Brian K.

POSEIDON RESOURCES

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
2008 NOV 18 P 1:23

November 14, 2008

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

Dear Mr. Robertus:

Subject: Adopted Order No. R9-2008-0039 conditionally approving *Revised Flow, Entrainment, and Impingement Minimization* Plan, Poseidon Resources Corporation, Carlsbad Desalination Project (CRU: 02-1429.02 bkelley).

Attached is the *Marine Life Mitigation Plan* (MLMP) for Poseidon's proposed Carlsbad Desalination Project. The MLMP represents a proposed amendment to the Carlsbad Desalination Project *Flow, Entrainment and Impingement Minimization Plan* (Minimization Plan), which was conditionally approved by Regional Board Resolution No. R9-2008-0039.

This MLMP was developed in consultation with several participating agencies, and through proceedings before the California Coastal Commission. The Coastal Commission approved the substance of the MLMP at its August 6, 2008 meeting, and directed Poseidon and Coastal Commission staff to reach agreement on minor administrative issues such as budget and reimbursements that would not require further Commission approval. Poseidon and Coastal Commission staff have now reached agreement on those issues, and will report the final MLMP to the Commission at the Commission's December 2008 meeting. Accordingly, the MLMP attached hereto is addressed to the Coastal Commission and its Executive Director. Once approved by the Regional Board, we understand the MLMP would be equally enforceable by the Regional Board and its Executive Officer.

As approved by the Coastal Commission, the requirements of the MLMP are consistent with, and in many respects more stringent than, the requirements under California Water Code section 13142.5, pursuant to which authority the Regional Board directed the preparation of the Minimization Plan.

Background. Regional Board Order No. R9-2006-0065 (NPDES CA0109223) regulates the proposed discharge of saline wastewater from the Carlsbad Desalination Project. Cooling water from the Encina Power Station (EPS) will provide the main source of desalination intake water. During times when EPS power generation is temporarily shut down, EPS will operate its intake structure to provide Poseidon with sufficient intake water to operate.

Minimization Plan Submittal and Conditional Approval. Order No. R9-2006-0065 required Poseidon to submit a Minimization Plan to address implementation or mitigation measures for minimizing impacts to marine organisms during periods when EPS power generation is shut down. An initial version of the Minimization Plan was submitted to the Regional Board in 2007, and an updated version was submitted to the Regional Board on February 13, 2008. Regional

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Board staff commented on the updated version in a February 19, 2008 letter. In response, Poseidon submitted an updated version of the Minimization Plan to the Regional Board on March 7, 2008, along with correspondence that addressed how the Minimization Plan had been revised to incorporate Regional Board staff comments.

After reviewing Poseidon's extensive submittal, the Regional Board adopted Resolution No. R9-2008-0039 on April 9, 2008, which conditionally approved the Minimization Plan. The Resolution required Poseidon to submit an amendment to the Minimization Plan addressing the Regional Board's February 19 letter, as well as the following items:

- Identification of impacts from impingement and entrainment;
- Adequate monitoring data to determine the impacts from impingement and entrainment;
- Coordination among participating agencies for the amendment of the Plan as required by Section 13225 of the California Water Code;
- Adequacy of mitigation; and
- Commitment to fully implement the amendment of the Plan.

As discussed below, the above requirements of Resolution No. R9-2008-0039 have been addressed by Poseidon, the Regional Board, the California Coastal Commission, and participating agencies through an independent review of Poseidon's entrainment study and related monitoring data, interagency coordination, and development of the final MLMP.

MLMP Development and Approval. In March 2008, Poseidon provided a copy of its entrainment study for Regional Board and Coastal Commission staff for their review. The Coastal Commission staff retained Dr. Pete Raimondi, an independent scientist with expertise in evaluating entrainment studies, to review Poseidon's study and provide recommendations regarding the adequacy of the information contained therein.

In May 2008, the Coastal Commission staff convened an interagency meeting, which included Regional Board staff, to determine what mitigation options might be available and feasible for Poseidon to include as part of its MLMP.

