

F I L E D  
Clerk of the Superior Court

MAY -- 7 2009

By: C. WALKER, Deputy

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Superior Court of the State of California  
County of San Diego

SURFRIDER FOUNDATION, a California non-profit public benefit corporation; PLANNING AND CONSERVATION LEAGUE, a California non-profit public benefit corporation, Petitioners,

vs.

CALIFORNIA COASTAL COMMISSION, a California public agency, Respondent.

POSEIDON RESOURCES (CHANNELSIDE) LLC, a Delaware limited liability company; POSEIDON RESOURCES CORPORATION, a Delaware corporation; POSEIDON WATER LLC, a Delaware limited liability company, et al., Real Parties In Interest.

Case No. 37-2008-00075727

STATEMENT OF DECISION

Judge: Judith F. Hayes  
Dept. C-68

The Court received into evidence the Administrative Record for the Carlsbad Desalination Project ("Project"), which was certified by Respondent California Coastal Commission ("Commission") and lodged with the Court. Poseidon submitted a Request for Statement of Decision prior to the start of the trial of Petitioners Surfrider Foundation and Planning and Conservation League's (collectively, "Petitioners") Petition for Writ of Mandamus. After reviewing the evidence in the Administrative Record and the briefs and supporting papers filed by the parties, and hearing the

1 arguments of counsel at oral argument on April 10, 2009, the Court rules as follows on the identified  
2 principal controverted issues.

3 **Enforcement of Water Code Section 13142.5(b)**

4  
5 The Commission proceeded in the manner required by law when it evaluated the Project's  
6 potential intake-related impacts for consistency with Coastal Act sections 30230 and 30231, and the  
7 Commission was not required to separately review the Project for compliance with Water Code section  
8 13142.5(b). Pursuant to Coastal Act section 30412(b), the Regional Water Quality Control Board, San  
9 Diego Region ("Regional Board") has primary jurisdiction to enforce water quality policies, such as  
10 Water Code section 13142.5(b), and the Commission was prohibited from taking "any action in  
11 conflict" with water quality determinations made by the Regional Board. Cal. Pub. Res. Code  
12 § 30412(b). In adopting the Project's NPDES Permit in 2006, the Regional Board determined that it  
13 would conduct any additional review needed under Water Code section 13142.5(b), and that such  
14 review would ensure the Project's conformity with all requirements of the Water Code. AR 6036,  
15 6067. Therefore, the Court finds that the Commission's express reliance on the Regional Board to  
16 ensure compliance with Water Code section 13142.5(b) was appropriate. AR 14043, 14071. Further,  
17 by conditioning Project construction on final Regional Board approval, through Special Condition 4,  
18 the Commission satisfied any obligations it had under Coastal Act section 30412(a). AR 14072,  
19 14049.

20 Petitioners state that the Commission is not permitted to enforce Water Code section  
21 13142.5(b) unless "the Regional Board has not previously acted on the project." Reply Brief, 4:21-22.  
22 There is no dispute that the Regional Board has already acted on the Project, and that the Regional  
23 Board's review is continuing. When it adopted the Project's NPDES Permit in 2006, the Regional  
24 Board required Poseidon to prepare a Flow, Entrainment & Impingement Minimization Plan  
25 ("Minimization Plan") to ensure compliance with Water Code section 13142.5(b) in situations when  
26 the Encina Power Station ("EPS") discharge is not providing all of the Project's intake water  
27 requirements, including when the Project is operating without concurrent EPS operation. AR 5974,  
28 6036, 6066-67. The Commission was prohibited from taking any action in conflict with the Regional  
Board's section 13142.5(b) review. Cal. Pub. Res. Code § 30412(b).

1 Coastal Act sections 30400 and 30401 further provide that it is “the intent of the Legislature to  
2 minimize duplication and conflicts among existing state agencies” and that “the commission shall not  
3 set standards or adopt regulations that duplicate regulatory controls established by any existing state  
4 agency.” Cal. Pub. Res. Code §§ 30400, 30401. These sections make clear that the Legislature did not  
5 intend for the Regional Board and the Commission to make separate and potentially conflicting  
6 determinations regarding water quality compliance for the same project. The legislative history also  
7 confirms that the Water Boards have primary jurisdiction to enforce water quality measures, and that  
8 inter-agency duplication and conflict are to be avoided.

