

October 10, 2018

BY EMAIL

Hope A. Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board
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Re: California Water Code Section 13142.5(b) Determination and Renewal and Reissuance of National Pollutant Discharge Elimination System Permit for the Proposed Seawater Desalination Project at Huntington Beach

Dear Mrs. Smythe:

Thank you for your October 1, 2018, letter confirming that Poseidon Resources (Surfside) LLC's ("Poseidon") application for a California Water Code Section 13142.5(b) determination ("Determination") and renewal/reissuance of the National Pollutant Discharge Elimination System ("NPDES") permit for the proposed Seawater Desalination Project at Huntington Beach ("Project") is complete, as revised on August 3, 2018.

We look forward to working with the Santa Ana Regional Water Quality Control Board ("Regional Board") staff on its continued analysis of Poseidon's application. While Poseidon's proposed diffuser design has been updated to reflect feedback from the Regional Board and the Regional Board's consultant, the Project is otherwise unchanged and has already undergone substantial, detailed analysis by the Regional Board over the last two and a half years. Poseidon first submitted its application materials to the Regional Board on March 15, 2016, at the request of State Water Board staff.¹ After extensions of time, the Regional Board deemed Poseidon's application complete on August 28, 2017. Around that same time, the State Lands Commission ("SLC") prepared a 2,800+ page Supplemental Environmental Impact Report ("SEIR") evaluating the Project's proposed intake and diffuser, which the SLC certified on October 19, 2017.² The SEIR was drafted to provide the necessary environmental analysis for the Regional Board's Determination, in compliance with the California Environmental Quality Act ("CEQA")

¹ See February 8, 2016 Letter from Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board, to Allison Dettmer, California Coastal Commission, re: Proposed Poseidon Huntington Beach Desalination Facility – Request for Consultation Regarding Ocean Plan Compliance Evaluation.

² The SEIR relied on and incorporated the analysis in the City of Huntington Beach's 2010 Subsequent Environmental Impact Report for the Project ("2010 EIR"). Accordingly, the 2010 EIR and the SEIR are to be read in conjunction.

and as reflected in the Interagency Permit Sequencing Framework Agreement.³ The Regional Board commented on the proposed intake and diffuser as part of the SEIR process, but did not request any design changes at that time.

Subsequent to the SLC's certification of the SEIR, the Regional Board retained Dr. Philip Roberts to review Poseidon's proposed diffuser design. One of Dr. Roberts' reports recommended modifications to the diffuser. In light of this recommendation, the Regional Board asked Poseidon to make further revisions to the diffuser design, which Poseidon submitted on August 3, 2018.

Finally, we appreciate the Regional Board's continued attention to deadlines imposed by the Permit Streamlining Act ("PSA"). Under the PSA, a responsible agency must approve or disapprove an application within 180 days (1) after it accepts the application as complete or (2) after the lead agency approves the project, whichever is later.⁴ (Gov. Code, § 65952, subd. (a).) Accordingly, the Regional Board must act on or before April 1, 2019, to comply with its PSA obligations. At this time, given the extended process and the documented need for the Project (including within the Regional Board's 2012 NPDES permit and Water Code section 13142.5(b) compliance determination), Poseidon does not intend to agree to any additional extensions or waivers of the PSA deadlines.⁵

³ The Interagency Permit Sequencing Framework Agreement also established a timely and orderly process for reviewing and acting upon the Project's necessary permits. The Regional Board agreed to issue the draft Tentative Order 90 days after the State Lands Commission certified the FSEIR.

⁴ Poseidon is also seeking renewal/reissuance of its NPDES Permit for the Project. Poseidon recognizes that the PSA does not apply to applications for waste discharge permits, including applications for the modification and reissuance of existing permits. (See SWRCB, *Processing Applications for Development Permits under the Permit Streamlining Act* (May 1, 2013) at 7.) Poseidon also recognizes that the Regional Board does not necessarily agree that the PSA applies to Water Code section 13142.5(b) determinations. However, nothing in the Water Code, the California Ocean Plan, or other applicable law excepts the Regional Board's decision on Poseidon's application for a Water Code section 13142.5(b) Determination from the PSA's deadlines.

⁵ We understand that the Regional Board may require further environmental analysis of the proposed diffuser modifications to ensure that they do not result in any new or more severe environmental impacts as compared to the design analyzed in the SEIR and that such analysis will be conducted by the Regional Board. Further, given that the scope of any further environmental analysis will be extremely narrow in light of the minor enhancements to the diffuser, we are confident that the Regional Board will be able to complete that analysis, to the extent necessary, during this 180-day period.

Poseidon appreciates staff's careful and continued consideration of the application. We look forward to the Regional Board's release of the tentative order and a public hearing on the amended permit in the first quarter of 2019.

Sincerely,



Scott Maloni
Vice President
Poseidon Resources (Surfside) LLC

cc: Teresita Sablan, Esq., State Water Resources Control Board
Daniel Ellis, State Water Resources Control Board
Jennifer Lucchesi, State Lands Commission
Kelly Huffman, Poseidon Water
Christopher Garrett, Latham & Watkins LLP