



Appendix E
Resolution No. R9-2011-0028

Renewal of NPDES CA0109223
Carlsbad Desalination Project



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Acting Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Edmund G. Brown, Jr.
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

March 10, 2011

In reply refer to:
640063:jebsen
9000001429

Peter MacLaggan
Poseidon Resources
501 West Broadway, Suite 2020
San Diego, CA 92101

Dear Mr. MacLaggan:

SUBJECT: Resolution Approving the Preliminary Wetland Restoration Plan and Site Selection for the Otay River Floodplain Wetland Mitigation Site

On March 9, 2011, the California Regional Water Quality Control Board, San Diego Region (*San Diego Water Board*) adopted *Tentative Resolution No. R9-2011-0028, a Resolution for Approval of the Preliminary Wetland Restoration Plan and Selection of the Otay River Floodplain Wetland Mitigation Site to Mitigate for Entrainment and Impingement Impacts of the Carlsbad Desalination Project*. This action was taken pursuant to Finding 43 of Order No. R9-2009-0038. The signed Resolution is included for your reference.

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. For questions pertaining to the subject matter, please contact Jody Ebsen at 858-636-3146 or jebsen@waterboards.ca.gov.

Respectfully,

DAVID W. GIBSON
Executive Officer

DWG:dtb:jme

Enclosure: Resolution No. R9-2011-0028

California Environmental Protection Agency

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

RESOLUTION NO. R9-2011-0028

**APPROVAL OF THE PRELIMINARY WETLAND RESTORATION PLAN AND
SELECTION OF THE OTAY RIVER FLOODPLAIN WETLAND MITIGATION
SITE TO MITIGATE FOR ENTRAINMENT AND IMPINGEMENT IMPACTS OF
THE CARLSBAD DESALINATION PROJECT, POSEIDON RESOURCES
CORPORATION, CARLSBAD, SAN DIEGO COUNTY**

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

1. San Diego Water Board Order No. R9-2009-0038 amending Order No. R9-2006-0065 (National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758), *Waste Discharge Requirements for the Poseidon Resources Corporation (Poseidon) Carlsbad Desalination Project (CDP) Discharge to the Pacific Ocean Via the Encina Power Station Discharge Channel*, adopted on May 13, 2009 approved Poseidon's March 27, 2009 Flow, Entrainment and Impingement Minimization Plan (Minimization Plan). The Minimization Plan included a Marine Life Mitigation Plan (MLMP) to address mitigation for the entrainment and impingement impacts that will be caused by operation of the CDP.
2. Finding 41 of Order No. R9-2009-0038 states that the MLMP includes phased implementation of up to 55.4 acres of wetland mitigation for entrainment and impingement impacts within the Southern California Bight. Phase I requires the creation of 37 acres, and Phase II requires an additional 18.4 acres, which Poseidon may propose to eliminate or reduce if it proposes alternative mitigation, such as new entrainment reduction technology or mitigation credits for dredging.
3. Finding 42 of Order No. R9-2009-0038 states the wetland mitigation site should be selected from among 11 potential sites in southern California. These sites are Tijuana Estuary, San Dieguito River Valley, Agua Hedionda Lagoon, San Elijo Lagoon, Buena Vista Lagoon, Huntington Beach Wetland, Anaheim Bay, Santa Ana River, Los Cerritos Wetland, Ballona Wetland, and Ormond Beach. Finding 42 also provides that additional wetland mitigation sites may be incorporated if appropriate, but a preference will be given to wetland mitigation sites in the San Diego Region, to the extent feasible.

4. Finding 43 of Order No. R9-2009-0038 requires that Poseidon submit proposed wetland mitigation site(s) and corresponding preliminary wetland restoration plan(s) for review and approval by the California Coastal Commission and the San Diego Water Board prior to development and implementation of a final wetland mitigation plan.
5. Section 3.1 of the MLMP sets the following minimum standards that the preliminary wetland restoration plan and mitigation site(s) must meet:
 - 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 is 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 of the California Coastal Commission and the Executive Officer of the San Diego Water Board) 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.
6. Section 3.2 of the MLMP sets the following objectives 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.
7. Poseidon evaluated the 11 wetland mitigation sites listed in the MLMP and the Otay River Floodplain mitigation site within the U.S. Fish and Wildlife Service's San Diego Bay National Wildlife Refuge near the City of Imperial Beach. Based on the MLMP minimum standards, MLMP objectives, and other criteria, Poseidon determined that the Otay River Floodplain site is the best wetland mitigation site location and meets the criteria and objectives in sections 3.1 and 3.2, respectively, of the MLMP.
 8. On July 28, 2010, Poseidon submitted a preliminary wetland restoration plan to restore 66-acres of tidal wetlands at the Otay River Floodplain wetland mitigation site.
 9. The San Diego Water Board has reviewed the proposed Otay River Floodplain wetland mitigation site and corresponding preliminary wetland restoration plans (*Poseidon Resources Marine Life Mitigation Plan Supplemental Alternatives Analysis of California Coastal Commission Standards and Objectives*, January 2011, Nordby Biological Consulting; *Technical Memorandum Poseidon Tidal Wetland Restoration Plan*, January 17, 2011; and *Proposed Backup Site – Poseidon Resources Wetland Mitigation*, January 2011) and finds that the Otay River Floodplain wetland mitigation site and the corresponding preliminary wetland restoration plan meet the requirements of the MLMP and Order No. R9-2009-0038.

10. On February 9, 2011, the California Coastal Commission approved Poseidon's mitigation site selection and preliminary restoration plan for the Otay River Floodplain Wetland Mitigation Site.
11. Approval of the preliminary wetland restoration plan and selected wetland mitigation site is exempt from the requirements of the California Environmental Quality Act pursuant to California Water Code section 13389.

THEREFORE BE IT RESOLVED THAT

The San Diego Water Board hereby approves the selection of the Otay River Floodplain wetland mitigation site and preliminary wetland restoration plan for the development of a final wetland restoration plan to address mitigation for the entrainment and impingement impacts caused by operation of the CDP.

I, David W. Gibson, Executive Officer, do hereby certify 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 March 9, 2011.



DAVID W. GIBSON
Executive Officer