking about caps  
20 too, I heard someone say that there is a cap on the  
21 mitigation measure costs.

22          MR. MACLAGGAN: No, sir, that was a misinterpretation  
23 of our report. We recognize that we have an obligation to  
24 mitigate to the extent feasible. We've identified via --

25          MR. RAYFIELD: In that case feasibility being

1 technical and not financial?

2 MR. MACLAGGAN: Feasibility being the  
3 information that Mr. Mayer walked you through showed you  
4 how we arrived at the 37 acres of restoration required of  
5 the project. Now it's our challenge to go find a site  
6 where we can do that in a affordable fashion. I don't  
7 have any expectation that that number is going to go down.  
8 If anything, it's going to go up. We did not set -- we  
9 suggested in the State Land's letter we set a \$3 million  
10 cap on mitigation. I can assure you we are going to pay a  
11 lot more than \$3 million dollars mitigation for we have  
12 not set any financial. For limits, we just said our  
13 commitment is to provide at least 37 acers to what was  
14 restoration. And the location to be determined, we  
15 identified feasible sites we think that can occur.

16 MR. RAYFIELD: I understand that. But somewhere  
17 during this session today I did hear the statement that  
18 there was a cap on mitigation.

19 MR. MACLAGGAN: It was suggested by the State  
20 Land's Commission staff, and that was incorrect  
21 interpretation of our proposal.

22 MR. RAYFIELD: Thank you.

23 MR. WRIGHT: Mr. Kelley.

24 MR. KELLEY: Just to clarify the agenda notice  
25 language, the words "technical report" refer to the March

1 sixth revised flow entrainment/impingement minimization  
2 plan. They do not refer to the staff technical report  
3 dated April fourth, that's a different document.

4 And I would just refer the staff's  
5 recommendation over to Mr. Robertus.

6 MR. RAYFIELD: Are you saying we made an error  
7 on the notice and called the document by the wrong name;  
8 is that what you're fundamentally saying?

9 MR. KELLEY: I guess we consider it a technical  
10 report. You could call it different things.

11 MR. RAYFIELD: Yeah, but there was something  
12 called a technical report out there or they came out? I'm  
13 just trying to get this --

14 MR. KELLEY: Yeah, later a staff technical  
15 report did come out.

16 MR. RAYFIELD: But that's not what it meant by  
17 the words --

18 MR. KELLEY: We also refer to the plan as a  
19 technical report. Maybe that was a misnomer.

20 MR. RAYFIELD: Okay, one other question. We had  
21 a February 19th letter that raised issues in question and  
22 so forth. Was every one of those issues addressed to your  
23 satisfaction?

24 MR. KELLEY: Not at this time. And I will say  
25 one additional comment on that. And that although

1 Poseidon provided all the additional attachments and  
2 specific data based on our review over the last 30 days,  
3 since that has come in, it has raised a couple of  
4 additional questions that we didn't include in that  
5 February letter as well. Because really now we can see  
6 the actual data, but then it raises questions on how they  
7 use that data to come up with the actual number. So  
8 that's still a question for us. We'd like clarification  
9 for that.

10 MR. RAYFIELD: Thank you. One last question.

11 Are you convinced that what we have in front of  
12 us in fact represents the best available technology?

13 MR. KELLEY: I would say for the cooperation where  
14 the Poseidon project is in conjunction with the cooling water  
15 discharge and the powerplant has its own requirements for the  
16 best available technology and they're using the same ones, then  
17 I would say yes. But once that ends and ceases, then I would  
18 say we'd have to reevaluate it.

19 MR. RAYFIELD: Mayer question mark after that.

20 So you're okay with the best available  
21 technology, but there's still outstanding issues that need  
22 clarification analysis or whatever?

23 MR. KELLEY: That's my understanding.

24 MR. RAYFIELD: Thank you.

25 MR. WRIGHT: Mr. King.

1           MR. KING: You stated earlier that 40 percent of  
2 the time the intake water from the power station is below  
3 what would be the 300 million gallons per day. How far  
4 below.

