

VOLUME 1

Submission to the Regional Water Quality
Control Board

Agenda Item 6 - Poseidon Resources
Corporation, Proposed Carlsbad
Desalination Project (Order No. R9-2006-
0065, NPDES No. CA0109223).



POSEIDON
R E S O U R C E S

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Overview of Poseidon Responses to January 30, 2009 Released Executive Officer Summary Report (January 30th Staff Report)

(1) **Take Final Action:** The Regional Board has the opportunity to take final agency action on Poseidon's Carlsbad Desalination Facility by taking action on Agenda Item No. 6 on February 11, 2009. The Board should resist staff suggestions to postpone and delay reviewing the information that has been developed in the past two years. Please accept Poseidon's suggestion [Tab 2----Gold Sheets] to take sufficient time to address all the issues on February 11.

(2) **Consider Our Proposed Resolution Approving The Inter-Agency MLMP:** Unfortunately, staff has not prepared a clear set of alternative proposed actions which would allow the Regional Board to reject, approve, or add to the Marine Life Mitigation Plan ("MLMP") that was approved by the California Coastal Commission and the California State Lands Commission as part of the Regional Board mandated "inter-agency" process. Please accept Poseidon's suggested resolution [Tab 3--- Green Sheets] to give final approval to the "Inter-Agency" MLMP.

(3) **No Explanation For Staff Disengagement From Process:** The January 30th Staff Report does not address staff's apparent disengagement from the interagency process:

- It does not contain concrete suggestions by staff to amend or add to the MLMP to provide anything which the staff feels is "missing" from the Inter-Agency MLMP.
- It is also written in open-ended fashion, as if staff did not want to clearly list for Poseidon or the Regional Board "all" of its remaining concerns with the MLMP, e.g., will there be 20 more questions later?
- It also characterizes Poseidon's submittals for the hearing as "new material," when in fact staff has had access to all this material for many months, and as part of the Inter-Agency process.
- It does not explain staff's failure to ask for additional information from Poseidon, or hold any meetings with Poseidon after the interagency May 1, 2008 concerning the MLMP, despite Poseidon's repeated requests and offers to answer any further questions.

(4) **Specific Proposal For Mitigation:** Obviously, the key concern of the Board has always been to provide a specific, complete mitigation plan with enforcement mechanisms and specific review requirements to assure that the needed mitigation will be provided. This led the Board to call for a "specific proposal for mitigation" in its 2008 Resolution. However, the January 30th Staff Report curiously refuses to acknowledge that Poseidon has submitted such a specific proposal for mitigation. If staff were concerned that the MLMP needed more or different mitigation details, or more enforcement mechanisms, one would expect staff to suggest specific changes or amendments, perhaps during the Inter-Agency review process that occurred between May and August 2008. However, as late as the January 30th Staff Report, staff is unable to

suggest anything new or different that would provide the alleged missing “specificity” to the MLMP.

(5) “**Specific Mitigation Alternative**”: The January 30th Staff Report faults the MLMP, stating that the “overarching concern” is that it fails to include a “specific mitigation alternative.”

- It should be noted that this is a different term than the actual language used by Condition 3 of the Board’s resolution, a “Specific Proposal for Mitigation.” Poseidon has complied with Condition 3 to the 2008 Resolution by submitting such a “specific proposal for mitigation” in the MLMP.
- Whatever staff may mean by using this different term, staff has ignored the specific Regional Board direction in April to include several different Mitigation Alternatives. This was specifically requested by Regional Board Chairperson Wright.
- The MLMP approved by the Inter-Agency process and submitted to the Regional Board does more than just “set forth a process and criteria for evaluating 11 independent mitigation site options”; it actually sets forth an enforceable plan of mitigation with specific performance criteria and enforcement mechanisms.
- The fact that a number of sites are analyzed and included in the Plan is a virtue, not a defect because it gives the Coastal Commission, the State Lands Commission and the Regional Water Quality Control Board an extensive array of required sites to assure the required quantity and quality of mitigation is provided.
- Curiously, staff’s argument seems to echo the attacks of entities which have sued the California Coastal Commission over its approval of a Coastal Development Permit, accusing it of deferral of mitigation. However, the Coastal Commission has made clear that the Commission did not “defer” mitigation for marine life impacts, but instead provided a specific plan of mitigation in the Inter-Agency MLMP. We urge the Regional Board to reject any suggestion that the Coastal Commission’s approved Inter-Agency MLMP has failed to provide for full mitigation with a complete set of performance standards and enforcement mechanisms.