### 9 **Applicability of Federal Clean Water Act Section 316(b)**

10 By its express terms, CWA section 316(b) applies only to “cooling water intake structures.”  
11 AR 9853-54. In approving the Project’s NPDES Permit, the Regional Board found that CWA section  
12 316(b) regulations are inapplicable to the Project, and the State Water Board’s Scoping Document for  
13 Power Plant Cooling states that desalination plants are outside the scope of CWA section 316(b)  
14 issues. AR 6066, 6986–87, 9832, 9854–55. The Court holds that CWA section 316(b) does not apply  
15 to desalination plants such as the Project, and that it did not affect the Commission’s review of  
16 Poseidon’s Coastal Development Permit (“CDP”) application.

### 17 **Alternative Sites Under Water Code Section 13142.5(b)**

18 Because the Commission was not required to enforce section 13142.5(b), as stated above, the  
19 Commission was not required to evaluate alternative sites under Water Code section 13142.5(b) The  
20 Regional Board previously determined the Project site was acceptable when it approved the Project’s  
21 NPDES Permit in 2006. Cal. Pub. Res. Code § 30412(b). As a condition of the NPDES Permit, the  
22 Regional Board imposed the Minimization Plan to assess the feasibility of “site-specific” plans,  
23 procedures, practices and mitigation measures to minimize intake and marine life mortality. In  
24 addition, the imposition of the Minimization Plan would address any “additional review” required by  
25 section 13142.5(b) when the Project intake requirements exceed the amount of water being discharged  
26 by the EPS. AR 5974, 6036, 6066-67, 9871. By requiring the Minimization Plan to minimize intake  
27 and mortality when the Project operates at the EPS site, including when it operates at the site without  
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1 concurrent EPS operation, the Regional Board determined that the Project site was appropriate. The  
2 Commission appropriately did not interfere with the Regional Board's decision in this regard. Cal.  
3 Pub. Res. Code § 30412(b).

#### 4 **Submission of Entrainment Data Prior to Commission's Approval of the CDP**

5 The Commission did not improperly defer analysis of entrainment impacts, and its finding that  
6 Poseidon's implementation of the Marine Life Mitigation Plan ("MLMP") would fully mitigate any  
7 entrainment impacts was supported by substantial evidence.

8 Poseidon presented the Commission with extensive entrainment information prior to CDP  
9 approval. This information included an expert report summarizing the results of a 12-month  
10 entrainment study and assessing potential entrainment impacts, which was submitted along with  
11 Poseidon's revised Minimization Plan. AR 7388-95, 7056, 7216-17, 7236-38, 14081, 10919. The  
12 data collection for the expert study (undertaken from June 2004 - July 2005) followed Regional  
13 Board-approved protocols, which also were submitted to the Commission. AR 7076, 9826, 7455-58,  
14 7472-74, 9849-60, 7735, 14081. In addition, the Commission received information in the Project's  
15 EIR, including the Intakes Effect Assessment, supporting Carlsbad's determination that the Project  
16 will not cause any significant entrainment impacts under CEQA. AR 6991, 345-46, 351-60, 16877-  
17 937, *see also* 5834-38, 14061, 14081.

18 The Commission's findings and Special Condition 8's plain language confirm that the  
19 Commission reviewed the expert entrainment assessment and other data before concluding that the  
20 MLMP would mitigate any entrainment impacts and satisfy Coastal Act sections 30230 and 30231.  
21 AR 14050, 14081. Substantial evidence therefore supports the Commission's finding that the Project,  
22 including the MLMP, will protect, maintain, and restore biological and marine resources under the  
23 Coastal Act. "[T]he details of exactly how mitigation will be achieved under the identified measures  
24 can be deferred pending completion of a future study." *Cal. Native Plant Soc. v. City of Rancho*  
25 *Cordova*, 2009 Cal.App.LEXIS 430 at \*34-35. The fact that the entire extent and precise details of  
26 potential mitigation measures are not known does not undermine a conclusion that impacts can  
27 successfully be mitigated. *See Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428, 1447 (1999).  
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1           Because the MLMP needed to be approved by the Commission prior to issuance of the CDP,  
2 the Commission retained discretion to impose additional mitigation not included in Poseidon's MLMP  
3 submission. AR 14099.

