

Chronology of Legal Challenges to Poseidon’s Huntington Beach and Carlsbad Seawater Desalination Projects

Huntington Beach Project

Between 2006 and 2018, six legal challenges – two lawsuits and four administrative permit appeals – were filed against the Huntington Beach desalination project by opponents of seawater desalination

Legal Challenge #1: November 2005 - Surfrider Foundation Huntington-Seal Beach Chapter and Sierra Club Angeles Chapter v. City of Huntington Beach (Case No. 06CC00063). Petitioners filed a lawsuit challenging the City of Huntington Beach’s September 6, 2005 approval of the project and its certification as lead agency of the Environmental Impact Report for the project under the California Environmental Quality Act (“CEQA”). On January 5, 2007, the California Superior Court rejected the appeal of the certified Re-circulated Environmental Impact Report (REIR).

Legal Challenge #2: March 2006 - Surfrider Foundation, Orange County Chapter of Coastkeeper and Residents for Responsible Desal (R4D4) appeal the City of Huntington Beach’s February 27, 2006 approval of the project’s Coastal Development Permit (CDP 02-05). The Commission accepted the appeal and the permit was stayed.

Legal Challenge #3: September 2006 - Surfrider Foundation and Orange County Chapter of Coastkeeper filed a petition with the State Water Resources Control Board appealing the Santa Ana Regional Water Quality Control Board’s August 25, 2006 approval of Order No. R8-2006-0034 [NPDES CA8000403]. On August 28, 2007 the State Board denied the appeal ruling that it “failed to raise substantial issues.”

Legal Challenge #4: October 4, 2010 – Surfrider Foundation, Orange County Chapter of Coastkeeper and Residents for Responsible Desal (R4D4) appeal the City of Huntington Beach’s September 2010 approval of the project’s Coastal Development Permit (CDP 10-014), which replaced the previously appealed CDP 02-05. On November 17, 2010, the Commission accepted the appeal and the permit is stayed.

Legal Challenge #5: March 12, 2012 - Surfrider Foundation, Residents for Responsible Desalination (R4D4), Orange County Coastkeeper and Coastal Environmental Rights Foundation (CERF) file a petition with the State Water Resources Control Board appealing the Santa Ana Regional Water Quality Control Board’s February 10, 2012 approval of Order No. R8-2012-0007 [NPDES CA8000403]. The petition was not filed in a timely manner within the 30-day period required by statute, and there was never any confirmation from State Board that the Petition was accepted. On July 31, 2015 – over three years after filing the petition during which no action was taken by the State Water Board - the appellants formally withdrew their petition.

Legal Challenge #6: November 17, 2017 – California Coastkeeper Alliance, California Coastal Protection Network and Orange County Coastkeeper file a petition with the California Superior Court Sacramento County challenging the California State Lands Commission’s October 19, 2017 approval of the Huntington Beach project’s lease amendment (No. 1980.1) and certification of the project’s Supplemental Environmental Impact Report (SEIR) evaluating the technology enhancements proposed by Poseidon in order to comply with the requirements of the State Water Board’s Ocean Plan Amendment pertaining to desalination facilities. On January 8, 2019, California Superior Court Judge Richard Sueyoshi denied the lawsuit.

Carlsbad Project

Between 2006 and 2012, Fourteen legal challenges – Nine lawsuits and an additional five administrative permit appeals – were filed against the Carlsbad desalination project by opponents of seawater desalination

Legal Challenge #1: July 19, 2006 - *Southern California Watershed Alliance and the Desal Response Group v. City of Carlsbad*. Petitioners filed a lawsuit challenging the City of Carlsbad's June 14, 2006 approval of the project and its certification as lead agency of the Environmental Impact Report for the project under the California Environmental Quality Act ("CEQA"). The lawsuit was filed after the 30-day statute of limitations expired, in violation of the California Public Resources Code and was dismissed in July 2006.

Legal Challenge #2: September 15, 2006 - Surfrider Foundation and San Diego Chapter of Coastkeeper filed a petition with the State Water Resources Control Board appealing the San Diego Regional Water Quality Control Board's August 16, 2006 unanimous approval of Order No. R9-2006-0065 [NPDES CA0109923]. On June 6, 2007 the State Board denied the appeal opining that the petition "fails to raise substantial issues that are appropriate for review."

Legal Challenge #3: January 14, 2008 - *Surfrider Foundation v. California Coastal Commission, et al., Case No. 37-2008-00075727CU-WM-CTL*. Petitioners Surfrider Foundation and California Planning and Conservation League filed a Petition for Writ of Mandamus seeking to overturn the Coastal Commission's November 15, 2007 approval of a CDP for the Project on the alleged basis that it did not comply with the Coastal Act. On May 7, 2009, the Court filed a Statement of Decision denying the Petition for Writ of Mandamus on all counts and upholding the Coastal Commission's approval of the Permit.

Legal Challenge #4: May 8, 2008 - Surfrider Foundation filed a petition with the State Water Resources Control Board appealing the San Diego Regional Water Quality Control Board's April 9, 2008 approval of Resolution No R9-2008-0039 granting conditional approval to the Carlsbad project's Flow, Entrainment and Impingement Minimization Plan. In response, the State Water Resources Control Board issued an August 19, 2008 ruling that the appeal "fails to raise substantial issues that are appropriate for review by the State Water Resources Control Board".

