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**F7a**

Staff Report: 12/22/16
Staff: TL-SF
Hearing Date: 1/13/17
Commission Action:

**STAFF REPORT: REQUEST TO WAIVE
PERMIT APPLICATION FEE**

Applicant: Poseidon Resources (Surfside), LLC

Project Location: Huntington Beach, County of Orange

Description: Request to waive fee on upcoming Coastal Development Permit application for proposed Poseidon Huntington Beach desalination facility.

SUMMARY OF STAFF RECOMMENDATION

Poseidon Resources (Surfside), LLC (“Poseidon”) requests a waiver of the coastal development permit (“CDP”) fee, estimated to be approximately \$286,649, required for its planned upcoming submittal of a CDP application for the above-referenced project. Pursuant to Section 13055(h)(1) of the California Code of Regulations, the Executive Director is to waive the application fee when requested by resolution of the Coastal Commission.

For reasons detailed in this report, staff recommends the Commission *deny* the requested fee waiver:

- 1. Prior reviews of Poseidon’s applications involved significant Commission and Commission staff workload, and the upcoming review is expected to require a similarly significant workload.** Poseidon’s proposed project has required significant staff time over more than ten years, and recent proposed changes to the project and new information about the project will require substantial additional work to determine whether it conforms to the Coastal Act and relevant Local Coastal Program.

2. **Poseidon has identified no financial hardship as a reason for its requested fee waiver.** The expected application fee of roughly \$287,000 is at the upper end of the Commission's permit fee range, and that amount represents a very small percentage of Poseidon's project costs. For example, the fee represents only about 0.03% of the project's expected capital and financing costs and less than 0.5% of Poseidon's project development costs to date. The Commission's CDP application fee is also less than 2% of the permit fees of other agencies that Poseidon will pay over the life of the project.
3. **Poseidon's statement that its 2015 CDP application withdrawal and upcoming 2017 resubmittal were based on "input from Commission staff" misconstrues staff's advice.** Staff actually recommended that Poseidon not submit the CDP application until after completion of an independent study conducted to determine feasibility of alternative intakes and alternative sites and after the Regional Board had determined whether Poseidon's proposed project conformed to requirements of the state's recently adopted Desalination Amendment. Poseidon nonetheless submitted its application.
4. **Commission staff offered Poseidon a method to avoid its 2015 CDP application withdrawal and thereby avoid the need to resubmit an application and application fee, but Poseidon declined to follow staff's advice.** After staff determined Poseidon's submitted 2015 CDP application was incomplete, it recommended Poseidon not submit the final information needed to complete the application until the Regional Board could determine whether the proposed project was consistent with the Desalination Amendment. Staff recognized that the Board's determination could take longer than the six months allowed under the state's Permit Streamlining Act ("PSA") for the Commission to take action on the complete application. This would likely have resulted either in the Commission needing to act on a project not yet reviewed by the Board and therefore still subject to substantial changes, or Poseidon having to withdraw its application to prevent such an action. By keeping its application incomplete, Poseidon would not have started the six-month PSA timeline and thereby could have avoided withdrawing its application and needing to resubmit a new application and permit fee. Poseidon declined to follow this recommendation. After Poseidon nonetheless submitted the final requested information and staff deemed the application complete (in April 2016), staff did a significant amount of work that including preparing a complete staff report and scheduling what was expected to be a full-day Commission hearing in September 2016, in anticipation of the Commission having to act within the required six-month PSA timeline. Poseidon withdrew its application only after staff had completed this significant workload.

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EXHIBITS

Exhibit 1: October 28, 2016 Poseidon letter requesting waiver of permit fee.

I. MOTION AND RESOLUTION

Motion

I move that the Commission direct the Executive Director to waive the permit application fee for the upcoming submittal of Poseidon’s Coastal Development Permit Application pursuant to the staff recommendation.”

Staff recommends a **NO** vote. Failure of this motion will result in the rejection of the applicant’s request that the Commission direct the Executive Director to waive the permit application fee and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution

The Commission hereby rejects the request to direct the Executive Director to waive the permit application fee for the upcoming submittal of a Coastal Development Permit Application for the proposed Poseidon Huntington Beach desalination facility.