5           MR. KELLEY: Gosh, I didn't get a number on the  
6 minimum and maximum. I'd have to look that up and see if  
7 I could get that. Sometimes with the plant it goes down  
8 fairly low, so it could be, you know, maybe 90 percent  
9 they would need to makeup, so it does fluctuate throughout  
10 the day and depending on the power needs of the regions.  
11 Maybe Mr. MacLaggan has some details on here.

12           So there are times when the actual flow goes to  
13 almost zero. I think those are times when maybe they have  
14 to do some work on the plan or they have to shut it down  
15 for heat treatment and things like that, so with those do  
16 occur.

17           MR. KING: What it means zero is correlated with  
18 40 percent of the time or zero is one day out of the year?

19           MR. KELLEY: It's just a short period of time.

20           MR. KING: Cause 40 percent of the time is quite  
21 a bit of a time. And I'm wondering how far below is the  
22 typical level when it's below the 300 MGD.

23           MR. KELLEY: It looks like somewhere between 100  
24 and 200 MGD would be the majority of the time when a  
25 coastal level, as looking at the graphs.

1           MR. WRIGHT: Mr. Geever, did you have a table to  
2 share some light on that. Why don't you give it to  
3 Mr. Kelley.

4           MR. KING: Couple other questions quickly. This  
5 is part of what we were covering today. But is it true  
6 that the powerplant shuts down and the desal plant doesn't  
7 happen, does the lagoon just lie fallow and turns back  
8 into its natural state which is not a lagoon?

9           MR. KELLEY: Most likely if there is no other  
10 agency or project that would keep it open then it would  
11 just revert back to its natural state or original state.

12          MR. KING: Can we kind of back to the issue of  
13 the notice. More the substantive issue of the notice  
14 here. The changes between the second and third draft; a  
15 lot of restructuring or would you say that degree of  
16 substantive changes between those two drafts can --

17          MR. KELLEY: Yeah. I would say as mentioned earlier  
18 that the majority of it was providing detailed data to support  
19 what was in the first draft and the second draft. So it gives  
20 us the data so that we can go look and see if the amount of the  
21 mitigation is comparable to what impacts they're actually  
22 having. And we're still really evaluating that. It is  
23 difficult to do in 30 days.

24          MR. WRIGHT: I think we're ready to turn this  
25 over to Catherine.

1 MS. GEORGE: I may want to respond briefly to  
2 some of the legal points raised.

3 would you like that before you hear from  
4 Mr. Robertus.

5 MR. WRIGHT: Yes.

6 MS. GEORGE: Just on the legal notice issue  
7 raised by Coastkeeper. I do think that there's been  
8 adequate legal notice for this proceeding. And I realize  
9 that the technical report by staff was not circulated  
10 until the fourth. There is certainly an opportunity for  
11 oral comments and also late comments. Written comments  
12 are routinely received when there's a good reason for  
13 that. So I think that's been adequately addressed.

14 I don't think that -- if you go forward and  
15 approve the tentative resolution with some changes that  
16 you requested earlier today, I don't think that you are  
17 precluding the kind of joint agency coordination process  
18 referred to in Water Code Section 13225. I think you're  
19 allowing that to go forward in meeting that requirement.

20 With regard to the Riverkeeper case, I agree for  
21 the most part with Coastkeeper and with a Poseidon  
22 representative that the Riverkeeper two case does not  
23 apply directly to the desalination facility. I do agree  
24 that you're required to comply with water Code Section  
25 13142.5 in making a final approval of the plan that you



1 receive from Poseidon. And you're not making that final  
2 approval today.

3           Let's see. I wanted to point out that I  
4 disagree with Coastkeeper in the context of Section  
5 13142.5 that all mitigation is considered after the fact  
6 restoration. That was the subject of the Riverkeeper  
7 case. The mitigation can constitute minimization and meet  
8 that requirement in Section 13142.5. At least at this  
9 point, there was a recent court of appeals -- state court  
10 decision whereas the wetlands that exclusively recognize  
11 that. Came after Riverkeeper two. Although that case has  
12 been with the Supreme Court. The California Supreme Court  
13 has granted petition for review. So we'll see we may have  
14 more clarity in the future.

