

CALIFORNIA COASTAL COMMISSION

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October 7, 2021

Mr. Scott Maloni, Vice President
Poseidon Water
5780 Fleet Street, Suite 140
Carlsbad, CA 92008

VIA EMAIL: smaloni@poseidonwater.com

RE: Poseidon's September 20, 2021 Response to Notice of Incomplete ("NOI")
Coastal Development Permit Application No. 9-21-0488 for the proposed
Huntington Beach desalination project

Dear Mr. Maloni:

We received your above-referenced response to our August 5, 2021 letter that identified several items and information needed to complete Poseidon's coastal development permit ("CDP") application, as well as additional information that would be useful for analyzing the appeal proceeding. Your September response did not provide all the information and materials requested to complete the application, including 1) the required application fee; 2) the list of interested parties and envelopes required to provide notice of a Commission hearing; 3) information regarding maintenance of the proposed facility's intake system; and 4) an evaluation of projected sea level rise on Poseidon's proposed mitigation in Bolsa Chica. For the second two items, we have identified a way to move forward despite not having the necessary information about them, although it may require staff to make conservative assumptions in our analysis or necessitate future amendments to any CDP approved by the Commission for development not adequately described in this application.

As we have discussed, and consistent with the commitment in our 2015 agreement with Poseidon to quickly schedule a Commission hearing upon receipt of Poseidon's complete application, we had intended to schedule a Commission hearing before the end of the year. However, we cannot proceed with scheduling a hearing until Poseidon has paid its application fee as required by Public Resources Code Section 30620(c)(1) and 14 California Code of Regulations Section 13055 and submitted a list of interested parties. Your September 20, 2021 response noted that Poseidon has previously paid two fees; however, those funds were fully encumbered by the work done by staff and

the Commission at the time Poseidon withdrew its two previous applications.¹ Your response also stated that Poseidon would pay the fee for its current application only after Commission staff determines that the application is otherwise complete, provides Poseidon with draft conditions of approval, and schedules a Commission hearing. As you know, the Commission's process does not work that way. Application filing fees reimburse the Commission for expenses of processing permit applications, and here, the Commission has already spent many hundreds of hours preparing for and processing your current application. Application fees may not be withheld until such time that an applicant obtains a draft recommendation and hearing date that it finds satisfactory. Although, as described above, we are prepared to deem the application complete and discuss potential hearing dates, we are not able to provide you with our draft recommendation or recommended conditions of approval prior to completing our analysis and publishing a staff report.

We will discuss these items and our expected next steps during the call we've scheduled with you next Tuesday. We would also like to discuss with you the proposed project's fill of onsite wetlands and the need for appropriate mitigation. Finally, in light of the current oil spill offshore of Orange County, it would be helpful if you could provide any information on how Poseidon would respond to a future oil spill that could affect the proposed open ocean intake.

Sincerely,



Tom Luster
Senior Environmental Scientist

¹ The first fee was for Poseidon's 2006 application. Commission staff fully evaluated that initial application, as well as an amended version Poseidon submitted in 2009, then prepared a staff report and held a Commission hearing in 2013 during which Poseidon withdrew its application. In 2015, although staff recommended Poseidon not submit a follow-up application until after the Regional Board completed its review, Poseidon submitted a second fee and application that Commission staff again fully evaluated, prepared a staff report, and scheduled a Commission hearing for August 2015; however, Poseidon again withdrew its application, this time just prior to publication of the staff report in July 2015.