

**REVISED**  
**AGENDA**  
SPECIAL MEETING BOARD OF DIRECTORS  
ORANGE COUNTY WATER DISTRICT  
18700 Ward Street, Fountain Valley, CA (714) 378-3200  
**THURSDAY, MAY 14, 2015 – 5:30 P.M.**

**\*Teleconference Site:**  
2255 Moody Ridge Road, Alta, CA 95717 (714) 454-2003

**\* Members of the public may attend and participate at both locations.**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**VISITOR PARTICIPATION**

Time has been reserved at this point in the agenda for persons wishing to comment for up to three minutes to the Board of Directors on any item that is not listed on the agenda, but within the subject matter jurisdiction of the District. By law, the Board of Directors is prohibited from taking action on such public comments. As appropriate, matters raised in these public comments will be referred to District staff or placed on the agenda of an upcoming Board meeting.

At this time, members of the public may also offer public comment for up to three minutes on any item on the Consent Calendar. While members of the public may not remove an item from the Consent Calendar for separate discussion, a Director may do so at the request of a member of the public.

**MATTER FOR CONSIDERATION**

1. **PROPOSED POSEIDON RESOURCES CITY OF HUNTINGTON BEACH OCEAN DESALINATION PROJECT**

RECOMMENDATION:

- 1) Approve the Term Sheet;
- 2) Establish a project budget of \$230,000; and
- 3) Authorize staff to hire consultants for project issues relating to distributing the Poseidon water, water quality, considering alternative supplies and financial assistance and execute the necessary contracts

2. **INFORMATIONAL ITEMS**

3. **VERBAL REPORTS**

- PRESIDENT'S REPORT
- GENERAL MANAGER'S REPORT
- DIRECTORS' REPORTS
- GENERAL COUNSEL REPORT

**ADJOURNMENT**

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the Orange County Water District, 18700 Ward Street, Fountain Valley, CA and on the OCWD website not less than 24 hours prior to the meeting date and time above. All written materials relating to each agenda item are available for public inspection in the office of the District Secretary. Backup material for the Agenda is available at the District offices for public review and can be viewed online at the District's website: [www.ocwd.com](http://www.ocwd.com)

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the District Secretary at (714) 378-3233, by email at [jdurant@ocwd.com](mailto:jdurant@ocwd.com) by fax at (714) 378-3373. Notification 24 hours prior to the meeting will enable District staff to make reasonable arrangements to assure accessibility to the meeting.

As a general rule, agenda reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda, and can be reviewed at [www.ocwd.com](http://www.ocwd.com). Copies of these materials and other disclosable public records distributed to all or a majority of the members of the Board of Directors in connection with an open session agenda item are also on file with and available for inspection at the Office of the District Secretary, 18700 Ward Street, Fountain Valley, California, during regular business hours, 8:00 am to 5:00 pm, Monday through Friday. If such writings are distributed to members of the Board of Directors on the day of a Board meeting, the writings will be available at the entrance to the Board of Directors meeting room at the Orange County Water District office.



**Revised**  
**AGENDA ITEM SUBMITTAL**

**Meeting Date:** May 14, 2015

**To:** Board of Directors

**From:** Mike Markus

**Staff Contact:** J. Kennedy

**Budgeted:** No

**Budgeted Amount:** N/A

**Cost Estimate:** \$230,000

**Funding Source:** General Reserves

**Program/ Line Item No.** 1045.53001

**General Counsel Approval:** N/A

**Engineers/Feasibility Report:** N/A

**CEQA Compliance:** N/A

**Subject:      PROPOSED POSEIDON RESOURCES CITY OF HUNTINGTON BEACH  
                    OCEAN DESALINATION PROJECT**

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**SUMMARY**

On March 18, 2015 staff provided a draft Term Sheet which outlined the overall structure of a potential partnership with Poseidon Resources regarding the City of Huntington Beach Ocean Desalination Project. Since that time, changes to the Term Sheet have occurred which are shown in the attached document.

On May 11, 2015 staff and Poseidon Resources agreed to additional changes to the Term Sheet which are separately shown in the document with yellow highlighting.

Four meetings recently occurred with the Ocean Desalination Citizens Advisory Committee (ODCAC) as approved by the Board. A written report on those meetings from the facilitator Paul Brown is attached.

Attachments to this report are listed below.

- A. Term Sheet – edited version as compared with March 18, 2015 document
- B. Term Sheet – clean version
- C. Presentation material
- D. Recent comment letters received on the project and/or Term Sheet
- E. Paul Brown Summary of ODCAC Deliberations and Findings
- F. Questions and Answers document
- G. March 26, 2015 meeting minutes
  - a. March 26, 2015 presentation on OCWD
  - b. March 26, 2015 presentation on the Poseidon project
  - c. March 26, 2015 general presentation on the Term Sheet
- H. April 9, 2015 meeting minutes
  - a. Detailed presentation on the Term Sheet
- I. April 23, 2015 meeting minutes
  - a. Individual summary comments provided by the CAC members
- J. April 30, 2015 meeting minutes
- K. Information regarding the individual Committee members

## RECOMMENDATION

- 1) ~~Approve Review~~ the Term Sheet ~~and consider action~~;  
*# the Term Sheet is approved*
- 2) Establish a project budget of \$230,000; and
- 3) Authorize staff to hire consultants for project issues relating to distributing the Poseidon water, water quality, considering alternative supplies and financial assistance and execute the necessary contracts.

## BACKGROUND/ANALYSIS

### Term Sheet

On January 7, 2015 staff was directed to begin negotiations for a Term Sheet with Poseidon Resources and to report back to the Board on March 18, 2015. Different options are available to the District to partner with Poseidon to advance the proposed project. These options directly impact the price of the water and the allocation of risk to the two parties. The Term Sheet provides the overall business terms and structure of such a partnership and if approved would be used in the future to assist in the development of an actual water purchase contract (Contract).

On March 18, 2015 the District released a draft Term Sheet to the community for review and comment. Additionally, the Board authorized four meetings with the ODCAC.

