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Superior Court Of California  
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ngonzalva  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2017-00002736

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
7 **COUNTY OF SACRAMENTO**

9 CALIFORNIA COASTKEEPER  
10 ALLIANCE, CALIFORNIA COASTAL  
PROTECTION NETWORK, and  
11 ORANGE COUNTY COASTKEEPER,

12 Petitioners,

13 v.

14 CALIFORNIA STATE LANDS  
COMMISSION,

15 Respondent.

17  
18 POSEIDON RESOURCES (SURFSIDE)  
LLC,

19 Real Party in Interest.  
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Case No. 17CV-XXXX

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

**(Pursuant to California Environmental  
Quality Act; Public Trust Doctrine; Civ.  
Pro. Code §§ 1094.5 and/or 1085)**

**by fax**

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Case No. 17CV-xxxx

1 **INTRODUCTION**

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3 1. Petitioners California Coastkeeper Alliance, California Coastal Protection Network,  
4 and Orange County Coastkeeper (collectively, “Petitioners”) hereby seek a writ of mandate  
5 pursuant to Code of Civil Procedure § 1094.5 and/or 1085 and Public Res. Code § 21168  
6 challenging the California State Lands Commission’s (“CSLC”) failure to comply with the  
7 requirements of the California Environmental Quality Act (“CEQA”), Cal. Pub. Res. Code §21000  
8 *et seq.*, and its breach of its fiduciary duties under California’s Public Trust Doctrine, in  
9 completing, approving, and certifying the Huntington Beach Desalination Plant Final  
10 Supplemental Environmental Impact Report (“SEIR”) and in approving an amendment to CSLC  
11 Lease No. 1980.1 on October 19, 2017 (“Lease Amendment”).  
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13 2. In September 2010, the City of Huntington Beach (“City”), as CEQA lead agency,  
14 certified a final EIR for the Huntington Beach Desalination Plant (the “Project”). As proposed at  
15 the time, the Project would develop a seawater desalination facility on the site of the AES  
16 Huntington Beach Generating Station, and using the power plant’s existing intake pipes, would  
17 process up to 152 million gallons of water per day from the ocean and discharge highly  
18 concentrated salt brine back to the near shore coastal water. Pursuant to the City’s EIR, CSLC, in  
19 its capacity as a CEQA responsible agency, issued its own findings in 2010 and approved a  
20 modified Lease No. 1980.1, adding Poseidon Resources (Surfside) LLC (“Poseidon”) as a co-  
21 lessee and allowing development of the proposed Project on state tidelands (“Modified Lease”).  
22

23 3. Seven years later, Poseidon has not obtained final regulatory approvals for, or  
24 commenced construction of, the proposed Project, and has now made substantial changes to the  
25 Project in response to new state law requirements, local water market conditions, new information,  
26 and other changed circumstances. To accommodate these changes, Poseidon applied to CSLC for  
27 the Lease Amendment that was ultimately approved on October 19, 2017. As part of that  
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1 application, Poseidon sought and obtained an extension of approximately eight years to comply  
2 with its obligations under the Lease Amendment.

3 4. Before acting upon the Lease Amendment application, CSLC undertook additional  
4 CEQA review. Pursuant to CEQA, CSLC should have prepared a Subsequent EIR for the whole  
5 Project as the substitute CEQA lead agency, in the absence of any further discretionary decision  
6 authority by the City of Huntington Beach. CSLC instead improperly limited its role and the  
7 resulting CEQA analysis by (1) declining to assume lead agency status and deeming itself solely a  
8 CEQA responsible agency and (2) segmenting out for further environmental review only that  
9 portion of the proposed Project changes that triggered the need for the Lease Amendment. Based  
10 on these two improper actions, CSLC decided to prepare only a truncated Supplemental EIR,  
11 rather than a full Subsequent EIR as required by CEQA, to update the outdated 2010 EIR.  
12

13 5. CSLC certified the Supplemental EIR and approved the Lease Amendment on  
14 October 19, 2017, and filed a Notice of Determination for the Project with the Office of Planning  
15 and Research on October 20, 2017.  
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17 6. As alleged more fully below, by improperly segmenting the updated environmental  
18 review of the Project, CSLC evaded its obligation, as the next public agency to take discretionary  
19 action with respect to the Project, to fully and adequately evaluate new significant environmental  
20 impacts resulting from substantial Project changes, changed circumstances, and new information  
21 not previously considered in the 2010 EIR. As a result, CSLC failed to adequately assess and  
22 disclose the Project's full impacts on the environment and public trust resources and feasible  
23 alternatives to mitigate or avoid those impacts, in violation of CEQA and its fiduciary duties under  
24 California's Public Trust Doctrine. CSLC's actions are particularly troubling because it  
25 acknowledged that its review of impacts was conducted "in a limited way" and that it was relying  
26 on other agencies to analyze remaining changes and new information about the proposed Project.  
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1 Before the full review had been completed, however, CSLC gave the Project its stamp of approval  
2 by approving the Lease Amendment.