Attendees included representatives from:

- California Department of Fish and Game
- California Department of Transportation
- California State Lands Commission
- San Diego Regional Water Quality Control Board
- City of Carlsbad
- City of Vista
- U.S. Fish and Wildlife Service
- California Coastal Commission

In June 2008, the Coastal Commission staff asked the Commission's Marine Review Committee (MRC) to review Dr. Raimondi's conclusions and make further recommendations for Poseidon to include in its proposed MLMP.

Also in June 2008, Coastal Commission staff provided Poseidon a copy of the conditions the Commission had required of Southern California Edison for its wetland restoration project at San Dieguito Lagoon (Edison Conditions). Based on input received from the MRC, Coastal Commission staff recommended to Poseidon that it incorporate modified versions of the Edison Conditions into its proposed MLMP to ensure that the mitigation site ultimately selected would be subject to compatible and consistent mitigation requirements.

On July 7, 2008, Poseidon submitted to Coastal Commission staff a revised MLMP, which incorporated the results of the reviews by Coastal Commission staff, Dr. Raimondi, MRC and the several state and local agencies listed above. The Coastal Commission reviewed and approved the substance of that Plan, subject to certain modifications, at its August 6, 2008 hearing.

Highlights of MLMP. The MLMP approved by the Coastal Commission consists of two parts: Conditions A and B. In accordance with the requirements of Resolution No. R9-2008-0039, Condition A of the MLMP attached hereto addresses:

- Required acreages of estuarine wetlands mitigation (Section 1);
- Mitigation site selection procedures (Section 2);
- Minimum standards, objectives, and restrictions (Section 3);
- Wetlands construction, permitting, and implementation schedules (Section 4); and
- Pre-restoration monitoring, construction monitoring, post-restoration monitoring, management, and remediation (Section 5).

As shown within Condition A of the attached MLMP, a two-phase wetlands restoration program is proposed. Phase I provides 37 acres of estuarine wetlands mitigation. Phase II provides for up to an additional 18.4 acres of estuarine wetlands mitigation unless Poseidon proposes and the Commission approves alternatives to reduce or eliminate the 18.4 acres of mitigation, including implementing new entrainment reduction technology or mitigation credits for conducting dredging. Under the MLMP, Poseidon is obligated to submit a CDP application for Phase I mitigation to the Coastal Commission within two years of the issuance of the CDP for the Carlsbad Desalination Project, and for Phase II mitigation, Poseidon is obligated to submit a CDP application within five years of the issuance of the CDP for Phase I mitigation.

Condition A (Section 2) of the MLMP also:

- Establishes standards for final mitigation site selection;
- Sets forth a "short list" of potential sites to be considered; and

- Provides that any additional future priority sites that may be recommended by the California Department of Fish and Game also may be considered.

Per the requirements of Resolution No. R9-2008-0039, Condition B of the MLMP sets forth the MLMP's administrative structure and budget, and the work plan for implementing the mitigation. As part of this administrative structure, Condition B also establishes means to remediate any deficiencies and resolve disputes associated with MLMP implementation. Poseidon's commitment to implement the MLMP as an amendment to the Mitigation Plan will be enforced by the Regional Board through the requirements of Order R9-2006-0065 and by the Coastal Commission through Condition 8 of Poseidon's CDP.

In order to facilitate the Regional Board's review of the MLMP, we would appreciate an opportunity to meet with you in the near future to discuss how the proposed MLMP accomplishes the Regional Board's resource protection objectives and Poseidon's duties under the Water Code. I look forward to speaking with you soon, and will be calling you to set up a meeting. Thank you for your assistance.

Sincerely,

Peter M. MacLaggan
Senior Vice President

Enclosure

Cc: Mike Porter
Chiara Clemente

POSEIDON RESOURCES MARINE LIFE MITIGATION PLAN

INTRODUCTION

Poseidon's Carlsbad desalination facility will be co-located with the Encina Power Station and will use the power plant's once-through cooling intake and outfall structures. The desalination facility is expected to use about 304 million gallons per day (mgd) of estuarine water drawn through the structure. The facility will operate both when the power plant is using its once-through cooling system and when it is not.

