

CALIFORNIA COASTAL COMMISSION

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March 20, 2008

Richard Wright, Chair, and Members of the Regional Board
San Diego Regional Water Quality Control Board
9174 Sky Park Court Suite 100,
San Diego, CA 92123

RE: Comments for April 9, 2008 Regional Board Meeting Item – consideration of Poseidon Resources Revised Flow, Impingement, and Entrainment Minimization Plan, pursuant to Order No. R9-2006-0065 / NPDES No. CA0109223.

VIA FACSIMILE AND E-MAIL

Dear Chair Wright and Board Members:

We want to comment on the possible Regional Board action on the *Revised Flow, Impingement, and Entrainment Minimization Plan (Revised Plan)* Poseidon Resources provided for its proposed Carlsbad desalination facility. Due to budget constraints, Coastal Commission staff will not be able to attend your April 9, 2008 Board meeting, but we are providing these comments for the Board's consideration, and in recognition of Porter-Cologne Act Section 13225(a)¹, which requires coordination between the Board, the Coastal Commission, and other involved agencies. For the reasons provided below, we recommend the Board not take action on the *Revised Plan* at this time.

In November 2007, the Coastal Commission approved a coastal development permit for Poseidon's desalination facility. Among the Commission's conditions of approval was a requirement that Poseidon submit its complete entrainment study and an acceptable Marine Life Mitigation Plan for further Commission review and approval before it can be issued a coastal development permit. For several reasons, we have determined that Poseidon's current *Revised Plan* is not yet adequate for Commission consideration – for instance, until we complete our review of Poseidon's entrainment study, we cannot determine whether Poseidon's proposed mitigation is appropriate or adequate to address the project's entrainment impacts; additionally, the mitigation options described in the *Revised Plan* do not include enough certainty or detail to show how they will actually mitigate for any anticipated impacts.

We have taken steps to address the *Revised Plan's* current shortcomings. Regarding the entrainment study, Poseidon submitted additional necessary information about the study last week, and we have hired an independent science team to review that information for adequacy. We expect that review to be completed by mid-April. Additionally, we have been working with

¹ Porter-Cologne Act Section 13225 states, in relevant part: "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."

involved agencies, including Regional Board staff, to help Poseidon develop the mitigation measures suitable for Commission approval. In anticipation of completing our entrainment review, we have scheduled a coordination meeting among involved agencies, including the Regional Board, State Lands Commission, the City of Carlsbad, and others, to determine what mitigation options available in the Agua Hedionda area are best suited to address the identified impacts.² That meeting is scheduled for the first week of May.

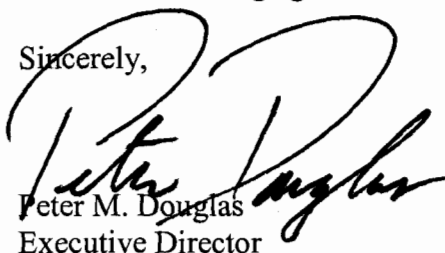
The coordination provided through this meeting in May will, we hope, identify the most suitable mitigation options and help us determine whether those options would be beneficial for other purposes – for example, some options may assist local governments in conforming to the requirements of the NPDES permit the Regional Board issued to local governments to improve urban runoff (Order No. 2001-01 / NPDES Permit No. CAS0108758). Other mitigation options may help reduce the adverse effects that resulted in Agua Hedionda Lagoon being listed as an impaired waterbody pursuant to Clean Water Act Section 303(d).

With these coordination efforts underway, we believe it would be in the best interest of all parties for the Regional Board to refrain from taking action on Poseidon's current *Revised Plan* until the above-described interagency coordination initiatives have occurred. Although the Board is reviewing Poseidon's project under standards different from those of the Coastal Commission, we believe that deferral by the Board of its decision will facilitate coordination efforts between our two agencies and will result in a mitigation plan that fulfills the standards of the Regional Board, the State Lands Commission, and the Coastal Commission, all of which have common but distinct interests in protecting water quality and marine life. Further, if the Board were to approve the *Revised Plan* in its current form, Poseidon would still need to incorporate significant additional information and changes into its Plan to provide the certainty needed for the required Commission review and approval.

Finally, we are concerned that action by the Board at this time on the *Revised Plan* would create a real or perceived conflict between the Board's action and the requirements imposed by the Commission in its November 2007 approval of Poseidon's project. This is likely to slow or confuse our ongoing review and coordination process, resulting in delay for Poseidon's project.

In closing, we respectfully request that the Board defer taking any action at its April hearing regarding Poseidon's *Revised Plan*. We believe your deferral at this time would result in a more expedient process for the Regional Board, the Coastal Commission, Poseidon, and other involved reviewing agencies.

Sincerely,



Peter M. Douglas
Executive Director

² Invited participants include the Regional Board, the State Lands Commission, the Department of Fish and Game, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the City of Carlsbad, the Agua Hedionda Lagoon Foundation, and the Carlsbad Watershed Network.