Staff has continued to meet with Poseidon Resources and negotiate the language of the Term Sheet. The ODCAC also provided comments and input in modifying the Term Sheet. Staff's approach to the meetings and the development of the Term Sheet was to keep the relationship between OCWD and Poseidon easily understandable and for the District to avoid becoming involved in the: (1) financing of the treatment plant; and (2) permitting issues regarding the California Coastal Commission and the State Regional Water Quality Control Board. The Term Sheet is summarized below:

- Poseidon would be responsible for permitting, financing, designing, constructing and operating the ocean desalination treatment plant,
- OCWD would purchase the plant water,
- OCWD would determine how the plant water would be distributed and its use,
- OCWD would be responsible for permitting, financing, designing, constructing and operating the necessary distribution facilities to transmit the water to the end users,
- The life of the agreement is for 50 years,
- OCWD can purchase the plant in 30 years,
- OCWD would pay Poseidon the Metropolitan Water District (MWD) treated full service rate (currently \$923/acre-foot) including an allowance for the MWD readiness to serve and capacity charges (approximately \$80 per acre-foot) plus an additional premium. The additional premium would be:
  - Up to 20% of the total MWD rate for the first 10 years of the contract,
  - Up to 15% for the second ten year period,
  - Up to 10% for the third ten year period,

- Up to -5% for the fourth ten year period, and
- 0% for the last ten year period.

~~The reliability premium averages 10% over the 50 year life of the contract.~~

- Starting with the fifteenth (15) anniversary of commercial operations and every five (5) years thereafter, the premium amount will be reviewed and adjusted down (can go below 0%) if the Seller is receiving an economic return above an agreed upon amount.
- The MWD rate is subject to a minimum cumulative annual escalation rate of approximately 3% to be negotiated prior to possible execution of a final contract.
- OCWD can take possession of the treatment plant at the end of the contract for \$1,
- The price of the water would be reduced and readjusted if new technological improvements can be installed,
- Poseidon would need to demonstrate successful operation of the plant in the City of Carlsbad,
- Poseidon would provide water at an agreed to water quality that meets all federal and state standards,
- Assumes the MWD Local Resources Program subsidy is received. If the subsidy is not received neither party will enter into a final Contract, and

The Term Sheet is not definitive and does not legally commit either party to any future actions. However if OCWD decides to move forward with the Term Sheet, the District is signaling a desire to explore in much greater detail the exact terms of a final Contract with Poseidon Resources to purchase the plant water.

If the Board agrees with the provisions within the Term Sheet and approves the document, staff would need to study and fully understand the issues, costs and risks of taking on the task of purchasing and then distributing the Poseidon water. The District would also need to obtain firm commitments from retail water agencies to purchase the water.

### Term Sheet Pros and Cons

The Term Sheet approach has several benefits or transfers of risk that are listed below:

- Interest rates are relatively low – any increase between now and when project financing would be obtained would be absorbed by Poseidon.
- Power rates increase – California has mandated the development of new “green energy” projects. This will put upward pressure on the cost of energy. Poseidon would have to absorb these increases.
- New regulatory requirements – Under the Term Sheet, Poseidon would have to comply with any new regulatory mandates or requirements.
- Construction cost increases – Poseidon would have to absorb any construction cost increases.

Conversely the Term Sheet as prepared has the following risk and/or issues that would have to be successfully managed.

- ~~If the price of MWD water significantly increases over time, payments to Poseidon could be much greater than the actual cost to create the water.~~

~~Note: Staff and Poseidon were still negotiating a new provision for the Term Sheet to address this issue at the time this report was being finalized for the Board agenda mail-out.~~

- OCWD construction of the necessary distribution system improvements – The District will have to ensure that sufficient time is provided in a final water purchase contract to complete the distribution system to avoid liquidated damage penalties from not finishing this work on time to match the completion date of the treatment plant,
- Take or Pay arrangement – The District will always have to purchase the Poseidon water and will need parallel agreements with any cities and retail water districts who decide to take the water. Additionally the District will need to verify that there is a benefit to taking the Poseidon water for all reasonable future water demands and supply scenarios that could exist.
- Avoid a pipeline to nowhere scenario – The District does not want to construct a new distribution system and for some reason Poseidon is unable to construct the treatment plant. Sufficient safeguards need to be put in place to avoid such a scenario.

### Moving Forward

If the Board approves the Term Sheet and the recommended project budget, staff would work on the following issues with assistance from technical consulting experts and the Municipal Water District of Orange County (MWDOC). Staff is estimating the cost of the outside consultants to be approximately \$230,000 with the work taking six to nine months.

- Distribution - Determine exactly how much water the District can reasonably take and what facilities and institutional approvals are needed to transport and recharge the water and estimate the costs; Determine which retail agencies would commit to taking Poseidon water and the quantity and flow rate. This would be accomplished by executing some type of document between the District, MWDOC and the interested retail agency; Determine how the Poseidon water would be transmitted to the retail agencies, the necessary institutional approvals and the estimated costs; Determine what the District would charge agencies receiving the Poseidon water.
- Water Quality - Based upon where the Poseidon water would be transmitted, determine what potential water quality integration issues could develop. The Poseidon water would have a different chemistry as compared with MWD imported water and groundwater. Would recharging the water potentially mobilize any elements naturally occurring in the aquifer formations? Under what conditions will MWD allow the water into their pipelines? Can issues such as the District is experiencing with the GWRS pipeline occur? What types of piping materials would be receiving the water? Any integration issues that may arise would not be unique and could be managed. However contingency plans and funding may need to be

set aside to allow the treatment process for the Poseidon water to be modified if necessary.

- Financial - Review in detail the project finances. Poseidon needs to have sufficient revenues to support the debt issuance needed to finance the project. However the District wants to avoid a scenario where the cost to actually produce the water is significantly less than what is being paid for the water. Review the debt and equity mix to fund the project and the implications to Poseidon's actual cost. Provide an analysis of past Metropolitan Water District (MWD) rate increases and future projections.
- Reliability Analysis – The reliability of imported MWD water supplies needs to be assessed. What types of assumptions has the MWD Integrated Resources Plan been built upon? Additionally, an analysis of what alternative water supply projects and/or programs could be considered needs to be completed. What is the cost of not having sufficient water supplies for the OCWD service territory? A review of the San Diego County Water Authority reliability analysis would also be conducted. The District would take advantage of work currently being completed by MWDOC (“Orange County Water Reliability Study”) to assist in this effort.

#### Comments Received on the Term Sheet

As of May 8, 2015 the District had received six letters on the project and/or Term Sheet which are attached. Additional letters are expected prior to the May 14, 2015 Board meeting date.

#### Ocean Desalination Citizens Advisory Committee (ODCAC)

The ODCAC met four times (March 23, April 9, 23 & 30). The committee facilitator Paul Brown has provided a detailed report to the Board which is separately attached. This report includes an attachment with general comments on the project and the Term Sheet from each committee member from the April 23, 2015 meeting. Additionally a “Question and Answer” document was generated from the committee meetings which addresses many of the project issues. Unfortunately Mr. Brown will not be able to attend the Board meeting due to a prior commitment.

