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March 27, 2008

Chairman Richard Wright  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Poseidon Resources Desalination Project-Flow  
Entrainment and Impingement Plan (project #r9-2006-0  
065, NPDES #CA0109223)  
April 9, 2008, Agenda Item 7

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SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

Dear Chairman Wright and Board Members:

I am writing you as a person interested in, and strongly supportive of, the Carlsbad Desalination Project. I am the former chief trial counsel for the San Diego Sierra Club and was recently involved on issues impacting the marine environment along our coast. Further, I have worked on numerous water and ecological issues over the years. Based on this experience, I feel qualified to comment on the environmental benefits and impacts of this desalination project and the plan now before you.

In my opinion, the project's entrainment and impingement minimization plan is a good one. As you know, the plan details procedures to minimize impacts on marine life during a temporary or permanent reduction or shutdown of the Encina power plant generation, i.e., when the project's intake requirements exceed the power station's discharges. The current productive state of the adjacent lagoon is primarily due to the good stewardship of the power station, which daily circulates seawater throughout the lagoon and dredges its entrance, annually. These actions have transformed the lagoon from the stagnant marsh of the past to the healthy ecosystem we see today. It now supports popular public recreation areas, a thriving aquaculture farm, and large wetlands that support several endangered species. Provisions in the minimization plan guarantees that Poseidon Resources will take over the maintenance and stewardship of the lagoon when the power station eventually shuts down.

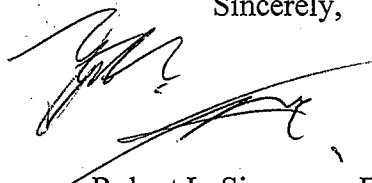
Opponents of this project have falsely argued to you (and unsuccessfully, to courts and other agencies) that the Federal Clean Water Act (CWA Section 316) applies to this desalination plant. This is legally incorrect! In truth, the plant is regulated under the California Water Code Section 13142.5. This provision requires industrial facilities using seawater for processing to use the best available site, design, technology, and

feasible mitigation—to minimize impacts to marine life. In my opinion, the plan before you for decision on April 9 clearly meets all the requirements of this law and I urge you to approve it.

Please do not be persuaded by the staff of a regulatory agency and several opponents of desalination to delay this project. These opponents are environmental extremists, at odds with the mainstream of us who value the precious water this project will bring. No minimization plan would satisfy them. They want elimination, not minimization! Attached for your review is a copy of an opinion piece I wrote that was published by the North County Times last month. I hope you will read it and come to understand that killing the Carlsbad Desalination Project has become a compulsion for some and hoped-for attorney fees for others.

Our region faces an unprecedented and potentially disastrous water crisis and this project will provide enough new potable water to serve 110,000 area families. I hope you will ignore the endless calls for unfounded delay. It is within your jurisdiction to approve this Flow Minimization Plan on April 9 and I appeal to you to do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Simmons', with a long horizontal flourish extending to the right.

Robert L. Simmons, Esq.

Attachment: North County Times Opinion

Cc: David Chin, Vice-Chairman, Member Susan Ritschel, Member Eric Anderson, Member Wayne Rayfield, Member Elizabeth Pearson-Schneider, Member Kris Weber, John Robertus, Executive Officer, and Staff

## **☉ Ride the desalination wave**

*By: ROBERT L. SIMMONS - commentary*

On the heels of the California Coastal Commission's approval of the Carlsbad Desalination Project, opponents of seawater desalination are making a desperate, last-ditch effort to derail the project by filing a lawsuit yet again. It is an all-too-common tactic of certain radical elements of the environmental movement to abuse the legal process by filing endless frivolous lawsuits trying to stop beneficial projects they oppose.

But when it comes to assaults on this Carlsbad project, it is time for those of us with long roots in the environmental movement to deplore this foolish and wasteful obstructionism and question whose interests these few people are serving.

The Carlsbad Desalination Project has undergone considerable expert scrutiny ---- and rightfully so. A water supply project of this magnitude must be turned upside down and inside out to ensure that the environment and public interests are being protected. This project has secured a favorable certified environmental impact report and permits from the California Department of Health Services, the Regional Water Quality Control Board and the California Coastal Commission.

Throughout the past decade, this project has withstood multiple lawsuits and regulatory agency appeals by the same few opponents who now refuse to accept the Coastal Commission's decision that this facility will protect the environment and is, therefore, consistent with the Coastal Act.

By filing another hopeless lawsuit, these non-expert activists blindly ignore the years of research and study by scientific experts that have been relied upon by every permitting and regulatory agency that has approved this project.

Why do they do this? Because these side-stream activists hope to remain politically relevant by intentionally crossing the line that separates environmental advocacy from obstructionism. To my mind, it is the same as knowing you have lost the war but are fighting on to save face. Like the general who sacrifices lives of his soldiers out of personal pride, these anti-desalination people seek to deprive all of us of a new potable water supply that is large, pure, reliable and sorely needed.

By continuing our nearly-total dependence on imported water, we inevitably risk severe ecological damage to the sources of this water and the loss of much of the water itself. Therefore, reducing our dependence on imported water is both good water policy and good environmental policy.

We desperately need to remove the stranglehold that outside water exporters have had on us for so many years. We cannot do it with conservation and recycling alone. But by combining those measures with the new water the Carlsbad Desalination will supply, we can achieve the water independence that I and many others have worked so hard to win.

Robert L. Simmons is the former chief trial counsel of the San Diego Sierra Club.