

**CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD**

SAN DIEGO REGION

9174 Sky Park Court, San Diego, CA 92123

April 8, 2009

PUBLIC HEARING

concerning

**COMPLIANCE WITH CALIFORNIA WATER CODE SECTION 13142.5(b); RELATED
AMENDMENTS TO WASTE DISCHARGE REQUIREMENTS, ORDER NO. R9-2006-
0065**

(NPDES No. CA0109223)

FOR

**POSEIDON RESOURCES CORPORATION
PROPOSED CARLSBAD DESALINATION PROJECT
SAN DIEGO COUNTY**

Poseidon Resources Corporation proposes to construct the Carlsbad Desalination Project (CDP) at a location adjacent to the Encina Power Station (EPS) and the Agua Hedionda Lagoon in the City of Carlsbad. Poseidon proposes to obtain the feed water for the CDP from the existing intake structure serving the EPS, resulting in the diversion of approximately 304 million gallons per day (MGD) of seawater from Agua Hedionda Lagoon for desalination at CDP.

On August 16, 2006 the Regional Board adopted Order No. R9-2006-0065, NPDES No. CA0109223 (Order), establishing waste discharge requirements for the CDP. Section VI.C.2.e. of the Order, required Poseidon to submit for Regional Board approval a Flow, Entrainment, and Impingement Minimization Plan (Minimization Plan) to "assess the feasibility of site specific plans, procedures, and practices to be implemented and/or mitigation measures to minimize the impacts to marine organisms when the CDP intake requirements exceed the volume of water being discharged by the EPS." The Minimization Plan is to ensure that the CDP complies with California Water Code Section 13142.5(b), which requires Poseidon to use the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life.

The Regional Board considered a prior version of Poseidon's proposed Minimization Plan at a public meeting on April 9, 2008, at which point the Regional Board adopted Resolution No. R9-2008-0039, "Conditional Approval of Revised Flow, Entrainment, and Impingement Minimization Plan." The Resolution required Poseidon to, among other

things, develop and submit an amendment to the Minimization Plan presenting a “specific proposal for mitigation of the impacts, by impingement and entrainment upon marine organisms resulting from intake of seawater from Agua Hedionda Lagoon.” The Resolution also required Poseidon to resolve the concerns identified in the Regional Board’s February 19, 2008 letter to Poseidon, and the following additional concerns:

- a) Identification of impacts from impingement and entrainment;
- b) Adequate monitoring data to determine the impacts from impingement and entrainment;
- c) Coordination among participating agencies for the amendment of the Plan as required by Section 13225 of the California Water Code;
- d) Adequacy of mitigation; and
- e) Commitment to fully implement the amendment to the Plan.

On November 14, 2008, Poseidon submitted a proposed amendment to the Minimization Plan in the form of the Marine Life Mitigation Plan (MLMP), which was considered at a public hearing on February 11, 2009. The Regional Board did not take final action that day, and continued the hearing until April 8, 2009. In addition, subsequent to the April 9, 2008 meeting, Poseidon submitted additional documentation to the Regional Board responding to technical questions raised by Regional Board staff and/or referred to in Resolution R9-2008-0039. Finally, also subsequent to the April 9, 2008 meeting, substantial interagency coordination among the participating agencies regarding the MLMP occurred.

Under California Water Code Section 13142.5(b), the Regional Board is authorized to take final action on the Minimization Plan, including the MLMP, and may make related findings. If the Regional Board approves the Minimization Plan, the Regional Board may take corresponding action to amend the Order, to incorporate the Plan to ensure its enforceability, and to specify the limited conditions under which the EPS intake structure may be operated when the cooling water discharge from the EPS is less than 304 MGD, in order to provide feedstock water to the CDP. Any such final actions would be to satisfy California Water Code Section 13142.5(b) and Section VI.C.2(e) of Order No. R9-2006-0065, and would supersede Resolution No. R9-2008-0039.

The Regional Board wishes to obtain public input on the terms of the current Minimization Plan and the related proposed amendments to the Order. The Order is not being reopened for any other purpose and only comments addressing the current Minimization Plan and related proposed amendments will be considered. The record for this matter already includes oral and written comments submitted for the April 9, 2008, Board action resulting in Resolution No. R9-2008-0039 and for the February 11, 2009 Regional Board hearing concerning this matter. The Regional Board discourages the submittal of oral or written comments that repeat comments already in the record.

The Regional Board will hear oral comments and consider written comments associated with the Minimization Plan and related proposed amendments to the Order at its meeting on:

Date: April 8, 2009

Time: 9:00 a.m.

Place: San Diego Regional Water Quality Control Board, Board Meeting Room
9174 Sky Park Court
San Diego, California.

The public comment period will remain open until the Regional Board takes action on April 8. However, to ensure that the Regional Board has the opportunity to fully study and consider written material, written comments should be received in the Regional Board's office no later than 5:00 P.M. on Wednesday, April 1, 2009. Written comments must be mailed, faxed, or delivered to the Regional Board's office at: 9174 Sky Park Court, Suite 100, San Diego, California, 92123; telephone 858-467-2952; fax 858-571-6972.

Comments may also be submitted by e-mail subject to the above time deadlines and as long as the total submittal (including attachments) does not exceed five printed pages in length. E-mail comments must be submitted to [RB9agenda@waterboards.ca.gov] to ensure consideration by the Regional Board insert the word ["Agenda"] in the subject line.

Pursuant to Title 23, California Code of Regulations, Section 648.4, the Regional Board may refuse to admit written testimony into evidence if it is not submitted to the Regional Board in a timely manner, unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance with the deadline would create unreasonable hardship.

Information related to these matters, including the Minimization Plan and a draft of the amendments to the Order, is currently available and may be reviewed at the Regional Board's office or on the Regional Board's web page at <http://www.waterboards.ca.gov/sandiego>. For information regarding this matter, please contact [Ms. Michelle Mata at (858) 467-2981 or by email at mmata@waterboards.ca.gov]

The procedures governing Regional Water Board meetings may be found at Title 23, California Code of Regulations, Section 647 et seq. and are available upon request. Adjudicatory matters before the Regional Board are conducted pursuant to Government Code sections 11400 et seq., but not sections 11500 et seq. The procedures may be obtained by accessing http://www.waterboards.ca.gov/laws_regulations/.

Please bring the above information to the attention of anyone you know who may be interested in this matter.

JOHN H. ROBERTUS
Executive Officer
March 9, 2009