#### **PRIOR RELEVANT BOARD ACTION(S)**

05/22/13 R13-5-48 – Adopt resolution stating that ocean desalination supplies should be considered in the District's water supply portfolio.

07/24/13 R13-7-97 - Authorize execution of a confidentiality agreement and receive information from Poseidon Resources to study the economic feasibility of a seawater desalination facility in Huntington Beach that may lead to a water purchase agreement for the entire productive capacity of the plant; and Establish a “Citizen's Advisory Committee” for the potential project;

11/11/13 – Support California Coastal Commission approval of the proposed Poseidon Project

01/08/14 M14-2 – Direct staff to arrange a Board meeting with the consultants used by SDCWA for their Carlsbad desalination project.

02/19/14 M04-36 - Request proposals from the three firms that assisted the SDCWA with the City of Carlsbad desalination project

04/02/14 M14-61 – Authorize staff to issue financial RFP's

05/21/14 M14-87 – Defer action to select a financial consultant to June 4, 2014

06/04/14 R14-6-80 – Approve agreement to Clean Energy Capital for \$49,720 to provide financial analysis on the proposed Poseidon Resources City of Huntington Beach Ocean Desalination Project

12/03/14 R14-12-155– Increase the Clean Energy Capital contract by \$27,000 to respond to comments on the financial analysis report.

01/07/15 M15-5 – Direct staff to begin negotiating a Term Sheet with Poseidon Resources and began establishing a Citizens Advisory Committee

03/18/15 – Directed that meetings of the Ocean Desalination Citizens' Advisory Committee begin



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**Term Sheet**  
**Water Reliability Agreement**  
**Huntington Beach Seawater Desalination Project**

**Orange County Water District**  
**and**  
**Poseidon Resources (Surfside) LLC**

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**May~~April 30~~March, 2015**

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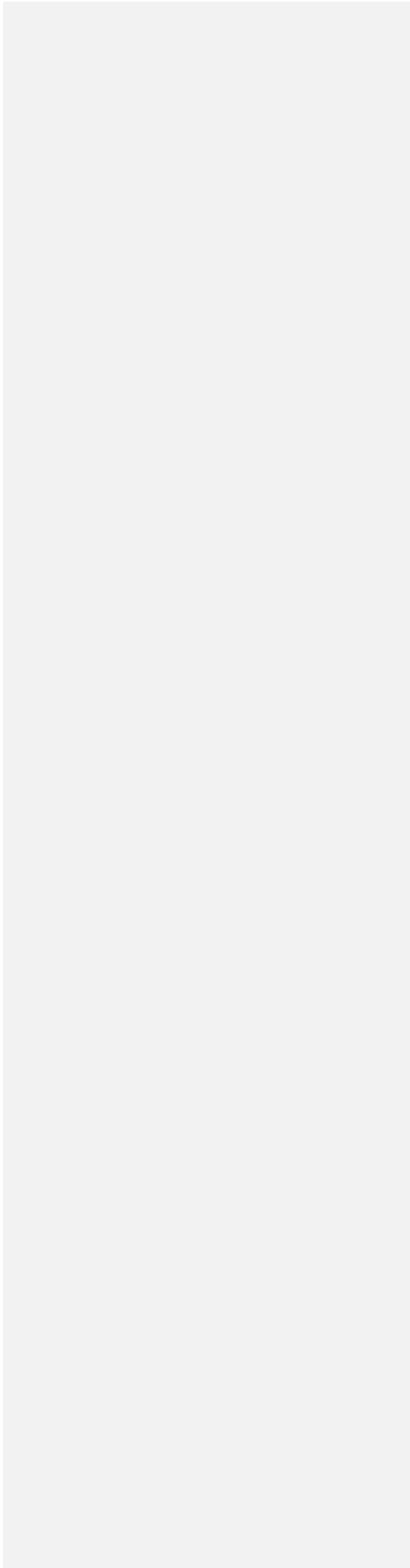
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## TERMINOLOGY

<b>Subject</b>	<b>Meaning</b>
1. Parties	<p>Seller Poseidon Resources (Surfside) LLC (“Seller”). Seller is a special purpose project company established and controlled by Poseidon Water LLC.</p> <p>Buyer Orange County Water District (“Buyer”).</p> <p>Together, the “Parties.”</p>
2. Plant	A reverse osmosis seawater desalination plant, including the seawater intake, concentrate disposal facilities, product water pump station (“Product Water Pump Station”), and appurtenant facilities to be located on a site adjacent to the AES Huntington Beach Generating Station (“Plant”), capable of delivering a baseload of 56,000 acre-feet/year of desalinated water (“Product Water”) to the boundary of the Plant site (“Delivery Point”) consistent with the Subsequent Environmental Impact Report (SEIR).
3. Delivery Point	The Delivery Point is defined as the boundary between the Plant and the Delivery System, currently expected to be the edge of the Plant site at Newland Street. The Product Water Pump Station that is part of the Plant will be adequate to transport and deliver Product Water at the quantity and pressure required by the Contract.
4. Delivery System	The Delivery System shall be defined as any offsite facilities (i.e., pipeline and booster pumps) to deliver the Product Water after the Delivery Point.
5. Water Reliability Agreement	A contract (“Contract”) between the Seller and the Buyer under which the Seller shall permit, construct, own, operate and maintain the Plant and deliver water to the Delivery Point, and the Buyer shall construct, own, operate and maintain the Delivery System and purchase all Product Water produced under terms set forth in the Agreement (up to 56,000 acre-feet/year), except for any water sold to the City of Huntington Beach under the Huntington Beach Agreement (defined below).
6. Contract Date	The date on which the Contract is executed and delivered by the Parties.

<b>Subject</b>	<b>Meaning</b>
7. EPC Contractor; EPC Contract	A proposed contract between Seller and the Plant’s engineering, procurement and construction contractor and with its principal process subcontractor (the “EPC Contractor”) for the design, construction and startup of the Plant (the “EPC Contract”). The EPC Contract will be consistent with the Contract.
8. Operations Agreement	A proposed contract between Seller and the Operating Contractor for the operation, maintenance, repair and equipment replacement of the Plant on behalf of Seller. The Operations Agreement will be consistent with the Contract and will have terms and conditions that will provide a reasonable assurance that the Seller will be able to meet its operating performance obligations under the Contract.
9. MWD	Metropolitan Water District of Southern California.
10. MWD Agreement	The MWD Local Reliability Program Agreement between the Buyer and/or Orange County MWD Member Agencies and MWD.
11. SEIR	The Subsequent Environmental Impact Report for the Huntington Beach Seawater Desalination Project (the “Project”) certified by the city of Huntington Beach in September, 2010.
12. Huntington Beach Agreement	The agreement contemplated to be entered into between Poseidon and the City of Huntington Beach (“HB”) that grants HB the right to purchase 3,360 acre-feet/year at a discounted price.
13. Regulatory Water Quality Standards	All potable water health and safety requirements and maximum contaminant levels established by state and federal agencies and applicable to the Product Water.

