October 9, 2026

ATTN: Cailynn Smith
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, California 92108-2700

Submitted via email to sandiego@waterboards.ca.gov.

Re: Comment – Tentative Order No. R9-2026-0007

Dear Cailynn Smith and Members of the Board:

Please accept the following comments on behalf of Coastal Environmental Rights Foundation (CERF) and San Diego Coastkeeper (Coastkeeper) regarding Tentative Order No. R9-2026-0007 (Tentative Order).

Coastkeeper is the San Diego region's leading clean water advocacy organization, member supported since 1995. Our mission is to protect and restore coastal and inland waters in San Diego County, using advocacy, community science, and education.[1] Coastkeeper also actively seeks agency implementation of federal, state, and local laws, regulations, and permits; regularly engages in administrative review and public comment procedures of agency actions; and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

CERF is a nonprofit environmental organization dedicated to protecting and restoring the natural resources, wildlife, and coastal environments of California.[2] Through advocacy, public education, community engagement, and legal action, CERF works to ensure compliance with environmental laws and to protect clean water, healthy ecosystems, and public access to the coast for current and future generations.

CERF and Coastkeeper are interested parties as the Claude "Bud" Lewis Carlsbad Desalination Plant (Facility) is located in San Diego County where our members live, work, and recreate. CERF and Coastkeeper also have a long and documented history opposing the construction and operation of the Facility, warning that it would be the most expensive, energy intensive, and environmentally destructive water supply source in the region. Unfortunately, all of these concerns have come to fruition.

[1] More detailed information on Coastkeeper can be found at www.sdcoastkeeper.org.
[2] More detailed information on CERF can be found at www.cerf.org.

I. Channelside's history of misleading decision-makers, missing deadlines, failing to comply with permit requirements, overselling their promises, and under-delivering on their obligations.

As an initial matter, desalination remains the most energy-intensive water supply. The Intergovernmental Panel on Climate Change report calls desalination "maladaptive" as it would exacerbate the climate crisis.[3] The Carlsbad facility relies on a renewable energy credits (RECs) scheme to claim the facility is entirely carbon neutral, when in fact *every REC purchased* was an out-of-state project and consisting almost entirely of polluting landfill gas,[4] which hinder meaningful GHG reductions, and exacerbate pollution in already overburdened communities.[5]

In large part because of this extreme energy intensity, the cost of desalinated water from the Facility has skyrocketed. While Poseidon projected the cost of water from the Facility would be a maximum of $2,257.8.[6] Water Authority itself recently projected the cost of desalinated water in San Diego County to reach **$4,674** per acre foot in 2027.[7] According to a December 2021 report prepared by economist Michael Hanemann, Poseidon's Carlsbad plant is a significant factor in the higher water rates in San Diego County[8] where water rates are 26% to 37% higher than that of the Metropolitan Water District of Southern California.[9]

The Facility kills an enormous amount of marine life via impingement and entrainment, and the discharge of chemical-laden ultra-saline brine through high-velocity diffusers. Poseidon also has a well-document track-record of missed deadlines pertaining to requirements to mitigate for this damage. Poseidon failed to begin construction on the habitat restoration project by its MLMP deadline, and only began work on its restoration plan six months after receiving a violation letter from the California Coastal Commission, in 2022.[10] As a result, the Facility has operated since 2015 without mitigation, accumulating a massive deficit of lost nearshore and estuarine marine life productivity, which continues to grow until construction is completed and the site eventually starts providing the expected amount of productivity (if it is able to do so at all).

---

[3] https://www.ipcc.ch/sr15/chapter/chapter-4/.
[4] https://www.environmentalpollutioncenters.org/news/landfill-gas-pollution/.
[5] https://insideclimatenews.org/news/25022022/why-do-environmental-justice-advocates-oppose-carbon-markets-look-at-california-they-say/.
[6] 8. $734 Million Carlsbad Desalination Project Financing Closes. San Diego County Water Authority, Der 24, 2012. https://carlsbaddesal.sdcwa.org/734-million-carlsbad-desalination-project-financing-closes/
[7] SDCWA FY 2027 Budget, at 37, https://www.sdcwa.org/wp-content/uploads/2020/11/SDCWA-Adopted-Budget-26.27-Final_secure.pdf. (Using "Full Service Untreated Water," calculate the supply cost of untreated water by dividing the Supply Costs line by the total Acre-feet, which would equate to $4,674).
[8] San Diego Union Tribune, San Diego water prices driven up by falling demand and costly projects, report says. February 12, 2022. https://www.latimes.com/california/story/2022-02-12/water-cost-san-diego.
[9] Professor Michael Hanemann. Fallbrook PUD and Rainbow MWD Wholesaler Reorganization. December 31, 2021. https://www.sdlafco.org/home/showpublisheddocument/6068/637777538812570000.
[10] California Coastal Commission. Notice of Violation, Violation File No.: V-9-22-009 (Poseidon Resources Channelside L.P.) February 11, 2022.

