

March 19, 2008

Mr. John Robertus  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340



**Re: Request for Full Public Hearing on Poseidon's Revised Flow, Entrainment, & Impingement Plan**

Dear Mr. Robertus:

We are writing on behalf of the environmental community to request postponement of any decision on the Carlsbad Seawater Desalination Project. Specifically, we request a 30-day public comment period on the revised "Flow, Entrainment and Impingement Minimization Plan" (Minimization Plan) that was submitted by Poseidon Resources to the Regional Board on March 6, 2008.

We have recently (March 18, 2008) discussed our concerns with Mr. Eric Becker, staff contact for this project, and are aware that Poseidon Resources has requested a hearing by the San Diego Regional Water Quality Control Board (Regional Board) in April. Today's posting of the April agenda on the Regional Board's website does include review of the Technical Report at the April meeting (Item 7).<sup>1</sup> The agenda specifies March 26<sup>th</sup>, 2008 at 5:00 pm as the deadline for comments on agenda items. As a practical and legal matter, this timeframe is unworkable.

In approving Tentative Order No. R9-2006-0065, granting NPDES Permit No. Ca0109223 (NPDES permit), the Regional Board considered public comments received during an extensive comment period. The original NPDES permit comment period started on May 8, 2006 and closed on June 14, 2006. After revisions to the NPDES permit were made, a second comment period was conducted until August 9, 2006. Thus, the original approval of the NPDES permit provided for almost 60 days of public comment. In contrast, today's post of the agenda on the Board's website provides only seven days for written comments (which will be extensive in keeping with the voluminous documents submitted by Poseidon) and a maximum comment period of 21 days before the hearing itself. Not only is such a limited review period insufficient to allow for public comment, but it also significantly impedes the ability of the Regional Board to review the large volume of material submitted. Poseidon has provided the Regional Board with over 300 pages of material for review. An extended comment period is necessary to allow for an appropriate response by interested parties and the subsequent review of public comments by the Regional Board. Furthermore, the NPDES permit required two public hearings and revisions before approval by the Regional Board, followed by a subsequent appeal to the State Water Resources Control Board. In order to prevent another unnecessary expenditure of time and resources, an appropriate comment period should be provided to the public in the first instance.

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<sup>1</sup> <http://www.waterboards.ca.gov/sandiego/rb9board/Apr08.html> (March 19, 2008)

San Diego Coastkeeper:

2825 Dewey Road, Suite 200, San Diego CA 92106 • p. (619)758-7743 • f. (619) 224-4638 • [www.sdcoastkeeper.org](http://www.sdcoastkeeper.org)

Surfrider Foundation:

PO Box 6010 San Clemente, CA 92674-6010 • p. (949) 492-8170 • f. (949) 492-8142 • [www.surfrider.org](http://www.surfrider.org)

As a consolidated permit issued pursuant to section 402 of the Federal Clean Water Act (CWA) and Chapter 5.5, Division 7 of the California Water Code (CWC), Poseidon's permit is subject to section 10206 of the California Code of Regulations. Section 10206 states that a "summary of *all* decisions made pursuant to the consolidated permit for the project shall be made available for public review and comment upon the filing of the consolidated permit application form or the permit applications." (emphasis added). Because the Minimization Plan is subject to approval and modification by the Regional Board, review of the Minimization Plan qualifies as a "decision made pursuant" to the NPDES permit.<sup>2</sup>

In addition to the legal rationale for a public comment period, we also invite the Board to consider the recently submitted and lengthy draft Minimization Plan itself. It is our intention to consult with experts in the field of entrainment and impingement studies, as well as after the fact "restoration plans" as mitigation for marine life mortality caused by industrial uses of seawater. This independent analysis of the Minimization Plan is critical to a thorough peer review of the proposed plan. Placing this item on the agenda for the April Regional Board hearing will not allow sufficient time for a thorough review by our experts.

Further, we support the concept, proposed by Regional Board staff, of a "Stakeholder Meeting" in late April or early May between the Project Proponent, Regional Board staff, Coastal Commission staff, State Lands Commission staff and our organizations. We strongly believe that this meeting would allow an opportunity to coordinate the agencies' actions regarding this process, as well as a fair and open process for public participation. Such a meeting would also provide consistency with the Regional Board's duties under CWC § 13225(a) which describes interagency coordination in situations exactly like this one.<sup>3</sup> Clearly, a stakeholder meeting would have little practical value if the Board makes its decision two weeks before.

To allow time for coordination of a stakeholder meeting, adequate review by our experts, and full public participation, we request a formal public comment period. This action is necessary given that this project presents a new interpretation and implementation of the language in CA Water Code § 13142.5(b). Granting a formal comment period, with responses from staff, will assure that Board members have all information before considering this important issue. Providing a sufficient amount of time may also avoid unnecessary complications in the permitting process in the future. We believe this project deserves extraordinary scrutiny in that the outcome has the potential to set important precedent for numerous similar project proposals statewide.

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<sup>2</sup> § 10206. Public Review and Participation.

(b) The public will have 30 days from the date that the public notice is issued to send comments concerning the summary to the consolidated permit agency.

(c) The consolidated permit agency shall respond to all public comments about the summary within 30 days of receipt.

<sup>3</sup> 13225. Each regional board, with respect to its region, shall do all of the following:

(a) Coordinate with the state board and other regional boards, as well as other state agencies with responsibility for water quality, with respect to water quality control matters, including the prevention and abatement of water pollution and nuisance.

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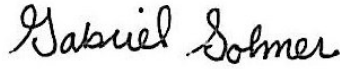
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Thank you for your consideration of these requests. We look forward to your response and to working with the project Proponent and the several agencies in a cooperative and open manner.

Sincerely,



Joe Geever  
*California Policy Coordinator*  
Surfrider Foundation



Gabriel Solmer  
*Legal Director*  
San Diego Coastkeeper

Cc: Mr. Eric Becker, *Water Resources Control Engineer*  
Mr. Brian Kelley, *Senior Water Resources Control Engineer*

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