**NEGOTIATION AND APPROVAL PROCESS**

<b>Subject</b>	<b>Understanding</b>
1. Purpose	<p>The purpose of this Term Sheet is to set forth the <del>basis for preliminary and non-binding terms of subsequent</del> negotiations toward a possible Contract between the Parties. The proposed terms and conditions set forth herein represent the current intention of the Parties, do not bind either Party in any manner, <del>do not commit any Party to a particular course of action (e.g., entering into a Water Reliability Agreement), do not limit the Buyer's discretion under CEQA,</del> and in particular do not commit the Buyer to <del>design or construct the Delivery System or to purchase Product Water.</del></p> <p>This Term Sheet is a summary only and is not comprehensive or definitive. The Parties <del>do not intend to be</del> <del>are do n not intend to be</del> legally bound until, <del>among other things, any required definitive agreements related to the Project, including without limitation the Contract, are executed by the Parties, and either any required CEQA review, including any required public hearings, are completed, and definitive agreements related to the Project are executed by the Parties,</del> <del>any additional conditions or changes to the Project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and all required permits and approvals needed to enter into the transactions contemplated herein have been obtained by Buyer and Seller in accordance with all applicable laws and regulations.</del> Either Party is free to terminate negotiations at any time following written notice to the other Party without any liability or obligation to the other Party.</p> <p><del>As required by law, prior to entering into the transactions contemplated herein, Buyer retains the sole and independent discretion to, among other things, balance the benefits of the proposed Project against any potential environmental impacts prior to taking final action if such impacts cannot be avoided, consider alternatives to the proposed Project (including the "no project" alternative), and determine not to proceed with the proposed Project.</del></p> <p>The Parties understand that substantive terms and detailed provisions not noted or fully developed in this Term Sheet are expected to be included in any final Contract. <del>Buyer's approval of the Contract is conditioned on and Buyer shall have no obligation to enter into any definitive transaction documents (including but not limited to the Contract), until Buyer</del></p>

Subject	Understanding
	<p><del>determines in its sole and absolute discretion that all of the following conditions are satisfied (or Buyer determines in its sole and absolute discretion to waive one or more such conditions):-</del></p> <p><del>A. Buyer certifies or adopts a CEQA document and makes all findings and adopts all mitigation measures in accordance with CEQA and all other applicable laws. In this regard, Buyer shall find that until after (1) the proposed project is reviewed in accordance with the requirements of CEQA, (ii) any additional conditions or changes to the project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and (iii) all required permits and approvals have been obtained by Buyer and Seller in accordance with all applicable laws and regulations.</del></p> <p><del>B. Buyer can feasibly sell and deliver at rates favorable to Buyer, and/or Buyer can feasibly and cost effectively beneficially use all of Product Water to be purchased from Seller,</del></p> <p><del>C. The Delivery System can feasibly be designed, constructed and operated by Buyer at costs acceptable to Buyer,</del></p> <p><del>D. Buyers design and construction of the Delivery System and Buyers purchase of the Product Water will not have an adverse impact on Buyer's financial rating or Buyer's ability to issue debt for other purposes of Buyer,</del></p>
2. Schedule	<p>A. Schedule Milestones for Project</p> <p>Seller anticipates:</p> <ul style="list-style-type: none"> <li>• that the Contract will be executed by the Parties no later than December 31, 2016;</li> <li>• that it shall obtain the full construction financing of the Plant ("Financial Close")no later than June 30, 2017 (the "Construction Finance Deadline");</li> <li>• that the Commercial Operation Date will be by a date that is 42 months following the Financial Close, as such date may be extended due to Uncontrollable Circumstances (the "Scheduled Commercial Operation Date").</li> </ul> <p>B. Schedule Extensions</p> <p>The Contract shall provide for extensions of such dates due to the occurrence of Uncontrollable Circumstances and, in the</p>

<b>Subject</b>	<b>Understanding</b>
	<p>absence of Uncontrollable Circumstances, as mutually agreed to by the Parties.</p> <p>C. Failure to Meet Deadlines            In the event that, after extensions that may be provided for in the Contract, Seller has not been able to meet the Construction Finance Deadline, or the Scheduled Commercial Operation Date, Buyer will have the remedies set forth below in the Section of this Term Sheet entitled TERMS AND CONDITIONS OF THE PROPOSED WATER RELIABILITY AGREEMENT Sections 4 &amp; 7. Similarly, if Buyer fails to complete construction of the Delivery System by the Scheduled Commercial Operation Date, the Seller will have the remedies set forth below in the Section of this Term Sheet entitled TERMS AND CONDITIONS OF THE PROPOSED WATER RELIABILITY AGREEMENT Section 7.</p>
3. Contract Negotiations	The Parties acknowledge that either Party may suspend, terminate or renew negotiations at any time and for any reason without consequence.
4. Buyer Due Diligence	<p>During the negotiating period and through the execution of the Contract, the Buyer intends to conduct such due diligence relating to the Project, the Seller and its proposed contractors and financing arrangements as it reasonably determines is necessary for entering into the Contract. Seller will fully cooperate with the examination, and provide all documents and information reasonably requested by the Buyer in connection therewith, subject to the terms of the existing confidentiality agreement between the Parties. Buyer will have the right to (a) review and comment on the EPC Contract, including but not limited to the provisions related to the design basis (including future optionality on expansion), process equipment and material specifications, prior to the EPC Contract being executed, (b) review and comment on the Operations Agreement, including but not limited to the provisions related to delivery of Product Water and repair and replacement of process equipment, prior to the Operations Agreement being executed, and (c) approve the EPC Contractor and Operating Contractor, in each case, which approval will not be unreasonably withheld.</p>
5. Responsibility for the Plant	<p>Seller understands and acknowledges Buyer does not assume any responsibility for the Plant whatsoever <u>for the term of the Cecontract</u>. Seller has planned and developed and will implement the Plant completely at its own risk. —Seller will be solely responsible for the efficacy of the Plant and its permitting,</p>

<b>Subject</b>	<b>Understanding</b>
	financing, design, construction, commissioning and capability of successfully passing acceptance tests producing Product Water to the standards of the Contract. <del>Seller warrants that plant will warrant in the Contract that the Plant will reasonably perform as being represented.</del> No due diligence performed by the Buyer shall constitute any transfer of liability to the Buyer for the Plant or its performance.
6. Water Supply Arrangement	The Parties recognize that Buyer may be discussing the supply of Product Water from the Project with Orange County and other Southern California water agencies.

