

MINUTES OF REGULAR MEETING  
BOARD OF DIRECTORS, ORANGE COUNTY WATER DISTRICT  
June 6, 2018, 5:30 p.m.

President Bilodeau called to order the June 6, 2018 regular meeting of the Orange County Water District Board of Directors at 5:30 p.m. in the Boardroom at the District office. Director Anthony participated via teleconference from: 3701 Monserate Hill Road, Fallbrook. Following the Pledge of Allegiance to the Flag, the District Secretary called the roll and reported a quorum as follows.

Directors

Philip Anthony (via teleconference)  
Denis Bilodeau  
Shawn Dewane  
Cathy Green  
Dina Nguyen  
Vicente Sarmiento  
Stephen Sheldon  
James Vanderbilt  
Bruce Whitaker  
Roger Yoh

Staff

Michael Markus, General Manager  
Joel Kuperberg, General Counsel  
Janice Durant, District Secretary

VISITOR PARTICIPATION

John Earl commented that he recently wrote a story in the Surf City Voice on the lack of transparency at OCWD, stating that the Desalination Funding ad hoc Committee has met secretly with Poseidon CEO Scott Maloni for the past 2 ½ years. He questioned the validity of this Committee being labeled an ad hoc rather than a standing committee, and expressed concern that Poseidon was given an unfair advantage by being allowed to attend these meetings. Mr. Earl also asked if the Board members who were not part of the ad hoc Committee were aware that these meetings took place.

CONSENT CALENDAR

The Consent Calendar was approved upon motion by Director Dewane, seconded by Director Sarmiento and carried [10-0] by roll call vote as follows:

Ayes: Anthony, Bilodeau, Dewane, Green, Nguyen, Sarmiento, Sheldon, Whitaker, Vanderbilt, Yoh

1. Approval of Cash Disbursements

MOTION NO. 18-64  
APPROVING CASH DISBURSEMENTS

Payment of bills for the period May 17, 2018 through May 30, 2018 in the total amount of \$3,232,147.01 is ratified and approved.

2. Approval of Minutes of Board Meeting

MOTION NO. 18-65  
APPROVING MINUTES OF BOARD MEETING

The minutes of the Board of Directors meeting held April 18 and May 2, 2018 are approved as presented.

3. GWRS Water Conveyance Facilities Project: Resolutions for State Revolving Fund Loan Application

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RESOLUTION NO. 18-6-60  
ESTABLISHING A DESIGNEE TO SIGN AND AUTHORIZE  
FINANCING AGREEMENTS WITH THE  
STATE WATER RESOURCES CONTROL BOARD  
FOR THE GROUNDWATER REPLENISHMENT SYSTEM WATER CONVEYANCE  
FACILITIES PROJECT

RESOLVED, by the Board of Directors of the Orange County Water District that the General Manager is hereby authorized and directed to sign and file, for and on behalf of the Orange County Water District, a Financial Assistance Application for a financing agreement from the State Water Resources Control Board for the planning, design, and construction of the Groundwater Replenishment System Water Conveyance Facilities Project.

RESOLVED FURTHER, that the Orange County Water District hereby agrees and further does authorize the aforementioned representative or his/her designee, to provide the assurances, certifications, and commitments required for any such financial assistance application, and the execution of related financial assistance agreements from the State Water Resources Control Board and any amendments or changes thereto.

RESOLVED FURTHER, that the General Manager, or his/her designee, is designated to represent the Orange County Water District in carrying out the Orange County Water District's responsibilities under the financing agreement, including certifying disbursement requests on behalf of the Orange County Water District and compliance with applicable state and federal laws.