**Summary of Poseidon's Responses to
EXECUTIVE OFFICER SUMMARY REPORT
Regional Water Quality Control Board, San Diego
February 11, 2009
Item No. 6**

No.	Issue Presented	Poseidon Response
1.	<p>“Staff remains concerned that the MLMP fails to satisfy a number of conditions in the-Resolution, such as the requirement to submit adequate data on impingement of organisms []... (see Resolution, Implementing, 3.d).”</p>	<ul style="list-style-type: none"> • The California Coastal Commission found that impingement impacts from the intake system were <i>de minimis</i> and did not require mitigation. Regional Board staff was aware of this finding throughout the interagency process on the development of the MLMP, and did not raise the issue at the interagency review meeting or to Poseidon. • Second, the Regional Board maintains significant data regarding the impingement impacts from the intake in its own files. The Regional Board obtained a copy of the 316(b) impingement and entrainments study from Cabrillo Power LLC dated January 2008. In fact, Ms. Jessica Jones, Poseidon's Assistant Project Manager, requested and obtained the 316(b) study from the records manager at the Regional Board in March of 2008. Therefore, if staff lacked data on the impingement impacts of the intake system, they could have asked for the data from Poseidon, or reviewed the information contained in its own files. • Finally, even though impingement impacts have been determined to be <i>de minimis</i>, the MLMP fully mitigates for <i>both</i> entrainment <i>and</i> impingement-related impacts. CDP's operations will result in the impingement of no more than 1.56 kg of organisms per day. On an annual basis, this is equal to 569 kg. By restoring 37 to 55 acres, Poseidon will yield between 1348 to 2003 kg fish biomass. Given that this will result in Poseidon's mitigation project yielding between 2.4 and 3.5 times the amount of fish that are impinged by CDP's operations, Poseidon will more than adequately account for CDP's <i>de minimis</i> impingement impacts.

