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Supporting Document No. 8

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May 6, 2009

BY HAND DELIVERY

Chairman Wright and
Members of the San Diego Regional Water Quality Control Board
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: Response to May 6, 2009 Letter of Peter Douglas, Executive Director of California Coastal Commission

Dear Chairman Wright and Board Members:

We represent Poseidon Resources Corporation in this matter.

This letter responds to the May 6, 2009 letter of Peter Douglas, Executive Director of the California Coastal Commission, which was sent to you today.

First, we do not consider it necessary or relevant for the Board to review or resolve any of the issues raised by Mr. Douglas in his letter, or the responses provided in this letter from Poseidon, prior to the Board's action on Proposed Order No. R9-2009-0038 for Poseidon's desalination facility. This response letter is provided for your consideration, if, and only if, you desire to examine these issues prior to your vote on the Proposed Order.

Second, we believe that the Regional Board's record has closed, and we do not believe it appropriate for the Board to accept any additional evidence or written testimony, even when it has been submitted by Mr. Douglas. The Board's website states: "On April 8, 2009, the Regional Board closed the public hearing on this matter and will not receive new evidence or testimony."

The Coastal Commission staff has had a full and complete opportunity to submit evidence to the Regional Board in the several years this matter has been pending before the Regional Board, including prior to the April 8, 2009 hearing. Poseidon's complete position on impingement, including the appropriate monitoring and measurement of impingement and productivity of mitigation wetlands, was submitted well in advance of the February 11th and April 8th hearings, and posted on the Regional Board's internet website, for review and consideration by the Coastal Commission. Coastal Commission staff took full advantage of this

opportunity to provide comment, and had the ability to submit comments to the Regional Board up to and including the date of the April 8, 2009 hearing before this Board. Poseidon previously responded to these comments in an April 8, 2009 letter addressed to you from my partner David Goldberg of Latham & Watkins. This response letter is provided for your consideration, if and only if, you decide to consider the letter from Mr. Douglas, despite the fact that it has been submitted after the close of the record for this proceeding and it does not include new or substantive information not previously provided to the Regional Board by Commission staff and fully addressed by Poseidon..

Mr. Douglas states in his letter that, "We understand the Board may be making a decision at its upcoming meeting based in part on information Poseidon recently provided to you about its proposed facility and the mitigation plan approved by the Coastal Commission."

This statement on its face is flatly incorrect on three key different points:

1. No Recent Information from Poseidon. Poseidon has not "recently provided" any "information" to the Regional Board about either "its proposed facility" or "the mitigation plan approved by the Coastal Commission." Any information provided by Poseidon about either of these topics was submitted in advance of the April 8th hearing, fully reflected in the documents posted on the Regional Board's website, and there have been no new submittals to the Board since that time.

2. Poseidon's Facility Has Not Changed. Poseidon's proposed facility has not changed. It is fully described in the March 27, 2009 Minimization Plan posted on the Regional Board's website.

3. The MLMP Adopted By The Commission Has Not Changed. The MLMP approved by the Coastal Commission has not changed. It was submitted to the Regional Board in November of 2008.

Turning to the details of Mr. Douglas's letter, he raises two key arguments. Both of these key substantive points are also incorrect.

1. Poseidon Has Not Changed Its Project Description And Has Not Changed Its Intake Velocities. As set forth in the April 8, 2008 letter to this Board from Mr. Goldberg of Latham & Watkins, Poseidon has consistently stated that it expects that when the desalination project operates in standalone mode without operations from the power plant, that the mean velocity of seawater at the bar rack intake from Agua Hedionda Lagoon will be 0.5 feet per second. Poseidon has not changed its project description. The bar racks contain vertical bars at the mouth of the seawater intake system as described on page 3-3 of the Minimization Plan. Downstream from the seawater intake system, the seawater then flows through bar racks and an approximately 600 to 1000 foot series of underground pipes and channels, through fine screens and two cooling water pumps described on page 3-6 of the Minimization Plan.

2. Poseidon Has Not Claimed That The MLMP Approved By The Coastal Commission Was Designed To Mitigate For Impingement Impacts. The record is clear that the Coastal Commission did not provide for mitigation of impingement impacts as part of its adopted Marine

Life Mitigation Plan, and Poseidon has never claimed that it did. Instead, Poseidon has presented evidence that the same wetlands that are required under the MLMP will also have excess biological productivity that more than compensates for any impingement impacts from the desalination project's standalone operations. Poseidon has agreed to an additional requirement from the Regional Board to confirm this commitment to the 1715.5 kilograms per year of additional biological productivity, and its experts have explained why this is not "double-counting." Poseidon is not seeking any change or modification to the MLMP. Instead, Poseidon has agreed to this separate and additional requirement, which can be satisfied by the same acreage as established under the MLMP.

