



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

November 9, 2007

**Agenda Item  
Th 7a**

**VIA E-MAIL AND FEDEX**

Chairman Kruer and Honorable Commissioners  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

Re: Carlsbad Desalination Project Coastal Development Permit Application  
No. E-06-013, Agenda Item Th 7a

Dear Chairman Kruer and Honorable Commissioners:

We are writing in response to the Staff Report regarding the application by Poseidon Resources Corporation ("Poseidon") for the above-referenced Coastal Development Permit ("CDP") for the Carlsbad Desalination Project ("Project"), which is scheduled to be considered by the Coastal Commission (the "Commission") at its meeting on November 15, 2007.

While Poseidon appreciates Staff's hard work in analyzing the issues involved in the CDP, we strongly disagree with Staff's conclusions regarding the Project's consistency with the Coastal Act and Carlsbad Local Coastal Program ("LCP") and its recommendation that the Commission deny the CDP. We are also concerned and surprised that the Staff Report: (i) fails to consider and/or summarily dismisses, without any basis, significant information that Poseidon has submitted to Staff over the last fourteen months, which other agencies who have considered and approved the Project have determined to be credible and relied upon; (ii) misstates facts and misleads the Commission on several important issues; and (iii) recommends denial, in large part, based on an unauthorized and unprecedented application of the Coastal Act to greenhouse gas emissions.

The Staff Report essentially ignores the comprehensive Environmental Impact Report certified by the City of Carlsbad (and with regard to which litigation has been dismissed), over eight years of scientific research and environmental study by leaders in the field, including the Scripps Institute of Oceanography, which found that the Project will not have a significant, negative impact on the marine environment. This conclusion is true for all operating conditions studied, including the foreseen "stand-alone" scenario when the Encina Power Station ("EPS") is decommissioned and no longer using the seawater in-take and out-fall infrastructure. This conclusion is also universally held by permitting agencies and the regulatory community, including the City of Carlsbad, San Diego Regional Water Quality Control Board ("Regional Board"), California Department of Health Services and the State Lands Commission staff.

**These materials have been provided to the Coastal Commission Staff**

**Poseidon Resources Corporation**

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Despite the parade of horrors included in the Staff Report, the simple and uncontroverted facts make clear that the Project will be protective of and will enhance coastal resources:

- A range of alternative sites were studied and the proposed site is the **environmentally superior alternative**.
- All alternative intake scenarios requested by Commission Staff were studied, and the proposed intake is the **environmentally superior alternative**.
- The Project will impinge less fish per day (1.92 pounds) than consumed by a single pelican.
- None of the fish impinged or entrained are threatened or endangered.
- Experts, such as Scripps Institute of Oceanography, have concluded that the Agua Hedionda Lagoon is thriving, and will only improve when the Project's stand-alone operations substantially reduce entrainment levels from existing conditions.
- The minimal marine impacts will be fully mitigated and marine resources will be enhanced through implementation of a **Coastal Habitat Restoration and Enhancement Plan** that will restore 37 acres of marine wetland habitat.
- The Regional Water Quality Control Board determined that the Project's discharge will not harm the marine environment and has required adherence to a **Flow, Entrainment and Impingement Minimization Plan**.
- The Project proposes an unprecedented voluntary **Climate Act Plan** that will render the Project "**net carbon neutral**," even though not required under the Coastal Act.
- **Dedication of more than 15 acres of coastal lands for public access** to the City of Carlsbad.

We therefore respectfully request that the Commission reject the Staff's recommendation, find that the Project is consistent with applicable policies of the Coastal Act and LCP, and approve the Project, for the reasons summarized below and set forth in detail in the Response to the Staff Report attached hereto at Exhibit A and the Correction of Staff Report Misstatements and Omissions attached hereto at Exhibit B. To allow the Commission to approve the Project at its November meeting, Poseidon has prepared a robust set of proposed Special Conditions, attached hereto as Exhibit C. These proposed conditions are based on previous conditions imposed by the Commission on similar industrial projects and we believe that they assure that the Project's commitments are enforceable by the Commission and ensure that Coastal Act and LCP policies and requirements are met and exceeded. In addition to being consistent with and

furthering Coastal Act and LCP policies, the Project is urgently needed and includes significant public benefits:

- **The Need for the Project is Clear.** As has been widely reported, California's water supply situation is rapidly deteriorating. Due to a recent shut-down of the State Water Project pumps, record lows in precipitation, a significantly diminished snowpack, serial below-normal runoff, and global warming, 2007 has been designated as a critically dry year in both the State Water Project and Colorado River watersheds. With this backdrop, State, regional and local water plans all have confirmed that San Diego County's immediate and pressing water needs cannot be met without a substantial investment in seawater desalination and that water conservation and water reuse alone are insufficient to address these needs. The need for the Project is clear: eight water agencies – Carlsbad Municipal Water District, Valley Center Municipal Water District, Rincon del Diablo Municipal Water District, Sweetwater Authority, Rainbow Municipal Water District, Santa Fe Irrigation District, Vallecitos Water District, and Olivenhain Municipal Water District – have already contracted to purchase 100% of the Project's capacity.
- **The Project Fully Mitigates and Enhances Marine Resources and Water Quality.** The Regional Board issued a NPDES Permit to Poseidon under which there will be no discharge impacts, whether the Project operates as a co-located or stand-alone facility. The Project will have insignificant impingement and entrainment impacts as a facility co-located with the EPS or as a stand-alone facility. Staff's finding to the contrary is based on a 900% inflation of the Project's contribution to entrainment of recreational sport fish and complete disregard for the fact that the lagoon is thriving under the existing pumping regime and will only improve under stand-alone desalination operations with its associated 50% reduction in required pumping.

To minimize and mitigate any impacts and enhance the marine environment should the Project operate stand-alone, Poseidon proposes a host of coastal resource enhancements. Poseidon will implement a **Flow, Entrainment and Impingement Minimization Plan** under the direction of the Regional Board. Poseidon also will fund the restoration of 36.8 acres of marine wetland habitat to enhance the near-shore coastal environment, pursuant to its **Coastal Habitat Restoration and Enhancement Plan** ("CHREP"). The CHREP would also result in the addition of valuable acreage for wetland species completely unaffected by the desalination plant's operations. These benefits, along with Poseidon's voluntary stewardship of Agua Hedionda Lagoon described below, more than mitigate the de minimis marine impacts of the Project and serve to restore and enhance coastal habitat.

- **The Project is the Most Environmentally Sensitive Desalination Facility Design.** The Project's use of EPS's existing intake system, whether or not EPS is operating, will not result in any significant unmitigated impacts to marine or other coastal

resources. The Project's use of the EPS system has been carefully reviewed and approved by the City of Carlsbad in its certified Project EIR, and the Regional Board, the entity with primary authority of water quality and related marine resources impacts. The Project will not result in any significant construction- or public access-related impacts. Without scientific support, the Staff Report argues that Poseidon's use of an alternative intakes system (subsurface slant wells, a seabed infiltration system, or an offshore intake) would result in fewer environmental impacts than the proposed Project's use of EPS's existing intake system. Poseidon has conducted site-specific analyses of the viability and impacts of each of these alternative intake systems, and strongly disagrees with Staff's unsupported assertions. Site-specific conditions render subsurface slant wells infeasible, due to the poor quality of water available, and construction of such an intake would require numerous above-ground structures on public beaches. Construction of a seabed infiltration system would require construction and ongoing maintenance in over 3 miles of seabed that would cause the loss of 150 acres of offshore habitat. An offshore intake would shift any Project-related impacts to a more environmentally sensitive area and construction and ongoing maintenance of such an intake would cause significant impacts to marine resources. In all, alternative intake systems would have far greater environmental impacts than the proposed Project, and add significant costs to the Project that would render it infeasible.

**The Project Protects and Enhances the Agua Hedionda Lagoon.** Poseidon has voluntarily committed to continue the periodic maintenance of the Agua Hedionda Lagoon necessary to keep the Lagoon in its current state in the event that EPS's dredging obligations cease, thereby maintaining a vibrant and thriving ecosystem and benefiting the public, which uses the Lagoon for recreation and fishing, as well as the aquaculture industry. Poseidon's commitment will ensure that the Lagoon remains healthy and can support the numerous current recreational and marine resource uses of the Lagoon, including public access to the YMCA Aquatic Park, Fishing Beach and the Lagoon's popular surfing break, and Hubbs-SeaWorld Fish Hatchery and Carlsbad Aquafarm. Without Poseidon's voluntary stewardship of the Lagoon, in the event of potential future EPS shut down, the Lagoon would return to its prior state of "stinky water" and its environmental and public recreational benefits would vastly diminish.