RESOLUTION NO. 18-6-61  
ESTABLISHING DEDICATED SOURCE OF REVENUE FOR REPAYMENT  
OF STATE WATER RESOURCES CONTROL BOARD STATE  
REVOLVING FUND FINANCING FOR THE  
FISCAL YEAR 2017-18 CAPITAL IMPROVEMENT PROGRAM

WHEREAS, the Orange County Water District (the “District”) plans to enter into one or more financing agreements with the State Water Resources Control Board pursuant to the Clean Water State Revolving Fund (CWSRF), Seawater Intrusion Control Loan Program (SWIC), and/or Water Recycling Funding Program (WRFP) programs for the projects listed in the three-year Capital Improvement Program Summary located in Section 8 of the approved fiscal year 2017-18 budget (the “Project/s”), as approved by the District on April 19, 2017.

WHEREAS, the CWSRF, SWIC, and WRFP requirements require each recipient to establish one or more dedicated sources of revenue for repayment of the CWSRF, SWIC, and/or WRFP assistance (except for grants); and

WHEREAS, the District plans to dedicate Net Revenues (as such terms are defined in the installment Purchase Agreement, dated as of July 1, 2009, by and between the District and the OCWD Public Facilities Corporation) to the repayment of any and all CWSRF, SWIC, and WRFP financing for the “Project/s” on a parity with the District’s obligation to make payments under all Bonds and Contracts (as such terms are defined in the Installment Purchase Agreement, dated as of July 1, 2009, by and between the District and the OCWD Public Facilities Corporation);

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby resolve as follows:

The District hereby dedicates and pledges Net Revenues to payment of any and all Clean Water State Revolving Fund, Seawater Intrusion Control Loan Program, and/or Water Recycling Funding Program financing for the “Project/s” listed in the fiscal year 2017-18 Capital Improvement Program adopted by the District on April 19, 2017. So long as the financing agreement(s) is/are outstanding, the District’s pledge hereunder shall constitute a lien in favor of the State Water Resources Control Board on the Net Revenues without any further action necessary. The District commits to collecting such Net Revenues throughout the term of such financing and until the District has satisfied its repayment obligation thereunder unless a modification or change is approved in writing by the State Water Resources Control Board. So long as the financing agreement(s) is/are outstanding, the District commits to maintaining Net Revenues at levels sufficient to meet its obligations under the financing agreement(s).

RESOLUTION NO. 18-6-62  
STATING OCWD INTENTION TO REIMBURSE ITSELF FOR EXPENDITURES  
PAID PRIOR TO ISSUANCE OF OBLIGATIONS OR APPROVAL BY  
STATE WATER BOARD OF THE PROJECT FUNDS  
FOR THE GROUNDWATER REPLENISHMENT SYSTEM WATER CONVEYANCE  
FACILITIES PROJECT

WHEREAS, the Orange County Water District (the "Agency") desires to finance the costs of constructing and/or reconstructing certain public facilities and improvements relating to its water and wastewater system, including certain treatment facilities, pipelines and other infrastructure (the "Project"); and

WHEREAS, the Agency intends to finance the construction and/or reconstruction of the Project or portions of the Project with moneys ("Project Funds") provided by the State of California, acting by and through the State Water Resources Control Board (State Water Board); and

WHEREAS, the State Water Board may fund the Project Funds with proceeds from the sale of obligations the interest upon which is excluded from gross income for federal income tax purposes (the "Obligations"), and

WHEREAS, prior to either the issuance of the Obligations or the approval by the State Water Board of the Project Funds the Agency desires to incur certain capital expenditures (the "Expenditures") with respect to the Project from available moneys of the Agency; and

WHEREAS, the Agency has determined that those moneys to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Agency for the Expenditures from the proceeds of the Obligations.

NOW, THEREFORE, THE AGENCY DOES HEREBY RESOLVE, ORDER AND DETERMINE AS FOLLOWS:

Section 1: The Agency hereby states its intention and reasonably expects to reimburse Expenditures paid prior to the issuance of the Obligations or the approval by the State Water Board of the Project Funds.

Section 2: The reasonably expected maximum principal amount of the Project Funds is \$23,400,000.

Section 3: This resolution is being adopted no later than 60 days after the date on which the Agency will expend moneys for the portion of the Project costs to be reimbursed with Project Funds.

Section 4: Each Agency expenditure will be of a type properly chargeable to a capital account under general federal income tax principles.