15           And I did want to just remind you that the  
16 permit provides that you can direct Poseidon to modify  
17 their plan in the future, so you retain that right. And  
18 also that there will be a need to comply anew with Section  
19 13142.5 at the Point Encina Power Station completely  
20 ceases operation.

21           And then lastly, it looks like one of the  
22 representatives, I think, Mr. Garrett mentioned that the  
23 Regional Board has primary jurisdiction over all issues  
24 regarding impingement and entrainment. I can't confirm  
25 that that statement is completely accurate. Although I do

1 agree that the Regional Board has the authority to  
2 implement and comply with Section 13142.5.

3 If there are any questions, I'd be happy to  
4 answer them.

5 MR. ANDERSON: I think you did address, I didn't  
6 quite catch it, the feasibility versus whether it's  
7 economically feasible. There was some decision about that  
8 or just flat out feasible. And your opinion was?

9 MS. GEORGE: I didn't express an opinion on  
10 that. I probably don't have one.

11 MR. ANDERSON: Okay.

12 MR. WRIGHT: The economic feasibility is not  
13 before us at any rate. I mean, we haven't gone into any  
14 kind of discussion on that aspect of it looking at  
15 subsidies and so on and so on.

16 Mr. Robertus.

17 MR. ROBERTUS: I recommend action today to  
18 approve the plan. And I know that the technical report  
19 was misconstrued. I think that the plan may be better  
20 expressed as a process. I'm concerned that if the board  
21 doesn't take action today it will exacerbate any attempts  
22 to get the right parties together and to take action to  
23 drive this to a conclusion. There are about 40 months  
24 left on the permit that this board has already adopted.  
25 There is virtually no action that you take to approve or

1 disapprove this fully opposition study that pertains to  
2 the ability to the discharge for the next 40 months. As  
3 you've heard, it will make a difference when they start  
4 the period subsequent to that when the Poseidon -- when it  
5 comes to pass, if it comes to pass, is operating in a  
6 stand-alone mode. Then the question of minimization and  
7 mitigation will be brought fully to bear on the Poseidon  
8 facility. And the other consideration of 316B wants to  
9 (inaudible) entrainment that's taking place in the  
10 facility at this time. That complicates the issue while  
11 they're co-operating an electrical powerplant with one  
12 MPDS permit and then the perspective -- and the Poseidon  
13 facility operating with another MPDS permit. That's the  
14 subject of the flow minimization issue today.

15           So my practical recommendation is to adopt this  
16 so that the process will move forward. I am not convinced  
17 that the parties will come to the table as highlighted in  
18 the schedule that Poseidon had. We have a tentative  
19 resolution with an errata sheet.

20           MR. WRIGHT: Do you have a copy of that?

21           MR. ROBERTUS: Yes, I have a copy. I will pass  
22 that at this time and request that you review it. My  
23 recommendation is you adopt it with the errata.

24           MS. SCHNEIDER: We will be approaching if we go  
25 that route.

1           MR. WRIGHT: Members of the board, have you had  
2 a chance to digest the errata sheet in the light of  
3 extensive testimony we heard today and as well as the  
4 reading of the voluminous materials?

5           MR. GARRETT: Mr. Chairman, would there be an  
6 opportunity for the applicant to respond to one of the  
7 items in errata that we haven't seen before?

8           MR. WRIGHT: Yes. But make it brief please.  
9 we'll also hear from Ms. Solmer.

10          MR. GARRETT: My name is Chris Garrett, a lawyer  
11 that works for Poseidon. I wanted to just address Item C  
12 in the errata. You may vaguely recall my statement that  
13 the board has primary jurisdiction on these issues. That  
14 both the Water Code and the Coastal Act give the Water  
15 Code -- give the Water Board responsibility. And my  
16 concern is that this might be misinterpreted as requiring  
17 approval from other agencies and/or their staff before the  
18 Regional Board could take action.