This Marine Life Mitigation Plan (the Plan) will result in mitigation necessary to address the entrainment impacts caused by the facility's use of estuarine water. The Plan includes two phases of mitigation – Poseidon is required during Phase I to provide at least 37 acres of estuarine wetland restoration, as described below. In Phase II, Poseidon is required to provide an additional 18.4 acres of estuarine wetland restoration. However, as described below, Poseidon may choose to provide all 55.4 acres of restoration during Phase I. Poseidon may also choose during Phase II to apply for a CDP to reduce or eliminate the required 18.4 acres of mitigation and instead conduct alternative mitigation by implementing new entrainment reduction technology or obtaining mitigation credit for conducting dredging.

CONDITION A: WETLAND RESTORATION MITIGATION

The permittee shall develop, implement and fund a wetland restoration project that compensates for marine life impacts from Poseidon's Carlsbad desalination facility.

1.0 PHASED IMPLEMENTATION

Phase I: Poseidon is to provide at least 37 acres of estuarine wetland restoration. Within two years of issuance of the desalination facility's coastal development permit (CDP), Poseidon is to submit a complete CDP application for a proposed restoration project, as described below.

Phase II: Poseidon is to provide an additional 18.4 acres of estuarine wetland restoration. Within five years of issuance of the Phase I CDP, Poseidon is to submit a complete CDP application proposing up to 18.4 acres of additional restoration, subject to reduction as described below.

2.0 SITE SELECTION

In consultation with Commission staff, the permittee shall select a wetland restoration site or sites for mitigation in accordance with the following process and terms.

Within 9 months of the effective date of this permit, the permittee shall submit the proposed site(s) and preliminary wetland restoration plan to the Commission for its review and approval or disapproval.

The location of the wetland restoration project(s) shall be within the Southern California Bight. The permittee shall select from sites including, but not limited to, the following eleven sites: Tijuana Estuary in San Diego County; San Dieguito River Valley in San Diego County; Agua Hedionda Lagoon in San Diego County; San Elijo Lagoon in San Diego County; Buena Vista Lagoon in San Diego County; Huntington Beach Wetland in Orange County, Anaheim Bay in

Orange County, Santa Ana River in Orange County, Los Cerritos Wetland in Los Angeles County, Ballona Wetland in Los Angeles County, and Ormond Beach in Ventura County. The permittee may also consider any sites that may be recommended by the California Department of Fish & Game as high priority wetlands restoration projects. Other sites proposed by the permittee may be added to this list with the Executive Director's approval.

The basis for the selection shall be an evaluation of the site(s) against the minimum standards and objectives set forth in subsections 3.1 and 3.2 below. The permittee shall take into account and give serious consideration to the advice and recommendations of the Scientific Advisory Panel (SAP) established and convened by the Executive Director pursuant to Condition B.1.0. The permittee shall select the site(s) that meets the minimum standards and best meets the objectives.

3.0 PLAN REQUIREMENTS

In consultation with Commission staff, the permittee shall develop a wetland restoration plan for the wetland site(s) identified through the site selection process. The wetland restoration plan shall meet the minimum standards and incorporate as many as feasible of the objectives in subsections 3.1 and 3.2, respectively.

3.1 Minimum Standards

The wetland restoration project site(s) and preliminary plan(s) must meet the following minimum standards:

a. Location within Southern California Bight;

b. Potential for restoration as tidal wetland, with extensive intertidal and subtidal areas;

c. Creates or substantially restores a minimum of 37 acres and up to at least 55.4 acres of habitat similar to the affected habitats in Agua Hedionda Lagoon, excluding buffer zone and upland transition area;

d. Provides a buffer zone of a size adequate to ensure protection of wetland values, and at least 100 feet wide, as measured from the upland edge of the transition area.

e. Any existing site contamination problems would be controlled or remediated and would not hinder restoration;

f. Site preservation is guaranteed in perpetuity (through appropriate public agency or nonprofit ownership, or other means approved by the Executive Director), to protect against future degradation or incompatible land use;

g. Feasible methods are available to protect the long-term wetland values on the site(s), in perpetuity;

h. Does not result in a net loss of existing wetlands; and

i. Does not result in an adverse impact on endangered animal species or an adverse unmitigated impact on endangered plant species.