Section 5: To the best of our knowledge, this Agency is not aware of the previous adoption of official intents by the Agency that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

Section 6: This resolution is adopted as official intent of the Agency in order to comply with Treasury Regulation §1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of Project costs.

Section 7: All the recitals in this Resolution are true and correct and this Agency so finds, determines and represents.

#### MATTER FOR CONSIDERATION

4. Proposed Poseidon Resources Huntington Beach Ocean Desalination Project – New 2018 Term Sheet

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President Bilodeau stated the new Poseidon term sheet before the Board tonight is a culmination of several months of work by the Desalination Funding ad hoc Committee and announced that this ad hoc Committee is officially being disbanded as it has completed the task for which it was formed.

General Manager Markus announced that the Board received three letters today regarding the Poseidon Term Sheet on tonight's Agenda: Orange County Coastkeeper, Golden State Water Company, and Irvine Ranch Water District.

Executive Director John Kennedy recalled that the Term Sheet with Poseidon provides the overall structure for a potential partnership for the purchase of up to 56,000 acre-feet per year (afy) of desalinated water. He outlined the major changes of the new Term Sheet as follows: 1) The rate OCWD pays Poseidon Resources for water would no longer be indexed to the Metropolitan Water District (MWD) water supply rate; OCWD would pay Poseidon's documented cost of service along with an agreed to return on equity; 2) The contractual relationship with Poseidon would be for a term of 30 to 35-years, with the exact length to be negotiated with the final Water Purchase Contract; 3) The District would assume the risk for electricity rate increases; and 4) OCWD would retain the lead role in developing all aspects of the distribution plan; but there is now an option to have Poseidon Resources take responsibility for financing and constructing facilities distributing potable water to the District, Producers and other retail water agencies.

**Public speakers in support of Poseidon Term Sheet due to:** increased water reliability, drought-proof, diversified water supply, improved Term Sheet with shortened term and reduced financial risk to tax payers.

Mike Posey, City of Huntington Beach Mayor

Sharon Campbell representing Assemblyman Bough - distributed a letter of support signed by 62 legislators

Jim Leach, Santa Margarita Water District

Zeke Hernandez, President of the League of United Latin American Citizens  
Shirley Dettloff, Past Huntington Beach Mayor, past Coastal Commissioner, Founder and  
President of Amigos de Bolsa Chica, and Huntington Beach resident  
Duane Cave, Moulton Niguel Water District Director  
Dr. Allan Bernstein, Tustin City Councilmember, Orange County Sanitation District Board  
member, Environmental Quality Committee of California League of Cities  
Tony Capitelli, Orange County Association of Realtors Government Affairs Director  
Adam Wood, Building Industry Association  
Carolyn Cavecche, President and CEO of the Orange County Taxpayers Association  
Ernesto Madrano, Representative for LA and OC Building and Construction Trades Council  
Paul Kelly, Executive Director of CalDesal Association  
Scott Maloni, Poseidon Chief Executive Officer

**Public speakers in opposition to revised Term Sheet due to:** environmental factors; water  
quality issues; project cost issues; lack of exploration into other alternatives including additional  
groundwater storage; lack of prospective customers; improper use of potable water for recharge  
or barrier protection; unfair financial burden to taxpayers; poor performance by Carlsbad  
Desalination Plant; illegal and toxic discharge violations by Poseidon, inability of Poseidon to  
meet water delivery requirements; insufficient proof of need for the water; significant future  
energy costs; poor site location on an earthquake fault and inundation area; lack of time provided  
for public review and comment.

Wayne Miller, Yorba Linda resident - submitted prior letter (dated May 1, 2015) detailing his  
concerns

Michael Wellborn, Friends of Harbors, Beaches & Parks

Norma Vandermullen, Huntington Beach resident

Merle Moshiri, President of Residents for Responsible Desalination

Paul Cook, Irvine Ranch Water District General Manager – Distributed letter (dated June 6,  
2018) expressing IRWD concerns

Ray Heimstra, Associate Director Orange County Coastkeeper – Distributed a letter (dated June  
6, 2018) setting forth its concerns and provided the Poseidon 2017 Annual Report to the San  
Diego County Water Authority that details numerous violations.