While the Tentative Order requires an updated Marine Life Mitigation Plan and continued quarterly reporting, it does not set a firm deadline or backstop for achieving full mitigation. That is particularly concerning given the project's history of delays and the fact that mitigation remains incomplete more than a decade after the Facility began operations. The longer implementation is delayed, the greater the risk that full mitigation is never achieved. Even after restoration activities are complete, future monitoring may show that additional restoration or corrective actions are needed to meet performance standards. The Board should therefore include a firm implementation schedule and enforceable milestones to ensure mitigation is completed within a reasonable timeframe.

II. Insufficient justification for reasonable potential analyses that Water Quality Objectives will be met, and antidegradation concerns

Coastkeeper acknowledges that the Receiving Water Limitations ("RWLs") in the Permit were removed to comply with the 2025 U.S. Supreme Court decision in *City and County of San Francisco, California v. Environmental Protection Agency*, 145 S.Ct. 704 (2025), prohibiting "end-result requirements." Coastkeeper also acknowledges that the San Diego Regional Water Quality Control Board (Regional Board) evaluated the reasonable potential of the Facility's discharge to cause or contribute to an exceedance of any narrative water quality objective in accordance with 40 CFR § 122.44(d). However, CERF and Coastkeeper are concerned with the Tentative Order's lack of analysis, reasoning, and data to justify the conclusions of the reasonable potential analyses (RPAs).

Further, as the Tentative Order itself states, "Federal regulations at 40 CFR section 131.12 require that the State water quality standards include an antidegradation policy consistent with the federal antidegradation policy."[11] The Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. *Id*.

For example, the Tentative Order completely lacks any effluent limitations, discharge prohibitions, or other protections to ensure bacterial characteristics, previously set forth in Section V.A.2 of Order No. R9-2019-0003, are not degraded. The Tentative Order explains that the 2019 Order "did not require monitoring the effluent or receiving water for bacterial indicators,"[12] and the Tentative Order now "requires monthly monitoring for enterococcus and total coliform in the effluent and receiving water to provide data which will be used for future reasonable potential evaluations."[13] However, the prior permit's failure to require monitoring to ensure compliance with Receiving Water Limitation V.A.2 does not justify impermissible terms in the instant Tentative Order.

The Tentative Order eliminates several other categories of Receiving Water Limitations that were included in the 2019 Order, including multiple related to physical characteristics,

[11] Tentative Order at F-20.
[12] *Id*. at F-31.
[13] *Id*. at F-32.

chemical characteristics, and biological characteristics. CERF and Coastkeeper find most of the RPAs conducted to justify the removal of Receiving Water Limitations from the Tentative Order to be inadequate because they lack any supporting data, so that the public is entirely unable to verify or validate the conclusions the RPAs.

Furthermore, the *new* Discharge Prohibitions in the Tentative Order include are extremely cursory, and include only the following:

> 3.3. The discharge of waste containing trash or material that is floatable or will become floatable upon discharge is prohibited.
>
> 3.4. The discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into the ocean is prohibited.
>
> 3.5. The discharge of sludge or sludge digester supernatant is prohibited.[14]

These three additional discharge prohibitions, without further data or justification, are plainly not as protective as the numerous Receiving Water Limitations set forth in Section V of the 2019 Order. At a minimum, CERF and Coastkeeper request the Tentative Order be revised to include an attachment, or at a minimum citations and/or URL links, which include all data relied upon to conduct any and all reasonable potential evaluations which concluded that the removal of a Receiving Water Limitation provision in the Order No. R9-2019-0003 would not result in an exceedance of water quality objectives.

Coastkeeper and CERF appreciate the opportunity to provide comments regarding the Tentative Order. Please contact the undersigned if you have any questions or need more information regarding our comments.

Sincerely,

Livia Borak Beaudin
Attorney
Coastal Environmental Rights Foundation

Patrick McDonough
Attorney
San Diego Coastkeeper

[14] *Id*. Section 3.