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LATHAM & WATKINS^{LLP}

February 3, 2010

VIA FEDERAL EXPRESS

Chairperson Neely
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Hope Schmeltzer, Esq.
Chief Counsel
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Jamee Jordan Patterson, Esq.
California Department of Justice
110 West A Street, Suite 1100
San Diego, CA 92101

Re: Carlsbad Desalination Project Coastal Development Permit No. E-06-013; Request for Revocation No. R2-E-06-013

Dear Chairperson Neely, Ms. Schmeltzer and Ms. Patterson:

We are writing on behalf of Poseidon Resources (Channelside), LLC ("Poseidon") with respect to the above-referenced Revocation Request concerning the Carlsbad Seawater Desalination Facility (the "Project"). At its meeting on February 10, 2010, the Coastal Commission will consider a Revocation Request submitted by Coastal Environmental Rights Foundation ("CERF"), Surfrider Foundation and San Diego Coastkeeper (collectively, the "Opponents"). On behalf of Poseidon, we respectfully request that Chairperson Neely consult with the Commission's Chief Counsel and Attorney General's Office prior to the commencement of the hearing to ensure that the Commission does not repeat the violation that occurred at the Commission's December 2009 hearing on the Opponents' previous revocation request by allowing CERF to appear before the Commission as a party to that revocation request. We also request that Ms. Schmeltzer and Ms. Patterson advise the Commission on this issue prior to the hearing. As discussed more fully below, CERF is not a proper party to the Revocation Request and therefore does not have standing to testify on behalf of the Opponents with a greater time allotment than members of the general public.

To protect the permittee's procedural rights during permit revocation proceedings and because of the importance of assuring that there are no violations of the Commission's regulations,

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**Agenda Item
W 6A**

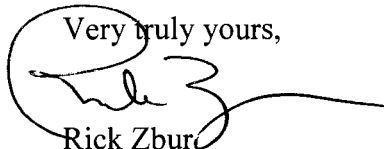
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it is critically important that the Coastal Commission strictly enforce the Commission's regulations with respect to which parties may initiate a revocation request and present such request during a hearing before the Commission. Accordingly, the question of CERF's standing must be addressed before commencement of the hearing because the Commission's regulations provide the Opponents with an opportunity to present the Revocation Request to the Commission before Poseidon may raise this issue in its rebuttal. In its written response to Opponents' previous revocation request, which the Commission heard at its December 2009 meeting, Poseidon also objected to CERF's standing and requested that the Commission dismiss CERF as a party. However, the Commission did not address this issue prior to the hearing. As a result, CERF presented to the Commission as a party to that revocation request, providing the Opponents an unfair advantage at the expense of Poseidon's procedural due process rights.¹

As we stated in prior submissions, we believe that CERF is not a proper party to the Revocation Request. Section 13106 of the Coastal Commission's Regulations only allows revocation requests to be brought by "[a]ny person who did not have an opportunity to fully participate in the original permit proceeding. . . ." (Cal. Code Regs., tit. 14, § 13106.) As shown on the California Secretary of State's website (a printout of which is attached to this letter as **Exhibit A**), CERF was not registered as a business in California until October 17, 2008 – well after the Commission's November 15, 2007 hearing on the Project's CDP and its August 6, 2008 hearings on the Project's mitigation plans. CERF is not a proper party to the Revocation Request because it did not exist at the time of those hearings, and thus could not have even had an "opportunity to fully participate" in those hearings. The Revocation Request must therefore be dismissed as to CERF, and CERF must not be permitted to testify at the hearing on behalf of the Opponents or otherwise provided more time to testify before the Commission than any other member of the general public.

Should you have any questions or if we can provide any additional information, please do not hesitate to contact me. Thank you for your attention and consideration of these issues.

Very truly yours,



Rick Zbur
of LATHAM & WATKINS LLP

Attachment

cc: California Coastal Commissioners
Tom Luster
Peter MacLaggan

¹

Poseidon has requested that Commission staff dismiss CERF as a party in its submissions to the Commission regarding the Opponents' first Revocation Request (R-E-06-013), which the Commission heard and denied on December 10, 2009, as well as its submissions to the Commission regarding the pending Revocation Request. In both instances, Commission staff has declined to dismiss CERF. Furthermore, the Commission permitted CERF to appear on behalf of the Opponents at the December 10, 2009 Commission hearing regarding the first Revocation Request, contrary to the requirements of the Coastal Commission's regulations.

These materials have been provided to Coastal Commission Staff

EXHIBIT A

**Business Entities (BE)**

Online Services

- **Business Search**
- **Disclosure Search**
- **E-File Statements**
- **Mail Processing Times**

Main Page**Service Options****Name Availability****Forms, Samples & Fees****Annual/Biennial Statements****Filing Tips****Information Requests**

(certificates, copies & status reports)

Service of Process**FAQs****Contact Information**

Resources

- **Business Resources**
- **Tax Information**
- **Starting A Business**
- **International Business Relations Program**

Customer Alert

(misleading business solicitations)

Business Entity Detail

Data is updated weekly and is current as of Friday, January 29, 2010. It is not a complete or certified record of the entity.

Entity Name:	COASTAL ENVIRONMENTAL RIGHTS FOUNDATION
Entity Number:	C3117149
Date Filed:	10/17/2008
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	1140 S COAST HWY 101
Entity City, State, Zip:	ENCINITAS CA 92024
Agent for Service of Process:	MARCO A GONZALEZ
Agent Address:	1140 S COAST HWY 101
Agent City, State, Zip:	ENCINITAS CA 92024

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Field Descriptions and Status Definitions**.

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