**TERMS AND CONDITIONS OF  
THE PROPOSED WATER RELIABILITY AGREEMENT**

Subject	Proposed Term/Condition
1. Conditions Precedent	<p>The Contract will include the following conditions precedent that will need to occur prior to Buyer having a firm obligation to purchase Product Water:</p> <ul style="list-style-type: none"> <li>A. Seller shall obtain all discretionary permits necessary to authorize Plant construction (including a Coastal Development Permit), and provide copies to Buyer.</li> <li>B. Seller shall provide fully-executed copies of the EPC Contract and Operations Agreement to Buyer.</li> <li>C. Seller shall achieve Financial Close (with all construction financing in place for the Plant).</li> <li>D. Buyer (or Orange County MWD Agencies) shall execute the MWD Agreement.</li> <li><u>E. Buyer shall complete all required CEQA processing and approvals, and the time period for challenging such CEQA documents shall have passed (or any such challenges shall be fully and finally resolved), and shall obtain all of its discretionary permits to perform its Delivery System improvement obligations and have a sufficient schedule to perform the Delivery System improvements.</u></li> <li><u>F. Seller will demonstrate 90 days of successful operation of the The desalination project in the City of Carlsbad will have demonstrated 90 days or more of successful operation. plant-</u></li> <li><u>G. Buyer certifies or adopts a CEQA document and makes all findings and adopts all mitigation measures in accordance with CEQA and all other applicable laws. In this regard, Buyer shall find that –(i) the proposed project is reviewed in accordance with the requirements of CEQA, (ii) any additional conditions or changes to the project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and (iii) all required permits and approvals have been obtained by Buyer and Seller in accordance with all applicable laws and regulations.</u></li> </ul>

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Subject	Proposed Term/Condition
	<p>H. Buyer can feasibly sell and deliver at rates favorable to Buyer, and/or Buyer can feasibly and cost effectively beneficially use all of Product Water to be purchased from Seller.</p> <p>I. The Delivery System can feasibly be designed, constructed and operated by Buyer at costs acceptable to Buyer.</p> <p>J. Buyers design and construction of the Delivery System and Buyers purchase of the Product Water will not have an adverse impact on Buyer's financial rating or Buyer's ability to issue debt for other purposes of Buyer.</p> <p><del>E.</del></p>
2. Term	<p><u>A. Term</u> The initial term ("Term") of the Contract shall begin upon the execution of the Contract and shall terminate {50} years from the Commercial Operation Date.</p> <p><u>B. Responsibility for Plant Upon Expiration of Term.</u> Buyer shall have no responsibility for any costs or obligations with respect to decommissioning the Plant at the end of the Term.</p>
3. Roles of the Parties	<p><u>A. Seller</u> Seller shall design, permit, construct, start-up and acceptance test the Plant all in conformity to applicable law, prudent industry practices and the requirements of the Contract and the EPC Contract. Seller shall finance the Plant and cooperate with Buyer in the financing of the Delivery System. Upon the commencement of the commercial operation of the Plant ("Commercial Operation Date"), Seller shall operate and maintain the Plant in accordance with prudent industry practices and applicable laws and regulations sufficient to meet the reliability, Product Water quality, <u>product water quantity</u>, and permitting requirements of the Contract, the Operations Agreement and the Plant's operation and maintenance manual (the "Operation and Maintenance Manual") and all Regulatory Water Quality Standards.</p> <p>Upon the achievement of the Commercial Operation Date, Seller shall sell Product Water as provided for under the</p>

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<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>Contract and deliver the Product Water to the Delivery Point.</p> <p><u>B. Buyer</u> Buyer shall design, permit as necessary (the anticipated Coastal Development Permit and any other permits obtained by Seller for the Delivery System prior to execution of the Water Reliability Agreement (the “Seller Delivery System Permits”) will be transferred to the Buyer solely to the extent necessary to design, construct, own, operate and maintain the Delivery System), construct, start-up and acceptance test the Delivery System. Upon the Commercial Operation Date, Buyer shall operate and maintain the Delivery System.</p> <p>Buyer shall cooperate with Seller during the period of the Project, as necessary and appropriate, with respect to activities such as permitting, financing and public information, but shall have no responsibility or liability regarding such activities of Seller.</p> <p>Upon the achievement of the Commercial Operation Date, Buyer shall purchase Product Water as provided for under the Contract and accept delivery of the Product Water at the Delivery Point.</p>
4. Financing Period	<p><u>A. Construction Finance Deadline</u> In the event a Contract is successfully negotiated and executed, Seller shall achieve Financial Close (with all construction financing in place for the Plant) by the Construction Finance Deadline.</p> <p><u>B. Failure to Achieve Financial Close by the Construction Finance Deadline</u> If, after extensions that may be provided for in the Contract, Seller fails to achieve Financial Close for the Plant by the Construction Finance Deadline, and if such failure to meet the Construction Finance Deadline is not caused by actions of the Buyer, the Buyer may terminate the Contract, and upon such termination Seller will reimburse Buyer’s third party costs incurred after execution of the Contract related to the permitting, design, construction, implementation and financing of the Delivery System (including the costs of its advisors and legal</p>

Subject	Proposed Term/Condition
	<p>support), and Seller will have the right to use all work product related to such costs in connection with the Project.</p> <p><u>C. Achievement of Financial Close</u>            If Seller succeeds in achieving Financial Close by the Construction Finance Deadline, Seller will proceed to construct the Plant and Buyer will proceed to construct the Delivery System, unless otherwise agreed by the Parties as part of the Contract. Buyer will not be obligated to construct the Delivery System if Seller fails to achieve Financial Close.</p>
5. Financing Plan	<p>Seller will be solely responsible for the financing of the Plant, and Buyer will be solely responsible for the financing of the Delivery System. Each Party will keep the other Party regularly informed of its progress in executing its respective plan of financing. <del>Notwithstanding the above, the Parties will work together to find the most cost-effective sources of financing, based on the desired allocation of performance and finance responsibilities to be undertaken by each Party.</del></p>
6. Design and Construction of the Plant	<p><u>A. Construction Period Design Reviews for the Plant</u>            During the Construction Period, the Buyer will have the right, but not the obligation, to periodically review the design of the Plant for compliance with the design specifications as set forth in the Contract and the EPC Contract. The Buyer will not have approval authority over the design of the Plant, except as such may relate to compliance with the requirements of the Contract. Seller will agree to consider and respond to material comments or concerns made by the Buyer. <del>“Seller to the extent reasonably possible and without a material impact to its costs, permits or operations capability, will design the treatment plant in a manner to accommodate possible future expansions, additions and changes to the treatment system.”</del></p> <p><u>B. Construction Period Reporting and Review for the Project</u>            Seller and Buyer will attend monthly progress meetings and will provide the other Party access to information such</p>

