

REVISED
EXECUTIVE OFFICER SUMMARY REPORT
May 13, 2009

- ITEM: 11
- SUBJECT: NPDES Permit Revision and Approval of Flow, Entrainment and Impingement Minimization Plan: Poseidon Resources Corporation, Proposed Carlsbad Desalination Project (Order No. R9-2006-0065, NPDES No. CA0109223). The Regional Board will consider approval of a March 9, 2009 Flow, Entrainment and Impingement Minimization Plan, including a Marine Life Mitigation Plan, as revised March 27, 2009 (March 27, 2009 Minimization Plan), required by section VI.C.2.e. of Order No. R9-2006-0065 and will consider related amendments to Order No. R9-2006-0065 to require the Discharger to implement and comply with the Minimization Plan under specified conditions of operation. Order No. R9-2006-0065 is not being reopened for any other purposes. At its meeting on April 8, 2009, the Regional Board closed the public hearing in this matter and will not accept new evidence or testimony. The Regional Board will only accept written and oral comments on the proposed revisions made to the Tentative Order following the April 8, 2009 meeting. Any such written comments must be submitted by May 6 at 5 p.m. The Regional Board will also consider staff's response, in the form of a responsiveness summary, to the comments that were previously submitted throughout the proceeding. (Tentative Order No. R9-2009-0038) (Michelle Mata)
- PURPOSE: To determine whether implementation of Poseidon's March 27, 2009 Flow, Entrainment and Impingement Minimization Plan will result in the "use [of] the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life," as required by California Water Code (CWC) section 13142.5(b) and to determine whether to amend Order No. R9-2006-0065 to require implementation of and compliance with the plan, as amended by the Regional Board.
- PUBLIC NOTICE: A Notice of Public Hearing was published in the San Diego Union Tribune on March 9, 2009. A copy of the tentative Order was mailed on March 9, 2009 to Poseidon Resources

Corporation and distributed by email to key interested parties. A Notice of Availability of the March 9 tentative Order, Notice of Public Hearing and Comment Period, and Flow, Entrainment and Impingement Plan was mailed to all known interested parties and agencies on March 10, 2009. The March 9 tentative Order and March 9, 2009 Minimization Plan were also posted on the Regional Board's web site on March 9, 2009. At its meeting on April 8, 2009, the Regional Board closed the public hearing in this matter and will not accept new evidence or testimony. As noted at the April 8, 2009 meeting and in the May 13, 2009 agenda notice, the Regional Board will only accept written and oral comments on proposed revisions made to the Tentative Order following the April 8, 2009 meeting. A revised tentative Order was sent to Poseidon and interested parties by regular mail, and distributed by email to Poseidon and interested parties email distribution list on May 1, 2009.

DISCUSSION:

At its April 8, 2009 meeting, the Regional Board was scheduled to consider whether the implementation of Poseidon's March 2009 Flow, Entrainment and Impingement Minimization Plan will result in the "use [of] the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life," as required by California Water Code (CWC) section 13142.5(b) and to determine whether to amend Order No. R9-2006-0065 to require implementation of and compliance with the plan.

The Regional Board heard extensive testimony from staff, the discharger, and other interested persons. After closing the public hearing, the Board directed staff to prepare responses to comments and bring back a revised Tentative Order No. R9-2009-0038 consistent with the Board members comments for consideration of adoption at their May 13, 2009 regularly scheduled meeting.

Revised Tentative Order No. R9-2009-0038 would, if adopted, approve Poseidon's March 27, 2009 Minimization Plan, as modified by the revised Tentative Order. The key changes in the revised tentative Order relate to the following:

1. New language has been added as a trigger to specify under what condition the discharger must submit a new report of

waste discharge to operate as a stand-alone facility,

2. New language has been added as a trigger to specify when the discharger must submit a technical report that identifies additional feasible measures the discharger can implement to reduce intake impingement and entrainment impacts if all power generating units at EPS are shut down for prolonged periods, but are not permanently shut down,
3. The revised Tentative Order establishes an annual fish productivity requirement of 1,715.5 kg/year as a “biological performance standard” in the Marine Life Mitigation Plan; it requires the discharger to submit a Productivity Monitoring Plan designed to measure whether the requirement is achieved in the mitigation wetland site(s), and provides a mechanism for adjusting the requirement in future permit cycles based upon review of impingement once the CDP commences operations,
4. The revised Tentative Order requires the discharger to sample impingement associated with CDP’s operations over the course of a one year period per permit cycle using the methods followed for the 2004-2005 EPS impingement sampling program, excluding heat treatment events; the results of impingement monitoring will be considered in adjusting the productivity requirement of 1,715.5 kg/year.

An Errata has been prepared to correct and clarify language in the Revised Tentative Order. Changes reflected in the Errata include clarification, but also concentrate on adding specificity concerning the methodologies that will be used to measure productivity under the Productivity Monitoring Plan. With the Errata, Poseidon Resources supports the Regional Board staff’s revised Tentative Order.

To date, the Regional Board has received comments from Poseidon Resources, including an alternative revised Tentative Order No. R9-2009-0038, **the California Coastal Commission, Latham Watkins on behalf of Poseidon Resources, and Coast Law Group on behalf of the Surfrider Foundation and San Diego Coastkeeper.** ~~Staff is continuing to work with the discharger and may propose additional minor revisions to the revised Tentative Order. Staff is currently preparing responses to~~

~~comments, in the form of a Responsiveness Summary, that will be made available prior to the May 13, 2009 Board Meeting.~~ **A Responsiveness Summary has been prepared which, includes responses to all written comments received through April 8, 2009.** Responses to all comments received will be provided to the Board, either in writing in advance of the hearing or orally at the hearing, along with any recommended errata to the revised Tentative Order.

SIGNIFICANT CHANGES: None

COMPLIANCE: N/A

LEGAL ISSUES: None.

SUPPORTING DOCS:

1. Site Map
2. Site Flow Diagram
3. Revised Tentative Order No. R9-2009-0038
4. Transmittal Letter for Revised Tentative Order No. R9-2009-0038 dated May 1, 2009
5. Poseidon Resources comments, including an alternative revised Tentative Order No. R9-2009-0038, dated April 30, 2009
6. **Regional Board staff Revised Tentative Order No. R9-2009-0038 with Errata dated May 6, 2009 (changes from the revised Tentative Order are shown in red underline/strikeout)**
7. **Comment Letter from the California Coastal Commission (May 6, 2009)**
8. **Latham & Watkins Response to California Coastal Commission Letter dated May 6, 2009 (May 6, 2009)**
9. **Comment Letter from Latham & Watkins (May 6, 2009)**
10. **Comment Letter from Coast Law Group on behalf of the Surfrider Foundation and San Diego Coastkeeper (May 7, 2009)**
11. **Regional Board staff Responsiveness Summary (May 8, 2009)**
12. **Poseidon Resources Project –Response to Comments , (May 7, 2009)**

RECOMMENDATION: **Following the discussion for this item, the Executive Officer will make a recommendation.**

NOTE: Additional supporting materials, including a redline/strikeout draft of the March 9, 2009 Minimization Plan showing changes from the March 6, 2008 Minimization Plan, and changes made in the March 27, 2009 Plan are available at:

http://www.waterboards.ca.gov/sandiego/press_room/announcements/carlsbad_desalination/carlsbad_desalination.shtml