3 7. Accordingly, Petitioners seek a writ of mandamus (1) declaring that CSLC's  
4 actions in certifying the Supplemental EIR and approving the Lease Amendment were unlawful  
5 and in violation of CEQA and the Public Trust Doctrine; (2) vacating and setting aside the  
6 Supplemental EIR certification and Lease Amendment approval decisions; (3) enjoining  
7 construction and operation of the Project until CSLC fully complies with CEQA and the Public  
8 Trust Doctrine; and (4) remanding this matter to CSLC for actions consistent with the Court's  
9 ruling.  
10

11 **PARTIES**

12 8. Petitioner CALIFORNIA COASTKEEPER ALLIANCE ("CCKA") is a non-profit  
13 public benefit corporation organized under the laws of the State of California and headquartered in  
14 San Francisco, California. Founded in 1999, CCKA represents ten non-profit Waterkeeper member  
15 organizations.<sup>1</sup> California Waterkeeper organizations work to protect and enhance the water quality  
16 and overall health of coastal and inland waterways for the benefit of ecosystems and communities  
17 throughout California. Collectively, CCKA's member organizations are dedicated to the  
18 preservation, protection, and defense of the environment, and the natural resources of California  
19 coastal waters and tidelands. CCKA's member organizations work to protect the health of their  
20 local waters and communities throughout California, as indicated by the geographic descriptors of  
21 each Waterkeeper organizational name (e.g., Los Angeles Waterkeeper). CCKA defends and  
22 expands on local matters by advocating before decision-makers on issues and programs with  
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25 \_\_\_\_\_  
26 <sup>1</sup> The ten non-profit organizations that CCKA represents include: Klamath Riverkeeper, Humboldt  
27 Baykeeper, Russian Riverkeeper, Yuba River Waterkeeper, Monterey Coastkeeper, Santa Barbara  
28 Channelkeeper, Los Angeles Waterkeeper, Orange County Coastkeeper, Inland Empire  
Waterkeeper, and San Diego Coastkeeper. Collectively, the foregoing Waterkeeper organizations  
have thousands of members residing throughout California.

1 statewide impact and significance. To further their goals, CCKA and CCKA’s member groups  
2 actively seek State agency implementation of environmental laws and policies and caretaking of  
3 public resources, and where necessary, directly initiate administrative challenges and enforcement  
4 actions on behalf of themselves and their individual members in State and Federal courts.

5           9.       Petitioner CALIFORNIA COASTAL PROTECTION NETWORK (“CCPN”) is a  
6 non-profit public benefit corporation organized under the laws of the State of California and  
7 headquartered in Santa Barbara, California. Founded in 1999, CCPN is dedicated to protecting and  
8 enhancing California’s coast by engaging with statewide coastal, ocean, environmental justice,  
9 social justice, tribal, and civil rights advocates on coastal issues, particularly public access to  
10 beaches, protection of environmentally sensitive habitat areas, sea level rise, and coastal  
11 development. To further its mission, CCPN pursues both advocacy and outreach to ensure that  
12 well-informed and effective voices are heard on coastal policy.

13  
14           10.       Petitioner ORANGE COUNTY COASTKEEPER (“OCCK”) is a non-profit public  
15 benefit corporation organized under the laws of the State of California with its main office in  
16 Costa Mesa, California. Founded in 1999, OCCK has approximately 6,500 members who live  
17 and/or recreate in and around the Orange County area. OCCK is dedicated to protecting and  
18 promoting marine and freshwater resources and tidelands. To further this mission, OCCK actively  
19 seeks state implementation of CEQA and the Public Trust Doctrine, among other laws. Where  
20 necessary, OCCK directly initiates enforcement actions on behalf of itself and its members.  
21 OCCK has members living in the community adjacent to the Project. They enjoy using the  
22 tidelands and coastal resources for recreation and other activities. Members of OCCK use those  
23 areas to recreate and view wildlife and marine life, among other activities.

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26           11.       Petitioners and their staff and members have interests in the species and habitats  
27 that will be affected by the Project and Lease Amendment and regularly use the tidelands and  
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1 waters adjacent to the Project for recreational, aesthetic, scientific, and educational purposes,  
2 including fishing, swimming, boating, marine life observation, scientific research, photography,  
3 nature study and aesthetic appreciation. Petitioners and their staff and members intend to do all  
4 the foregoing on an ongoing basis in the future, and thereby do and will continue to derive  
5 recreational, aesthetic, scientific, educational, conservational and economic benefits from the  
6 ecological resources affected by construction and operation of the Project.

7  
8 12. Petitioners and their members are directly, adversely and irreparably affected, and  
9 will continue to be prejudiced by CSLC's actions, as described herein, until and unless this Court  
10 provides the relief prayed for in this petition.