II. FINDINGS

A. POSEIDON COASTAL COMMISSION PERMIT AND APPEAL HISTORY

Since the early 2000s, Poseidon has sought the permits and customers it needs to construct and operate a proposed seawater desalination facility in the City of Huntington Beach (“the City”). The initially proposed design and location of Poseidon’s facility, changes to that initial proposal, and changes in state requirements since that time have resulted in the proposal undergoing three different reviews pursuant to the California Environmental Quality Act (“CEQA”), issuance and appeals of two CDPs from the City, and submittal and withdrawal of two previous CDP applications to the Commission.

Much of Poseidon’s lengthy permit and review history results from Poseidon’s proposed site and design. Poseidon’s selected site is subject to several significant coastal and seismic hazards, while its proposed facility design and seawater intake volume of 106 million gallons per day would cause significant adverse effects on marine life due to its proposed use of an open water intake that is currently used by the Huntington Beach Power Plant but is to be retired soon.

Initial Project Review

In 2002, the City, serving as lead agency under the California Environmental Quality Act (“CEQA”), started preparing an Environmental Impact Report (“EIR”) to evaluate the original version of Poseidon’s proposed project. Commission staff reviewed that proposal, provided comments to the City, and participated in the City’s Planning Commission project review. In 2003, the City declined to certify that project EIR. In 2005, Poseidon reapplied to the City with a slightly modified proposal. Commission staff reviewed and provided comments on a second project EIR, which the City certified later that year. In 2006, the City approved a CDP for those portions of the project within the City’s LCP jurisdiction, which was then appealed to the

Commission. Staff prepared recommended findings and scheduled a hearing during which the Commission found that substantial issue existed with respect to Poseidon's conformity to LCP policies related to protection of marine life and water quality, protection of environmentally sensitive habitat areas, energy use and development, and adequate public services. All this staff work between 2002 and 2006 occurred prior to Poseidon submitting a CDP application or application fee to the Commission.

Initial CDP Application and Appeal Reviews

In May 2006, Poseidon submitted its first CDP application for those portions of the proposed project within the Commission's retained jurisdiction. Staff determined this application was incomplete, and requested Poseidon submit additional information necessary to complete the application and to schedule a combined *de novo* hearing and original jurisdiction hearing before the Commission. Between 2006 and 2009, staff prepared eight letters identifying information needed from Poseidon to complete its application. Staff also reviewed several dozen documents Poseidon provided in response to those letters, though determined that those documents were not adequate to complete the CDP application.

Then, in 2009 and before completing its application, Poseidon submitted to the City a proposed re-configuration of its facility, which required the City to conduct additional CEQA review. Commission staff again participated in the City's review. In September 2010, the City certified a Supplemental EIR and issued a new CDP, which was also appealed to the Commission. Staff prepared recommended findings and, in November 2010, the Commission found substantial issue existed with respect to the same LCP issue areas as in the 2006 appeal, along with additional LCP policies related to protection of wetlands, the facility's land use designation, public recreation, protection against seismic events and liquefaction, growth-inducement, and whether the project met the LCP's requirement for mitigation to the maximum extent feasible. During this 2010 CEQA review, staff also identified an alleged violation within the proposed footprint of Poseidon's project. This alleged violation is not yet resolved and remains part of the review of Poseidon's expected upcoming application submittal. In April 2011, Poseidon submitted an amended CDP application to the Commission to make it consistent with the reconfigured proposed project that was the subject of the 2010 appeal. Poseidon's amendment of its existing incomplete application did not require submittal of an additional fee.

A significant part of staff's workload during this time involved responding to Poseidon's contentions about its project's expected adverse effects on marine life, which were counter to much of the established science that the Commission and other agencies had relied on for several years. Between 2009 and 2013, and after staff prepared a total of 12 "notice of incomplete application" letters to Poseidon with responses by Poseidon to those information requests that were determined to be inadequate, staff and Poseidon agreed to deem the application complete in order to schedule a Commission hearing. That nine-hour hearing, in November 2013, ended with Poseidon withdrawing its application and the Commission continuing the *de novo* appeal pending Poseidon's submittal of a new application. At that time, several Commissioners recommended that Poseidon work with staff and independent experts to address the questions raised in staff's "notice of incomplete application" letters regarding the feasibility of alternative intake methods that might avoid or reduce the project's adverse effects on marine life.

