



California Regional Water Quality Control Board San Diego Region



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April 17, 2008

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

In reply refer to:
CRU: 02-1429.02:bkelly

Dear Mr. MacLaggan:

**ADOPTED ORDER NO. R9-2008-0039, AN ORDER CONDITIONALLY APPROVING
REVISED FLOW, ENTRAINMENT, AND IMPINGEMENT MINIMIZATION PLAN,
POSEIDON RESOURCES CORPORATION, CARLSBAD DESALINATION PROJECT**

Enclosed is Order No. R9-2008-0039, which was adopted by the Regional Board at their April 9, 2008 meeting and provides conditional approval of Poseidon's Flow, Entrainment, and Impingement Minimization Plan (Plan) dated March 6, 2008. Within six months of adoption of Order No. R9-2008-0039, Poseidon is required to submit 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.

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 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. Brian Kelley at (858) 467-4254, or at bkelly@waterboards.ca.gov.

Respectfully,

John H. Robertus
Executive Officer

8002/81/4

California Environmental Protection Agency

Mr. Peter M. MacLaggan
Poseidon Resources Corporation
Adopted Resolution R9-2008-0039

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April 17, 2008

cc:

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cc : (See Enclosed Interested Parties List)



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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

RESOLUTION NO. R9-2008-0039

**CONDITIONAL APPROVAL OF
REVISED FLOW, ENTRAINMENT, AND IMPINGEMENT MINIMIZATION PLAN
FOR
POSEIDON RESOURCES CORPORATION
CARLSBAD DESALINATION PROJECT**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. On August 11, 2006, the Regional Board adopted Order R9-2006-0065 NPDES No. CA0109223 (Order No. R9-2006-0065) establishing waste discharge requirements for Poseidon Resources Corporation (Poseidon) to discharge up to 57 million gallons per day (MGD) of a combined waste stream comprised of concentrated saline waste seawater and filter backwash wastewater from the Carlsbad Desalination Project (CDP) into the Pacific Ocean via the Encina Power Station's (EPS) cooling water discharge channel.
2. As proposed in Poseidon's Report of Waste Discharge for Order No. R9-2006-0065, the CDP will operate in conjunction with the EPS and will draw upon cooling water discharges by EPS for its intake requirements in the production of fresh potable water. As recognized in Section VI.C.2(e) of Order No. R9-2006-0065, CDP's intake requirements may, at times, exceed the volume of seawater being discharged by the EPS during times when EPS temporarily ceases operating to generate electricity. During these periods, EPS will operate its intake structures to produce intake water sufficient to meet CDP's intake needs.
3. The operations at the CDP are not subject to the statutory requirements of section 316(b) of the Clean Water Act as that section pertains only to impacts from intake of seawater for the purpose of power generation.
4. CDP is, however, a new industrial installation that is subject to California Water Code Section 13142.5 which requires use of best available site design, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life.
5. Section VI.C.2(e) of Order No. R9-2006-0065 requires Poseidon to submit (within 180 days of adoption), a Flow, Entrainment and Impingement Minimization Plan ("Plan") that "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." Thus, Poseidon is required to submit a plan to minimize these impacts to marine organisms under conditions of operation in conjunction with the Encina Power Station (EPS), as described in Finding II.B of Order No. R9-2006-0065. Approval of the Plan is currently not a condition for commencement of the discharge from the CDP.

6. On March 7, 2008, Poseidon submitted an updated Revised Flow, Entrainment, and Impingement Minimization Plan (Plan) to address best available site design, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life and Order No. R9-2006-0065 Section VI.C.2(e) requirements.
7. As submitted, the Plan does not include a specific mitigation alternative but instead sets forth a process to be used for evaluating and selecting a specific mitigation alternative that will compensate for impacts, to beneficial uses of Agua Hedionda Lagoon, from entrainment and impingement of marine organisms by operations at the CDP. An amendment to the Plan containing a specific mitigation alternative must be submitted to the Regional Board for approval.
8. The Plan, including any amendments subsequently approved by the Regional Board, is of limited duration and is applicable only to Poseidon's current cooperative operation with EPS. Upon Poseidon's proposal to operate CDP independent of EPS or when EPS permanently ceases power generation operations, it may be necessary to further evaluate appropriate mitigation and/or minimization of impacts to marine organisms of CDP's operations.
9. This action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Water Code section 13389 (see *County of Los Angeles v. California State Water Resources Control Board*, (2006) 143 Cal.App.4th 985, 50 Cal.Rptr. 3d 619), and this action of the Regional Board does not have the potential to cause a significant effect on the environment. (See Title 14, California Code of Regulations, section 15061.)

THEREFORE, BE IT RESOLVED THAT:


1. The Plan, dated March 6, 2008, does not include specific implementation provisions as required in Section VI.C.2.(e) of Order No. R9-2006-0065 and does not as yet resolve the concerns noted in the Regional Board's February 19, 2008 letter to Poseidon Resources.
2. The San Diego Water Board hereby conditionally approves the Plan.
3. 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

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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.
4. Poseidon's Plan, including any amendments that are subsequently approved by the Regional Board, are of limited duration and are applicable only to CDP's current cooperative operation with EPS. When Poseidon proposes to operate independent of EPS or EPS permanently ceases power generation operations, EPS's cessation of power generation operations, would be necessary to further evaluate appropriate mitigation and/or minimization of impacts to marine organisms of CDP's operations.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on April 9, 2008.



JOHN H. ROBERTUS
Executive Officer

Interested Parties
Order No. R9-2006-0065
NPDES Permit No. CA0109223

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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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Order No. R9-2006-0065

NPDES Permit No. CA0109223

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*Peter MacLaggan,
501 Broadway, Suite 840
San Diego, CA 92101*

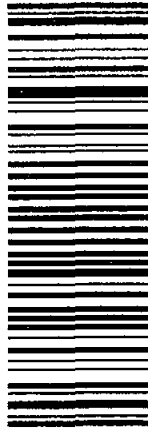
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