11 13. Respondent CALIFORNIA STATE LANDS COMMISSION is a statewide agency  
12 established by the California Legislature pursuant to the State Lands Act of 1938 (California Pub.  
13 Res. Code section 6001 *et seq.*) to manage public lands owned or controlled by the State of  
14 California. CSLC is the entity authorized by Pub. Res. Code Section 6301 to exclusively  
15 administer and control all un-granted tidelands and submerged lands owned by the State, as well  
16 as to lease or otherwise dispose of such lands, as provided by law, upon such terms and for such  
17 consideration, if any, as are determined by it. In carrying out these responsibilities, CSLC is  
18 acting as a state trustee for the public tidelands and must, at all times, exercise its fiduciary duties  
19 to protect the public resources and values on such tidelands under California's Public Trust  
20 Doctrine. The CSLC's main office is located at 100 Howe Avenue, Suite 100 South, Sacramento,  
21 California 95825.

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23  
24 14. Real party in interest POSEIDON RESOURCES (SURFSIDE) LLC is a Delaware  
25 corporation doing business in California. Poseidon is the co-lessee to CSLC Lease No. PRC  
26 1980.1. Poseidon applied to CSLC for the Lease Amendment, which led to the approval and  
27 Supplemental EIR challenged here. On October 19, 2017, CSLC approved the Lease Amendment.  
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**JURISDICTION AND VENUE**

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15. This Court has jurisdiction over this matter pursuant to California Code of Civil Procedure section 1085 and/or 1094.5, and California Public Resources Code section 21168 and/or 21168.5.

16. Venue in this Court is proper pursuant to California Code of Civil Procedure section 395 (actions generally) because Respondent CSLC is a statewide agency located in Sacramento County.

17. Petitioners have exhausted all administrative remedies, as required by Pub. Res. Code section 21177, by submitting written comments regarding the Draft EIR to CSLC prior to the Lease Amendment approval requesting compliance with CEQA, the Public Trust Doctrine, and other laws, and seeking the completion of full and adequate environmental review. All issues raised in this petition were raised in a timely manner before Respondent by Petitioners, other members of the public, or public agencies.

18. On November 16, 2017, Petitioners’ counsel transmitted a Notice of Intent to File a CEQA Claim to CSLC and Poseidon as required by California Public Resources Code section 21167.5, providing notice of Petitioners’ intent to file this petition. See Exhibit A hereto.

19. This petition is timely filed in accordance with Public Resources Code section 21167 and California Code of Regulations, tit. 14, section 15112(c)(1).

**FACTUAL ALLEGATIONS**

20. In 2010, the City of Huntington Beach (“City”), as CEQA lead agency, certified a subsequent EIR for construction of a “stand-alone” desalination plant at the site of the AES Huntington Beach Generating Station. The power plant uses an open ocean cooling water system that involves the intake of ocean water and the discharge of heated water on state tidelands administered by CSLC. That power plant cooling system is being phased out pursuant to state

1 regulation. The proposed desalination plant would, however, continue drawing seawater through  
2 the power plant's open ocean intake system after the power plant stopped using this system.

3 21. The intake of ocean water is associated with entrainment and impingement of  
4 marine life. Entrainment is the intake of smaller marine organisms into the facility where  
5 mechanical systems, temperature increases, or toxic stress destroy most or all the organisms.  
6 Impingement occurs when marine organisms are trapped by water pressure against screens or  
7 other system components, where they die or are severely injured. The discharge of hypersaline  
8 brine may have deleterious effects, particularly to bottom-dwelling marine life. Brine plumes  
9 increase ambient water temperatures and are nonbuoyant and hypoxic.  
10

11 22. The intake and discharge components of the AES cooling water system are located  
12 on state tidelands and subject to CSLC Lease No. 1980.1. In order to allow the use of that system  
13 for a desalination plant, Poseidon sought a modification of Lease No. 1980.1 to add Poseidon as a  
14 co-lessee and authorize the proposed Project approved by the City. In October 2010, CSLC, as a  
15 CEQA responsible agency, relied upon the City's EIR to approve this lease modification for the  
16 portion of the proposed Project located on state tidelands. The modified lease allowed Project  
17 proponent Poseidon to use the power plant's existing offshore ocean intake and outflow pipes in  
18 connection with the proposed desalination plant.  
19

20 23. The modified lease also contained an express condition that construction of the  
21 Project must be completed by within eight years, or by October 29, 2018. Petitioners are  
22 informed and believe that Poseidon cannot currently complete construction of the desalination  
23 plant by October 29, 2018.  
24

25 24. Based on the 2010 EIR, the City issued a coastal development permit, which was  
26 subsequently appealed to the California Coastal Commission ("Coastal Commission"), thereby  
27 concluding the City's discretionary authority over the Project. Petitioners are informed and  
28



1 believe that the City has no further discretionary authority over the Project and, therefore, no  
2 further role as a CEQA lead agency.

3 25. The next seven years saw no commencement in construction, but substantial  
4 changes in the proposed Project and its surrounding circumstances, and the emergence of new  
5 information of substantial importance.