#### 4           **"Deferred" Mitigation**

5           The Coastal Commission did not improperly "defer" mitigation through imposition of Special  
6 Condition 8 (SC-8), which required the Commission to approve the MLMP before the CDP could be  
7 issued. First, the CEQA deferred mitigation cases relied upon by Petitioners are inapplicable because  
8 Carlsbad, acting as lead agency under CEQA, already determined that the Project will not have any  
9 significant impacts on marine life. AR 345-46, 351-60. Because the MLMP is not a CEQA mitigation  
10 measure, there is no reason to evaluate SC-8 under CEQA's deferred mitigation principles.

11           Second, under the Coastal Act, the Commission has authority to impose "prior to issuance"  
12 mitigation conditions, like SC-8, that require subsequent Commission review and approval after a  
13 CDP is adopted but before it is issued. Cal. Code Regs. tit. 14, §§ 13057(c)(4), (5), 13158(e). The  
14 record demonstrates that it is common Commission practice to require such prior to issuance  
15 mitigation conditions. AR 11092-93, 13184, 13191-204. SC-8 required Commission approval of the  
16 MLMP before the CDP could be issued. Petitioners dispute that "prior to issuance" conditions are  
17 authorized by Coastal Act regulations and consistent with regular Coastal Commission practice.

18           Third, *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988) is inapposite because  
19 SC-8 requires subsequent Commission (rather than Staff) approval of the MLMP before the CDP may  
20 issue, so there was no improper delegation of the Commission's responsibilities to Staff, and because  
21 the Commission's review of the MLMP provided for further public participation and scrutiny. *C.f.*  
22 *Sundstrom*, 202 Cal. App. 3d at 308. The Commission's determination that any entrainment impacts  
23 would be fully mitigated by the MLMP – made after the Commission's review of an expert report  
24 summarizing Poseidon's entrainment study – is not an impermissible postponement of environmental  
25 review because the underlying entrainment study was completed in 2004-05, long before the  
26 Commission's approval of the CDP in 2007. AR 7390, 14050.

27           Fourth, even if CEQA's deferred mitigation standards did apply, the Court finds that SC-8  
28 satisfies those standards because it evidences the Commission's commitment to mitigating impacts,

1 and specifies the criteria that Poseidon was required to meet before the CDP could issue. *See Cal.*  
2 *Native Plant Soc. v. City of Rancho Cordova*, 2009 Cal.App.LEXIS 430 at \*34 (denying deferral claim  
3 where city determined the project would have an impact on habitat loss and imposed mitigation  
4 requiring preservation or creation of replacement habitat, off site, in a specific ratio to habitat lost as a  
5 result of the Project); *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th 777,  
6 794-96 (2005); *Defend the Bay*, 119 Cal.App.4th at 1275-76 (2004). It is undisputed that the  
7 Commission committed to fully mitigate any marine life impacts through imposition of SC-8, and that  
8 SC-8 prohibited issuance of the CDP unless the Commission found that the MLMP would ensure  
9 conformity with the Coastal Act. It is further undisputed; that SC-8 required the MLMP to mitigate to  
10 the maximum extent feasible any entrainment impacts through creation, enhancement or restoration of  
11 aquatic and wetland habitat and ensure long-term performance, monitoring and protection of the  
12 approved mitigation sites in accordance with Coastal Act sections 30230 and 30231. AR 14043,  
13 14099, 14103.

14 As Respondent points out, Petitioners' deferral claim also lacks a remedy. The MLMP was  
15 approved on August 6, 2008, but was not challenged by Petitioners or anyone else, so it is now final  
16 and its adequacy is no longer subject to judicial review.

17 **The Commission's "Override" Finding Was Appropriate Under Coastal Act section 30260**

18 The Commission properly concluded that the Project qualified for an "override" under Coastal  
19 Act section 30260 because substantial evidence indicates that: (1) alternative locations were infeasible  
20 and/or more environmentally damaging; (2) not approving the Project would adversely affect public  
21 welfare; and (3) adverse environmental affects are mitigated to the maximum extent feasible. AR  
22 14133-39. The Commission was required to make an override finding under section 30260 because  
23 the Commission determined that the Project's withdrawal of water from Agua Hedionda Lagoon,  
24 through the existing EPS intake, would constitute an "alteration" of the Lagoon that would not  
25 conform to Coastal Act section 30233(c). AR 14107. Non-conformity with section 30233(c) was the  
26 only reason the Commission was required to analyze "alternative locations" under section 30260, and  
27 the Commission's alternatives analysis properly considered alternative locations for the intake that  
28 would not withdraw water from the Lagoon. Because the Commission was not required to enforce

1 Water Code section 13142.5(b) for the Project, section 13142.5(b) did not apply to the Commission's  
2 alternative locations analysis.

