



Santa Ana Regional Water Quality Control Board

August 2, 2021

Mr. Scott Maloni
Poseidon Resources (Surfside) LLC
5780 Fleet Street, Suite 140
Carlsbad, CA 92008
smaloni@poseidonwater.com

SUBJECT: COMMENTS ON POSEIDON RESOURCES' COORDINATION AND COMMUNICATION PLAN FOR DEVELOPMENT AND IMPLEMENTATION OF HUNTINGTON BEACH DESALINATION FACILITY'S PROPOSED MARINE LIFE MITIGATION PROJECTS DATED JUNE 8, 2021

Dear Mr. Maloni:

The Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) received Poseidon Resources (Surfside) LLC's (Poseidon's) Draft Coordination and Communication Plan for the Development and Implementation of the Huntington Beach Desalination Facility's Proposed Marine Life Mitigation Projects dated June 8, 2021 (Plan). The Santa Ana Water Board staff have reviewed the draft Plan and determined that it does not satisfy the requirements of Attachment K to Order R8-2021-0011 (Order). Therefore, the Plan as submitted, is not approved. This letter includes staff's general and specific comments on the Plan.

General Comments

The purpose of the Plan is to ensure that effective communication and coordination occurs between Poseidon and the agencies reviewing the development and implementation of the Bolsa Chica mitigation projects and Palos Verdes artificial reef project. The Plan needs to provide the reviewing agencies with Poseidon's approach to execute the marine life mitigation projects, such as a list of Poseidon's submittals and milestones for the Bolsa Chica mitigation projects (the Fieldstone Property, the enhancement plan to improve water circulation in the Muted Tidal Basin, the Oil Pads and Road Restoration, and the Intertidal Shelf Restoration projects), implementation of the dredging of the Bolsa Chica inlet, the Palos Verdes artificial reef project, and the steps required to complete the various design stages and CEQA documentation. The Plan should specify when the reviewing agencies will be asked to provide their input and direction on the projects to Poseidon. The Plan submitted does not include the methods and milestones (and any necessary interim milestones) to be used by

LANA ONG PETERSON, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

Poseidon to ensure effective communication with relevant agencies, in order to meet the permit conditions set forth in Attachment K of the Order.

Additionally, the draft Plan has several areas where agencies are given a time frame to respond and if response is not received then the Plan specifies that the project proceeds as Poseidon has proposed. This provision as proposed is unacceptable. Public agencies have limited resources and the timing of our review will depend on the availability of resources. The Santa Ana Water Board will do its best to review submitted plans and provide a response within 30 to 60 days of receiving plans. Depending upon the complexity of the submittal and available staff time and resources, the Board may need additional time for their review. The exceedance of any number of days for the Board's review, however, does not and will not result in a waiver under any circumstance and may not be construed as Santa Ana Water Board concurrence with Poseidon's submittals. The timelines provided for agency review in the Plan should be modified based on input from the other reviewing agencies and should clearly state that timelines are contingent upon agency resources and staff availability.

Task 1.A.i and Task 1.B.i of Attachment K require Poseidon to include a summary of methods and milestones for the Bolsa Chica mitigation projects and the Palos Verdes artificial reef project, respectively. Additionally, Tasks 1.A.vii and viii and Tasks 1.B.vii and viii require Poseidon to submit various plans and schedules related to the projects. To comply with these tasks, Poseidon must contact and discuss the key milestones of the mitigation projects and the proposed schedules with the relevant agencies and get their input on when and how to engage with the participating agencies in the development of the mitigation projects before submitting a revised plan. For example, the Plan calls for a minimum of four meetings, two meetings for the Bolsa Chica Projects, and two meetings for the Palos Verdes Artificial Reef Project. The plan needs to have an anticipated schedule for when these meetings are planned to be held, who will be involved, and the desired outcomes, such as, design related details, success criteria, and so forth.