6 Changes in Marine Protection Requirements

7  
8 26. In 2012, pursuant to the Marine Life Protection Act, California established a  
9 network of Marine Protected Areas to protect the diversity and abundance of marine life and the  
10 integrity of the marine ecosystems. Nine newly established Marine Protected Areas are within 25  
11 miles of the Project’s offshore intake and outtake valves, including the Bolsa Chica State Marine  
12 Conservation Area. Petitioners are informed and believe that CSLC has legally committed to  
13 avoiding and mitigating impacts on these protected areas.

14 27. Pursuant to California Water Code section 13142.5, the State Water Resources  
15 Control Board adopted the Amendments to the Statewide Water Quality Control Plan for Ocean  
16 Waters of California Addressing Desalination Facility Intakes, Brine Discharges, and to  
17 Incorporate Other Non-Substantive Changes (“Desalination Regulations”) in 2015. The  
18 Desalination Regulations require that desalination facilities minimize marine life mortality during  
19 the intake of seawater, and define how facilities must dilute brine discharges to prevent toxicity  
20 build-up. Under the new regulations, the owner or operator of a desalination facility must identify  
21 the need for desalinated water and consider whether that need is consistent with applicable urban  
22 water management plans.  
23

24  
25 28. The Desalination Regulations state a strong preference for desalination facilities to  
26 use subsurface intake of seawater where feasible, since that method is most protective of marine  
27 life. Where it is not feasible, desalination facilities may use intake screens as a method to prevent  
28

1 entrainment of marine life in the open ocean drains. The Desalination Regulations give the State  
2 and Regional Water Boards primary authority to determine the best site, design, technology and  
3 mitigation measures feasible for proposed desalination facilities.

4 29. The Desalination Regulations also state a preference for discharging brine only  
5 after commingling it first with freshwater discharges, but when infeasible, allow the use of  
6 multiport diffusers for discharging brine as the second-best method.

7 New Information About Mitigation Measures  
8

9 30. Since the certification of the 2010 EIR, new information of substantial importance  
10 has emerged regarding the feasibility of subsurface intakes. In 2013 and 2015, Geosyntec  
11 Consultants, on behalf of Poseidon, evaluated the feasibility of subsurface intakes for the Project.  
12 In September 2016, HydroFocus Inc. critically reviewed and analyzed outputs from Geosyntec's  
13 groundwater-flow model, and produced a report that found, among other things, that slant wells at  
14 this site are technically feasible and substantially benefit upland water resources by preventing  
15 seawater intrusion into inland freshwater aquifers.  
16

17 31. New information of substantial importance has also revealed the limited  
18 effectiveness of intake screens as mitigation measures. For example, the Staff Report and the  
19 Substitute Environmental Documentation in support of the Desalination Regulations in 2015  
20 disclosed studies finding that installation of 1-millimeter screens on open ocean intake pipes will  
21 reduce entrainment of marine life by only one percent, and in most cases, will have no effect at  
22 reducing mortality for two of the most prevalent fish larvae in California waters.  
23

24 Changes in Water Supply and Demand

25 32. Since the certification of the 2010 EIR, local governments in Orange County,  
26 where the Project is proposed to be located, have made significant changes in water management,  
27 significantly reducing the need for new water supplies. In 2015, the Orange County Water District  
28

1 (“OCWD”), which manages much of the region’s drinking water supply, expanded its  
2 Groundwater Replenishment System to produce 100 million gallons per day (up from 50 million  
3 gallons per day). Petitioners are informed and believe that OCWD plans to further expand  
4 production from this system to 130 million gallons per day.

5 33. Orange County residents and businesses have also implemented water conservation  
6 measures and are decreasing their water demand even as the economy grows. In February 2016,  
7 the Municipal Water District of Orange County revealed new water demand projections for 2040  
8 showing county-wide demand at 435,000 acre-feet, a decrease of nearly 20 percent from an earlier  
9 projection of 525,000 acre-feet.

11 Changes in Upland Distribution of Desalinated Water

12 34. Since certification of the 2010 EIR, the delivery and distribution system for the  
13 desalinated water produced by the Project has been completely reconfigured. The Project as  
14 reviewed in 2010 relied upon surface distribution of produced water directly to the delivery  
15 systems of Orange County retail water agencies. In agreement with Poseidon, OCWD is now  
16 planning and designing new distribution components of the Project, including but not limited to  
17 components for directly injecting and recharging 100 percent of the desalinated water into the  
18 groundwater basin.

19 35. In July 2016, the OCWD Board of Directors authorized staff to proceed with – and  
20 OCWD staff is currently advancing with – the study, planning, and design of the recharge  
21 distribution components for the Project. However, CSLC did not review the environmental issues  
22 relating to potential new plans for recharge and distribution of the desalinated water.