Additional Project Review

In January 2014, shortly after Poseidon’s November 2013 application withdrawal, staff and Poseidon agreed to convene an expert panel and use the services of a professional facilitator (Concur, Inc.) to evaluate potential alternative intake options. Staff, Poseidon, and Concur established the Independent Science and Technical Advisory Panel (“ISTAP”), which included five members during its initial Phase 1 review, to evaluate the technical feasibility of alternative intake methods, and seven members during its Phase 2 review, which evaluated the environmental, economic, and social feasibility of selected alternative intake methods. The ISTAP process, which lasted until November 2015, represented between 20% and 70% of one staff member’s workload during that nearly two-year period and involved numerous meetings, document preparation, review, and editing, travel, preparation and participation in public meetings, and other work. The ISTAP work during that period also required occasional, but ongoing involvement of other staff technical experts and managers. Poseidon did not pay for the Commission’s staff’s participation in the ISTAP process.

During the ISTAP process, the State Board adopted in May 2015 a new Desalination Amendment that requires all seawater desalination facilities use the “best available site, design, technology, and mitigation measures” feasible and establishes that the State and Regional Boards have primary authority to determine whether proposed facilities meet that standard. The Amendment also establishes that subsurface intakes are the preferred method for facilities to obtain seawater, and it established a formal consultation process among involved agencies to conduct a coordinated review of proposed desalination projects. The new amendment became final with the approval by the state’s Office of Administrative Law in January 2016 and the U.S. EPA in April 2016.

Additional CDP Application and Appeal Reviews

In September 2015, near the end of the ISTAP’s Phase 2 review, Poseidon submitted its second CDP application (#9-15-1361) and application fee of \$280,324 to the Commission. This was despite staff’s recommendation that Poseidon fund a third phase of the ISTAP review to determine the feasibility of alternative sites along the Orange County shoreline (i.e., similar to the site alternative review staff expected would be required as part of the final Desalination Amendment), or to at least wait until the ISTAP completed its Phase 2 review and until the Regional Board made its determination as to whether Poseidon’s proposal conformed to the Desalination Amendment (see additional information below).

Staff reviewed Poseidon’s application and identified additional information needed to complete the application. In March 2016, staff became aware that Poseidon was ready to submit information that it believed would result in a complete CDP application and therefore start the 180-day timeline of the state’s Permit Streamlining Act. As noted above, the state had just fully approved the Desalination Amendment and the US EPA was about to approve it. The requirements of the new Desalination Amendment were fully known to Poseidon. Additionally, staff of the State Water Board had informed Poseidon and Commission staff that the proposed project would require substantial review and submittal of significant new information to determine whether the project conformed to the Desalination Amendment.¹ Staff immediately

¹ See February 8, 2016 letter from Jonathan Bishop, Chief Deputy Director of the State Water Resources Control Board to Alison Dettmer, Deputy Director of Coastal Commission.

contacted Poseidon and suggested that it may want to consider keeping their pending CDP application incomplete to allow for the Board's review of the project under the new Desalination Amendment to be completed prior to the Commission taking action, which staff anticipated could take longer than six months. Staff's concern was that the Commission would be required to act on Poseidon's proposed project before the Board had made its determination as to whether the proposal represented the "best available site, design, technology, and mitigation measures feasible" to avoid and minimize adverse effects on marine life. Nonetheless, Poseidon submitted the final necessary information needed for its CDP application, which staff deemed complete on April 1, 2016. CDP application #9-15-1361 therefore needed to be scheduled for Commission action by September 2016 unless Poseidon granted the one-time 90-day extension allowed by the Permit Streamlining Act ("PSA").