19          So I would suggest that deletion of Item C or to  
20 have that rephrased so that it's considering of the input  
21 from participating agencies. Perhaps make it clear with  
22 the agencies or their staff as well. But as phrased here,  
23 my concern is that this would require before the Regional  
24 Board could act that you would have to have the other  
25 agencies approve it, and we would not want to get stuck in

1 that loop. Nor do we think it's consistent with the  
2 primary jurisdiction of the board.

3 MR. WRIGHT: We need to run it by our  
4 attorney.

5 MS. GEORGE: I'm not familiar with the Coastal  
6 Act provision that Mr. Garrett -- the specific provision.  
7 I can't review it to determine what it says. I think the  
8 wording there may be some way to modify it so it addresses  
9 his concern and still allows you to achieve the kind of  
10 joint coordination that you're looking for. So I'm trying  
11 to think while I'm talking about some alternative  
12 language. Although, I don't think consensus necessarily  
13 implies approval by other agencies.

14 MR. ROBERTUS: would coordination as required by  
15 the supported code and section?

16 MS. GEORGE: That would be terrific, yes.

17 MR. WRIGHT: Consensus has changed to  
18 coordination.

19 MR. RAYFIELD: And as required by the Port of  
20 Cologne. It's citing that specific section.

21 MS. GEORGE: So C would read: Coordination  
22 among participating agencies for the amendment of the plan  
23 as required by Section 13225 of the California Water  
24 Code.

25 MR. WRIGHT: What's the section again.

1 MS. GEORGE: 13225.

2 Ms. Solmer.

3 MR. GARRETT: You're catching us off guard with  
4 these last minutes. I guess the one thing I want a little  
5 bit of clarification. The other parts of the revised plan  
6 that do seem final, you know, their conclusions, studies  
7 all that other stuff. That is a final act?

8 MR. WRIGHT: I don't say it's final at all.  
9 This is a process.

10 MR. KING: You still have the extensive range of  
11 comments on the February 11th letter. We haven't signed  
12 off on any of those.

13 MR. GEEVER: What are we approving. I'm not  
14 sure how this advances anything, and why you're approving  
15 anything.

16 I guess I'd like to make one comment about --  
17 without identifying what the best design of the facility  
18 is and what the best available technology to meet that  
19 design are prior to, you know, in contemplation of the  
20 cooling water intake not being available, you're allowing  
21 a design that would preclude the use of the best available  
22 technology for -- actually, just eliminating the intake  
23 and mortality of marine life. So I mean, I think it  
24 requires looking a little bit ahead into the future, and  
25 ensuring that the design of the facility, especially a

1 \$300 million facility, is designed in a way that allows  
2 the use of the best available technology when that becomes  
3 required. And I guess I take a little bit of --

4 MR. KING: Could you limit this to the errata.  
5 Look at what's blacked line.

6 MR. GARRETT: Okay.

7 MS. SOLMER: I think we can resolve this. The  
8 concern is under the number two of the via resolved the  
9 San Diego Board hereby conditionally approves the plan. I  
10 think that that's confusing. Because after that you said  
11 that you're going to require in six months an amendment to  
12 this plan. So, if we can change number two to say that  
13 we -- that the board hereby approves this process that's  
14 been described. What we don't want what happened today  
15 where different people are referring to different  
16 documents of the same thing. And, again, you know, please  
17 don't insult our intelligence that you provide a document  
18 called a technical report and then you say actually this  
19 plan that we provided is called a technical report and we  
20 didn't mean to submit this. So I think that if we can  
21 change that number two to say that we're conditionally  
22 approving this process with the errata, that would make  
23 sense and, you know, put everyone on the same page and  
24 would not delay anything. Then we have the same six month  
25 period that we're going to come back and we're certainly

1 okay with the consensus in the errata.

2 MS. GEORGE: What about the San Diego Water  
3 Board hereby conditionally approve the plan subject to the  
4 following conditions being satisfied.

5 MS. SOLMER: I think the concern there is you're  
6 approving a plan that has a lot of information; 300 pages  
7 of information. And I don't think that you can condition  
8 out all of those different things. I think rather than  
9 conditioning out what you don't want to approve, just in  
10 plain language just say what you are approving which is  
11 this process which I think is otherwise understood by the  
12 other resolution, and then you're going to come back with  
13 the information that hasn't been provided in that six  
14 month period.

