



*Appendix V*  
*U.S. Fish and Wildlife Service MOU*

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*Renewal of NPDES CA0109223*  
*Carlsbad Desalination Project*

## MEMORANDUM OF UNDERSTANDING

Between

**U.S. FISH AND WILDLIFE SERVICE  
SAN DIEGO NATIONAL WILDLIFE REFUGE COMPLEX**

And

**POSEIDON RESOURCES**

This Memorandum of Understanding ("MOU") is entered into between the U.S. Fish and Wildlife Service, San Diego National Wildlife Refuge Complex ("Service") and Poseidon Resources (Channelside) LP ("Poseidon") (individually as "Party" and together as the "Parties") for mutual benefits to be derived from the restoration and enhancement of a portion of the South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge ("Refuge").

**Whereas**, authority for the Service to participate in this MOU is provided in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997;

**Whereas**, the Service's purpose for the Refuge is to protect, manage, and restore habitats for federally listed endangered and threatened species and migratory birds and to maintain and enhance the biological diversity of native plants and animals; and

**Whereas**, the Service has completed a Comprehensive Conservation Plan ("CCP"), Environmental Impact Statement, and Record of Decision in 2006 to determine the best course of action to enhance, preserve, and manage the Refuge; and

**Whereas**, Poseidon is the developer of a 50-million gallon per day desalination facility in the City of Carlsbad, California, received regulatory approval for their project from the California Coastal Commission and the San Diego Regional Water Quality Control Board and did not require any permits under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act; and

**Whereas**, a permit condition for the desalination facility is to provide 66 acres of estuarine wetland restoration that includes functioning wetlands and habitat for fish and other species; and

**Whereas**, the Service believes that a partnership with Poseidon will have significant positive impacts on the overall health of the Refuge and develop new habitat that will be beneficial to bird, fish, and plant populations within the Refuge; and

**Whereas**, Poseidon and the Service have entered into this MOU to create a partnership to facilitate the restoration of property within the Refuge consistent with the CCP and Poseidon's permit requirements.

**Now therefore**, the Parties hereto agree to cooperate, and to work in good faith effort, in the restoration and enhancement of wetlands in the Refuge; and

**To which the Service will:**

1. Make the property shown in Exhibit 1 available to Poseidon for restoration as tidal wetlands.
2. Make available existing data and biological studies that will aid in the development of a restoration plan.
3. Act as lead agency under National Environmental Policy Act (NEPA) for implementation of the restoration plan, and work collaboratively with Poseidon to ensure compliance with NEPA and other applicable regulations and policies.
4. Assist in the coordination with State and Federal agencies to obtain all permits necessary for the implementation of the restoration plan.

**To which Poseidon will:**

1. Work cooperatively with the Service to design a restoration plan that complies with the objectives of the CCP and Poseidon's permit requirements.
2. Provide the resources necessary to prepare and process all required technical reports, NEPA and California Environmental Quality Act (CEQA) documents, NEPA and CEQA public notices and outreach, and permit applications.
3. Provide the Service with all data, studies and other documents obtained or produced by Poseidon regarding the property.
4. Provide the resources necessary to complete development, and implementation of the approved restoration plan, as well as all required mitigation, permit conditions, monitoring, reporting, and maintenance.

It is mutually understood and agreed by and among the parties that:

The Service is working with River Partners to restore riparian habitats on Refuge lands within the Otay River floodplain adjacent to the property shown in Exhibit 1 that is to be made available to Poseidon. The Service does not foresee any conflicts with the projects proposed by Poseidon and River Partners since they are geographically and hydrologically discrete. The Service will coordinate with Poseidon and River Partners to resolve any potential conflicts, share information as appropriate, and ensure that both projects are able to meet their permit requirements and objectives.

Public access to Federal records shall not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to FOIA regulations (5 U.S.C. 552).

No United States member of, or United States delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly (41 U.S.C. 22).

This agreement involves no exchange of funds between the Parties. Financial support for any activities must be covered in separate written agreements among or between the Parties and subject to ordinary budgetary and administrative procedures of each Party.

The parties shall develop a dispute resolution process to resolve conflicts between the California Coastal Commission and San Diego Regional Water Control Board performance requirements, Poseidon, and our management of Refuge lands.

This agreement shall be effective on the date of the last signature and shall continue until notification by one of the Parties as noted below.

Modifications to this MOU may be proposed by either Party and shall become effective upon the written concurrence of the Parties.

This agreement may be terminated by Poseidon or the Service following 90 days written notification to the other.

**U.S. Fish & Wildlife Service:**

Signature: Andrew Grew Date: 9/28/10

**Poseidon Resources (Channelside) LP:**

Signature: Pete Marjeger Date: 9/29/10

09/28/10

San Diego Bay National Wildlife Refuge  
Includes portion of the  
San Diego Bay National Wildlife Refuge

Parcel lines



Seal  
Disposal

702LS

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14

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WEMO

Trailer  
Parks