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<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>Party has regarding the Project, including without limitation any material information Seller provides to the parties providing Plant debt financing or needed to obtain any federal, state, local or water agency subsidies. Seller will consider and respond to material comments or concerns made by the Buyer. The Buyer will have the right to observe and inspect construction of the Plant at any reasonable time following reasonable notice. The Contract will detail the Buyer inspection rights and requirements, and Seller's obligations during the construction of the Plant. The Buyer shall have the right to review information regarding the construction of the Plant to the extent reasonably necessary to confirm Seller's compliance with the requirements of the Contract.</p> <p><u>C. Start-Up and Acceptance Testing of the Plant</u>  The Contract will set forth acceptance test standards and procedures designed to assure the Buyer that the Plant will be capable, on a long term basis, of meeting the requirements of the Contract. The Buyer will have the right to review and comment on the acceptance test protocol to be developed in accordance with the requirements of the Contract, and to observe Plant start-up and acceptance testing.</p>
7. Scheduled Commercial Operation Date	<p>After Financial Close, if, after extensions that may be provided for in the Contract, Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, Seller will owe the Buyer liquidated damages in an amount that will be based on the estimated fixed costs of the Buyer on the Delivery System (including without limitation financing costs) and for a period to be negotiated in the Contract. If the period ends before the Commercial Operation Date occurs, Seller may purchase the Delivery System from Buyer (and be assigned all Buyer rights in the Project) on terms and conditions that will be set forth in the Contract. If Seller elects not to purchase the Delivery System or if Seller has notified Buyer of its intent to abandon the Project, the Buyer may terminate the Contract and shall have the first right, but not the obligation, to purchase the Plant from Seller (and be assigned all Seller rights in the Project) on terms and conditions that will be set forth in the Contract. If, after extensions that may be provided for in the Contract,</p>

Subject	Proposed Term/Condition
	<p>Buyer fails to complete construction of the Delivery System by the Scheduled Commercial Operation Date, the Buyer will owe the Seller liquidated damages in an amount that will be based on the estimated fixed costs of the Seller (including without limitation financing and operating costs) and for a period to be negotiated in the Contract. After such period of time, the Seller may then terminate the Contract and shall have the right to sell the Product Water to third parties. Seller will make reasonable efforts to mitigate its damages by offering to sell Product Water to third parties during any delay in construction or operation of the Delivery System.</p>
<p>8. Operation and Maintenance</p>	<p><u>A. Seller's Obligation to Operate the Plant</u>  Upon the achievement of the Commercial Operation Date, Seller will operate, maintain, repair and replace the Plant in accordance with the terms of the Contract, the Operations Agreement, the Operation and Maintenance Manual, prudent industry practices and applicable laws and regulations sufficient to meet the contractual performance and regulatory requirements. <u>Seller will operate the Plant to meet the distribution requirements of the Buyer, including the operation and maintenance of the Plant's product water storage tank and metering system necessary for Buyer to operate and maintain the Delivery System.</u></p> <p><u>B. Operation and Maintenance of the Delivery System</u>  The Delivery System will be operated and maintained by Buyer. <del>Seller may be given Buyer shall have the option to operate pipeline valves at the interface of the distribution system with the plant in accordance with Buyers instructions at no cost to Buyer with the plant.</del></p> <p><u>C. Operator</u>  Seller will, prior to the Contract Date, contract for the operation, maintenance, repair and equipment replacement of the Plant with the Operating Contractor. The Operating Contractor, which shall perform its duties under the Operations Agreement on behalf of Seller, will not be replaced without the Buyer's approval, which shall not be unreasonably withheld.</p> <p><u>D. Operation and Maintenance Manual</u></p>

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	<p>Two months prior to the Commercial Operation Date, Seller will provide the Buyer with a draft copy of the Operation and Maintenance Manual. Upon its approval, Seller shall provide Buyer with a copy of the approved Operation and Maintenance Manual.</p> <p><u>E. Life-Cycle Maintenance</u> The Contract will contain all necessary assurances that the Plant will be properly maintained, repaired and replaced over the term of the Contract. These will include a requirement to have an <u>industry standard Computerized Maintenance Management (CMMS)</u> system and use it to perform ordinary and capital maintenance, and periodic maintenance inspections.</p> <p><u>F. Restoration of the Plant</u> In the event of damage to the Plant, Seller will be obligated to repair or replace damaged components to enable the restoration of full operations and the full performance of its obligations under the Contract, whether through the application of insurance proceeds, payments from the Operating Contractor or Seller's own capital.</p> <p><u>G. Buyer Right to Monitor</u> The Buyer will have the right to monitor the operation and maintenance of the Plant in order to confirm compliance with the requirements of the Contract. The Buyer will have the right to conduct periodic inspections of the Plant, and will notify Seller of any operations and maintenance deficiencies found for rectification by Seller. The Buyer will have the right to engage consultants and advisors, at Buyer's own cost, for inspections to review Seller performance and performance reports and to provide recommendations to the Seller.</p> <p><u>H. Future Technology Changes</u> <u>If future commercially viable technology changes can be reasonably integrated into the Plant which will have a material reduction project and can allow for a decrease in the cost of providing ocean desalination water by the Seller to the Buyer, the Parties a level to be determined the parties will negotiate an equitable adjustment to the price of the water, taking into account the costs to implement such new commercially viable technology (including the</u></p>