3.2 Objectives

The following objectives represent the factors that will contribute to the overall value of the wetland. The selected site(s) shall be determined to achieve these objectives. These objectives shall also guide preparation of the restoration plan.

a. Provides maximum overall ecosystem benefits, e.g. maximum upland buffer, enhancement of downstream fish values, provides regionally scarce habitat, potential for local ecosystem diversity;

b. Provides substantial fish habitat compatible with other wetland values at the site(s);

c. Provides a buffer zone of an average of at least 300 feet wide, and not less than 100 feet wide, as measured from the upland edge of the transition area.

d. Provides maximum upland transition areas (in addition to buffer zones);

e. Restoration involves minimum adverse impacts on existing functioning wetlands and other sensitive habitats;

f. Site selection and restoration plan reflect a consideration of site specific and regional wetland restoration goals;

g. Restoration design is that most likely to produce and support wetland-dependent resources;

h. Provides rare or endangered species habitat;

i. Provides for restoration of reproductively isolated populations of native California species;

j. Results in an increase in the aggregate acreage of wetland in the Southern California Bight;

k. Requires minimum maintenance;

l. Restoration project can be accomplished in a reasonably timely fashion; and,

m. Site(s) in proximity to the Carlsbad desalination facility.

3.3 Restrictions

a. The permittee may propose a wetland restoration project larger than the minimum necessary size specified in subsection 3.1(c) above, if biologically appropriate for the site(s), but the additional acreage must (1) be clearly identified, and (2) must not be the portion of the project best satisfying the standards and objectives listed above.

b. If the permittee jointly enters into a restoration project with another party: (1) the permittee's portion of the project must be clearly specified, (2) any other party involved cannot gain mitigation credit for the permittee's portion of the project, and (3) the permittee may not receive mitigation credit for the other party's portion of the project.

c. The permittee may propose to divide the mitigation requirement between a maximum of two wetland restoration sites, unless there is a compelling argument, approved by the Executive Director, that the standards and objectives of subsections 3.1 and 3.2 will be better met at more than two sites.

4.0 PLAN IMPLEMENTATION

4.1 Coastal Development Permit Applications

The permittee shall submit complete Coastal Development Permit applications for the Phase I and Phase II restoration plan(s) that shall include CEQA documentation and local or other state agency approvals. The CDP application for Phase I shall be submitted within 24 months following the issuance of the Coastal Development Permit for the Carlsbad desalination facility. The CDP application for Phase II shall be submitted within 5 years of issuance of the CDP for Phase I. The Executive Director may grant an extension to these time periods at the request of and upon a demonstration of good cause by the permittee. The restoration plans shall substantially conform to Section 3.0 above and shall include, but not be limited to the following elements:

a. Detailed review of existing physical, biological, and hydrological conditions; ownership, land use and regulation;

b. Evaluation of site-specific and regional restoration goals and compatibility with the goal of mitigating for Poseidon's marine life impacts;

c. Identification of site opportunities and constraints;

d. Schematic restoration design, including:

1. Proposed cut and fill, water control structures, control measures for stormwater, buffers and transition areas, management and maintenance requirements;
2. Planting program, including removal of exotic species, sources of plants and or seeds (local, if possible), protection of existing salt marsh plants, methods for preserving top soil and augmenting soils with nitrogen and other necessary soil amendments before planting, timing of planting, plans for irrigation until established, and location of planting and elevations on the topographic drawings;
3. Proposed habitat types (including approximate size and location);
4. Assessment of significant impacts of design (especially on existing habitat values) and net habitat benefits;
5. Location, alignment and specifications for public access facilities, if feasible;
6. Evaluation of steps for implementation e.g. permits and approvals, development agreements, acquisition of property rights;
7. Cost estimates;

8. Topographic drawings for final restoration plan at 1" = 100 foot scale, one foot contour interval; and
9. Drawings shall be directly translatable into final working drawings.