23 36. The change in water distribution is an integral part of the Project and any review of  
24 its components and environmental impacts cannot be separated from review of the Project as a  
25 whole, including its intake and outtake systems. Even if the distribution system has not been fully  
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1 decided, CSLC cannot omit discussion of the environmental impacts from that portion of the  
2 Project. The CSLC’s Supplemental EIR fails to disclose the potential adverse environmental  
3 impacts of the recharge distribution components, which are reasonably likely to result in  
4 cumulatively considerable ground and surface water quality and water supply impacts.

5 Changes in Adjacent Developments and Cumulative Impacts

6 37. Since the certification of the 2010 EIR, there have been new developments in  
7 projects directly adjacent to the Project that would likely increase cumulative impacts, e.g. traffic,  
8 air emissions, noise, from the Project. For example, the adjacent Magnolia Oil Tank Farm is  
9 slated to be demolished and replaced with a large residential-commercial complex. Construction  
10 is expected to continue over the next ten years. Other nearby developments have been recently  
11 modified, with construction and remediation in progress, including the Huntington Beach Energy  
12 Project and the removal of contaminated soil from the Ascon toxic landfill.

13 Changes in the Project Specifications and Application to the CSLC

14 38. In July 2016, the Project developer applied to the CSLC for an amendment to Lease  
15 No. 1980.1 to, among other things: (1) extend the October 2018 construction completion deadline;  
16 (2) change the offshore seawater intake by adding a one-millimeter wedgewire screens; (3) replace  
17 the existing seawater discharge pipe with a concentrated seawater diffuser; and (4) adjust the  
18 volume of seawater intake per day. The Project developer amended its application twice in 2017  
19 to modify the intake screens and brine diffuser design.

20 39. On October 3, 2016, the CSLC, the Santa Ana Regional Water Quality Control  
21 Board (“Regional Board”), and the Coastal Commission, three state agencies with discretionary  
22 approval authority over the proposed Project, signed a nonbinding Interagency Permit Sequence  
23 Framework Agreement, or Memorandum of Agreement (“MOA”), that was intended to sequence  
24 necessary Project approvals in an orderly fashion. Although not a party to the MOA, Poseidon  
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1 signed in acknowledgement.

2 40. The MOA set up a sequence of approvals: (1) the CSLC would first complete its  
3 CEQA review and consider the application for the proposed Lease Amendment, then (2) the  
4 Regional Board would conduct consider the Project's compliance with the Desalination  
5 Regulations and make decisions on necessary state and federal permits, and then (3) the Coastal  
6 Commission would review the Project's compliance with the Coastal Act and make a decision  
7 with respect to coastal development permits.  
8

9 The Draft Supplemental EIR

10 41. CSLC was the first agency to undertake updated CEQA review in light of these  
11 changes in the Project and its circumstances. On May 26, 2017, CSLC issued a draft  
12 Supplemental EIR. In that document, CSLC took the position that a more extensive Subsequent  
13 EIR was not required because CSLC was undertaking additional CEQA review in its capacity as a  
14 responsible agency and was not assuming the status of CEQA lead agency, even though the City  
15 had already issued its final discretionary approvals and, therefore, no longer had any further lead  
16 agency role under CEQA.  
17

18 42. Based on this legal position, CSLC declined to undertake environmental review for  
19 all of the changes affecting the proposed Project and instead limited its review to the impacts  
20 associated with Project changes affecting the tidelands portions of the facility. CSLC's  
21 segmentation of the Project for purposes of updating the CEQA review meant that the draft  
22 Supplemental EIR did not consider many substantial and potentially significant impacts that were  
23 not considered in 2010, as well as significant new information not available in 2010, including,  
24 without limitation, the proposed changes in how the potable water produced would be distributed,  
25 the sharply declining need for new water supplies in Orange County, and alternatives to the  
26 proposed Project that might mitigate its impacts to public trust resources and the environment.  
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1           43.     In response to the draft Supplemental EIR, CSLC received more than 1,400  
2 comments. Petitioners’ timely comments on the draft Supplemental EIR argued that CSLC is  
3 required by law to assume the role of CEQA lead agency; that since 2010 the substantial changes  
4 to the Project, changes in the project circumstances, and new information of substantial  
5 importance mandated a Subsequent (rather than a Supplemental) EIR; and that segmentation of  
6 environmental review for the Project is unlawful.

7  
8           The Final Supplemental EIR and CSLC’s Approval of the Lease Amendment

9           44.     On October 4, 2017, CSLC issued the Final Supplemental EIR.

10          45.     The Final Supplemental EIR did not correct the legal deficiencies identified in  
11 comments by Petitioners and others. In a foundational error, CSLC continued to consider itself a  
12 “CEQA responsible agency” rather than the substitute “CEQA lead agency” in the City’s absence.  
13 This position is inconsistent with CEQA, which requires that, when the original lead agency no  
14 longer has any discretionary decisionmaking authority, and changes in the project or its  
15 circumstances necessitate updated environmental review, the agency making the next  
16 discretionary decision shall assume lead agency status. There is no authority in CEQA for a  
17 responsible agency to issue an updated, Supplemental or Subsequent EIR.

