



San Diego Regional Water Quality Control Board

May 6, 2019

Sent via email

Senator Patricia C. Bates
36th Senate District
California State Senate
State Capitol, Room 3048
Sacramento, CA 95814

Subject: Response to Letter Dated April 25, 2019 Regarding Tentative Order No. R9-2019-0003, Waste Discharge Requirements for the Poseidon Resources (Channelside) LP, Claude “Bud” Lewis Carlsbad Desalination Plant Discharge to the Pacific Ocean (NPDES No. CA0109223)

Senator Bates,

I am responding on behalf of Board Chair Henry Abarbanel to your letter regarding the California Regional Water Quality Control Board, San Diego Region's (San Diego Water Board) consideration of Tentative Order No. R9-2019-0003 (Tentative Order) which proposes to reissue the waste discharge requirements and National Pollutant Discharge Elimination System (NPDES) permit for the Claude “Bud” Lewis Carlsbad Desalination Plant (CDP) discharge to the Pacific Ocean including a California Water Code section 13142.5(b) determination (Water Code Determination) necessary for stand-alone operations of the CDP. The San Diego Water Board appreciates your attention to and engagement in this matter.

The San Diego Water Board will conduct a public hearing on May 8, 2019 to consider adoption of the Tentative Order and a Water Code Determination concluding that the stand-alone operation of the CDP uses the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life. In brief, the Tentative Order advances the use of ocean water as a supplement to traditional water supplies in the San Diego region while protecting marine life and water quality in Agua Hedionda Lagoon and affected coastal waters. The Tentative Order, Response to Comments document, Executive Officer Summary Report, and other supporting documents are all available for public review. The Executive Officer Summary Report document provides an overview of the Tentative Order and the key issues that will be presented to the Board. The documents are available on the San Diego Water Board website at:

https://www.waterboards.ca.gov/sandiego/board_info/agendas/2019/may/

As you may know, the joint mission of the Water Boards is to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. To this end, the San Diego Water Board is required to implement all applicable State and federal policies, rules, and regulations, including but not limited to the *Water Quality Control Plan for Ocean Waters of California* (California Ocean Plan) which includes direction for determining the best available science, design and technology available for ocean desalination projects. In doing so, the San

Senator Patricia C. Bates
36th Senate District

- 2 -

May 6, 2019

Diego Water Board is relying on all information provided by the Poseidon Resources (Channelside) LP (Poseidon) in support of its permit application.

As proposed by Poseidon, the CDP will rely on flow augmentation technology to dilute the brine waste from the CDP prior to discharging the brine waste to the Pacific Ocean. To implement this technology, Poseidon will employ new intake pumps at CDP and construct a new screened intake structure at CDP to withdraw source and dilution water from Agua Hedionda Lagoon in Carlsbad, California. The Tentative Order includes a compliance schedule of approximately 4.5 years for Poseidon to complete design and construction, commence operation of the new source water intake structure and achieve full Ocean Plan compliance no later than December 11, 2023.

The Ocean Plan allows for flow augmentation only when the impacts of this technology and a multiport diffuser are comparable in intake and mortality of all forms of marine life. In brief, the Water Code Determination in the Tentative Order is conditional on the expectation that Poseidon's completion of the Multiport Diffuser Analysis described in section VI.C.2.a. of the Tentative Order, requiring the collection of additional scientifically appropriate data, will confirm the conclusion that flow augmentation and a multiport diffuser are comparable in intake and mortality of all forms of marine life in accordance with the Ocean Plan. If the analysis confirms the San Diego Water Board's conclusion that flow augmentation and a multiport diffuser provide comparable intake and mortality of all forms of marine life, the condition placed on the Water Code Determination will have no further effect. The results of the Multiport Diffuser Analysis will then establish the level of intake and mortality of all forms of marine life for a multiport diffuser as a benchmark for purposes of the comparison to the flow augmentation empirical study as required in the Ocean Plan. This will provide Poseidon and San Diego County Water Authority with the benchmark or metric they are seeking by the May 2021 timeframe while Poseidon is still in the early design phases for the new intake structure.

San Diego Water Board staff have communicated and worked cooperatively with Poseidon and San Diego County Water Authority to address their concerns on this issue. The Tentative Order provides specific requirements and protocols for establishing the benchmark level of intake and marine life mortality from the Multiport Diffuser Analysis for later comparison to the flow augmentation empirical study that help to address Poseidon and San Diego County Water Authority concerns for certainty and clearly defined criteria as expressed in your letter. San Diego Water Board staff most recently met with Poseidon and San Diego County Water Authority on May 2, 2019 and reached agreement on an additional proposed adjustment to the permit language of the Tentative Order to address their concerns for Board consideration at the public hearing. (See Supporting Documents Nos. 6 and 7 of the Poseidon agenda package at the above San Diego Water Board website link.) At the conclusion of the meeting Poseidon and San Diego County Water Authority indicated that with the permit language adjustment they would not object to the Tentative Order.