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	<p><u>capital, operating, and maintenance costs and the time remaining in the Contract). These terms shall be negotiated within the final Contract</u><del>Water Reliability Agreement</del></p>
<p>9. Water Quantity</p>	<p><u>A. Water Quantity Commitments</u>  Seller will agree to produce and deliver, and the Buyer will agree to take, 56,000 acre-feet per year of Product Water (the “Committed Amount”). The Committed Amount will be reduced by (a) the amount of Product Water purchased by other entities agreed to by the Parties, including without limitation the City of Huntington Beach under the Huntington Beach Agreement and AES under any direct purchase agreement, and (b) on a year by year basis, any reductions in the quantity of Product Water produced by Seller and for other reasons as permitted under the Contract. The amount of Product Water that Buyer is required to purchase shall never be more than the amount of Product Water that Seller produces and delivers to Buyer; provided that except as otherwise provided in the Contract, Product Water that is not produced or delivered solely due to Buyer’s failure or refusal to take such Product Water will be treated as having been produced and delivered for all purposes under the Contract. For the quantity of Product Water produced and delivered under the Contract, the Buyer will pay a per-acre foot unit charge as set forth in Item 14.</p> <p><u>B. Payment for Available Water that is Not Taken</u>  Payment for Product Water the Buyer does not take will be based on the Delivery Schedule. Seller will make reasonable efforts to mitigate its <del>costs</del><del>damages</del> by offering to sell Product Water to third parties during any period in which Buyer is unable to take Product Water. <u>For water that is available but which Buyer does not take, and for which Seller is unable to deliver to a third party, Buyer will pay a price to be negotiated in the final Contract</u><del>Water Reliability Agreement</del> <u>that covers all of Sellers fixed cost including an appropriate capital charge.</u></p> <p><u>C. Delivery Schedule</u>  The schedule for periodic deliveries of Product Water (daily, monthly, quarterly) will be mutually agreed to by</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>the Parties prior to the Commercial Operation Date and thereafter on an annual basis.</p> <p><u>D. Operating Committee</u>  Seller, the Operating Contractor, and the Buyer will establish an Operating Committee to address daily flow changes and operations and other items to be set forth in the Contract.</p> <p><u>E. Water Ownership</u>  The Buyer will own all Product Water received and accepted at the Delivery Point.</p> <p><u>F. Product Water Pressure and Hydraulic Transients Guarantee</u>  Seller will guarantee Product Water pressure, and will operate the Product Water Pump Station within agreed upon protocols so to minimize hydraulic transients in the Delivery System.</p> <p><u>G. Distribution System Emergencies</u>  In the event of emergencies in its distribution system to be specified in the Contract (a “Distribution System Emergency”), the Buyer may demand a curtailment of Plant operation and Product Water deliveries, excusing the Buyer from its purchase obligation for the duration of the emergency.</p> <p><u>H. Product Water Not Delivered Due to Uncontrollable Circumstances/Distribution System Emergency</u>  Product Water which Seller would have delivered to the Buyer but which Seller is unable to deliver due to an Uncontrollable Circumstance affecting Seller or a Distribution System Emergency shall be delivered by Seller and purchased by the Buyer from any excess Product Water on a negotiated basis, or during an extension of the term of the Contract not to exceed three years. The Buyer will use all reasonable efforts to purchase “make-up” Product Water following the occurrence of Uncontrollable Circumstances affecting Seller and Seller will use all reasonable efforts to provide “make up” Product Water following a Distribution System Emergency if such Product Water can be provided while operating the Plant in accordance with applicable law and within its design</p>

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	<p>limits. Seller will be compensated for any additional costs of providing “make up” Product Water following a Delivery System Emergency.</p> <p><u>I. Respective Cost Obligations of the Parties</u>  Seller will be responsible for all costs incurred in producing and delivering Product Water to the Delivery Point, and the Buyer will be responsible for all costs incurred in receiving and distributing Product Water after the Delivery Point. <del>accept as noted in Section 8.B.</del></p> <p><u>J. Additional Water</u>  <del>Buyer shall have first-right of first offer refusal to purchase any additional Product Wwater beyond the amounts offered under the Huntington Beach Agreement that may become available for sale to third parties. any reason.</del></p>
10.Product Water Quality	<p><u>A. Product Water Quality Requirements Generally</u>  Product Water delivered by Seller will meet all Contract specifications and requirements, and all Regulatory Water Quality Standards. A detailed set of water quality specifications will be incorporated in the Contract per Attachment A to this Term Sheet. Prior to Contract execution, specific disinfection requirements and any other local water quality conditions may also be added to the Attachment A conditions as are reasonably required for safe and prudent operations of the distribution system. If Buyer directs Seller to deliver Product Water different than as specified in the Contract or if there is a need to change the water quality specifications in the Contract other than as a result of a change in Regulatory Water Quality Standards, Seller will be entitled to an equitable adjustment to the Water Purchase Price.</p> <p><u>B. Third Party Claims Regarding Product Water Quality</u>  Seller will be solely liable for any fines, penalties or damages that may be incurred by either Party due to Seller’s failure to meet Product Water quality requirements in the Contract. Seller will indemnify the Buyer against any fines, penalties or damages (including third party tort claims) that may be incurred by the Buyer due to the delivery of Product Water that does not meet such Product Water quality requirements.</p>

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	<p><u>C. Limitation on the Buyer Obligation to Accept Product Water</u>  The Buyer will not be obligated to accept or pay for Product Water that does not meet the Product Water quality requirements in the Contract.</p>
<p>11.Performance Liquidated Damages</p>	<p><u>A. Product Water Quantity Failures</u>  The Contract will specify liquidated damages for Seller’s failure to deliver an agreed upon amount of Product Water required to be delivered by the Contract during any Contract Year (any period running from July 1 to the following June 30 during the term of the Contract). Seller will be afforded a reasonable opportunity to make up delivery failures prior to the imposition of liquidated damages.</p> <p><u>B. Product Water Quality Failures</u>  The Contract will specify liquidated damages for Product Water quality non-compliance.</p>
<p>12.Raw Water Risks</p>	<p>The Contract will set forth the assumed raw water quality parameters upon which Seller’s performance guarantees are based. If (1) actual raw water quality parameters are outside those assumed, or (2) specific negotiated events occur affecting raw water quality (such as pollution events), Seller will be entitled to relief from its water quantity production guarantee <del>if after using reasonable efforts to make operational changes to account for events in (1) and (2) above cannot be made.the plant treatment process cannot be made.</del></p>
<p>13.AES</p>	<p>Seller shall bear all risks relating to AES and AES’s generating plant and property as they relate to the Plant, including AES sale, merger or bankruptcy, and AES lease breach, default and termination; provided Seller shall be entitled to relief from its water quantity production guarantee upon (1) the occurrence of force majeure events or other events effecting the construction and operations of the Plant including access to source water and the site and (2) other reasonable exceptions negotiated by the Parties.</p>
<p>14.Water Purchase Price</p>	<p><u>A. Buyer Obligation to Pay for Product Water</u>  The Buyer will only pay for Product Water that meets the Product Water quality requirements in the Contract and is</p>