15 MR. KING: Just get a last round what we are  
16 doing here. Let's look at one errata at a time. We  
17 propose specific changes to this particular section here.  
18 And we've proposed changes to Section C. Otherwise nobody  
19 has commented on there's a change in line one of paragraph  
20 three. Shall submit to the Regional Board executive  
21 officer for the approval by the Regional Board. And  
22 nobody's commented on that change?

23 MS. SCHNEIDER: That's correct.

24 MR. KING: And the additional changes and the  
25 following additional concerns that are listed in A through



1 E. And then paragraph four we've stricken through  
2 executive officer so that the subsequent changes will come  
3 back to the board instead of the executive officer. So if  
4 question can hammer out any changes --

5 MS. SCHNEIDER: I don't have any changes on  
6 that.

7 MR. KING: we are talking about different things  
8 at a time.

9 MR. WRIGHT: If we can zero in on the Errata  
10 sheet.

11 MR. RAYFIELD: I do have one concern on the  
12 errata sheet. Not the Regional Board part, but the last  
13 sentence. In paragraph three that says shall resolve the  
14 concerns identified in the Regional Board's February 19  
15 letter.

16 And we heard from Brian earlier that there are  
17 additional concerns that they've uncovered. And I don't  
18 know that there's items listed as A, B, C, D, and E. I  
19 think -- are they, Brian?

20 MR. KELLEY: Yes, that was the intent.

21 MR. RAYFIELD: And is that the full set?

22 MR. KELLEY: I believe so.

23 MR. RAYFIELD: I guess that's okay.

24 Also Item D, appropriateness of mitigation  
25 sounds really open to interpretation and rather vague to

1 me. I'm not sure what we mean by that. And if we could  
2 remember what we meant by that six months from now.

3 Can you elaborate what we're measuring here. I  
4 mean, this is kind of -- we're setting a standard or  
5 measurement. We're going to measure for appropriateness,  
6 but what are we really going to look at.

7 MR. WRIGHT: Mr. King, do you have a --

8 MR. KING: I do. The more legal term of art is  
9 adequacy of mitigation. Appropriateness. I agree with  
10 the adequacy is it sufficient.

11 MR. RAYFIELD: Is it sufficient. That was the  
12 word I was looking at too. So that would work for me.  
13 And actually that's to the extent of my --

14 MR. WRIGHT: Sufficiency.

15 MR. RAYFIELD: My comments are sufficiency.

16 MR. KING: No, adequacy.

17 MR. WRIGHT: Is George adequacy?

18 MS. GEORGE: Okay.

19 MR. WRIGHT: Any other comments about the errata  
20 sheet?

21 Do we need to -- I guess we need to take some  
22 action on -- well, before we do that I really think that  
23 we ought to deal with that as part of the larger motion  
24 and take a look at the resolved section of the board, the  
25 order.

1           I agree with the concern that's been raised  
2 about Item two under the resolve section. That's preceded  
3 by a statement that says the plan dated da-da-da does not  
4 include specific implementation provisions as required in  
5 section so on, so on. And does not as yet resolve the  
6 concerns noted in the Regional Board's February 19, 2008  
7 letter. Poseidon Resources.

8           And then in the next sentence Item two it says  
9 the San Diego Water Board hereby conditionally approves  
10 the plan. So I have a hard time resolving those two  
11 paragraphs, and that's why I think that we're really  
12 talking more about a process. And even then I have some  
13 questions about the process. But it's a little -- to call  
14 it a plan, when it's not a plan. I guess it's a plan to  
15 plan a plan.

16           MR. KING: If I could jump. We should read the  
17 whole resolution section together and try to read it  
18 harmoniously here.

19           If -- it says specifically why in paragraph one  
20 that the word "conditional" is in paragraph number two.  
21 And in paragraph three and four we say how the conditions  
22 were to play out. Three gives exactly what the condition  
23 is. And four is not related to the conditional section of  
24 it. But there's no such thing right now as a define term  
25 of a process. I don't want to throw another word in there

1 as something new, even though we are trying to split the  
2 baby here and make everybody happy. But it's adding  
3 vagaries into an operative document here. Three  
4 paragraphs together say something clear, if you read it  
5 together for harmony. There's a reason why we're  
6 attaching conditions to an approval. This is what the  
7 condition is. And it's a conditional approval and this is  
8 what the condition is.