- **The Project Fully Mitigates Net Carbon Emissions through a Voluntary, Precedent- Setting Climate Action Plan.** Poseidon has committed to implement a precedent-setting **Climate Action Plan** which would result in the Project being the first industrial Project in the State to be "net carbon neutral." This plan is voluntary. California has placed primary authority over air quality impacts, including greenhouse gas emissions and climate change, with the California Air Resources Board ("CARB"). Although the Commission has no authority to impose emissions-related requirements or mitigation pursuant to Coastal Act Sections 30253(4) and 30414(a) (which only allow the Commission to enforce consistency with CARB rules

and no CARB rules have been imposed), Poseidon has voluntarily taken early action as part of its commitment to environmental stewardship. As fully described in the attached, the Plan will implement a combination of techniques that may include the installation and use of solar power; purchase of carbon offset projects; installation of energy efficiency technologies; acquisition of Renewable Energy Credits; and/or other measures. Poseidon's commitment to a Climate Action Plan that fully mitigates any Project-related greenhouse gas emissions ensures that the Project will not result in an increase in greenhouse gas emissions or resultant climate change-type impacts. See Exhibit D - Poseidon Resources Draft Climate Action Plan for the Carlsbad Desalination Project, November 9, 2007.

- **The Project Will Not Induce Growth.** The Project will replace an existing and future supply of imported water and serve only growth that is already planned for the region, rather than provide a new water supply that could induce new growth. Moreover, the only area in the coastal zone that will receive water from the Project is the city of Carlsbad, which adopted a Growth Management Plan which is part of the City's LCP. The Plan caps existing and future development and the maximum size of Carlsbad at 54,600 dwelling units, and the Project will do nothing to change Carlsbad's growth limitation.
- **The Project Provides Abundant Public Benefits and Coastal Resource Enhancements.** The Project includes additional public benefits beyond the Coastal Habitat Restoration and Enhancement Plan and Lagoon maintenance including:
  - Dedication of more than 15 acres of Lagoon- and ocean-front land for public purposes;
  - Funding of \$2 million per year for public infrastructure;
- **The Project Has Broad Support.** Recognition of the Project as a critical component in meeting the region's water supply and reliability needs has galvanized broad public and bi-partisan government support, including the entire San Diego County State Senate and Assembly delegation, San Diego County Congressional delegation, all members of San Diego County's U.S. Congressional delegation, the Metropolitan Water District of Southern California, the San Diego County Water Authority, the City of Carlsbad and numerous other local governments, the Agua Hedionda Lagoon Foundation and Hubbs Seaworld Research Institute. Eighty-two of the letters received by the Commission were supportive of the proposed project. Public officials testifying in support of the project at the State Lands Commission Hearing included Senator Chris Kehoe, San Diego Mayor Jerry Sanders, Carlsbad Mayor Bud Lewis, and many local city council members and water agency officials.
- **The CEQA Review for the Project is Comprehensive and Sufficient.** The Staff Report's finding that the City of Carlsbad's review and approval of the Project fails to comply with the California Environmental Quality Act ("CEQA") is inaccurate and

not relevant to this Commission's deliberations. The City of Carlsbad conducted an extensive review of the Project pursuant to CEQA, and analyzed the Project both as a facility co-located with EPS and stand-alone. Under either operating scenario, the City found no significant impacts. There is no "new" information today that would require any supplemental CEQA review of the Project. Moreover, as a certified regulatory program pursuant to Public Resources Code Section 21080.5, the Commission is authorized to analyze such information through its environmental review process and indeed has done so through numerous information requests, and as a result, the Commission Staff Report satisfies the Commission's CEQA obligations.

In all, the Project is an urgently needed and environmentally responsible solution to the San Diego region's water supply and reality needs, which is consistent with and will further Coastal Act and LCP policies and will provide significant public and environmental benefits. We therefore urge the Commission to approve this important Project at its November 15 meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter MacLaggan", with a long horizontal flourish extending to the right.

Peter MacLaggan  
Poseidon Resources Corporation

cc: Tom Luster, California Coastal Commission  
Rick Zbur, Latham & Watkins LLP