3 By asserting without qualification that the Commission did not consider "any" alternative sites  
4 or locations for the Project, despite the fact that Poseidon clearly submitted alternative sites analyses to  
5 the Commission, the Court holds that Petitioners failed their burden under the substantial evidence test  
6 to lay out all favorable evidence supporting the Commission's alternative locations finding. Opening  
7 Brief, 13:3-4, 18:27, 19:3-4; AR 5874-77, 6987-89, 7067.

8 The record reflects that Poseidon submitted analyses to the Commission, at Staff's request,  
9 establishing that alternative sites were infeasible and/or more environmentally damaging than the  
10 Project. AR 5874-77, 6987-89, 7067. The Commission's findings regarding alternative locations  
11 incorporated these analyses by reference, which are therefore part of the Commission's findings and  
12 support its determination that alternative locations were infeasible or more environmentally damaging  
13 than the Project. AR 14133-34, 14088 n.69, 14089 n.71, 5875-76; *See McMillan v. Am. Gen. Fin.*  
14 *Corp.*, 60 Cal.App.3d 175, 183-84 (1976); *Towards Responsibility in Planning v. City Council*, 200  
15 Cal.App.3d 671, 683-84 (1988); *Save San Francisco Bay Ass'n v. San Francisco Bay Conserv. & Dev.*  
16 *Com.*, 10 Cal.App.4th 908, 927 (1992).

17 Petitioners concede in their Reply Brief that the record did include an assessment of alternative  
18 sites. However, Petitioners assert the Commission did not consider a "true" alternative site that did not  
19 use the existing EPS intake infrastructure. Reply Brief, 6 n.6. However, the record includes discussion  
20 of an alternative site evaluated in Poseidon's submission to the Commission and the EIR – the Encina  
21 Water Pollution Control Facility ("EWPCF") which expressly contemplated use of "a new intake  
22 structure [that] would be constructed offshore of the EWPCF." AR 1724, 544. Further, the  
23 Commission's alternatives analysis considered a wide variety of different locations for the intake that  
24 would not utilize the existing EPS intake infrastructure, including horizontal wells, vertical beach  
25 wells, slant wells, infiltration galleries and an offshore intake. AR 14044, 14068, 14088-91, 14103,  
26 14133-34, 5864-78, 9833-37, 9852-53, 9864-72, 8045-87, 8203-30, 6987-89, 14184-85, 545-46, 1421,  
27 1727-29, 13011-12, 10920-22.  
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1           The Administrative Record demonstrates that the Commission sufficiently analyzed a reasonable  
2 range of alternative Project sites and alternative locations for the intake that would not utilize the existing  
3 EPS intake infrastructure, in satisfaction of Coastal Act section 30260. Substantial evidence supports the  
4 Commission's finding that these alternative sites and locations were infeasible and/or more  
5 environmentally damaging than the Project.

6           The Commission analyzed three potential sites, which were detailed in Poseidon's written  
7 submissions to the Commission: (1) sites within the boundaries of the EPS, (2) the EWPCF site, and  
8 (3) the Maerkle Reservoir site. AR 5874-77, 6987-89, 7067. The first two sites were also included in  
9 the EIR, while the third was added during the CDP review process in response to Commission Staff's  
10 request for analysis of additional sites within the Project's service area. AR 5874-77. Substantial  
11 evidence in the record demonstrates that these are the only potentially feasible locations for the Project  
12 in its service area, and that the EPS is the only one of these sites that could feasibly meet Project  
13 objectives and minimize impacts. AR 5874-77. Petitioners do not contend otherwise.

14           Petitioners assert that the Commission should have considered un-specified alternative sites  
15 beyond Carlsbad. But substantial evidence supports the Commission's decision to limit its review to  
16 all potentially feasible sites within the Project's service area. The Commission need not consider sites  
17 that cannot achieve the basic Project goal. *In re Bay-Delta Programmatic Env'tl. Impact Report*  
18 *Coordinated Proceedings*, 43 Cal.4th 1143, 165-66 (2008). Alternatives that cannot achieve the  
19 fundamental project purpose are "infeasible," and feasibility considerations should guide an agency's  
20 consideration of alternatives. *Id.*; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553,  
21 561, 565 (1990); *see also Save San Francisco Bay Ass'n v. San Francisco Bay Conserv. & Dev. Com.*,  
22 10 Cal.App.4th 908, 929 (1992) (alternative sites analysis appropriately limited to waterfront sites in  
23 San Francisco Bay Area because it was unlikely that a broader search would have identified a site that  
24 could feasibly accomplish project's purpose).