9 MR. WRIGHT: I hear what you're saying. I'm  
10 just still uneasy about how we're throwing around the use  
11 of the word "plan." Even if I'm reading all of these  
12 items I wonder if --

13 MS. SCHNEIDER: But title of the resolution.  
14 That means we need to change the title of the resolution  
15 if we don't. It says it's conditional -- the title is a  
16 tentative resolution in a number of conditional approval  
17 of revised flow entrainment and impingement minimization  
18 plan. So we would need to change the title if we're not  
19 going to approve the plan, the minimization plan.

20 MS. RITSCHER: I'd like to jump in and just  
21 agree with Mr. King. I don't think at this point no one  
22 knows what the process means and what it's referring to,  
23 so you can't just say we approved the process. We haven't  
24 defined what that is. I think if there is going to be an  
25 approval, it is appropriate to approve what has been put

1 before us. The latest version of the document -- approve  
2 this plan except for this, this, and this. Or subject to  
3 this condition and this condition. And that's I believe  
4 what is before us. Is it written the best possible way?  
5 I mean, maybe there could be some slight words missing. I  
6 think Ms. George suggested slight words were missing from  
7 Item number two.

8 I agree with Mr. King you can not simply approve  
9 something that we have no definition of.

10 MR. KING: On that note, I'd like to make a  
11 motion to adopt the errata sheet as written with the  
12 exceptions that the word "consensus" in Paragraph three  
13 Subsection C change to coordination.

14 MS. RITSCHER: Coordination among.

15 MR. KING: The word "consensus" is stricken  
16 through and substitution the word "coordination" is  
17 written. Inserted at the word plan as required under  
18 Section --

19 MS. SCHNEIDER: 13225.

20 MR. KING: Is it 1322.5?

21 MS. GEORGE: No, 13225.

22 MR. KING: 13225 of the California Water Code.  
23 The word appropriateness stricken from Subsection D and  
24 change to adequacy, and otherwise adopted as written.

25 MS. RITSCHER: Second.

1 MS. GEORGE: Third. You're voting on the  
2 errata?  
3 MR. KING: The errata.  
4 MS. GEORGE: That would be incorporated into a  
5 motion eventually?  
6 MR. KING: Correct.  
7 MS. SCHNEIDER: I second to that.  
8 MR. WRIGHT: Is there a motion made by Mr. King  
9 in the section -- made by Elizabeth Schneider.  
10 I'm getting groggy here.  
11 Is there a discussion to the motion? All those  
12 in favor of the motion All say aye.  
13 MR. ANDERSON: Aye.  
14 MR. KING: Aye.  
15 MR. WEBER: Aye.  
16 MR. RAYFIELD: Aye.  
17 MS. RITSCHER: Aye.  
18 MS. SCHNEIDER: Aye.  
19 MR. WRIGHT: The motion is approved  
20 unanimously.  
21 Now, we're ready for vote on the tentative  
22 resolution as modified with the errata sheet. So is there  
23 a motion to approve the tentative resolution number  
24 R9-2008-0039?  
25 MS. SCHNEIDER: I move to conditionally approve

1 the Resolution Number R9-2008-0039 as amended.