Tasks 1.A.vi and 1.B.vi of Attachment K require Poseidon to submit letters of intent from the California State Lands Commission (SLC) for the Bolsa Chica Projects and from SLC and the Southern California Marine Institute (SCMI) for the Palos Verdes artificial reef. The Plan cites a December 5, 2019 SLC letter as the letter of intent for the Bolsa Chica Project. The Santa Ana Water Board agrees this is a letter of intent, however, it predates the inclusion of the Intertidal Shelf Restoration (the project identified in Appendix HHHHHH, dated October 2020). Poseidon needs to submit a letter of intent for the Intertidal Shelf Restoration Project or other documentation demonstrating that the 2019 letter from the SLC includes the Intertidal Shelf Restoration Project. In addition, Poseidon also needs to submit a similar letter of intent or other agreement from SLC and SCMI for the Palos Verdes artificial reef project before submitting their revised plan.

Specific Comments

1. Page 2, paragraph A.i.II.8: California Resources Agency should be California Natural Resources Agency (CNRA).
2. Page 2, paragraph A.i.V (also applies to paragraph B.i.V): Scheduling ad hoc meetings as needed should be included in the plan with an advanced notice, but please confirm that 10 days is sufficient time for the participating agencies. Attachment K requires a minimum of two meetings for Bolsa Chica Projects and two meetings for the Palos Verdes Artificial Reef. The draft Plan includes one meeting for each project within 90 days of the Executive Officer's approval of the Plan. Please include the second meetings for Bolsa Chica and Palos Verdes projects in a revised plan.
3. Pages 2 and 3, paragraph A.i.VI, Draft Restoration Plan: this section lumps all the Bolsa Chica Mitigation projects together and lists general requirements for all of the projects. This list is too general; specific actions, submittals, and milestones for each project needs to be provided.
4. Pages 3 to 5, paragraphs A.i.VI.b, A.i.VII.b, and A.i.VIII.b (also applies to pages 11, paragraph B.i.VI.b and page 13, paragraph B.i.VII.b): The following statement must be removed from the Plan: "If no timely comments are received from one or more Agencies, it will be assumed that those Agencies do not have any comments. Late comments will be given secondary consideration as compared to timely comments. Oral comments will not be accepted unless also submitted in writing." As explained in the General Comments above, if an agency exceeds the time estimated for review it does not and will not result in a waiver and may not be construed as a concurrence with Poseidon's submittals. Poseidon should work with the agencies to establish a reasonable time for review and comment and a process for agencies to notify Poseidon if additional time will be needed for their review and comments.
5. Page 3, paragraph A.i.VI.c (applies to page 11, paragraph B.i.VI.c): Poseidon proposes to develop a Response to Comments (RTC) document; this is an acceptable submittal, the Plan should state that the RTC document will require Santa Ana Water Board review and approval as part of the milestone submittal.
6. Page 3, paragraph A.i.VI.d. (also applies to page 11, paragraph B.i.V.d.): This paragraph states that the SLC Executive Officer shall have sole and absolute discretion to resolve conflicts that appear in comments submitted by reviewing agencies and must be resolved in 30 days. While Poseidon may include this as a process for resolving these type of conflicts in the Plan, the process does not address how potential conflicts described in Task 1.A.iv of Attachment K will be resolved (i.e., conflicts between work necessary to implement circulation improvements and the SLC's operation of the Muted Tidal Basins). Similarly, the process does not address how potential conflicts described in Task 1.B.iv of Attachment K will be resolved (i.e. conflicts on habitat design, performance standards, and monitoring). Regarding the proposed process for conflicts between or among agency comments, the Santa Ana Water Board does not have concern with SLC Executive Officer leading the conflict resolutions, however, the Board cannot impose such a duty on her. Has the SLC Executive Officer agreed to facilitate the conflicts that may arise in agency comments?

Also, have the other agencies agreed to this process? Please submit documentation of the Executive Officer's and the agencies' agreement to this process or submit a revised process based on agency input. Also, the 30-day time constraint for the SLC Executive Officer's review and ramifications of exceeding the time limits must be removed, unless the SLC Executive Officer agrees to the conditions.