Legal Challenge #5: September 18, 2008 - *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, et al., Case No. 37-2008-00091983-CU-WM-CTL*. Petitioners Surfrider Foundation and San Diego Coastkeeper filed a Petition for Writ of Mandamus challenging the Regional Board's April 9, 2008 adoption of Resolution No. R9-2008-0039. On May 13, 2009, the Regional Board adopted Order No. R9-2009-0038, which specifically superseded Resolution No. R9-2008-0039, and, as a result, Resolution No. R9-2008-0039 had no ongoing force or effect. Consequently, on June 8, 2009, Petitioners filed a Request for Dismissal of the case, which the Court entered on June 19, 2009.

Legal Challenge #6: September 26, 2008 - *Surfrider Foundation v. California State Lands Commission, Case No. 37-2008-00092607-CU-WM-CTL*. Surfrider Foundation and San Diego Coastkeeper filed a Petition for Writ of Mandamus challenging the State Lands Commission's August 22, 2008 approval of an amendment to Lease No. PRC 8727.1 to allow Poseidon to use the Encina Power Station's existing intake and outfall structures, located on tidelands within the jurisdiction of the State Lands Commission. On October 6, 2009, Judge Hayes issued a Final Statement of Decision denying the Petition in its entirety, and Judgment was entered on November 20, 2009.

Legal Challenge #7: June 11 and 12, 2009 - *Surfrider Foundation and San Diego Coastkeeper* separately filed petitions with the California State Water Resources Control Board administratively challenging the San Diego Regional Board's May 13, 2009 approval of Order No. R9-2009-0038. The petitions were dismissed by the State Board effective March 23, 2010 after the State Board ruled that the petitions "fail to raise substantial issues that are appropriate for review by the State Water Resources Control Board".

Legal Challenge #8: July 1, 2009 - *Petitioners Surfrider Foundation and California Planning and Conservation League* filed an appeal of the Court's Coastal Commission decision to the California Court of Appeal. The parties agreed to settle the matter through an agreement that the prevailing parties would waive their right to recover litigation costs in exchange for the Petitioners' agreement to dismiss their appeal. Pursuant to a stipulation of the parties reflecting this agreement, on August 26, 2009 the Court entered an order dismissing the appeal with prejudice.

Legal Challenge #9: October 9, 2009 – *Surfrider Foundation, Coastal Environmental Rights Foundation (“CERF”) and San Diego chapter of Coastkeeper* petition the California Coastal Commission to revoke the Coastal Development Permit (CDP) issued to the Carlsbad Desalination Project November 15, 2007 based on the assertion that Poseidon misled the Commission about the project's marine life impingement impacts. On December 10, 2009, the Commission voted to dismiss the request to revoke the CDP.

Legal Challenge #10: October 16, 2009 - *Coastal Environmental Rights Foundation v. City of Carlsbad, Case No. 37-2009-00061008-CU-TT-NC*. Petitioners Coastal Environmental Rights Foundation (“CERF”) and San Diego Coastkeeper filed a Petition for Writ of Mandamus, in which they challenged the September 15, 2009 approvals of the following City permit amendments: (1) Precise Development Plan (“PDP”), (2) Encina Specific Plan, (3) Development Agreement, (4) Habitat Management Plan, and (5) Redevelopment Permit. These permits were originally approved for the Project by the City in 2006; however minor conforming amendments to these approvals were required in order to reflect the final Project design plans. Petitioners counsel proposed dismissing the case in exchange of a waiver of costs in this suit and other related suits that have been completed. A notice of Dismissal was issued by the Superior Court on April 21, 2011.

Legal Challenge #11: December 7, 2009 - Surfrider Foundation and San Diego Coastkeeper filed a Notice of Appeal of the trial court's decision on the State Lands Commission suit. Surfrider subsequently filed an abandonment of the appeal, on its own behalf, and as a result the only entity left to pursue the appeal was Coastkeeper. On December 10, 2010, the Court of Appeal issued a ruling upholding the trial court's decision in full.

Legal Challenge #12: December 8, 2009 - Surfrider Foundation, Coastal Environmental Rights Foundation (“CERF”) and San Diego chapter of Coastkeeper petition the California Coastal Commission to revoke the Coastal Development Permit (CDP) issued to the Carlsbad Desalination Project November 15, 2007 based on the assertion that Poseidon misled the Commission about the project's Energy Minimization and Greenhouse Gas Reduction Plan. On February 10, 2010, the Commission voted for the second time in as many months to dismiss a request to revoke the project's CDP.

Legal Challenge #13: April 22, 2010 – *Surfrider Foundation v. the California Regional Water Quality Control Board, San Diego Region, Case 37-2010-00090436-CU-WM-CTL*. Petition for Writ of Mandamus challenging the Regional Board's adoption of Order No. R9-2009-0038, alleging that the Order's approval failed to comply with the requirements of Water Code Section 13142.5(b), and that the Regional Board's findings did not satisfy the applicable legal standard. On June 21, 2011, Judge Hayes issued a final judgment upholding the San Diego Regional Water Quality Control Board's application of 13142.5(b) to the project.

Legal Challenge #14: September 8, 2011 – *Surfrider Foundation v. the California Regional Water Quality Control Board, San Diego Region, Fourth District Court of Appeal case No. Do60382*. Surfrider Foundation appealed Superior Court ruling upholding San Diego Regional Water Quality Control Board's approval of the Coastal Commission's mitigation plan for the project. On November 30, 2012 the Court of Appeals issued ruling upholding Superior Court decision that the San Diego Regional Board properly applied the requirements of the California Water Code section 13142.5(b) to its review of the Carlsbad desalination facility.