g. Detailed information about how monitoring and maintenance will be implemented;

h. Detailed information about construction methods to be used;

i. Defined final success criteria for each habitat type and methods to be used to determine success;

j. Detailed information about how Poseidon will coordinate with the Scientific Advisory Panel including its role in independent monitoring, contingency planning review, cost recovery, etc.;

k. Detailed information about contingency measures that will be implemented if mitigation does not meet the approved goals, objectives, performance standards, or other criteria; and,

l. Submittal of "as-built" plans showing final grading, planting, hydrological features, etc. within 60 days of completing initial mitigation site construction.

4.2 Wetland Construction Phase

Within 6 months of approval of the Phase I restoration plan, subject to the permittee's obtaining the necessary permits, the permittee shall commence the construction phase of the wetland restoration project. The permittee shall be responsible for ensuring that construction is carried out in accordance with the specifications and within the timeframes specified in the approved final restoration plan and shall be responsible for any remedial work or other intervention necessary to comply with final plan requirements.

4.3 Timeframe for Resubmittal of Project Elements

If the Commission does not approve any element of the project (i.e. site selection, restoration plan), the Commission will specify the time limits for compliance relative to selection of another site or revisions to the restoration plan.

5.0 WETLAND MONITORING, MANAGEMENT AND REMEDIATION

Monitoring, management (including maintenance), and remediation shall be conducted over the "full operating life" of Poseidon's desalination facility, which shall be 30 years from the date "as-built" plans are submitted pursuant to subsection 4.1(1).

The following section describes the basic tasks required for monitoring, management and remediation. Condition B specifies the administrative structure for carrying out these tasks, including the roles of the permittee and Commission staff.

5.1 Monitoring and Management Plan

A monitoring and management plan will be developed in consultation with the permittee and appropriate wildlife agencies, concurrently with the preparation of the restoration plan to provide an overall framework to guide the monitoring work. It will include an overall description of the studies to be conducted over the course of the monitoring program and a description of management tasks that are anticipated, such as trash removal. Details of the monitoring studies and management tasks will be set forth in a work program (see Condition B).

5.2 Pre-restoration site monitoring

Pre-restoration site monitoring shall be conducted to collect baseline data on the wetland attributes to be monitored. This information will be incorporated into and may result in modification to the overall monitoring plan.

5.3 Construction Monitoring

Monitoring shall be conducted during and immediately after each stage of construction of the wetland restoration project to ensure that the work is conducted according to plans.

5.4 Post-Restoration Monitoring and Remediation

Upon completion of construction of the wetland(s), monitoring shall be conducted to measure the success of the wetland(s) in achieving stated restoration goals (as specified in the restoration plan(s)) and in achieving performance standards, specified below. The permittee shall be fully responsible for any failure to meet these goals and standards during the facility's full operational years. Upon determining that the goals or standards are not achieved, the Executive Director shall prescribe remedial measures, after consultation with the permittee, which shall be immediately implemented by the permittee with Commission staff direction. If the permittee does not agree that remediation is necessary, the matter may be set for hearing and disposition by the Commission.

Successful achievement of the performance standards shall (in some cases) be measured relative to approximately four reference sites, which shall be relatively undisturbed, natural tidal wetlands within the Southern California Bight. The Executive Director shall select the reference sites. The standard of comparison, i.e., the measure of similarity to be used (e.g., within the range, or within the 95% confidence interval) shall be specified in the work program.

