

April 6, 2012

VIA EMAIL AND REGULAR MAIL

Ms. Joanna Jensen (jjensen@waterboards.ca.gov)
State Water Resources Control Board
1001 I Street, 15th Floor
P.O. Box 100
Sacramento, CA 95814

Subject: Comment Letter – Desalination Facilities and Brine Disposal

Dear Ms. Jensen:

On behalf of CalDesal, we appreciate the opportunity to provide comments on the State Water Resource Control Board's (Board) proposed Ocean Plan Amendments (OPA). CalDesal understands that the Board intends to adopt amendments to the California Ocean Plan as well as the Enclosed Bays and Estuaries Plan. CalDesal represents over 70 members including municipal water agencies covering the majority of California's population centers. These municipal agencies have a statutory mandate to provide reliable, safe drinking water to the people and businesses of California. The success of California Department of Water Resources' California Water Plan rests largely upon the ability of local municipalities to meet their own water demands. For many of California's water agencies, desalination has been identified as a key element to a balanced water supply portfolio, due to its ability to provide a reliable, locally controlled and high quality supply of potable water. With California's current rainfall season well below normal and continued long-term supply reliability issues with the Delta, Colorado River, locally constrained or contaminated groundwater, and locally limited or regulatory restricted freshwater supplies, it is more essential than ever for the State to ensure that desalination is available to local municipalities.

CalDesal would like to offer the following comments on the Informational Document relative to proposed amendments to the California Ocean Plan and Enclosed Bays and Estuaries Plan:

- 1) Although CalDesal and its member agencies provided oral comments at the March 30 Scoping Meeting, the following comments are intended to be taken in addition to comments previously provided, and do not supersede prior comments.
- 2) Due to the generalized nature of the Informational Document, our ability to comment on the specifics of the proposed policies is limited given that the policies and amendments have yet to be identified. In addition, given that we do not have the benefit of reviewing all three of the underlying technical reports being conducted by the Board (the brine panel, impingement/entrainment panel, and toxicity panel), upon which the policies and amendments will be based, this further limits our ability to provide meaningful input.

Therefore, please note that CalDesal reserves the right to provide additional or modified comments as additional documents are made available by the Board.

- 3) It is our understanding that the Board intends to make available the draft technical reports for brine toxicity and brine discharge. CalDesal would appreciate the opportunity to review and comment on all related technical reports prior to Board staff incorporating them into the Substitute Environmental Document (SED).
- 4) Based on our reading of the scoping document, we are concerned that staff's proposed amendments will not take into account the desalination studies and projects that have been completed, both in CA and worldwide. This information was previously provided to the Board at the Board's request.
 - For example, exhaustive studies done by Poseidon Resources for the Carlsbad Desalination Project EIR are not referenced in the document, nor are recent studies conducted by West Basin MWD, the Metropolitan Water District of Orange County, and the City of Santa Cruz.
 - There are also numerous case studies world-wide, such as Australia, where desalination discharges have been in place for several years that should be included in the body of evidence used to substantiate a proposed policy.
 - We believe that any proposed regulation should consider all available data, and not just select data sets.
- 5) While we appreciate the need for statewide regulatory consistency noted in the scoping document, the amendments should consider the robust adequacy of existing regulations including the Ocean Plan and Porter Cologne Act. Therefore, the SED should address the "No Project Alternative", including a detailed evaluation and comparison against any proposed policies or amendments.
- 6) The amendments should not erode the intended project and site-specific considerations of existing regulations as they relate to intake and discharge.
 - Each project must be evaluated on a site-specific basis, taking into account location, size, and environmental characteristics.
 - Proposed policies and amendments should recognize the importance of providing flexibility, in balancing competing objectives, and in physical or site-specific limitations of certain technologies (such as subsurface intakes), such that desalination is not precluded in areas where subsurface intakes are not feasible.
 - The SED and associated policies or amendments should take into account the fact that, unlike other industries, ocean desalination is dependent upon proximity to the ocean and does not have alternative source water options.

- The SED and associated policies or amendments should include, wherever possible, a narrative standard rather than a numeric standard, or otherwise provide for the greatest flexibility and recognition of site-specific conditions as possible.
- 7) The SED environmental analysis must take into account the impact adopting the proposed amendments would have on permitted desalination facilities as well as those in various stages of the development process.
- 8) State law provides that activities and factors which may affect water quality be regulated to “the highest water quality which is reasonable” considering total values, including beneficial, economic and social.
- The SED environmental document needs to analyze the environmental effects of water quality protection potentially precluding the equally important need for the beneficial use of sources of brackish water and seawater as local high-quality, reliable municipal supplies.
- 9) The SED should base its impact analysis and associated proposed policies and amendments upon sound science and the abundance of data available.
- 10) The SED should include a fair and balanced discussion regarding the impacts and uncertainties associated with all intake alternatives, including low velocity (to avoid adult fish entrainment), large screen aperture (to avoid fouling) intakes (aka “Australian Intakes”), fine screen intakes, deep water intakes (below the photic zone), and various types of subsurface intakes.
- 11) The SED and associated policies should consider marine life impact assessments based upon an ecosystem-wide approach (“whole life cycle”), meaning any conclusions regarding impacts of intake technologies should be in light of potential real effects upon the associated fisheries, listed species and/or protected habitat. Alternatives, mitigation or policies proposed in light of these impacts should consider the protection of mature larvae, juveniles and adult fish as the greatest value.
- The SED should explain the underlying science behind any/all policies or amendments, and how this relates to marine impacts.
 - The SED should discuss the economic life-cycle cost of any mitigation fee.
- 12) The SED and associated policies and amendments should be based on substantive collaboration with other State and local agencies to ensure the policies are representative of the State’s relevant laws, regulations and policies related to desalination and ensuring adequate water supply for the State. The SED in particular should discuss, in detail, whether or not the proposed policies and amendments are consistent with other applicable State laws, regulations and policies, such as pertinent sections of the California Water Plan, California Water Code and Public Resources Code.



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We look forward to continuing to work with State Water Board staff on desalination policies that will provide California with a reliable new water supply in an environmentally responsible fashion.

Sincerely,

(Original Signed by)

Ronald Davis
Executive Director
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