In March 2016, just before staff deemed Poseidon's CDP application complete, Poseidon submitted its request to the Regional Board for a determination of conformity to the Desalination Amendment. Commission staff and staff of the State and Regional Boards then started the Amendment's formal consultation process to review Poseidon's proposed project for conformity. Thus far, this formal consultation has involved several dozen meetings and review of hundreds of pages of documents Poseidon submitted to Board staff. Between March and July 2016, Board staff informed Poseidon several times about additional information it would need to submit to allow for the determination of conformity and also responded to Poseidon's request that its proposed project be exempt from some of the Amendment's requirements. During this time, Poseidon also applied to the California State Lands Commission ("CSLC") for the required extension of a lease of state tidelands needed for Poseidon to use and modify the power plant intake and outfall system. The CSLC determined that the requested lease extension would need to undergo additional CEQA review.

At this point, and given the information needed for both the Board and CSLC reviews, it was clear that neither review would be complete before the Commission's September 2016 PSA deadline expired and would likely not be complete even with a 90-day extension of that deadline. In August 2016, Commission staff met with Poseidon to urge them to consider withdrawing their CDP application to allow for a more efficient permit sequencing in which the Commission would benefit from the CSLC's completion of its CEQA review and the Regional Board would have at least a tentative decision on the project's Desalination Amendment conformity before the Commission needed to act. Poseidon then proposed, as a condition of withdrawing its CDP application, that the three agencies develop a Memorandum of Agreement ("MOA") with Poseidon to outline the preferred review sequence – i.e., that the CSLC will complete its CEQA review; that the Regional Board staff will develop a tentative decision within 90 days of receiving all necessary information from Poseidon and of completion of the proposed project's CEQA requirements; and that Commission staff will schedule a hearing on Poseidon's new CDP application within 90 days of the Regional Board's published tentative determination of Poseidon's project's conformity with the Desalination Amendment. To provide adequate time to develop this MOA, Poseidon also agreed to the 90-day extension allowed under the PSA for Commission consideration of the CDP application, which would have allowed a December 2016 hearing instead of a September 2016 hearing. However, by that point (in mid-August 2016), Commission staff had already completed the staff report for posting and mailing in anticipation of a September 2016 Commission hearing. On October 3, 2016, all parties signed the MOA and Poseidon withdrew its CDP application.

Post-CDP Withdrawal Review

Since then, staff has continued its review and formal consultation processes. On October 31, 2016, Regional Board staff informed Poseidon that the information provided to that point was not adequate and provided Poseidon with a 75-page matrix identifying the information needed to conduct the Board’s review. This information could result in changes to Poseidon’s site, design, technology, and mitigation measures needed to conform to the Desalination Amendment.² In November 2016, the CSLC published a Notice of Preparation of a Supplemental Environmental Impact Report for Poseidon’s proposed lease extension.

B. POSEIDON’S REQUEST FOR A FEE WAIVER

On October 28, 2016, Poseidon sent a letter to Commission staff requesting a waiver of the fee required for its expected upcoming CDP application (see Exhibit 1). Section 13055(h)(1) of the Commission’s regulations state that the “executive director shall waive the application fee where requested by resolution of the commission.” Pursuant to the Commission’s current fee schedule, the application fee for Poseidon’s proposed project, based on its expected overall development costs exceeding \$100,000,001, would be \$283,250. The project is also expected to require between 10,001 and 100,000 cubic yards of grading, which requires an additional fee of \$3,399, for a total fee of about \$286,649.

Poseidon’s letter provides the following as the basis for its fee waiver request:

“Poseidon believes that its request for a fee waiver is supported by the circumstances surrounding its withdrawal and planned future resubmittal. Poseidon’s Pending CDP application was deemed complete on April 1, 2016, and was tentatively scheduled to be heard by the Coastal Commission in September, 2016. Poseidon sought to have the Coastal Commission consider its Pending CDP application in advance of actions by other permitting agencies in reliance on input received from Commission staff in August 2015 prior to submitting our CDP application and comments submitted to the State Water Resources Control Board by Coastal Commission staff during the development of the Desalination Amendment to the State Ocean Plan indicating that the Coastal Commission’s preference was to act prior to the Regional Water Quality Control Board on permitting applications for desalination plants.”

