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February 5, 2009

California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court Suite 100
San Diego, CA 92123-4353

Subject: Poseidon Resources Corporation, Proposed Carlsbad Desalination Plant, Marine Life Mitigation Plan and Order No. R9-2008-0039

Dear Chairman Wright and Members of the Board:

We have reviewed the subject documents and conclude that we agree with the staff recommendation that the Regional Board has not satisfied all of the conditions in the Resolution R9-2008-0039 and that the failure to satisfy the conditions as rendered the Resolution inoperative by its own terms.

We support the staff position the Marine Life Mitigation Plan (MLMP) submitted by Poseidon Resources Corporation for the proposed Carlsbad Desalination Project because it fails to include adequate data on impingement of organisms and a specific mitigation alternative requested by the Board.

In reviewing the MLMP we find that it fails to apply an ecosystems based approach in assessing and mitigating the impingement and entrainment the impacts of the project. In March of 2005 a group of 25 renowned scientists and policy experts released a Scientific Consensus Statement on Marine Ecosystems-Based Management.¹ By October 2006 there were 198 additional signatories to this statement. The Executive summary states:

The current state of the oceans requires immediate action and attention. Solutions based on an integrated ecosystems approach hold the greatest promise for delivering desired results. From a scientific perspective, we know enough to improve dramatically the conservation and management of marine systems through the implementation of ecosystems-based approaches.

Tool kits for implementing the ecosystems-based approach are available; see for example the Nature Conservancy web site.² There are two key elements of the ecosystems-based approach that are missing from the MLMP.

- No data are provided to explicitly account for the interconnectedness of the sediments, benthic community, and the upper trophic marine life. The focus has been

¹ Scientific Consensus Statement on Marine Ecosystem-Based Management
http://www.compassonline.org/pdf_files/EBM_Consensus_Statement_v12.pdf

² Advancing Ecosystems-Based Management <http://www.marineebm.org/index.htm>


- primarily on the fish as the target species and not protecting the biodiversity of the marine life.
- Is not placed-based in focusing on a specific ecosystem and related activities affecting it. Instead it provides a generic mitigation plan.

The MLMP uses a limited data base that sampled the source water that would be extracted by the proposed desalination plant. It should be noted that the marine life in this source water has been subjected to impingement and entrainment stresses by the Encina Power Station since 1954 when the plant first came on line. No studies were conducted to determine if the marine life and sediment quality in these waters were impacted compared to a reference site not subject to these stresses. For example, sediment samples in the adjacent coastal waters and in Agua Hedionda Lagoon to evaluate the chemistry and benthic community were not sampled. Hence, the source Poseidon water analysis, in our view, should be questioned. These data are necessary to establish specific criteria for mitigation site selection.

In summary, the proposed MLMP poses a high risk for success because it lacks an ecosystems based approach. We ask that you support the staff recommendation not to accept the MLMP.

Thank you,

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Kimura", with a long horizontal flourish extending to the right.

Edward Kimura