
Santa Ana Regional Water Quality Control Board

October 30, 2015

Mr. Tom Luster
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

**Coastal Development Permit Application No. 9-15-1731 – Proposed Poseidon
Huntington Beach Desalination Facility**

Dear Mr. Luster:

This letter regards the proposed Poseidon Huntington Beach Desalination Facility (Facility). The Santa Ana Regional Water Quality Control Board (“Regional Water Board”) is aware that Poseidon has submitted Coastal Development Permit (CDP) Application No. 9-15-1731 to the Coastal Commission. This letter provides a status update on the Regional Water Board’s regulation of the Facility.

In February 2012, the Regional Water Board adopted Order No. R8-2012-0007, NPDES No. CA8000403—*Waste Discharge Requirements for Poseidon Resources (Surfside) L.L.C. Huntington Beach Desalination Facility, Orange County* (2012 Order). The 2012 Order permits the Facility, as proposed at that time, to intake seawater and discharge waste under the following two operational scenarios: 1) as a co-located operation in conjunction with the AES Huntington Beach Generating Station (HBGS), which would entail using HBGS cooling water discharge as the Facility’s source water and 2) as a temporary stand-alone operation of HBGS’s seawater intake and outfall while the adjacent HBGS’s once-through cooling system is in use or during short-term and temporary shutdowns of that system. The 2012 Order found that the proposed co-located and temporary stand-alone operations of the Facility, as conditioned in the Order, satisfied the requirements of California Water Code section 13142.5(b). Upon the permanent shutdown of HBGS’s once-through cooling system, currently required no later than December 31, 2020, the 2012 Order requires Poseidon to apply for a permit covering its stand-alone operations, necessitating a new analysis pursuant to California Water Code section 13142.5(b). The 2012 Order remains valid and in full force and effect for the Facility, as proposed at that time, with an expiration date of February 1, 2017.

On May 6, 2015, the State Water Resources Control Board (State Water Board) approved an amendment to the State’s Water Quality Control Plan for the Ocean Waters of California (Ocean Plan) to address effects associated with the construction

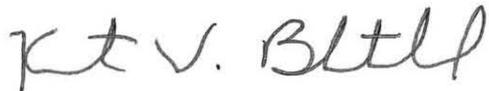
and operation of seawater desalination facilities (Desalination Amendment). The Desalination Amendment will be effective upon approval by the Office of Administrative Law (OAL). The Desalination Amendment establishes new requirements related to Water Code section 13142.5(b) for new and expanded facilities, as well as new requirements related to receiving water limitations for salinity and monitoring and reporting programs for both new and existing facilities. The Desalination Amendment defines "existing facilities" as "desalination facilities that have been issued an NPDES permit and all building permits and other governmental approvals necessary to commence construction for which the owner or operator has relied in good faith on those previously-issued permits and approvals and commenced construction of the facility beyond site grading prior to [effective date of this Plan]." The Desalination Amendment defines "expanded facilities" as existing facilities that meet certain additional conditions. "New facilities" are defined as "desalination facilities that are not existing facilities or expanded facilities". As further explained in enclosed August 27, 2015 letter from Phil Wyels of the State Water Board to Deborah Sivas of the Mills Legal Clinic, the Facility currently does not meet the definition of an existing facility.

Absent changed circumstances under which the facility would meet the definition of an existing facility, upon approval of the Desalination Amendment by OAL, Poseidon will need to obtain a Water Code section 13142.5(b) determination from the Regional Water Quality Control Board that is consistent with the Desalination Amendment. The Desalination Amendment requires a new or expanded facility to submit a request for a section 13142.5(b) determination from the appropriate Regional Water Board as early as practicable. This section 13142.5(b) determination would address all operational scenarios, including the co-located and temporary stand-alone operations authorized in the current 2012 Order, as well as the full stand-alone operation. The Regional Water Board would need to ensure that the Facility is consistent with the Desalination Amendment. Among other things, in making the section 13142.5(b) determination, the Desalination Amendment requires the Regional Board to consult with and consider the project-specific decisions made by other state agencies involved in the permitting of the Facility.