2.	“Staff looks forward to discussions with Poseidon and members of the public in the future to try to resolve these and other substantive concerns.”	Since the submittal of the MLMP to the Regional Board on November 14, 2008, Poseidon has offered its assistance to Regional Board Staff on several occasions in an effort to address any issues that Regional Board staff may have in regards to the MLMP, including on December 19, 2008, January 5, 2009, January 6, 2009 and January 7, 2009. If Regional Board staff is now interested in participating in such a discussion, Poseidon likewise looks forward to meeting with Regional Board staff and other interested members of the public to resolve any outstanding issues regarding the MLMP.
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<p>3. “Staff’s overarching concern, which remains unsatisfied, is that the MLMP fails to include a specific mitigation alternative as the Board required. Instead, it sets forth a process and criteria for evaluating 11 independent mitigation site options. The Resolution conditions approval of the Plan on the timely submittal of a specific mitigation alternative for Regional Board approval. Staff continues to believe that a specific mitigation alternative is a critical element in order to properly evaluate whether the functions of the proposed mitigation will match those lost from impingement and entrainment. Poseidon’s MLMP is fundamentally flawed in that it fails to fulfill this condition.”</p>	<p>At no time during the preparation and development process of either the Minimization Plan or the MLMP was Poseidon directed to prepare a <i>single-site</i> mitigation plan. Instead, following direction from the Regional Board, Staff and the multiple interested state, federal and local agencies involved in the interagency process required under Resolution No. R9-2008-0039, Poseidon developed and submitted the MLMP which fully addresses all concerns raised by the Regional Board’s February 19, 2008 letter, the Resolution No. R9-2006-0065 and Regional Board staff input.</p> <p>This direction included the following:</p> <ul style="list-style-type: none"> • <u>Order R9-2006-0065 NPDES No. CA0109223</u> – The 2006 Order specifically does not indicate that site-specific mitigation measures are required under the Minimization Plan, or that Poseidon shall prepare a single-site mitigation plan. Nor was there any interpretation during the permitting phase to that effect. • <u>Resolution No. R9-2008-0039</u> - While the 2008 Resolution required “a specific proposal for mitigation of impacts,” there is no language in the Resolution requiring that the mitigation plan provide for mitigation at a “single site.” • <u>February 19, 2008 Regional Board Letter</u> - The February 19, 2008 Regional Board letter raised the concern that Poseidon’s July 2007 submittal did not “identify and evaluate the possible mitigation projects located within the same watershed [Agua Hedionda Lagoon], prior to proposing the out of watershed mitigation in San Dieguito.” (pg. 2) This statement implies that the Regional Board was interested in the evaluation of additional sites beyond simply the San Dieguito site proposed by Poseidon. • <u>March 4, 2008 Meeting</u> - In response to the February 19, 2008 Regional Board letter, Poseidon met with Regional Board staff members on March 4, 2008 to receive input on Poseidon’s proposed revisions to the Minimization Plan. At this meeting, Regional Board staff requested that Poseidon include additional sites in its mitigation planning.
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- March 7, 2008 Minimization Plan - The March 7, 2008 version of the Minimization Plan, submitted in response to the February 19, 2008 Regional Board letter and input received at the March 4, 2008 meeting, did not propose a “single site” mitigation plan and expressly stated that multiple sites would be evaluated in the final submittal. (See pgs. pages 6-9 and 6-10 of the updated Minimization Plan.) Neither Staff nor any of the Board members expressed dissatisfaction with the mention of multiple site review in either Poseidon’s Response or the updated Minimization Plan.
- April 4, 2008 Central Watershed Unit Report - The April 4, 2008 Central Watershed Unit Technical Report stated, “The proposed process seems to favor a pre- determined outcome (i.e. mitigation in San Dieguito Lagoon). Other mitigation alternatives (e.g. kelp bed enhancement and artificial reef construction) should be considered and evaluated equally as viable mitigation possibilities.” This indicates that Regional Board staff did not want a plan focused on one specific site, and instead Poseidon should consider and evaluate “other mitigation alternatives.”
- April 4, 2008 Central Watershed Unit Report - The Central Watershed Report also acknowledged, with apparent approval, that Poseidon was considering mitigation at several possible sites, including those expressly enumerated: Frazee State Beach, Loma Alta Lagoon and Buena Vista Lagoon, in addition to Agua Hedionda Lagoon and San Dieguito Lagoon.
- April 9, 2008 Meeting Transcript - Regional Board Chairman Wright stated: “It sounds like there’s a lot more that needs to be done before you have full evaluation of the mitigation alternatives.” This statement indicates that Chairman Wright was open to the prospect of multiple mitigation alternatives, and in fact, thought it necessary for the mitigation plan to include a “full evaluation” of such alternatives.

		<ul style="list-style-type: none">• <u>May 1 and 2, 2008 Interagency Meeting Agenda</u> - The draft agenda for the May 1 and 2 interagency meeting specifically requested the proposal of additional mitigation sites: “If proposing marine life mitigation, describe <i>the type and location of potential mitigation sites</i>, and describe how restoration or creation of this particular habitat/vegetation would mitigate for impacts associated with the desalination facility’s impacts to marine life in Agua Hedionda.” (emphasis added). This language makes clear that multiple sites would be taken into consideration during the interagency process of developing the plan.
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Poseidon's Suggested Additional Steps To Be Taken By Board As Part Of Its Hearing On Agenda Item No. 6 To Make A Final Decision On February 11th.

The Board has the authority, upon the motion of one of its members and a majority vote of the Board, to hear additional testimony and evidence beyond that allowed by the suggested hearing procedures provided by your staff for this matter. This action would be especially helpful if the Board wishes to make a final decision on February 11th, rather than postponing the matter for further submittals and hearings.

Poseidon suggests that the Board vote to add the following additional steps to the Item No. 6 at the February 11th hearing. (This procedure will not give Poseidon the procedures that it has requested for the hearing, but would give the Board sufficient evidence to make a final decision on the submittal).