Firoozeh Peiman

Peer Swan, Irvine Ranch Water District Director

Kassra Ghasemi

Wanzhuo Li, UCI, Irvine resident and student

Milsa Vijayadharan, South Orange County resident

Kathy Martens, Huntington Beach resident

Kirk Nason, Huntington Beach resident and HB Huddle Environment team member

Milt Dardis, Huntington Beach resident

Bill McCardy

Alex Kanavalehyk, Anaheim resident

Kirk Nason, Huntington Beach resident and HB Huddle representative

Taxpayer Dr. Mikel Hogan, Huntington Beach resident

**Other comments:**

Richard Armendariz, Retired Administrative Law Judge – Five-member Desalination Funding ad hoc Committee was never ratified by the Board and has met in secrecy without any posted Agenda which is a violation of The Brown Act. Members of the Board who were not included in these meetings should have a say in what happens with the Term Sheet.

John Earl, Voice of Surf City – Desalination Funding ad hoc Committee has been meeting for 2 ½ years and was never approved by a formal motion of the Board. It provided an unfair advantage for Poseidon to be involved in those meetings. The public has been locked out of the process.

Bill McCardy – Questioned why Director Dewane has not recused himself from voting on the matter due to conflicts of interest stemming from his service on OCWD Board, the Mesa Water Board and CalDesal.

**Board discussion**

The Board asked the Poseidon representatives to clarify comments made by the public regarding operational issues and toxicity violations at the Carlsbad Plant. Poseidon Sr. Vice President Peter MacLaggan clarified problems highlighted in the Poseidon 2017 Annual Report to the San Diego County Water Authority (SDCWA), noting that new operational protocols are in place, and toxicity issues will be resolved when the State Water Resources Quality Board corrects and reissues Poseidon's permit.

The Board questioned staff regarding issues OCWD faces with the future availability of Metropolitan Water District water, and requested staff to provide information on the cost of GWRS water v. replenishment water. Staff was further directed to plot MWD increases over the last 50 years. With regard to the assertions that the Desalination Funding ad hoc Committee violated The Brown Act, General Counsel Kuperberg stated the Committee met all legal requirements. He further stated that the District Act does not prohibit its elected officials from serving on other Boards. After discussion, the Board concurred that additional time should be provided for public input on the Term Sheet, and the following action was taken.

## MOTION NO. 18-66

## DEFERRING CONSIDERATION OF THE REVISED TERM SHEET WITH POSEIDON

Upon motion by Director Sarmiento, seconded by Director Whitaker and carried [10-0] by roll call vote, consideration of the 2018 term Sheet with Poseidon is hereby deferred to the July 18 Board meeting.

Ayes: Anthony, Bilodeau, Dewane, Green, Nguyen, Sarmiento, Sheldon, Whitaker, Vanderbilt, Yoh

5. Santa Ana Watershed Project Authority Activities

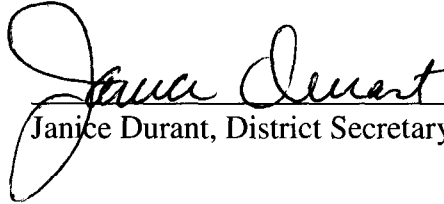
There was no discussion of this item.

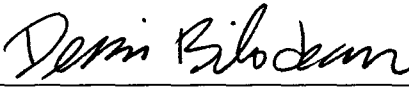
6. Committee/Conference/Meeting Reports

Directors Green and Whitaker reported on their attendance at the Orange County Water Summit at the Grand Hotel in Anaheim on June 1.

ADJOURNMENT

General Counsel Joel Kuperberg advised that there was no need to recess to Closed Session at tonight's meeting. There being no further business to come before the Board, the meeting was adjourned at 8:20 p.m.

  
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Janice Durant, District Secretary

  
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Denis Bilodeau, President