3. Poseidon Does Not Believe That There Are Any "Recently Identified Higher Adverse Impingement Impacts", Nor Will The Regional Board In Its Proposed Order Find Any Such "Higher Adverse Impacts." Poseidon's position, since April 30, 2008 (over one year ago), is that the forecasted impingement from Poseidon's desalination plant during standalone operations will be 1.56 kg per day (3.43 pounds per day), or less. This is the figure cited in Dr. David Mayer's report in April of 2008, which was resubmitted to this Board on February 2, 2009. This value is slightly more than the 2.12 pounds per day estimate of impingement that the Coastal Commission cites in its August 8, 2008 findings adopted for its permit, but still less than the daily diet of one adult brown Pelican. There has been no recently identified increase in forecasted impingement. We understand that the Regional Board staff may disagree with the Poseidon forecast, in part because of a staff concern including so called "outliers" recorded during unusually heavy rainstorms, and an unwillingness to discount these outliers for expected reduced flow. We believe the staff's proposed order with errata (like Poseidon's proposed Alternative Order) will provide that the Board does not need to resolve this disagreement as to the impingement forecast, between Poseidon and the Regional Board staff, because Poseidon has voluntarily agreed to meet a higher productivity standard. We believe this is the most expeditious way for the Board to take action on May 13th and move on with this project.

However, should the Board have any concerns about this issue raised by Mr. Douglas, we urge the Board to change the proposed Order before it and expressly and explicitly determine that the forecasted level of impingement will be in accordance with Poseidon's position, 1.56 kg per day (3.43 pounds per day), and find that Poseidon has voluntarily agreed to meet a productivity standard which is based on a higher estimate of 1715.5 kg/year (which is based on a 4.7 kg/day (10.37 pounds per day) standard). This language is in Attachment A to this letter.

By making this explicit change to accept Poseidon's 1.56 kg per day number respond to Mr. Douglas's letter, the Board will put to rest any concerns that have been raised by Mr. Douglas's misunderstanding of the Board's order.

We would also note that Poseidon's forecast of 1.56 kg per day (3.43 per day) was provided to the Regional Board staff on April 30, 2008, who in turn provided it to the State Lands Commission staff. We do not know to what extent the Regional Board staff provided this information to the Coastal Commission staff as part of the extended interagency coordination process that the Board directed occur in April 2008 with the conditional approval of the Minimization Plan, but we do know that such information was available for the May 1, 2008

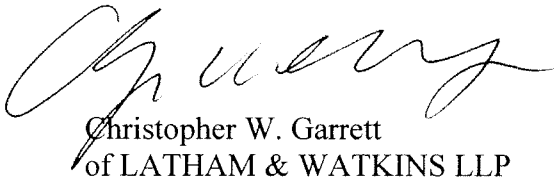
interagency coordination meeting at Agua Hedionda Lagoon. Should the Coastal Commission staff have desired to obtain any information on impingement, we are sure the Regional Board staff would have provided this April 30, 2008 information and Dr. David Mayer's report.

4. The Productivity Monitoring Plan For The Board's 1715 kg per year Standard Will Be Reviewed By The Scientific Advisory Panel. Mr. Douglas's letter incorrectly states that the productivity monitoring plan ("PMP") to demonstrate compliance with the 1715.5 kg/year standard provided for under the Board's Order to meet the Board's productivity standard will not be reviewed by the Scientific Advisory Panel. In fact, both the staff proposed Board order and the Poseidon Alternative Order expressly provide for such review by the SAP.

We note that the letter you received is from the Coastal Commission staff, not the Coastal Commission itself and that the Commission has repeatedly rejected the Commission staff's position on an number of occasions concerning the Poseidon project. While Poseidon does not believe there is any need for an amendment to its permit, should the Coastal Commission staff believe that the Coastal Commission should require an amendment to Poseidon's permit to address the staff's concerns, the staff certainly has the ability to request the Commission to take such action, and no action by this Board is required for the Commission to consider this request of its own staff.

Thank you for considering our input.

Sincerely,



Christopher W. Garrett
of LATHAM & WATKINS LLP

cc: Peter Douglas

45. The Regional Board considered multiple approaches to estimating impingement associated with the CDP's projected operations under co-located conditions as presented in the March 27, 2009 Minimization Plan. The estimates derived from the multiple approaches range from 1.56 kg/day to 7.16 kg/day of fish impinged. The Discharger contends that the appropriate estimate of impingement is 1.56 kg/day and contends that the estimate of 4.7 kg/day overstates the projected impingement associated with CDP's operations. The ~~Discharger and Regional Board staff disagree as to whether, and to what extent, it is appropriate to exclude two days of very high impingement during the 2004-2005 sample year when projecting impingement. The Discharger refers to the data from the two very high impingement days as "outliers." Staff disagrees that the Discharger has adequately justified its characterization of the data as "outliers" and disagrees with the Discharger's proposed exclusion of the data from the estimate of future impingement. The Regional Board finds that it is unnecessary to resolve these disputes. The Regional Board finds that 4.7 kg/day is a reasonable, conservative~~**Regional Board accepts Poseidon's estimation and finds that 1.56 kg/day is a reasonable** estimate of impingement associated with CDP's projected operations under co-located conditions ~~and notes that on the basis,~~ **. However, the Regional Board finds that** the Discharger has agreed to meet ~~an annual~~**a** fish productivity standard of 1,715.5 kg/year, derived from the **conservative** estimate of 4.7 kg/day, in the mitigation wetlands.