This could be done by the following motion of a Board member, approved by the Board:

I move that we add the following hearing procedures to our hearing for Board Agenda Item No. 6, in addition to those suggested by staff:

1. Poseidon, the applicant, shall be designated as a party and allowed to present the following evidence in support of its submittal and requested action by the Board:

(1) A twenty minute opening statement by Poseidon after the staff report. Poseidon would provide an overview of its project, its work on the Flow, Entrainment and Impingement Minimization ("FEIM") Plan, and on the Marine Life Mitigation Plan ("MLMP") that was required as an amendment to the FEIM Plan

After Poseidon's opening statement, and at the conclusion of an additional staff report and public comment from any other person appearing to speak on this matter, Poseidon shall be allowed the opportunity to submit the following additional evidence and argument, with a response from Regional Board staff

(2) 15 Minutes On "Specific Proposal" Issue Fifteen minutes presentation (testimony of experts and argument) from Poseidon supporting the applicant's position that its MLMP submittal is "an amendment to the [Flow, Entrainment and Impingement Minimization] Plan that includes a specific proposal for mitigation of impacts" as required by Condition 3 of Resolution No. R9-2008-0039 and the appropriateness of final agency action on February 11th by the Board, and a staff response of equal length on this issue.

(3) 10 Minutes On "Interagency Coordination" Issue Ten minutes presentation (testimony of experts and argument) from Poseidon concerning the interagency process that was used to develop and approve the MLMP, (under Water Code Section 13225 and as required by Condition 3(c) of the Resolution) and the inappropriateness of the Regional Board staff rejection of this Plan approved by both the Coastal Commission and the State Lands Commission, , and a staff response of equal length

(4) 10 Minutes On "Impingement" Issue Ten minute presentation (testimony of experts and argument) by Poseidon concerning adequacy of mitigation for impingement impacts and the question regarding staff access to "adequate" impingement data, and a staff response of equal length.

(5) 20 Minutes On "Adequacy of Mitigation For Entrainment" Issue Twenty minute presentation (testimony of experts and argument) by Poseidon concerning the adequacy of mitigation presented in the MLMP for entrainment impacts, including a staff response of equal length

(6) 5 Minutes On the Timing of Poseidon's MLMP Submittal Five minute presentation by Poseidon regarding Poseidon's efforts to coordinate with staff on the submittal of the MLMP so that staff would receive the version of the MLMP it desired in an acceptable time frame, and a staff response of equal length

(7) Cross-Examination Counsel for Poseidon and counsel for staff each would have up to 30 minutes for cross-examination, which may occur as the issues are presented, with the balance available after presentation of the issues, (1) through (6) hereinabove, is completed

(8) Closing Statements Both Poseidon and staff would have up to 10 minutes to make a closing statement after making the above presentations.

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

RESOLUTION NO R9-2009-0 _____

**FINAL APPROVAL OF
FLOW, ENTRAINMENT AND IMPINGEMENT MINIMIZATION PLAN
FOR
POSEIDON RESOURCES CORPORATION
CARLSBAD DESALINATION PROJECT**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter "San Diego Water Board" or "Regional Board"), finds that:

I. BACKGROUND

1. On August 11, 2006, the Regional Board adopted Order R9-2006-0065 NPDES No. CA0109223 (Order No. R9-2006-0065), which established waste discharge requirements for Poseidon Resource Corporation's (Poseidon) Carlsbad Desalination Project (CDP). CDP, which will be co-located with the Encina Power Station (EPS) and use EPS's intake system and discharge channel, will discharge up to 57 million gallons per day (MGD) of a combined waste stream comprised of concentrated saline waste seawater and filter backwash wastewater.
2. CDP is not subject to Section 316(b) of the Clean Water Act because that section only applies to power generation operations.
3. CDP is subject to California Water Code Section 13142.5, which requires use of the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life.
4. Section VI.C.2(e) of Order No. R9-2006-0065 required Poseidon to submit a Flow, Entrainment and Impingement Minimization Plan ("Minimization Plan") to "address the feasibility of site-specific plans, procedures, and practices to be implemented and/or mitigation measures to minimize the impacts to marine organisms when the CDP intake requirements exceed the volume of water being discharged by the EPS." Approval of the Minimization Plan is not a condition for commencement of the discharge from CDP, but no discharge has been made to date. Order No. R9-2006-0065 expires October 1, 2011.
5. On March 7, 2008, Poseidon submitted an updated Minimization Plan addressing the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life in accordance with Water Code section 13142.5(b) requirements and Section VI.C.2(e) of Order No. R9-2006-0065.