I hope these comments are responsive to your concerns. If you would like to discuss this matter further, please contact me by email at David.Gibson@waterboards.ca.gov or by phone at (619) 521-3305.

Respectfully,



David Gibson
Executive Officer, San Diego Water Board

Senator Patricia C. Bates
36th Senate District

- 3 -

cc: San Diego Water Board Members

Joaquin Esquivel, Chair, State Water Resources Control Board

Kristin Peer, Kristin.Peer@calepa.ca.gov, Assistant General Counsel, California Environmental Protection Agency

Christine Hironaka, Christine.Hironaka@gov.ca.gov, Deputy Cabinet Secretary, Office of the Governor

Jonathan Bishop, Jonathan.Bishop@waterboards.ca.gov, Deputy Director, State Water Resources Control Board

Rob Egel, Rob.Egel@waterboards.ca.gov, State Water Resources Control Board

Cody Storm, Cody.Storm@sen.ca.gov, Office of State Senator Patricia C. Bates

CAPITOL OFFICE
STATE CAPITOL, ROOM 3048
SACRAMENTO, CA 95814
TEL (916) 651-4036
FAX (916) 651-4936

DISTRICT OFFICES
24031 EL TORO ROAD
SUITE 201A
LAGUNA HILLS, CA 92653
TEL (949) 598-5850
FAX (949) 598-5855

169 SAXONY ROAD
SUITE 103
ENCINITAS, CA 92024
TEL (760) 642-0809
FAX (760) 642-0814

SENATOR.BATES@SENATE.CA.GOV
WWW.SENATE.CA.GOV/BATES

California State Senate

SENATOR
PATRICIA C. BATES
THIRTY-SIXTH SENATE DISTRICT



- COMMITTEES
- APPROPRIATIONS
VICE CHAIR
- ENVIRONMENTAL QUALITY
VICE CHAIR
- TRANSPORTATION
VICE CHAIR
- HOUSING
- INSURANCE
- JOINT RULES COMMITTEE
- JOINT LEGISLATIVE BUDGET
COMMITTEE
- JOINT LEGISLATIVE COMMITTEE
ON EMERGENCY MANAGEMENT
- RULES

MAY 1 2019

April 25, 2019

Mr. E. Joaquin Esquivel, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Mr. Henry Abarbanel, Chair
San Diego Regional Water Quality Control Board
2375 Northside Drive
San Diego, CA 92108

RE: Tentative Order R9-2019-0003 for the Claude "Bud" Lewis Carlsbad Desalination Plant

Dear Chairs Esquivel and Abarbanel,

I am writing regarding Tentative Order R9-2019-0003 ("Tentative Order") for the Claude "Bud" Lewis Carlsbad Desalination Plant ("CDP"). Several members of the San Diego County Water Authority ("Water Authority") Board of Directors recently briefed me on the status of the San Diego Water Board's efforts to resolve the open issues described in the Water Authority and Poseidon Resources (Channelside) LP's ("Poseidon") comments on the Tentative Order related to the construction and operation of new intake and discharge improvements for the CDP to accommodate the transition from a "co-located" operation with the Encina Power Station ("EPS") to a "stand-alone" operation following the December 11, 2018 decommissioning of the EPS.

I understand from their remarks that staff from the State Water Board and San Diego Water Board have yet to confirm how they plan to address the Water Authority and Poseidon's comments – specifically, and most critically, confirmation of the performance standards San Diego Water Board staff plans to use to confirm that Poseidon's proposed discharge technology meets the requirements of the California Ocean Plan.

As currently drafted, the Tentative Order leaves open the discharge technology performance standards to a future determination. I am sure you can appreciate the need to set forth certainty in the Tentative Order with clearly defined performance criteria provided up front. Understanding the performance standards ahead of constructing the proposed flow augmentation technology is critical to risk management and cost containment, particularly given the serious consequences of not meeting the performance standards.

If the marine impacts associated with Poseidon's proposed flow augmentation discharge technology were found to be greater than that of multiport diffusers or wastewater dilution, as determined by some future yet-to-be-defined performance standard, Poseidon and the Water Authority would be required to abandon the investment in the flow augmentation technology – an \$80 million investment – and install and use a multiport diffuser or wastewater dilution at an additive cost to the San Diego County ratepayers of more than \$350 million.

Consequently, I respectfully request you direct your staff to revise the Tentative Order to include clearly-defined performance standards that will be used to determine the performance of the flow augmentation technology.

Finally, time of the essence. The Carlsbad Desalination Plant is a critical element of the Water Authority's regional water supply portfolio. The continued delays by the San Diego Water Board to issue a Tentative Order with clear performance criteria are threatening Poseidon's ability to operate the plant due to outside obligations to decommission the existing intake facilities serving the CDP by a date certain. Any further delays in Tentative Order issuance could potentially shut down the operations of the Carlsbad Desalination Plant and result in the loss of what amounts to 10 percent of San Diego's regional water supply that supports the quality of life of 3.3 million people and a \$231 billion regional economy.

Thank you for your consideration of this request.

Sincerely,



PATRICIA C. BATES
Senator, 36th District