



State Water Resources Control Board

MARCH 8, 2023 PUBLIC COMMENT DRAFT TEMPORARY CONDITIONAL WAIVER FOR THE CARLSBAD DESALINATION PLANT

Sandra L. Kerl, General Manager
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Sachin Chawla, President
Poseidon Resources (Channelside) LP
5780 Fleet Street, Suite 140
Carlsbad, California 92008

RE: Temporary Conditional Waiver for the Carlsbad Desalination Plant

Dear Ms. Kerl and Mr. Chawla:

In response to the request by the San Diego County Water Authority (Water Authority) and Poseidon Resources (Channelside) LP (Poseidon) to the State Water Resources Control Board (State Water Board), I am issuing a temporary conditional waiver for the Claude "Bud" Lewis Carlsbad Desalination Plant (Facility) as authorized in section III.M.1.a. of the Water Quality Control Plan for Ocean Waters of California ([Ocean Plan](#)). The section states:

"The Executive Director of the State Water Board may temporarily waive the application of chapter III.M to desalination facilities that are operating to serve as a critical short-term water supply during a state of emergency as declared by the Governor."

A temporary conditional waiver is appropriate in light of the severe drought conditions in San Diego County and statewide, the Facility's current contributions to water supplies for the county and the need to continue producing such supplies during the drought emergency, recent intake structure modifications, and the unique challenges relating to procurement of specialized materials for construction and other construction-related factors.

This waiver is based on the requests by the Water Authority and Poseidon dated November 1, 2022, and December 2, 2022, and additional materials provided on February 7 and 14, 2023 (hereafter collectively referred to as Communications). On May 8, 2019, the San Diego Regional Water Quality Control Board (San Diego Water Board) made a new Water Code section 13142.5(b) determination and issued Waste

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Discharge Requirements (Order No. R9-2019-0003 NPDES No. CA0109223, referred to hereafter as Permit) for the Facility. As required by Chapter III.M.2.a.(5)(b) of the Ocean Plan, Provision VI.C.7.a of the Permit requires compliance with the Permit's intake specifications no later than December 11, 2023.

In December 2021, Poseidon and the Water Authority requested approval of a modified intake design citing feasibility issues related to biofouling. In August 2022, the San Diego Water Board issued a letter approving the modified intake design for the Facility.

The Water Authority and Poseidon have requested a temporary Ocean Plan waiver until December 11, 2024, to achieve full compliance with the Ocean Plan and the Regional Board's Water Code section 13142.5(b) determination for the Facility by constructing and operating the new intake infrastructure. This request seeks an additional year to come into compliance with Permit requirements related to sections III.M.2.a.(5)(b) and III.M.2.d.(1)(c) ii. and iv. of the Ocean Plan to prevent the Facility from potentially having to temporarily shut down. Your Communications indicate Poseidon's contractor for the Facility modifications, Kiewit Shea Joint Venture, has identified unforeseen challenges with supply chain issues, equipment availability, and construction sequencing.

On October 19, 2021, California Governor Newsom issued a [Proclamation of a State of Emergency](#) statewide, including in San Diego County, due to severe drought conditions. On February 13, 2023, Governor Newsom issued [Executive Order N-3-23](#) continuing provisions of the emergency drought proclamations issued in 2021 and 2022. The emergency proclamations remain in effect at this time.

As explained in the Communications, an extension of the compliance schedule for an additional year will enable the Facility to operate as a critical water supply during a state of emergency as declared by the Governor. The Facility produces 54 million gallons per day of potable drinking water, which provides approximately ten percent of the water supply for San Diego County, and the San Diego County Water Authority relies on this water. A temporary waiver will help ensure that this water supply remains available during the ongoing drought emergency.

The temporary waiver is conditioned to require progress reports on compliance and mitigation of impacts associated with extending the compliance schedule. Regular progress reports are necessary to ensure that the construction and operation of the new intake infrastructure proceeds in accordance with the extended schedule and the mitigation requirements.

