



P O S E I D O N R E S O U R C E S

Supporting Document No. 40

January 26, 2009

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San Diego Regional Water Quality Control Board
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Dear Members of the Regional Board:

Poseidon looks forward to your review and approval of the Marine Life Mitigation Plan for the Carlsbad Desalination Project at your February 11th meeting. We believe that the Plan addresses all the conditions that the Board established in its Resolution adopted last April.

As those of you who were on the Board in April of 2008 may recall, Poseidon had hoped that the Board would grant final approval to the Revised Flow, Entrainment, and Impingement Minimization Plan at that time. The Board did not do so, however, granting a conditional approval instead. The Board's decision to defer final action, and require the submittal of the Final Plan was based on a desire to:

- (1) have certain staff questions in their February 19, 2008 letter addressed,
- (2) have the plan expanded to include "alternative: mitigation sites (see Comments of Chairman Wright, April 2008 Transcript, Page 41)
- (3) develop a plan for Regional Board approval through an "interagency" "coordination" or even "consensus" process with other state agencies (see Comments of Chairman Wright, April 2008 Transcript, Page 120)

We believe that Poseidon has demonstrated that it has met all three of the Board's objectives. We have made a diligent effort to address all of the staff questions and concerns from their February 19, 2008 letter, we have expanded the plan to include additional alternative mitigation sites, and we have developed the Plan through an intense and public process of interagency consultation.

We are submitting this letter in advance of the release of the staff report for our item, but we hope your staff supports approval of the Plan and acknowledges that the staff has had significant opportunities to review, comment upon, as part of the interagency process that the Board indicated should occur in the review of this Plan. For example, your staff provided valuable input at the May 1st meeting, and the Plan reflects those specific comments.

Poseidon Resources

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Our first and only indication that the staff had concerns about the Plan (that was developed through the interagency consultation process and approved by the Coastal Commission and the State Lands Commission) was the staff letter dated December 2, 2008. We provided a complete response to this letter in our December 9, 2008. Since that date, we have been unable to meet with the Board staff, and have received no further comment or communication from them, so we do not know what their staff recommendation may be. For example, we do not know if your staff has had the opportunity to further meet with the independent experts who were retained by and advised the Coastal Commission on the Plan. If there are additional comments or questions from your staff, we will do our best to address them at the hearing on February 11th.

However, it may be possible that your staff may have remaining concerns or issues that cannot be addressed in a manner that would allow them to recommend final approval of the Plan by the Board on February 11th. Even if your staff is not in a position to recommend approval on February 11th, we request that you move forward that date and grant final approval to our Plan.

We base our request for final action on February 11th on the following points:

(1) The record reflects a good faith effort by Poseidon and its technical experts to answer every question or concern raised by your staff. Poseidon has been working with your staff since 2007 to develop a Plan which addresses all their questions and concerns. Every concern which your staff has put in writing has been fully addressed.

(2) The record reflects that the Regional Board, at the staff's recommendation, required Poseidon to follow an interagency consultation process in developing the Final Plan. Your staff has had substantial opportunities to comment upon and suggest revisions during that process.

(3) The Plan has been fully examined by independent expert, agency staff, project opponents and members of the public in the Coastal Commission and State Lands Commission hearing process. The Board can be comfortable that any adverse impacts have been fully mitigated by an enforceable plan.

(4) After two years of work with your staff on the Plan for minimization and mitigation for entrainment and impingement, it is time to make a final decision so that the desalination facility can be in operation by 2012 as required to meet the Region's water supply needs.

Thank you for your consideration of our Plan.

Sincerely,



Peter M. MacLaggan
Senior Vice President