C. COMMISSION’S REJECTION OF FEE WAIVER REQUEST

As noted above, Section 13055(h)(1) of the Commission’s regulations state that the “executive director shall waive the application fee where requested by resolution of the commission.” The regulations do not specify what factors the Commission must consider when determining whether to approve or deny a fee waiver request; however, prior Commission decisions have been based in part on the amount of staff time involved in application review, whether the applicant’s withdrawal and resubmittal were based on factors the applicant could not have anticipated or prevented, and other similar considerations. Along with guidance provided by these previous decisions, the Commission’s CDP application form provides guidance by suggesting that the Commission may consider the expected amount of staff effort for reviewing

² See the Regional Board’s October 31, 2016 letter and accompanying 75-page information request matrix.

an application. For example, the application’s Filing Fee Schedule states that an applicant may request a permit fee refund if an application is withdrawn, though “only if no significant staff review time has been expended (e.g., the staff report has not yet been prepared).” It also states that in addition to the application fee, “the Commission may require the applicant to reimburse it for any additional reasonable expenses incurred in its consideration of the permit application...”

For several reasons, the Commission finds that waiving Poseidon’s application fee is not warranted:

1. Prior reviews of Poseidon’s applications involved significant Commission workload, and the upcoming review is expected to require a similarly significant workload.
2. Poseidon has identified no financial hardship as a reason for its requested fee waiver.
3. Poseidon’s statement that its application withdrawal and resubmittal was based on “input from Commission staff” misconstrues staff’s advice.
4. Commission staff offered Poseidon a method to avoid its recent permit application withdrawal and thereby avoid the need to resubmit an application and application fee, but Poseidon declined to follow staff’s advice.

These reasons are further detailed below.

1. Significant Workload.

CDP/Appeal Review

The proposed project has and will continue to require enormous staff time, both within and outside the CDP application review process. As described above, staff workload for Poseidon’s two previous CDP applications involved extensive staff review, staff preparation of two sets of recommended findings, and scheduling two Commission hearings, with one of the two applications involving a full day hearing before the Commission. Staff also prepared findings on two appeals of CDPs issued by the City, and the Commission held two Substantial Issue hearings on these appeals. Significant staff work also occurred outside the CDP application and appeal processes, including review and comment on the project’s three CEQA reviews and extensive work done as part of the independent review conducted with staff and Poseidon to identify potential alternative intake methods (see details above about the review conducted pursuant to the Independent Scientific and Technical Advisory Panel, or “ISTAP” process).

The upcoming review will require additional significant analysis, both during review of Poseidon’s CDP application and during the CEQA review currently being conducted by the State Lands Commission to reflect changes and new information about the project since the previous CEQA review in 2010. These changes include new information about coastal hazards at Poseidon’s selected site and Poseidon’s proposed extension of its project’s operating life from 30 years to 60 years, which will require substantial review of the project’s effects and risks related to coastal hazards.

Regional Board/Desalination Amendment Review

Poseidon’s proposed project is one of the first to be subject to the Desalination Amendment, and because Poseidon’s proposal is to use an open intake rather than the Amendment’s strongly stated preference to use subsurface intakes where feasible, the proposal is expected to require more review and analysis than other projects that are proposing to use a subsurface intake.

Since March 2016, staff has been involved in formal consultation with staff of the State and Regional Water Boards to review Poseidon's conformity to this Amendment. Review conducted thus far during this Board consultation process has included evaluation of several dozen of Poseidon's technical documents totaling several thousand pages. The Board staff, however, has concluded many of these documents are not adequate to determine Poseidon's conformity to the Amendment and has requested Poseidon submit additional documentation. As noted above, an October 31, 2016 letter from Board staff to Poseidon included a 75-page matrix with detailed information requests about alternative sites, modified intake and discharge methods, project economics, geotechnical data, and other significant requests. The documents Poseidon is expected to provide are likely to be voluminous and require substantial additional review by Commission staff. Board staff has also recommended that some aspects of Poseidon's proposed project be subject to independent scientific review, which will require additional coordination and consultation among Board and Commission staff. Additionally, and as occurred in the two previous reviews, much of the necessary consultation will occur outside of the review to be conducted as part of Poseidon's submittal of a CDP application.