2 MR. RAYFIELD: Second.

3 MS. GEORGE: Can I make a clarification. I  
4 believe you said conditionally approve the resolution.  
5 And it should be that you approve resolution --

6 MR. KING: Adopt.

7 MS. GEORGE: Adopt the resolution.

8 MS. SCHNEIDER: Accepted.

9 MR. ANDERSON: Second.

10 MR. WRIGHT: Are you speaking to the motion?

11 MR. RAYFIELD: well, I'm speaking to the motion,  
12 yeah. Actually, I share your concern about approves the  
13 plan. And a concern that was mentioned by some of our  
14 comments. What we're really doing is accepting this plan  
15 to forward it on to a joint agency meeting and so forth.  
16 And I'm wondering if the person that made the motion  
17 would -- if we could change approve, because we're really  
18 not we are expecting some additional stuff, to accept the  
19 plan. A little different twist. And I don't mean to --

20 MS. SCHNEIDER: Do you need approval on the  
21 resolution, John? That was my motion to approve the  
22 resolution.

23 MR. RAYFIELD: I was just talking about a  
24 wording change in the resolution that we're approving.

25 MR. KING: Is there a vote on this motion?

1 MR. WRIGHT: That is the motion.

2 MS. SCHNEIDER: No, it's discussion. I'm asking  
3 a question before I --

4 John, did you ask us to approve the resolution  
5 today?

6 MR. ROBERTUS: Yeah, the word -- operative word  
7 I believe is "approve." That's in the language of the MPS  
8 permit. The word "approve."

9 MR. WRIGHT: And you're simply offering an  
10 editorial change.

11 MR. RAYFIELD: Well, actually I think it's more  
12 than an editorial.

13 MS. SCHNEIDER: We either approve or deny the  
14 resolution. So I motion to approve, and he second it.

15 MR. KING: A motion to call the question.

16 MR. WRIGHT: The question has been called for.  
17 My inclination is not to support the resolution. I am  
18 continued to be concerned about the word "plan." And I'm  
19 also concerned that it may appear that we are approving  
20 the plan that presumably is going to be considered by a  
21 number of other agencies, and it makes us look as though  
22 we're very supportive of the plan, and I don't think  
23 that's the case at least. At least I don't feel the plan  
24 is ripe enough, let's put it that way, to receive our  
25 approval.



1 Any other comments?  
2 MR. KING: I call the question.  
3 MR. WRIGHT: The question has been called for  
4 all those in favor say aye.  
5 MR. ANDERSON: Aye.  
6 MR. KING: Aye.  
7 MS. RITSCHER: Aye.  
8 MR. WEBER: Aye.  
9 MS. SCHNEIDER: Aye.  
10 MR. WRIGHT: Those against say no.  
11 MR. RAYFIELD: No.  
12 MR. WRIGHT: Motion carries five to two.  
13 MS. RITSCHER: And there were no extensions?  
14 MR. WRIGHT: No extensions, no.  
15 Well, there being no other matters motion to  
16 adjourn. We have a motion to adjourn. We are adjourned.  
17 (End of partial transcript)

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1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
2 SAN DIEGO REGION

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4 In the Matter of the )  
Public Hearing )  
5 RE: All items on the )  
6 agenda, including, but )  
not limited to, )  
7 Poseidon Resources )  
Corporation, Proposed )  
8 Desalination Project. )  

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PARTIAL TRANSCRIPT OF PROCEEDINGS

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San Diego, California

16

wednesday, April 9, 2008

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19 Reported by:

20 GIDGETTE NIEVES

21 CSR No. 10142

22

23 Job No.:

24 A8287WQSD(P)

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1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
 2 SAN DIEGO REGION

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 Desalination Project. )

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PARTIAL TRANSCRIPT OF PROCEEDINGS, taken at  
 9174 Sky Park Court, San Diego, California,  
 commencing on Wednesday, April 9, 2008, heard before  
 THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
 reported by GIDGETTE NIEVES, CSR No. 10142,  
 a Certified Shorthand Reporter in and for  
 the State of California.

1 APPEARANCES:

2 CHAIRPERSON: Richard Wright

3 VICE CHAIRPERSON: David King

4 BOARD MEMBERS: Susan Ritschel  
Eric Anderson  
5 Elizabeth Pearson Schneider  
Wayne Weber

6 EXECUTIVE OFFICER: John Robertus

7 LEGAL COUNSEL: Catherine George

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# **EXHIBIT 5**

**Draft Agendas**

**Developing Preferred Mitigation Options  
for Poseidon's  
Marine Life Mitigation Plan  
May 1, 2008**

**&**

**Developing Preferred Mitigation Options  
for Poseidon's  
Energy Minimization and Greenhouse Gas Reduction Plan  
May 2, 2008**

**at**

**Agua Hedionda Lagoon Foundation  
1580 Cannon Road, Carlsbad CA**

*Note:* Coastal Commission staff will be requesting from participants at these meetings information about potential mitigation ideas. Before the meeting, please contact Sara Townsend and let her know if you'll be presenting mitigation options.