7. Page 4, paragraph A.i.VII: (also applies to page 10, paragraph B.i.VI) Poseidon proposes to develop 30% designs in these sections; the revised plan needs to include the schedule for submittals of 30% design and interim steps.
8. Page 4, paragraph A.i.VII,e and page 5, A.i.VIII.e, (also applies to page 12, paragraph B.i.VI.f, and page 13, paragraph B.i.VII.e.): The plan includes an appeal process if the Executive Officer rejects the 30% or 60% design plans. The Board has the discretion to review the Executive Officer's decision, but there is no right to appeal the Executive Officer's decision. These paragraphs should be removed from the Plan.
9. Page 5, Paragraph A.i.VIII, (also applies to page 12, paragraph B.i.VII): Poseidon proposes to develop 60% designs in these sections; the revised plan needs to include the schedule for submittals of 60% design and interim steps.
10. Page 5, paragraph A.i.VIII.c (also applies to page 13, paragraph B.i.VII.c): states that 'Poseidon will have no obligation to address comments that Conflict with the previously approved 30% Design Plans.' Refer to comment number 6, this statement needs to be modified to the coincide with the revised conflict resolution agreed upon in the revised plan; it is the intention that conflicts will be resolved.
11. Page 5, paragraph A.i.VIII.d (also applies to page 13, B.1.VII.d): The statement in these sections that state, 'The RWB Executive Officer shall consult with the SLC Executive Officer to ensure that the SLC is also supportive of the 60% Design Plans and RTC document.', should be removed, it presumes one agency has responsibility over another agency.
12. Page 5 and 6, paragraphs A.i.VII.f and A.i.VIII.f (also applies to page 12, paragraph B.i.VI.g and page 13, paragraph B.i.VII.f): these paragraphs state that subsequent revisions to 30% and 60% designs will not be subject to additional comments from agency representatives, these paragraphs must be removed as it assumes that Poseidon will adequately respond to all comments.
13. Page 6, paragraph A.i.IX (also applies to page 13, B.i.VIII): The Plan includes language that is not consistent with the reopener provision in section VI.C.1.h of the Order. The reopener provision is not referenced in Attachment K's requirements for the Plan and should not be included in or referred to in the Plan. The Order itself states the requirements that Poseidon must meet to seek the removal of the intake and discharge prohibitions through the reopener provision.
14. Page 6, paragraph A.i.X (also applies to page 14, paragraph B.i.IX): These paragraphs need to be removed, agency input should be anticipated for all of the design phases and implementation of the mitigation projects. Please include the schedule for the 90% design in the revised plan.
15. Page 7, paragraph A.iv.I: As noted above, the proposed conflict resolution process does not address the type of conflicts described in Task 1.A.iv of Attachment K.

16. Pages 7 to 8, paragraph A.vii.I (also applies to page 14 to 15, paragraph B.vii.I): The proposed Plan does not provide a schedule or timeline as required under Task 1.A.vii of Attachment K; rather, the Plan describes what Poseidon expects to include in their proposed schedule. Poseidon should solicit input from the relevant permitting agencies to develop a workable plan and schedule for permitting and CEQA review.
17. Page 9, paragraph A.viii.I : The Plan should include a more detailed schedule and plan for how and when Poseidon will obtain the necessary permits and approvals from SLC or enter into a contract with SLC to perform the maintenance dredging.
18. Page 10, paragraph B.i.II: This paragraph refers to the Bolsa Chica mitigation projects instead of the Palos Verdes artificial reef.
19. Page 14, paragraph B.iv.I: The conflict process included in the proposed Plan addresses conflicts between or among agency comments on the design plans. The conflict process does not address the conflicts described in Task 1.B.iv of Attachment K.
20. Page 16, paragraph B.viii.I.a: The proposed Plan purports to limit what the Coastal Commission may consider in its review of Poseidon's Coastal Development Permit application. Neither Poseidon nor the Santa Ana Water Board can dictate what the Coastal Commission may consider in its review of the CDP application. If the Coastal Commission has agreed to limit its review as described in this application, please submit documentation of such agreement.
21. Page 17: Remove the signature blocks when resubmitting a revised plan.
22. The Plan includes reference to when the "Facility debt is closed," please provide a definition for how this date is determined.

The general and specific comments provided should be addressed and incorporated in a revised Coordinated and Communication Plan. Should you have any questions regarding this letter, please contact Jayne Joy by email at Jayne.Joy@waterboards.ca.gov.

Sincerely,

Hope Smythe
Digitally signed by Hope Smythe
Date: 2021.08.02 12:33:56 -07'00'
Water Boards

Hope A. Smythe
Executive Officer

cc:

Wendy Hall, California State Lands Commission
Lucinda Calvo, California State Lands Commission
Teresita Sablan, Office of Chief Counsel