In sum, the Commission expects that Poseidon's upcoming CDP application submittal will again require significant staff effort to review and comment on additional CEQA documents, conduct formal consultation with the Regional Board and other agencies, and prepare a new written staff recommendation for a technically complex large-scale industrial project that raises significant issues under the Coastal Act and LCP.

2. No Financial Hardship.

Poseidon has not cited any financial hardship or raised concerns of financial equity regarding its requested fee waiver. The expected application fee of roughly \$287,000 is at the upper end of the Commission's permit fee range, and that amount represents only about 0.03% of the project's approximately \$900 million in capital and financing costs. The required permit fee is also less than 0.5% of Poseidon's approximately \$60 million in other project development costs, which include legal fees, lobbying, etc., and is less than 3% of Poseidon's expected annual return on equity invested in the project.³

Additionally, in comparison with Poseidon's other permit fees, the Commission's one-time CDP application fee is just slightly higher than the \$220,000 fee Poseidon currently pays each year for its NPDES permit from the Regional Board. Including the NPDES fee's annual adjustment for inflation, the CDP application fee is less than 2% of what Poseidon will pay over the expected life of the project for this other major project permit. Similarly, Poseidon's 20-year lease with the State Lands Commission currently requires a payment of about \$90,000 per year (which is also adjusted for inflation), so the Commission's one-time permit fee is only about 15% of what Poseidon will pay for its lease of state tidelands over a 20-year period. Finally, the CDP application fee is equal to only about 3½ days of the income Poseidon generates at its similar desalination facility in Carlsbad.

³ See Poseidon's *Project Capital Costs* submittal to Regional Board, December 6, 2016, and Clean Energy Capital, *Financial Analysis of Proposed Huntington Beach Ocean Water Desalination Project*, prepared for the Orange County Water District, 2014.

3. Permit Sequencing

As noted above, Poseidon’s October 28th letter states that its fee waiver request is based on staff’s stated preference in August 2015 that the Commission act prior to the Regional Water Board on permits for desalination facilities and that application withdrawal and resubmittal was necessary to accomplish that permit sequence. Poseidon apparently misconstrued what it refers to as the “input received from Commission staff.” Staff had actually recommended that Poseidon not submit its application until after the ISTAP had completed its review, including its evaluation of alternative sites, and until after the Regional Board had determined whether Poseidon’s proposed project conformed to requirements of the Desal Amendment.

Poseidon is probably referring to Commission staff’s much earlier recommendations to Poseidon and other desalination proponents that applicants obtain a CDP before they obtain the necessary Regional Board permits. Prior to adoption of the Desal Amendment, Commission staff recommended to applicants for desalination facility permits that they first coordinate with all involved agencies and establish a preferred sequence of permitting, based on the particular characteristics of a proposed project and the different permits that may be required. In most cases, staff recommended that applicants obtain a CDP before obtaining any necessary Regional Board permits. This changed, however, with the State Board’s May 2015 approval of the Desal Amendment and the Amendment’s statement that the State and Regional Boards have primary authority to determine the best available site, design, technology, and mitigation measures feasible for proposed desalination facilities. Although Commission staff had recommended to the Board that the Amendment include a required or preferred permit sequence,⁴ the Board, at a public hearing that Poseidon attended, declined to adopt that recommendation. Instead, the Board’s approval of the Amendment acknowledged the need for coordination among agencies, but found that it would be premature to require a specific permit sequence in the Amendment and instead directed its staff to pursue an agreement among the involved agencies to identify the type and form of coordination necessary.⁵ Therefore, with the Amendment’s May 2015 adoption, it was no longer Commission staff’s recommendation in August 2015 that applicants obtain a CDP before obtaining Regional Board approvals, as that preferred permit sequence was out of date and no longer applicable by then.