6. On April 9, 2008, the Regional Board adopted Resolution R9-2008-0039 conditionally approving Poseidon's Minimization Plan. The conditional approval required Poseidon to submit "an amendment to the [Minimization] Plan that includes a specific proposal for mitigation of the impacts, by impingement and entrainment upon marine organisms resulting from the intake of seawater from Agua Hedionda Lagoon, as required by Section VI.C.2(e) of Order No. R9-2006-0065; and shall resolve the concerns identified in the Regional Board's February 19, 2008 letter to Poseidon resources, and the following additional concerns:
 - a) Identification of impacts from impingement and entrainment;
 - b) Adequate monitoring data to determine the impacts from impingement and entrainment;
 - c) Coordination among participating agencies for the amendment of the [Minimization] Plan as required by Section 13225 of the California Water Code;
 - d) Adequacy of mitigation; and
 - e) Commitment to fully implement the amendment to the Plan."
7. In November 2007, as a condition of the Coastal Development Permit for the Project, the Coastal Commission ordered Poseidon to develop a Marine Life Mitigation Plan ("MLMP"). Regional Board Resolution R9-2008-0039 directed Poseidon to submit the MLMP to an interagency process. Participants in the interagency review process for the MLMP included representatives from the Regional Board, California Coastal Commission, California Department of Fish and Game, California Department of Transportation, California State Lands Commission, City of Carlsbad, City of Vista, and U.S. Fish and Wildlife Service.
8. On July 7, 2008, Poseidon submitted a proposed MLMP to the Coastal Commission, who circulated it to other interested agencies for comment. The MLMP was revised to address concerns raised by Coastal Commission Staff and incorporate many of Coastal Commission Staff's recommendations, and resubmitted August 2, 2008. On August 6, 2008, the Coastal Commission approved the MLMP but took time to come to final language. On September 17, 2008, CDP Project Manager Peter MacLaggan discussed the MLMP approved by the Coastal Commission with the Executive Officer and indicated that he did not think final language would be available by the October 8, 2008 deadline set by Resolution R9-2008-0039 for submittal of the plan. The Executive Officer indicated that he wished to have final language submitted, and Poseidon complied with this request.
9. On November 7, 2008, Coastal Commission staff finalized language in the MLMP reflecting the Coastal Commission's approval of the MLMP on August 6, 2008. On November 14, 2008, Poseidon submitted the final version of the MLMP to the Regional Board. As submitted, the MLMP represents an agency consensus on the appropriate mitigation strategy for the CDP.
10. This action is exempt from the provisions of the California Environmental quality Act (Public Resource Code, Section 21000 et seq.) in accordance with Water Code

Section 13389 (see *County of Los Angeles v. California State Water Resources Control Board*, 143 Cal. App. 4th 985, 50 Cal. Rptr. 3d 619 (2006), and this action of the Regional Board does not have the potential to cause a significant effect on the environment (see Tit. 14, Cal. Code of Regulations, Section 15061).

II. FINDINGS

11. Water Code section 13142.5(b) requires that “the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.” Each element of section 13142.5(b) is addressed below.

Site

Chapter 2 of the Minimization Plan identifies the best available site feasible to minimize the intake and mortality of all forms of marine life (Minimization Plan, 2-1 – 2-8), and is incorporated herein by reference.

12. CDP will not build a new intake structure to acquire its source water. Instead, it will be co-located with the EPS and primarily use the cooling water discharged by the EPS to support its operations. The EPS’s maximum permitted intake of water is 857 million gallons per day (MGD), more than sufficient to meet CDP’s 304 MGD intake needs.
13. Only three sites in the City of Carlsbad would accommodate a large desalination project, including the EPS, the Encina Water Pollution Control Facility and Maerke Reservoir. The EPS site, however, is the only site in reasonable proximity to the seawater intake, the outfall, and key delivery points of the distribution system of the City of Carlsbad, the largest anticipated user of the desalinated water. EPS is the only site with sufficient space and necessary zoning to accommodate the Project.
14. The use of the EPS’s existing intake and discharge facilities avoids construction of a major new intake system and discharge facilities, and prevents costs associated with demolition of the EPS’s intake and outfall when EPS ceases to operate. In 2007, seawater discharge by the EPS would have been sufficient to meet 61% of CDP’s intake requirements. As a result, when the EPS is operating, the potential intake of marine organisms associated with CDP’s operations will be reduced by 61% in virtue of its co-location with the EPS.
15. The EPS site is associated with the least environmental impacts, energy consumption, construction cost, operating cost, and disruptions to public and private property. There are no feasible alternative sites that would avoid or minimize environmental impacts of the Project.¹

¹ In approving a Coastal Development Permit for the Project, the Coastal Commission found that there are no feasible alternative locations for the Project that would

Design

Chapter 3 of the Minimization Plan identifies the best available design feasible to minimize the intake and mortality of marine life (Minimization Plan, 3-1 – 3-8), and is incorporated herein by reference.