25           The Project's basic purpose is to provide a local, reliable and drought-proof water supply to the  
26 City of Carlsbad and the San Diego area, in order to reduce local dependence on imported water, and  
27 to provide desalinated water at or below the cost of imported water supplies. AR 14054, 643, 1404-  
28 1405, 14057, 5857-58. The Project will supply 100% of Carlsbad's potable water requirements,



1 providing Carlsbad with approximately 21,000 AFY of desalinated water (out of a total output of  
2 56,000 AFY), and the Project's location is critical for servicing Carlsbad and surrounding water  
3 districts in North San Diego. AR 550, 5874. The Project's expected output of 50 million gallons per  
4 day ("MGD") is a central component of regional water supply planning, as the Project will provide  
5 approximately 10% of the desalinated water needed in California by 2030. AR 14057, 10153.

6 A Carlsbad locale is material to a project that will supply a significant percentage of its output  
7 to Carlsbad and satisfy 100% of Carlsbad's water needs. Substantial evidence supports the  
8 determination that siting the Project within its service area is central to Poseidon's ability to feasibly  
9 fulfill the Project's purpose of providing a local, drought-proof water source at or below the cost of  
10 imported water supplies. The record reflects that benefits of the Project site include its close proximity  
11 to the existing EPS intake and outfall and key delivery points of the distribution system of Carlsbad,  
12 the largest water user. AR 5874 and 5877. The location allows the Project to optimize the cost of  
13 delivery of the produced water and the environmental impacts associated with the construction and  
14 operation of the Project. *Id.* It also avoids the construction of new intake and discharge facilities,  
15 providing significant environmental and cost benefits. AR 5874.

16 Similarly, the quantity of water to be produced by a desalination plant is mandated by the  
17 Project's objectives. Producing sufficient water to satisfy Carlsbad's demand, the demand of other  
18 local agencies, and the Project's planned contribution of desalinated water as a component of regional  
19 water supplies are key objectives that could not be met with a scaled down project. AR 14054, 14057,  
20 5857-58. The administrative record indicates that a reduced output alternative (25 MGD) was  
21 considered but found insufficient to meet objectives with no environmental benefits. AR 5857-58,  
22 1729-32, 546. The Commission also found that replacing the Project with multiple smaller  
23 desalination facilities would result in far greater environmental impacts and costs, would not address  
24 the water needs of Carlsbad and the San Diego area, and would not conform to Coastal Act policies.  
25 AR 14089, 9833-35, 14184.

26 A desalination project separately proposed for Dana Point by the Municipal Water District of  
27 Orange County is not a feasible alternative site for this Project. AR 2294. The record establishes that  
28 the Dana Point project would serve Orange County, rather than Carlsbad/San Diego, and that it will

1 only output 15 MGD of desalinated water. AR 2296. Moreover, the Commission specifically  
2 considered the Dana Point site, but rejected it because its slant well technology is infeasible for the  
3 Project. AR 14088-89, 8046, 5864-67, 9833-35. Petitioners conceded that Dana Point is not an  
4 alternative site for this Project and would at best provide a framework for analyzing sub-surface  
5 intakes in Carlsbad. AR 2500. Petitioners also conceded that slant wells proposed in Dana Point are  
6 not feasible in the Carlsbad area.

7 Petitioners' failure to point to other viable alternative sites that could potentially meet Project  
8 objectives provides further support for finding that the Commission's alternative locations analysis was  
9 sufficient. *See Save San Francisco Bay*, 10 Cal.App.4th at 922, 929-30; *Save Our Residential*  
10 *Environment v. City of W. Hollywood*, 9 Cal.App.4th 1745, 1754 (1992).

11 The Commission's alternatives analysis was not limited to alternative sites. The Commission  
12 also considered alternative locations to draw in the needed seawater for desalination, such that the  
13 existing EPS intake would not be used. AR 14044. The Commission evaluated alternative intakes  
14 including horizontal wells, vertical beach wells, slant wells, infiltration galleries and an offshore  
15 intake. These alternatives were found to be infeasible and more environmentally damaging than the  
16 Project. AR 14044, 14068, 14088-91, 14103, 14133-34, 5864-78, 9833-37, 9852-53, 9864-72, 8045-  
17 87, 8203-30, 6987-89, 14184-85, 545-46, 1421, 1727-29, 13011-12, 10920-22. Petitioners do not  
18 contest these findings.