4. Hold Application Incomplete

As noted above, Poseidon submitted its most recent application in September 2015, which was during the interim between the State Water Board’s adoption of the Ocean Plan Amendment in May 2015 and the Amendment becoming fully effective in early 2016 through its approval by the state and the U.S. EPA. Poseidon’s application submittal was also just before the ISTAP had completed its review of public comments received on its draft Phase 2 Report and publication of its final Report in November 2015. As noted above, Commission staff recommended to Poseidon in August 2015 that it not submit a new CDP application until after the Amendment

⁴ See April 9, 2015 comment letter from Commission staff to State Board, available here: http://www.swrcb.ca.gov/water_issues/programs/ocean/desalination/comments041015/tom_luster.pdf

⁵ The Board’s Resolution to adopt the Amendment “[d]irects State Water Board staff to propose and pursue a Memorandum of Agreement with the California Coastal Commission, California Department of Fish and Wildlife, and the State Lands Commission to promote interagency collaboration for siting, design, mitigation, and permitting of desalination facilities.”

was fully in effect and until after the ISTAP had completed its review. Commission staff believed this would allow Poseidon to submit an application that included any project modifications resulting from final ISTAP recommendations and from Regional Board direction regarding changes needed for the proposed project to conform to the Amendment. Poseidon nonetheless chose to submit its application prior to final approval of the Amendment, which required staff to review the application's completeness without being able to request information related to the Amendment, since it was still then not fully approved.⁶

Upon receipt of Poseidon's application in September 2015, staff identified several other elements of the application not related to the Desal Amendment that were incomplete, and staff requested Poseidon provide the additional necessary information. In March 2016, after receiving Poseidon's responses to those requests, staff was prepared to deem the application complete pending receipt of requested modifications to Poseidon's coastal hazards analyses. However, this was shortly after the state's final approval of the Amendment and after Poseidon had been informed by Board staff that its proposed project would require significant additional review. Staff recognized that the Board's review could modify the project Poseidon was proposing in its CDP application, and staff therefore recommended to Poseidon that it not submit the final information needed to complete the application, as that would start the 180-day timeline allowed under the Permit Streamlining Act for staff to bring the application to the Commission for a permit decision. Given that the proposed project could require modification to conform to the Amendment, staff was concerned that the Commission would be considering a different proposed project than was being simultaneously reviewed by the Board and that the six-month period would not be sufficient to develop consistent proposed projects before each agency. It was therefore likely that Poseidon would either need to withdraw and resubmit its application or would have the Commission act on a proposed project that was in the midst of undergoing extensive review by the Regional Board.

Poseidon chose to submit the information needed to finalize its CDP application, which the staff deemed completed on April 1, 2016. Shortly thereafter, the Regional Board reviewed Poseidon's initial application for a determination of conformity to the Amendment and identified significant additional information Poseidon needed to submit before the Board could make its determination. The necessary information included analyses of alternative sites, the feasibility of alternative intake and discharge systems, answers to Board staff questions regarding the proposed size and production volume of the facility, and others, any of which could result in substantial modifications to the facility Poseidon was proposing the Commission approve.

Conclusion

The Commission **denies** the fee waiver request. Because this proposed project has required, and will continue to require, significant staff and Commission workload, requiring the fee for the upcoming CDP application is fully warranted. Fees should be consistently applied to permit applications unless there are circumstances that suggest a fee may be waived, such as there being limited or no staff workload involved. Those circumstances do not exist for this proposal.

⁶ Because the Amendment had not yet been fully approved, staff was not able to request that Poseidon provide, as part of a complete application, evidence of the Regional Board's discretionary approval that Poseidon's project was consistent with the Amendment. Additionally, because staff was not able to request evidence of conformity to the fully approved Amendment as part of its initial completeness review of Poseidon's application, it was not able to raise this requirement later in the review process after the Amendment had been fully approved.