18  
19          46.     CSLC’s erroneous legal position in declining to assume lead agency status fatally  
20 infected its CEQA analysis. In particular, as had the draft Supplemental EIR, the final  
21 Supplemental EIR declined to undertake any updated environmental review for project changes or  
22 changed circumstances over which CSLC does not have discretionary decision authority,  
23 including, without limitation, dramatic changes in the proposed distribution side of the Project,  
24 significant changes in the local need for the water, substantial changes in regulatory requirements  
25 under the Desalination Policy and in connection with implementation of new Marine Protected  
26 Areas, and cumulative impacts in light of new activity in the surrounding area, and feasible  
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1 alternatives that might mitigate impacts associated with these changes.

2 47. Not only did CSLC erroneously limit its environmental review to what it deemed  
3 to be “minor additions” to the lease (e.g., intake screens, diffusers on the discharge pipe, and  
4 reduced water flow), but the Supplemental EIR entirely neglected to evaluate the most significant  
5 impact of the Lease Amendment – the eight-year extension of the lease deadline for completing  
6 construction. The Project cannot be completed within the original deadline, and the failure to  
7 complete construction within the deadline will terminate Poseidon’s lease rights, eliminating any  
8 adverse environmental impacts. Conversely, CSLC’s extension of the deadline to complete  
9 construction of the Project without analysis of new circumstances and information is a substantial  
10 change, will have new significant adverse impacts, and must be considered in an EIR.

12 48. Separate and apart from its CEQA obligations, CSLC also has a solemn fiduciary  
13 obligation to consider and, to the extent feasible, avoid or minimize impacts to public trust  
14 resources on the tidelands it is charged with administering. In the decision documents for the  
15 proposed Lease Amendment, CSLC does not meaningfully evaluate impacts to public trust  
16 resources, let alone show how it has, as far as feasible, attempted to avoid or minimize those  
17 impacts.

19 49. On October 19, 2017, CSLC held a public hearing, at the end of which it certified  
20 the final Supplemental EIR and approved the Lease Amendment.

22 50. On October 20, 2017, CSLC filed its Notice of Determination with the Office of  
23 Planning and Research.

24 **CLAIMS FOR RELIEF**

25 **First Cause of Action**

26 **(Violations of CEQA)**

27 51. Petitioners reallege and incorporate by reference each and every allegation set forth  
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1 in paragraphs 1 through 50, inclusive, as though fully set forth herein.

2 52. CEQA requires the preparation of an Environmental Impact Report by a lead  
3 agency. Other agencies issuing approvals for the same Project, such as the Coastal Commission  
4 and the Regional Board, are “responsible agencies” that, although they issue findings specific to  
5 their own permitting concerns, are entitled and required under the statute to rely on the lead  
6 agency’s compliance with CEQA.

7 53. CSLC violated CEQA Guidelines section 15052(a) by not taking the role of lead  
8 agency in undertaking necessary additional CEQA review for a new discretionary decision after  
9 the City of Huntington Beach, as the original lead agency, granted its final approval. A CEQA  
10 responsible agency “shall assume the role of the lead agency” when the original lead agency  
11 prepared an environmental review but (1) a subsequent EIR is required, (2) the lead agency has  
12 already granted a final approval for the project, and (3) the statute of limitations for challenging  
13 the lead agency’s action under CEQA has expired. 14 Cal. Code Regs. § 15052(a) (emphasis  
14 added).  
15

16 54. The City granted final approval to the Project in the form of a coastal  
17 development permit in 2010, based upon its 2010 EIR, and the time to challenge that decision has  
18 long passed. Accordingly, if a subsequent EIR is required, CSLC is required by law to assume  
19 lead agency status.  
20

21 55. CSLC also violated CEQA Guidelines 15162 and 15163 by ignoring its  
22 requirement to conduct a Subsequent EIR rather than a Supplemental EIR. Despite substantial  
23 changes proposed for the project, substantial changes with respect to the circumstances, and new  
24 information of substantial importance—all of which were clearly present here—CSLC determined  
25 that only minor changes would be necessary to apply the 2010 EIR, and conducted a Supplemental  
26 EIR extremely limited in scope, instead of the full EIR it should have conducted as lead agency.  
27  
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1 In doing so, it sought to foist responsibility upon other State agencies for reviewing undeniably  
2 substantial changes in the Project.