In addition, Water Code section 13142.5(b) and the Ocean Plan require mitigation to replace all forms of marine life or habitat that is lost due to the construction and operation of a desalination facility after minimizing intake and mortality of all forms of marine life through best available site, design, and technology. Section III.M.2.e of the Ocean Plan requires regional water quality control boards to ensure that owners or operators of desalination facilities fully mitigate for the operational lifetime of the facility and use the best available mitigation measures feasible to minimize intake and mortality of all forms of marine life. Pursuant to these requirements, the Permit includes requirements for Poseidon or any subsequent owner of the Facility to provide 68.3 acres of functional mitigation per year, of which 65.97 acres are for intake-related mortality (see Permit, Table H-2, Finding 42). The Marine Life Mortality Report (MLMR)

and December 23, 2020 Marine Life Mitigation Plan (MLMP) indicate that Poseidon will compensate for the temporal loss of marine life and habitat productivity during the period extending from the commencement of Facility operations that result in marine life impacts until the mitigation project meets performance standards by continuing to maintain the mitigation for an equivalent time after the Facility shuts down. Although the construction of the mitigation project commenced in October 2022, the entrainment impacts from the Facility have been unmitigated for 7 years and it is unclear when the mitigation project will meet performance metrics. Additional information is needed on the status of the mitigation for the Facility, including an updated MLMR and MLMP with a detailed schedule for the mitigation project and when the mitigation is expected to meet performance metrics. Additionally, the San Diego Water Board applied the one percent mitigation credit for the Ocean Plan-compliant intake screens. Although Section III.M.2.e.(1) of the Ocean Plan includes an allowance for this, the one percent mitigation credit should only be applied when the Ocean Plan-compliant intake screen is fully operational. Consequently, there is a need to update the MLMR and MLMP to provide additional mitigation to compensate for the impacts to marine life associated with the compliance extension. The waiver is conditioned accordingly, below.

Therefore, pursuant to the authority granted me in Ocean Plan Section III.M.1.a., I am hereby issuing a temporary conditional waiver of the application of Ocean Plan Chapter III.M.2.a.(5)(b) to the Facility with the following terms and conditions:

1. The application of Ocean Plan section III.M.2.a.(5)(b) for the requirements in section III.M.2.d.(1)(c)ii. and iv. is temporarily waived until construction of the Facility's new intake infrastructure is complete and no later than December 11, 2024. This waiver is solely for the purpose of allowing no more than one additional year to begin operating the modified intake structure approved by the San Diego Water Board, and does not extend to any other provision of the Ocean Plan or the Permit. As a result, the San Diego Water Board need not issue a new Water Code section 13142.5(b) determination for the Facility due to this waiver.
2. Poseidon shall:
 - a. Make every effort to come into compliance as soon as possible, but shall come into compliance no later than December 11, 2024;
 - b. Submit a revised MLMR and revised MLMP to the San Diego Water Board for the San Diego Water Board's or Executive Officer's approval that includes:
 - i. An additional 0.132 acres of mitigation through expansion of the approved mitigation project to correctly apply the one percent mitigation credit for the intake screen as commencing on December 11, 2024, rather than July 1, 2019 (the effective date of the Permit). The current MLMR and MLMP apply an intake screen credit of 0.66 acres for the 30-year operational life of the Facility (see the Permit, Table H-2, Finding 39), but due to the approximately six-year delay in installing the screen, the credit must be prorated to 0.528 acres to fully compensate for the marine life mortality attributable to the Facility's operations. If the new intake infrastructure is completed and fully functional before December 11, 2024, the Water Authority

- or Poseidon may request the San Diego Water Board, in consultation with the State Water Board, to prorate the amount of additional mitigation acreage based on meeting the compliance schedule earlier; and
- ii. An updated schedule for the approved mitigation project and when the mitigation is expected to meet performance metrics.
 - c. Submit to the State Water Board and San Diego Water Board quarterly progress reports commencing June 2, 2023, that describe progress towards meeting the compliance schedule and mitigation requirements, the associated project schedules, any critical path issues that may result in further delays, and any relevant information regarding compliance with the conditions of this waiver.

Please direct any questions to Claire.Waggoner@waterboards.ca.gov.

Sincerely,

Eileen Sobek
Executive Director
State Water Resources Control Board

cc:

David Gibson, Executive Officer, San Diego Regional Water Quality Control Board
Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board
Phil Wyels, Office of Chief Counsel, State Water Resources Control Board
Erin Mahaney, Office of Chief Counsel, State Water Resources Control Board