October 28, 2016

VIA ELECTRONIC MAIL (JOHN.AINSWORTH@COASTAL.CA.GOV)

Mr. John Ainsworth
Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Request to Waive Fee on Resubmitted Coastal Development Permit Application

Dear Mr. Ainsworth:

On October 13, 2016, Poseidon Resources (Surfside) LLC ("Poseidon") entered into a Memorandum of Understanding ("MOU") with the California Coastal Commission staff. The MOU set forth the parties' shared understanding regarding the process that will be followed by the Commission staff in considering Poseidon's application for a coastal development permit ("CDP") for its proposed Huntington Beach Desalination Project ("Project"). At the time the MOU was entered into, Poseidon's CDP Application No. 9-15-1361 ("Pending CDP") was before the Coastal Commission. In accordance with the MOU, Poseidon agreed to withdraw the Pending CDP, which it did on October 13, 2016. The MOU also set forth Poseidon's intention to resubmit its CDP application for the Project soon after its withdrawal of the Pending CDP.

In recent discussions with Commission staff, Poseidon informed staff that it was planning to resubmit its CDP application this week, together with a request to waive the application fee on the resubmitted application so that the waiver request could be scheduled for consideration at the December, 2016 Coastal Commission hearing. Commission staff (Tom Luster) indicated that it would be staff's preference to not have the CDP application resubmitted at this time. Mr. Luster also said that Coastal Commission counsel advised staff that Poseidon's request for a fee waiver could be submitted independent of, and be considered in advance of, having a CDP application on file. Finally, Mr. Luster indicated that delaying the submittal of the CDP application would not affect the Commission staff's obligations under the MOU regarding, for instance, its cooperation with the Regional Water Quality Control Board and State Lands Commission staffs.

Poseidon has not personally spoken to your counsel, but in reliance on Mr. Luster's representation, by this letter, Poseidon formally requests the waiver of its CDP application fee pursuant to Section 13055(h) of the Coastal Commission regulations (14 Cal. Code of Regs. § 13055(h)), and that its request be agendized for consideration at the December, 2016 hearing.

Poseidon Water LLC

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www.poseidonwater.com

Poseidon further requests written confirmation that the delayed submittal of its CDP application will not affect the Commission staff's obligations under the MOU.

Poseidon believes that its request for a fee waiver is supported by the circumstances surrounding its withdrawal and planned future resubmittal. Poseidon's Pending CDP application was deemed complete on April 1, 2016, and was tentatively scheduled to be heard by the Coastal Commission in September, 2016. Poseidon sought to have the Coastal Commission consider its Pending CDP application in advance of actions by other permitting agencies in reliance on input received from Commission staff in August 2015 prior to submitting our CDP application and comments submitted to the State Water Resources Control Board by Coastal Commission staff during the development of the Desalination Amendment to the State Ocean Plan indicating that the Coastal Commission's preference was to act prior to the Regional Water Quality Control Board on permitting applications for desalination plants. As a result of interagency discussions, however, Poseidon and the staffs of the Coastal Commission, Santa Ana Regional Water Quality Control Board and the State Lands Commission entered into an Interagency Permit Sequence Framework Agreement that provides for actions by the State Lands Commission and Santa Ana Regional Water Quality Control Board before the consideration of the Project by the Coastal Commission.

In order to allow for that permitting process to occur, as contemplated by the Interagency Permit Sequence Framework Agreement, Poseidon and Coastal Commission staff entered into the MOU pursuant to which Poseidon withdrew its CDP application. In light of the desire among the permitting agencies and Poseidon to cooperatively implement an orderly consideration of the Project, Poseidon has withdrawn and will resubmit its CDP application. At such time as the application is resubmitted, Poseidon would like to be assured that no additional application fee will be required to deem its CDP application complete. For these reasons, Poseidon respectfully requests that its request for a fee waiver be agendaized for the December, 2016 Coastal Commission hearing.

Thank you for your consideration of our request.

Very truly yours,

The image shows two handwritten signatures in black ink. The signature on the left is 'Scott Neal' and the signature on the right is 'Stan Williams'. Both are written in a cursive, flowing style.

Cc: Tom Luster
Christopher Pederson, Esq.
Alison Dettmer
Coastal Commission Chair Steve Kinsey

Poseidon Water LLC

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