3 56. CSLC’s attempt to evade this legal duty is a circular one that violates the letter and  
4 spirit of CEQA. CSLC contends that it need not assume CEQA lead agency authority because the  
5 Project changes and changed circumstances do not rise to the level of requiring a “subsequent”  
6 EIR. It simultaneously contends that the Project changes and changed circumstances do not  
7 require a “subsequent” EIR because CSLC is not a “lead agency,” but only a “responsible agency”  
8 limited to considering only those changes within its discretionary jurisdiction. In this entirely  
9 circular way, CSLC has unlawfully avoided assuming the lead agency role and preparing a  
10 Subsequent EIR as required by CEQA.  
11

12 57. Additionally, CSLC’s circular logic has resulted in unlawful segmentation of the  
13 environmental review, in direct contradiction of CEQA and applicable judicial precedent. By  
14 failing to prepare a meaningful updated environmental review for the Project, CSLC has left it to  
15 other agencies like the Coastal Commission, the Regional Board, and OCWD to each prepare their  
16 own separate Supplemental or Subsequent EIRs. This piecemeal approach is precisely what  
17 CEQA seeks to avoid and undermines the public’s ability to obtain a fully informed and integrated  
18 evaluation the Project.  
19

20 58. CSLC filed a CEQA Notice of Determination for the Project on October 20, 2017,  
21 triggering a statute of limitations of 30 days, and Petitioners filed this challenge to the propriety of  
22 that Notice of Determination within 28 days.  
23

24 59. The CSLC’s failure to satisfy its CEQA environmental review requirements  
25 constitutes a prejudicial abuse of discretion and is actionable under California Public Resources  
26 Code section 21168 and/or 21168.5 and California Code of Civil Procedure section 1094.5 and/or  
27 1085.  
28

1           60.     Petitioners have a clear, present, and beneficial right to the proper performance by  
2 CSLC of its duties as alleged herein. Petitioners are beneficially interested in the issuance of a  
3 Writ of Mandate by virtue of the facts set forth previously, in that Petitioners and the general  
4 public will otherwise be adversely affected by CSLC’s actions.

5           61.     Because the CSLC believes that its CEQA review was adequate, Petitioner has no  
6 other plain, speedy or adequate remedy at law. Petitioners are entitled to seek a peremptory writ of  
7 mandate declaring that Respondents have not satisfied the requirements of CEQA and to seek an  
8 order vacating the certification of the Supplemental EIR and the approval of the Lease  
9 Amendment.

11                                 **Second Cause of Action**

12                                 **(Breach of California Public Trust Fiduciary Duty)**

13           62.     Petitioner realleges and incorporates by reference each and every allegation set  
14 forth in paragraphs 1 through 50, inclusive, as though fully set forth herein.

15           63.     In California, the waters and lands of the State, and the fish, marine life, and  
16 ecological values they support and sustain, belong to the public and are held in trust by the State  
17 for the benefit of the people of California and future generations.

18           64.     The tidelands and submerged lands adjacent to the Project, and their waters, fish  
19 and marine life resources, and ecological, aesthetic and recreational values are subject to and  
20 protected by the Public Trust Doctrine.

21           65.     The Public Trust Doctrine creates an affirmative and ongoing fiduciary duty in all  
22 California public agencies, including Respondent CSLC, to protect and preserve these public trust  
23 resources for benefit of the people of California and future generations. CSLC is the primary state  
24 trustee for our public tidelands, submerged lands, and marine life.

25           66.     But for the Lease Amendment approved by CSLC on October 19, 2017, the  
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27  
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1 Poseidon would not be able to satisfy the construction completion deadline in Lease No. 1980.1  
2 and, therefore, would lose its right to develop the Project, thereby avoiding all impacts to public  
3 trust resources. By extending the deadline for completion of construction by approximately eight  
4 years, the Lease Amendment therefore authorizes and facilitates injury to public trust resources  
5 that would not otherwise occur. Accordingly, before approving the Lease Amendment, CSLC had  
6 a fiduciary duty to consider and evaluate these impacts and to avoid them to the extent feasible.

7  
8 67. In approving the Lease Amendment on October 19, 2017, CSLC failed to satisfy  
9 this duty by failing to adequately consider and evaluate the impacts of its decision on public trust  
10 resources and by failing to meaningfully consider feasible alternatives or mitigation measures that  
11 would avoid or reduce the Project's impacts on public trust resources to the greatest extent  
12 feasible.

13 68. Contrary to the CSLC's assertions, there are no vested rights in a lease that violates  
14 the public trust. The Public Trust Doctrine is a background rule of property law, and "the public  
15 trust... prevents any party from acquiring a vested right to appropriate water in a manner harmful  
16 to the interests protected by the public trust." Nat'l Audobon Soc'y v. Sup. Ct, 33 Cal. 3d 419  
17 (1983).

18  
19 69. Petitioners and the general public share interests in public resources of the State  
20 which will be adversely affected by CSLC's actions. The public enjoys the tidelands and  
21 submerged lands adjacent to the Project, and their waters, fish and marine life resources, and those  
22 public resources promote ecological, aesthetic and recreational values. Petitioners thus seek  
23 through writ of mandate to compel the CSLC to perform its public trust duties which are owed to  
24 Petitioners and the people of Orange County and the State of California.  
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**PRAYER FOR RELIEF**

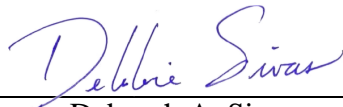
WHEREFORE, Petitioners prays for entry of judgment as follows:

1. For a peremptory writ of mandate, commanding Respondent to:
  - (i) Declare that Respondent State Lands Commission has violated CEQA by not taking the role of CEQA lead agency and by completing a Supplemental EIR rather than a Subsequent EIR;
  - (ii) Vacate and set aside certification of the Final Supplemental EIR for the Project;
  - (iii) Declare that Respondent State Lands Commission has violated its fiduciary obligations under California’s Public Trust Doctrine by failing to meaningfully consider the impacts of the Lease Amendment decision on public trust resources and by failing to avoid or mitigate those impacts to the extent feasible;
  - (iv) Vacate and set aside CSLC’s approval for the Lease Amendment for the Project until an adequate EIR is completed and certified and until CSLC fully complies with its fiduciary duties under California’s Public Trust Doctrine;
  - (v) Temporarily and permanently enjoin construction and operation of the Project until CSLC fully complies with the writ of mandate issued by the Court.
2. For costs of suit and an award of attorneys’ fees under California Civil Procedure Code section 1021.5.
3. For any such other equitable or legal relief as the Court deems appropriate.

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Dated: November 17, 2017

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

By:   
Deborah A. Sivas

Attorneys for Petitioners California Coastkeeper Alliance,  
Orange County Coastkeeper, and California Coastal  
Protection Network

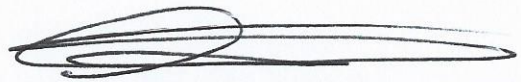
1 **VERIFICATION**

2 SEAN BOTHWELL declares:

3 I am the Policy Director of Petitioner CALIFORNIA COASTKEEPER ALLIANCE and  
4 execute this verification on its behalf.

5 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know  
6 the contents thereof. The same is true and correct of my personal knowledge, except as to those  
7 matters which are alleged on information and belief, and, as to those matters, I believe it to be true.

8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct, and that this verification was executed November 17, 2017 at  
10 *Napa*, California.

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12 \_\_\_\_\_  
SEAN BOTHWELL

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# **EXHIBIT A**

November 16, 2017

Environmental Law Clinic

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Fax 650 723-4426  
www.law.stanford.edu

Deborah A. Sivas  
Tel 650 723-0325  
dsivas@stanford.edu

*Via U.S. Mail*

Jennifer Lucchesi  
Executive Officer  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**Notice of Intent to File a CEQA Petition**

To the State Lands Commission:

PLEASE TAKE NOTICE, pursuant to Public Resources Code §21167.5, that petitioners California Coastkeeper Alliance, California Coastal Protection Network, and Orange County Coastkeeper, intend to file a petition for writ of mandate challenging the State Lands Commission's failure to comply with the requirements of the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §21000 et seq., and its breach of its fiduciary duties under California's Public Trust Doctrine, in completing, approving, and certifying the Huntington Beach Desalination Plant Final Supplemental Environmental Impact Report (SEIR) (SCH No. 2001051092) and its approval of the proposed Lease Amendment.

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

By   
Deborah A. Sivas

Attorney for Petitioners California Coastkeeper  
Alliance, California Coastal Protection Network,  
and Orange County Coastkeeper



November 16, 2017

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dsivas@stanford.edu

*Via U.S. Mail*

Scott Maloni  
Vice President  
Poseidon Surfside  
17011 Beach Boulevard, Suite 900  
Hunting Beach, CA 92647-5998

**Notice of Intent to File a CEQA Petition**

Dear Mr. Maloni:

PLEASE TAKE NOTICE, pursuant to Public Resources Code §21167.5, that petitioners California Coastkeeper Alliance, California Coastal Protection Network, and Orange County Coastkeeper, intend to file a petition for writ of mandate challenging the State Lands Commission's failure to comply with the requirements of the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §21000 et seq., and its breach of its fiduciary duties under California's Public Trust Doctrine, in completing, approving, and certifying the Huntington Beach Desalination Plant Final Supplemental Environmental Impact Report (SEIR) (SCH No. 2001051092) and its approval of the proposed Lease Amendment.

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

By   
Deborah A. Sivas

Attorney for Petitioners California Coastkeeper  
Alliance, California Coastal Protection Network,  
and Orange County Coastkeeper

cc: Jennifer Lucchesi,  
State Lands Commission

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**PROOF OF SERVICE**

I, ANA VILLANUEVA declare:

I am over the age of eighteen years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On November 16, 2017, I served a **NOTICE OF INTENT TO FILE A CEQA PETITION** on all persons identified below by placing a true and correct copy thereof for delivery by United States Postal Service, addressed to each recipient respectively as follows:

Jennifer Lucchesi	Scott Maloni
Executive Officer	Vice President
California State Lands Commission	Poseidon Resources (Surfside) LLC
100 Howe Avenue, Suite 100 South	17011 Beach Boulevard, Suite 900
Sacramento, CA 95825	Hunting Beach, CA 92647-5998

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed November 17, 2017 at Stanford, California.

  
\_\_\_\_\_  
ANA VILLANUEVA