In measuring the performance of the wetland project, the following physical and biological performance standards will be used:

a. **Longterm Physical Standards.** The following long-term standards shall be maintained over the full operative life of the desalination facility:

   1. ***Topography.*** The wetland(s) shall not undergo major topographic degradation (such as excessive erosion or sedimentation);
   2. ***Water Quality.*** Water quality variables to be specified shall be similar to reference wetlands;
   3. ***Tidal prism.*** If the mitigation site(s) require dredging, the tidal prism shall be maintained and tidal flushing shall not be interrupted; and,

4. ***Habitat Areas.*** The area of different habitats shall not vary by more than 10% from the areas indicated in the restoration plan(s).

b. **Biological Performance Standards.** The following biological performance standards shall be used to determine whether the restoration project is successful. Table 1, below, indicates suggested sampling locations for each of the following biological attributes; actual locations will be specified in the work program:

1. ***Biological Communities.*** Within 4 years of construction, the total densities and number of species of fish, macroinvertebrates and birds (see Table 1) shall be similar to the densities and number of species in similar habitats in the reference wetlands;
2. ***Vegetation.*** The proportion of total vegetation cover and open space in the marsh shall be similar to those proportions found in the reference sites. The percent cover of algae shall be similar to the percent cover found in the reference sites;
3. ***Spartina Canopy Architecture.*** The restored wetland shall have a canopy architecture that is similar in distribution to the reference sites, with an equivalent proportion of stems over 3 feet tall;
4. ***Reproductive Success.*** Certain plant species, as specified by in the work program, shall have demonstrated reproduction (i.e. seed set) at least once in three years;
5. ***Food Chain Support.*** The food chain support provided to birds shall be similar to that provided by the reference sites, as determined by feeding activity of the birds; and
6. ***Exotics.*** The important functions of the wetland shall not be impaired by exotic species.

Table 1: Suggested Sampling Locations

	Salt Marsh			Open Water			Tidal
	Spartina	Salicornia	Upper	Lagoon	Eelgrass	Mudflat	Creeks
1) Density/spp:							
– Fish				X	X	X	X
– Macroinvert-ebrates				X	X	X	X
– Birds	X	X	X	X		X	X
2) % Cover							
Vegetation	X	X	X		X		
algae	X	X				X	
3) Spartina architecture	X						
4) Reproductive success	X	X	X				
5) Bird feeding				X		X	X

6) Exotics	X	X	X	X	X	X	X

6.0 ALTERNATIVE MITIGATION

As part of Phase II, Poseidon may propose in its CDP application alternatives to reduce or eliminate the required 18.4 acres of mitigation. The alternative mitigation proposed may be in the form of implementing new entrainment reduction technology or may be mitigation credits for conducting dredging, either of which could reduce or eliminate the 18.4 acres of mitigation.

CONDITION B: ADMINISTRATIVE STRUCTURE

1.0 ADMINISTRATION

Personnel with appropriate scientific or technical training and skills will, under the direction of the Executive Director, oversee the mitigation and monitoring functions identified and required by Condition A. The Executive Director will retain scientific and administrative support staff needed to perform this function, as specified in the work program.

This technical staff will oversee the preconstruction and post-construction site assessments, mitigation project design and implementation (conducted by permittee), and monitoring activities (including plan preparation); the field work will be done by contractors under the Executive Director's direction. The contractors will be responsible for collecting the data, analyzing and interpreting it, and reporting to the Executive Director.

The Executive Director shall convene a Scientific Advisory Panel to provide the Executive Director with scientific advice on the design, implementation and monitoring of the wetland restoration. The panel shall consist of recognized scientists, including a marine biologist, an ecologist, a statistician and a physical scientist.

2.0 BUDGET AND WORK PROGRAM

The funding necessary for the Commission and the Executive Director to perform their responsibilities pursuant to these conditions will be provided by the permittee in a form and manner reasonably determined by the Executive Director to be consistent with requirements of State law, and which will ensure efficiency and minimize total costs to the permittee. The amount of funding will be determined by the Commission on a biennial basis and will be based on a proposed budget and work program, which will be prepared by the Executive Director in consultation with the permittee, and reviewed and approved by the Commission in conjunction with its review of the restoration plan. If the permittee and the Executive Director cannot agree on the budget or work program, the disagreement will be submitted to the Commission for resolution.

The budget to be funded by the permittee will be for the purpose of reasonable and necessary costs to retain personnel with appropriate scientific or technical training and skills needed to assist the Commission and the Executive Director in carrying out the mitigation and lost resource compensation conditions. In addition, reasonable funding will be included in this budget for necessary support personnel, equipment, overhead, consultants, the retention of contractors

needed to conduct identified studies, and to defray the costs of members of any scientific advisory panel(s) convened by the Executive Director for the purpose of implementing these conditions.