Additionally, the Regional Water Board understands that as part of its CDP Application, Poseidon is proposing physical modifications to the existing seawater intake and discharge facilities that are intended to comply with the Desalination Amendment's requirements for intakes and discharges. Depending on the nature and extent of the changes, these changes may constitute a material change in design or operation from discharge requirements contained in the 2012 Order. Should this be the case, Poseidon would need to submit a new Report of Waste Discharge to the Regional Water Board and obtain a new/revised permit prior to discharging from the changed discharge facilities.

We look forward to continuing collaboration efforts as the Coastal Commission review process moves forward. If you have any questions or would like to discuss further, please contact Milasol Gaslan of my staff at (951) 782-4419 or me at (951) 782-3286.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

Enclosure: State Water Resources Control Board Letter Dated August 27, 2015

cc: Scott Maloni, Poseidon Water, SMaloni@poseidon1.com
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EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

August 27, 2015

[via U.S. Mail and email]

Deborah A. Sivas
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Dear Ms. Sivas:

PETITION OF SURFRIDER FOUNDATION, COASTAL ENVIRONMENTAL RIGHTS FOUNDATION, ORANGE COUNTY COASTKEEPER, AND RESIDENTS FOR RESPONSIBLE DESALINATION FOR REVIEW OF ORDER NO. R8-2012-0007 (RENEWAL OF WASTE DISCHARGE REQUIREMENTS FOR POSEIDON RESOURCES L.L.C. (SURFSIDE), HUNTINGTON BEACH DESALINATION FACILITY), ISSUED BY THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD: WITHDRAWAL OF PETITION

Thank you for your letter dated July 31, 2015, withdrawing the above-referenced petition in light of the State Water Resources Control Board's May 6, 2015, adoption of amendments to the Water Quality Control Plan for Ocean Waters of California that address desalination facilities ("desalination amendments.") You have also asked for confirmation of your understanding about how these amendments will apply to the proposed Huntington Beach desalination facility that was the subject of your petition, once the desalination amendments are approved by the Office of Administrative Law and take effect.

The portion of the desalination amendments that establish requirements related to Water Code section 13142.5, subdivision (b), apply to "new" and "expanded" facilities, but not to "existing facilities." The desalination amendments define "existing facilities" as "desalination facilities that have been issued an NPDES permit and all building permits and other governmental approvals necessary to commence construction for which the owner or operator has relied in good faith on those previously-issued permits and approvals and commenced construction of the facility beyond site grading prior to [effective date of this Plan]." The desalination amendments define "expanded facilities" as existing facilities that meet certain additional conditions. Lastly, the desalination amendments define "new facilities" as "desalination facilities that are not existing facilities or expanded facilities." On the other hand, both existing and new desalination facilities must comply with the portions of the desalination amendments that establish requirements related to receiving water limitations for salinity and monitoring and reporting programs.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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As you have correctly stated, the proposed Huntington Beach desalination facility currently does not meet the definition of an "existing facility," and is therefore considered a "new facility." If the proposed Huntington Beach desalination facility does not meet the definition of an "existing facility" on the date that the Office of Administrative Law approves the desalination amendments, the proposed Huntington Beach desalination facility will be subject to all of the requirements of the desalination amendments. In this case, Poseidon Resources (Surfside) L.L.C. would need to submit a new or revised request for a Water Code 13142.5, subdivision (b), determination by the Santa Ana Regional Water Quality Control Board that is consistent with the desalination amendments. The Santa Ana Regional Water Quality Control Board would then need to ensure that the proposed Huntington Beach desalination facility is consistent with all of the desalination amendments, including the conditional prohibition on using flow augmentation as a brine discharge technology.

Finally, you have requested that the State Water Resources Control Board review the Santa Ana Regional Water Quality Control Board's Order No. R8-2012-0007 on its own motion if the Office of Administrative Law does not approve the desalination amendments prior to the proposed Huntington Beach desalination facility receiving all approvals that are necessary to commence construction. We will defer acting on this request for now, but will consider your request if the Office of Administrative Law does not approve the desalination amendments in a timely manner.

If you have any questions regarding this letter, please contact me at (916) 341-5178.

Sincerely,



Philip G. Wyels
Assistant Chief Counsel

cc: See next page

cc: **[via U.S. Mail and email]**

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