19 Substantial evidence supports the Commission's finding that alternative locations were infeasible  
20 or more environmentally damaging under Coastal Act section 30260, based on the Commission's review  
21 of alternative sites and intake locations.

22 Petitioners do not present any argument challenging the Commission's finding that denial of  
23 the CDP would adversely affect public welfare, and such an argument is therefore waived. Further,  
24 substantial evidence supports the Commission's finding that denial of the CDP would adversely affect  
25 public welfare by raising water costs and denying the public an important and reliable water resource,  
26 and because the Project is a necessary and integral part of the region's water portfolio. *E.g.*, AR 14138-  
27 39, 14134, 14056-57.  
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1           Petitioners' challenge to this finding is based on their argument that the Commission failed to  
2 consider the feasibility of alternative locations for the Project. As stated above, the feasibility of  
3 alternative sites was adequate. Further, the record includes substantial evidence that impacts will be  
4 mitigated to the maximum extent feasible through imposition of Special Conditions 4, 8, 9, 10, 11, 12,  
5 13, 14, 15, 16, and 17. AR 14134, 14045.

6           **Requests For Judicial Notice**

7           RPI's Request for Judicial Notice of Legislative History of the Coastal Act and Water Code  
8 section 13142.5, which was not opposed, is granted in its entirety. Legislative history is a proper  
9 subject of judicial notice under Evidence Code section 452(c). *Kaufman & Broad Communities, Inc.*  
10 *v. Performance Plastering, Inc.*, 133 Cal.App.4th 26, 31-37 (2005). The legislative history of the  
11 Coastal Act and Water Code section 13142.5 is relevant because Petitioners claim that the  
12 Commission failed to enforce Water Code section 13142.5, while Respondent and RPIs contend that  
13 the Commission was not required to do so pursuant to Coastal Act section 30412(b).

14           RPI's Request for Judicial Notice of the Transcript of the August 6, 2008 Coastal Commission  
15 Hearing regarding approval of the MLMP is granted in its entirety. The Certified Transcript is relevant  
16 to the Court's evaluation of Petitioners' "deferred" mitigation claim because it establishes that the  
17 Commission approved the MLMP on August 6, 2008, prior to issuance of the CDP, in satisfaction of  
18 Special Condition 8. The Certified Transcript is a proper subject of judicial notice pursuant to  
19 Evidence Code section 452(h), because it contains matters that are not reasonably subject to dispute  
20 and are capable of immediate and accurate determination by resort to sources of reasonably  
21 indisputable accuracy. *See Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383, 405-06  
22 (1993); *Almond v. County of Sacramento*, 276 Cal.App.2d 32 (1969).

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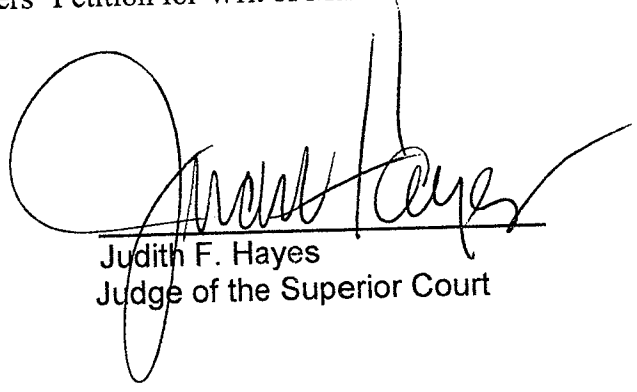
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1 Respondent's Request for Judicial Notice of the Commission's Revised Condition Compliance  
2 Findings regarding approval of the MLMP is granted in its entirety. The findings are an appropriate  
3 subject for judicial notice pursuant to Evidence Code section 452(c), which authorizes judicial notice  
4 of the "[o]fficial acts" of state agencies. The findings are relevant to the Court's evaluation of  
5 Petitioners' "deferred" mitigation claim because they establish that the Commission approved the  
6 MLMP on August 6, 2008, prior to issuance of the CDP, in satisfaction of Special Condition 8.

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8 For the foregoing reasons, Petitioners' Petition for Writ of Mandamus is denied.

9 **IT IS SO ORDERED.**

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11 Date: MAY 07 2009

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Judith F. Hayes  
Judge of the Superior Court