Costs for participation on any advisory panel shall be limited to travel, per diem, meeting time and reasonable preparation time and shall only be paid to the extent the participant is not otherwise entitled to reimbursement for such participation and preparation. The amount of funding will be determined by the Commission on a biennial basis and will be based on a proposed budget and work program, which will be prepared by the Executive Director in consultation with the permittee, and reviewed and approved by the Commission in conjunction with its review of the restoration plan. If the permittee and the Executive Director cannot agree on the budget or work program, the disagreement will be submitted to the Commission for resolution. Total costs for such advisory panel shall not exceed $100,000 per year adjusted annually by any increase in the consumer price index applicable to California.

The work program will include:

a. A description of the studies to be conducted over the subsequent two year period, including the number and distribution of sampling stations and samples per station, methodology and statistical analysis (including the standard of comparison to be used in comparing the mitigation project to the reference sites);

b. A description of the status of the mitigation projects, and a summary of the results of the monitoring studies to that point;

c. A description of four reference sites;

d. A description of the performance standards that have been met, and those that have yet to be achieved;

e. A description of remedial measures or other necessary site interventions;

f. A description of staffing and contracting requirements; and,

g. A description of the Scientific Advisory Panel's role and time requirements in the two year period.

The Executive Director may amend the work program at any time, subject to appeal to the Commission.

3.0 ANNUAL REVIEW AND PUBLIC WORKSHOP REVIEW

The permittee shall submit a written review of the status of the mitigation project to the Executive Director no later than April 30 each year for the prior calendar year. The written review will discuss the previous year's activities and overall status of the mitigation project, identify problems and make recommendations for solving them, and review the next year's program.

To review the status of the mitigation project, the Executive Director will convene and conduct a duly noticed public workshop during the first year of the project and every other year thereafter unless the Executive Director deems it unnecessary. The meeting will be attended by the contractors who are conducting the monitoring, appropriate members of the Scientific Advisory Panel, the permittee, Commission staff, representatives of the resource agencies (CDFG, NMFS, USFWS), and the public. Commission staff and the contractors will give presentations on the previous biennial work program's activities, overall status of the mitigation project, identify problems and make recommendations for solving them, and review the next upcoming period's biennial work program.

The public review will include discussions on whether the wetland mitigation project has met the performance standards, identified problems, and recommendations relative to corrective measures necessary to meet the performance standards. The Executive Director will use information presented at the public review, as well as any other relevant information, to determine whether any or all of the performance standards have been met, whether revisions to the standards are necessary, and whether remediation is required. Major revisions shall be subject to the Commission's review and approval.

The mitigation project will be successful when all performance standards have been met each year for a three-year period. The Executive Director shall report to the Commission upon determining that all of the performance standards have been met for three years and that the project is deemed successful. If the Commission determines that the performance standards have been met and the project is successful, the monitoring program will be scaled down, as recommended by the Executive Director and approved by the Commission. A public review shall thereafter occur every five years, or sooner if called for by the Executive Director. The work program shall reflect the lower level of monitoring required. If subsequent monitoring shows that a standard is no longer being met, monitoring may be increased to previous levels, as determined necessary by the Executive Director.

The Executive Director may make a determination on the success or failure to meet the performance standards or necessary remediation and related monitoring at any time, not just at the time of the workshop review.

4.0 ADDITIONAL PROCEDURES

4.1 Dispute Resolution

In the event that the permittee and the Executive Director cannot reach agreement regarding the terms contained in or the implementation of any part of this Plan, the matter may be set for hearing and disposition by the Commission.

4.2 Extensions

Any of the time limits established under this Plan may be extended by the Executive Director at the request of the permittee and upon a showing of good cause.

CONDITION C: SAP DATA MAINTENANCE

The permittee shall make available on a publicly-accessible website all scientific data collected as part of the project. The website and the presentation of data shall be subject to Executive Director review and approval.