Please come prepared to briefly discuss the following:

- **May 1<sup>st</sup>:** If proposing marine life mitigation, describe the type and location of potential mitigation sites, and describe how restoration or creation of this particular habitat/vegetation would mitigate for impacts associated with the desalination facility's impacts to marine life in Agua Hedionda. Please also let us know if a site visit would be possible later in the day on May 1<sup>st</sup> or 2<sup>nd</sup>.
- **May 2<sup>nd</sup>:** If proposing energy minimization or greenhouse gas reduction measures, describe the proposed measures and how they will reduce or offset electrical use and/or GHG emissions. *Note:* Our intent is to develop a plan that can easily transition to the anticipated requirements of AB 32 (Global Warming Solutions Act of 2006), so where possible, please describe how the proposed measures conform to the criteria contained in AB 32 – i.e., are they “real, permanent, quantifiable, verifiable, and enforceable,” and would they be “in addition” to measures already required?
- For both types of mitigation options, please describe the information that Poseidon would likely need if it decides to pursue those options, such as contracts, agreements, other permits, etc.
- **Note:** We will not be making final decisions at this meeting as to specific mitigation options. Rather, we will review the information discussed and presented, coordinate with the involved agencies and with Poseidon, and develop final proposed mitigation plans based on this further coordination and review.



*May 1, 2008*

**Marine Life Impacts  
Draft Agenda**

*10:00am- 1:00 pm*

1. Introductions (by all)
2. Review of meeting purpose and the Coastal Commission review process (by Coastal Commission staff – Tom Luster)
3. Results of Coastal Commission staff review of Poseidon's entrainment study and proposed mitigation at San Dieguito (Tom L.).
4. Description of preferred additional mitigation options (Tom L.). These include:
  - Restoration and/or creation of wetland/estuarine habitats similar to those affected at Agua Hedionda (e.g., mudflats, tidal channels, salt marsh, etc.).
  - Water quality restoration projects within Agua Hedionda lagoon or watershed.
  - Others?
5. Comments/discussion by other involved regulatory agencies – State Lands Commission & Regional Water Quality Control Board, Department of Fish & Game, etc.
6. Presentations by meeting attendees of potential/proposed mitigation options and roundtable discussion of those options (*Note: we anticipate that this agenda item will take the bulk of the meeting time. Time allotted to each presentation may be based on priority of options and the expected number of presentations*).

**Lunch Break**

*1:00 pm- 2:00 pm*

**Meeting Continued**

*2:00pm-??*

Meeting may be continued if necessary and/or for site visits to potential mitigation sites.

*May 2, 2008*

**Energy Minimization and Greenhouse Gas Emissions  
Draft Agenda**

*10:00am- 1:00 pm*

1. Introductions (all)
2. Review of meeting purpose and the Coastal Commission review process (by Coastal Commission staff – Tom Luster)
3. Commission staff's proposed Energy Minimization & Greenhouse Gas Reduction Plan template (Tom L.).
4. Current status of Coastal Commission staff review of Poseidon's plan and proposed mitigation (Tom L.).
5. Discussion of Poseidon's tree planting proposal.
6. Comments/discussion from other agencies, including California Department of Forestry, CA Energy Commission, CA Air Resources Board, and San Diego Control District regarding preferred options, current and potential regulations, etc.
7. Presentations by meeting attendees of potential/proposed mitigation options and roundtable discussion of those options (*Note: we anticipate that this agenda item will take the bulk of the meeting time. Time allotted to each presentation may be based on priority of options and the expected number of presentations*).

**Lunch Break**

*1:00 pm- 2:00 pm*

**Meeting Continued**

*2:00pm-??*

Meeting may be continued if necessary and/or for site visits to potential mitigation sites.