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Supporting Document No. 22

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January 22, 2009

Chair Richard Wright and Board Members  
San Diego Regional Water Quality Control Board  
Region Nine  
9174 Sky Park Court  
San Diego, CA 92123

Dear Members of the Board:

This letter concerns the Carlsbad Desalination Project (Resolution #R9-2008-0039). As you know, last April, this Board reviewed and approved the project's Flow, Entrainment and Impingement Minimization Plan, which details the intended procedures that will minimize impacts to marine life. As a condition of that plan and your approval, Poseidon created a Marine Life Mitigation Plan, which will be discussed at a public hearing scheduled for February 11, 2009.

Based on my experience working on marine environmental law issues similar to those before you, my work as the former chief trial counsel for the San Diego Sierra Club, my familiarity with the Poseidon project, the mitigation plans referenced above, and this Board's prior hearings and orders, I believe I am qualified to express an opinion on the Plan now before you for your decision. I strongly endorse this Plan and urge you to approve it, today, so this new supply of potable water will not be further delayed.

I remind you that the State Coastal Commission approved Poseidon's Marine Life Mitigation Plan, last August; further, that the supplemental mitigation plan now before you is the result of the direction given Poseidon by this very Board. The Plan identifies a specific proposal for mitigation of marine impacts, as required by the Board's April resolution. I am dismayed to learn that now, your staff appears to be insisting that this plan must identify a single site for the mitigation action. This position is not, I believe, consistent with your Resolution and runs counter to your direction that Poseidon must coordinate with other State agencies and then return to this Board for approval.

Poseidon complied with your direction! Its inter-agency approval process, I understand, involved eight State agencies, including staffs of the Regional Board, Coastal Commission, State Lands Commission, and the Department of Fish and Game. This cooperative work culminated in the August, 2008, action of the Coastal Commission, which approved a performance-based plan with eleven pre-approved candidate sites.

**Professor of Law, University of San Diego (Ret.)**

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SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

It is important to note that your staff participated in the review of this mitigation plan, but never objected, nor even expressed concern, about the final plan that was approved by the Coastal Commission. Despite your staff's full knowledge about all elements of this plan, staff raised no objections until after the Mitigation Plan was submitted in November, 2008.

It is clear to me that this Poseidon Mitigation Plan fully complies with the controlling section of the California Water code (#13,142.5(B)). The 55 acre mitigation reach meets and exceeds the level of specificity required by the Regional Board. Should you fail to approve this Mitigation Plan on February 11, you would be repudiating the lengthy inter-agency review and approval process that the Board, itself, initiated. To my mind, such a result is unthinkable! Then, not only would a very sound mitigation plan--with its unprecedented expansion of coastal wetlands acreage--be lost, but the construction of the desalination facility would surely be delayed. This should not, must not, happen! The promised new supply of potable water is desperately needed.

In closing, I urge the Board to be mindful of the following two facts:

1. Besides protecting the marine life in coastal waters, the Regional Boards are also tasked with promoting the "beneficial uses" of such waters. Surely, providing potable water to 110,000 human families more than offsets the speculative marine injury that may remain after the planned mitigation.
2. The two environmental groups that oppose the Plan's approval—Surfrider Foundation and CoastKeeper—have opposed the Poseidon project since its very inception. They oppose all coastal desalination and are out of step with the vast majority of environmentalists, who believe that the threat of severe drought injury, to the land environment, is far worse than the speculative threat posed by Poseidon to the marine environment.

I urge you to approve the Poseidon Plan as submitted, without delay.

Sincerely,



Robert L. Simmons, Esq.

Copies to all addressees