16. When the EPS is conducting power generation operations and using 304 MGD or more of seawater for once-through cooling, CDP will cause only a de minimis increase in the impingement and entrainment of marine organisms over that caused by the EPS's operations.
17. Because of significant differences in the EPS's intake design and operations, CDP intake and mortality of marine organisms will be significantly lower when operating independently of the EPS than when operating cooperatively. When operating alone, CDP will reduce inlet screen velocity, fine screen velocity and ambient temperature processing, and will eliminate heat treatment, all of which will reduce mortality of marine life. There are no additional, feasible design measures that would minimize the intake and mortality of marine life.

Technology

Chapter 4 of the Minimization Plan identifies the best available technology feasible to minimize the intake and mortality of marine life (Minimization Plan, 4-1 – 4-31), and is incorporated herein by reference.

18. Because CDP will be co-located with the EPS, unless and until the EPS ceases operations, entrainment and impingement reduction technologies must be compatible with both operations.
19. CDP will, however, implement the following technologies to reduce intake and mortality of marine organisms: installation of variable frequency drives to reduce total intake flow to no more than that needed at any given time, installation of micro-screens, and installation of low impact pretreatment technology. Marine organisms captured by the screens will be returned to the ocean.
20. There are no additional, feasible technologies that would minimize the intake and mortality of marine life. A variety of alternative intakes were studied including subsurface intakes (vertical and horizontal beach wells, slant wells, and infiltration

minimize or avoid environmental impacts, and that the proposed Project as conditioned mitigates impacts to the maximum extent feasible. (Coastal Commission's Final Adopted Findings, 4, 47-52, 93).

galleries) and a new open ocean intake, but these were found to be infeasible and/or more environmentally damaging than the Project.²

Mitigation

21. When operating cooperatively with the EPS, impingement associated with CDP's operations will be de minimis. When operating independently of the EPS, impingement associated with CDP's operations will be further reduced by the technology measures described above.
22. When operating cooperatively with EPS, and not taking entrainment reductions caused by use of technology into account, CDP will entrain the number of marine organisms equivalent to the number produced in a 55.4-acre estuarine and nearshore habitat.
23. The MLMP will offset any impingement and entrainment by providing for the construction of up to 55.4 acres of wetlands in two phases.
24. Phase I of the MLMP provides for 37 acres of wetland restoration within the Southern California Bight. During this phase, Poseidon will conduct technology review to determine whether new or developing technologies have become feasible to reduce entrainment.
25. If the EPS stops operating or meets less than 15% of CDP's intake needs, Phase II of the MLMP applies, which requires an additional analysis of whether new or developing technologies have become available and are feasible to reduce entrainment. A new entrainment analysis will be conducted at that time to assess whether such technologies should be implemented, and/or if additional mitigation is necessary. If additional mitigation is necessary, Poseidon may propose additional wetland mitigation acreage of up to 18.4 acres or the assumption of dredging obligations for Agua Hedionda Lagoon in exchange for mitigation credit. Poseidon may elect to construct 55.4 acres of wetlands during Phase I.
26. The Minimization Plan, coupled with the MLMP amendment, fully satisfies Order No. R9-2006-0065, Resolution No. R9-2008-0039, and the requirements of California Water Code Section 13142.5. Poseidon has proposed a seawater intake that will utilize the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of marine life.

THEREFORE, BE IT RESOLVED THAT:

1. The San Diego Water Board hereby finally approves the MLMP amendment, effecting a full and final approval of the Minimization Plan.

² See also Coastal Commission's Final Adopted Findings, at 47-53.

2. This Resolution is only of limited duration and is only applicable so long as Poseidon is operating cooperative with the EPS. When Poseidon proposes to operate independently of the EPS or the EPS permanently ceases power generation operations, the Regional Board may further evaluate whether CDP's operations minimization the intake and mortality of marine life using the best available design, technology and mitigation measures.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on February 11, 2009.

JOHN H. ROBERTUS
Executive Officer