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	<p>actually delivered or ready to be delivered to the Delivery Point.</p> <p><u>B. Water Purchase Price</u>  The price payable by the Buyer for Product Water shall consist of (1) the negotiated Unit Price per acre-foot, multiplied by (2) the number of acre-feet of Product Water purchased by the Buyer. Any extraordinary items under the Contract (such as amounts payable by Seller for non-compliance with the MWD Agreement, liquidated damages or indemnity payments) shall be paid or credited as a separate element of the Water Purchase Price, or shall be reflected in a revised Unit Price, as the Parties mutually determine to be appropriate.</p> <p><u>C. Unit Price</u>  The negotiation of the Unit Price (to be finalized prior to execution of the Contract) will be based on the sum of:</p> <ol style="list-style-type: none"> <li>1. The MWD Treated Water Rate, <u>subject to a minimum cumulative annual escalation rate of approximately 3% to be negotiated prior to possible execution of a final contract</u>; plus</li> <li>2. Any other charges from the MWD or the Municipal Water District of Orange County (“MWDOC”) that are avoided by Buyer or its member agencies not purchasing the same amount of water from MWD or MWDOC, as the case may be (subsections 1 and 2 together, the “Base Rate”); plus</li> <li>3. The amount of the MWD subsidy that should be received by Buyer and/or Orange County MWD Member Agencies under the MWD Agreement based on the costs and performance of the Project, so long as Poseidon performs its obligations under the MWD Agreement; plus</li> <li>4. A <u>reliability</u> premium of <u>up to 20%</u> of the Base Rate for the first ten (10) years of the Term, <u>up to 15%</u> of the Base Rate for the second ten (10) years of the Term, <u>up to 10%</u> of the Base Rate for the third ten (10) years of the Term, <u>up to 5%</u> of the Base Rate for the fourth ten (10) years of the Term, and 0% for the final ten (10) years of the Term, <u>each adjustment to the Base Rate a “Premium”</u>.</li> <li>4.5. <u>Starting with the fifteenth (15) anniversary of</u></li> </ol>

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	<p><u>commercial operations and every five (5) years thereafter, the Premium amount will be reviewed and adjusted down (can go below zero) if the Seller is receiving an economic return above an agreed upon amount.</u></p> <p>Failure of Buyer to receive any amount of the expected MWD subsidy will not reduce the Unit Price, unless such failure is caused by the actions or inactions of the Seller as provided in the MWD Agreement and the Contract.</p> <p><u>D. Plant Site Conditions Risk</u> Seller shall bear all risk associated with any differing site conditions and regulated site conditions (such as hazardous substances and cultural resources) at the Plant site.</p> <p><u>E. Delivery System Conditions Risk</u> Buyer shall bear all risk associated with any differing conditions and regulated conditions (such as hazardous substances and cultural resources) on the route of the Delivery System (regardless of any information in the Seller Delivery System Permits or other information provided by Seller to Buyer related to the Delivery System); provided that Seller will make customary representations and warranties related to the Seller Delivery System Permits.</p> <p><u>F. Grants and Subsidies Benefit Buyer</u> <u>Any—While the Buyer and Seller recognize that any potential benefits of private activity bond financing or the pricing support from the MWD Agreement are already included in the Unit Price terms in Section 14C, any other subsidy, grant or contribution received directly or indirectly by the Buyer or Seller from the MWD or any other local, regional, state or federal governmental agency “(Grants and Subsidies)” will be for the full benefit of the Buyer (including the subsidy received pursuant to the MWD Agreement as it relates to the cost and performance of the Plant). The Parties will will also consider alternative approaches regarding federal, state, regional and local financial support to help negotiate an equitable reduction in the Unit Price if the Grants and Subsidies, reduce the capital cost or operating cost of the Plant product Water.</u></p>

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	<p><u>G. Notification of Annual Price Adjustments</u>  For budgetary purposes, Seller will notify the Buyer no later than a date to be specified in the Contract prior to the start of the next succeeding Contract Year of the Water Purchase Price that will be in effect for the coming Contract Year based on changes to the Base Rate and premium as specified in the Contract.</p> <p><del><u>H. Water Available by Seller but Buyer Unable to Take For water that is available but which Buyer does not take, and for which Seller is unable to deliver to a third party. Buyer will pay a price to be negotiated in the final Water Reliability Agreement that covers all of Sellers fixed cost.</u></del></p>
15.No Payment Obligation Before Commercial Operation Date; Exception	<p><u>A. General</u>  The Buyer will have no obligation to purchase Product Water or make any payment whatsoever to Seller prior to the Commercial Operation Date.</p> <p><u>B. Exception</u>  Following approval by the State Department of Public Health of the introduction of Product Water into the Delivery System and prior to the Commercial Operation Date, the Buyer will purchase Product Water meeting Product Water quality requirements in the Contract. The price of the Product Water will be equal to the Base Rate, and the duration of this commitment will be negotiated.</p>
16.Plant Purchase Option	<p>The Buyer will have the option to purchase the Plant for <del>a \$1a nominal price</del> at the end of the Term of the Agreement. <del>Additionally Buyer will have the option, starting on the 30th anniversary of the Commercial Operations Date and annually thereafter, to purchase the Plant from the Seller for the fair market value of the Plant taking into account the condition of the Plant and the terms and conditions of the Contract Agreement.</del></p>

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17.Site Access	<p><u>A. Plant Tours</u> Seller will make the Plant available for Buyer tours after start of commercial operations, subject to reasonable notice by the Buyer.</p> <p><u>B. Site Access</u> Buyer staff, consultants and contractors will be provided reasonable access to the site and all facilities owned or leased by Seller during the construction period and after the start of commercial operations, subject to reasonable notice by the Buyer.</p>
18.Insurance	<p><u>A. Seller Insurance Obligations</u> Seller will obtain and maintain, in reasonable amounts, insurance on the Plant as follows: commercial general liability insurance; builder's risk (including earthquake coverage with an agreed sublimit) and property and casualty insurance that will provide for the full replacement value of the Plant; motor vehicle insurance; workers compensation; business interruption insurance in an amount sufficient to cover a minimum of one year of fixed operating and financing costs and, as appropriate, pollution liability insurance.</p> <p><u>B. Insurance Costs and Risks</u> Seller will bear all costs associated with any insurance deductibles, and replacement cost exceedances associated with builders' risk and property insurance coverage on the Plant. Seller will also bear the risk of any insurance unavailability related to the insurance it is required to maintain on the Plant.</p>
19.Uncontrollable Circumstances/ Performance Relief	<p><u>A. Defined</u> Uncontrollable Circumstances are force majeure, changes in law and other events beyond a Party's reasonable control (after exercising diligence to prevent the occurrence and to mitigate the effect of the occurrence) that materially and adversely affect such Party. Inclusions and exclusions will be negotiated.</p> <p><u>B. Seller Performance Relief</u> An Uncontrollable Circumstance will entitle Seller to schedule and water quantity guarantee relief, to the extent</p>

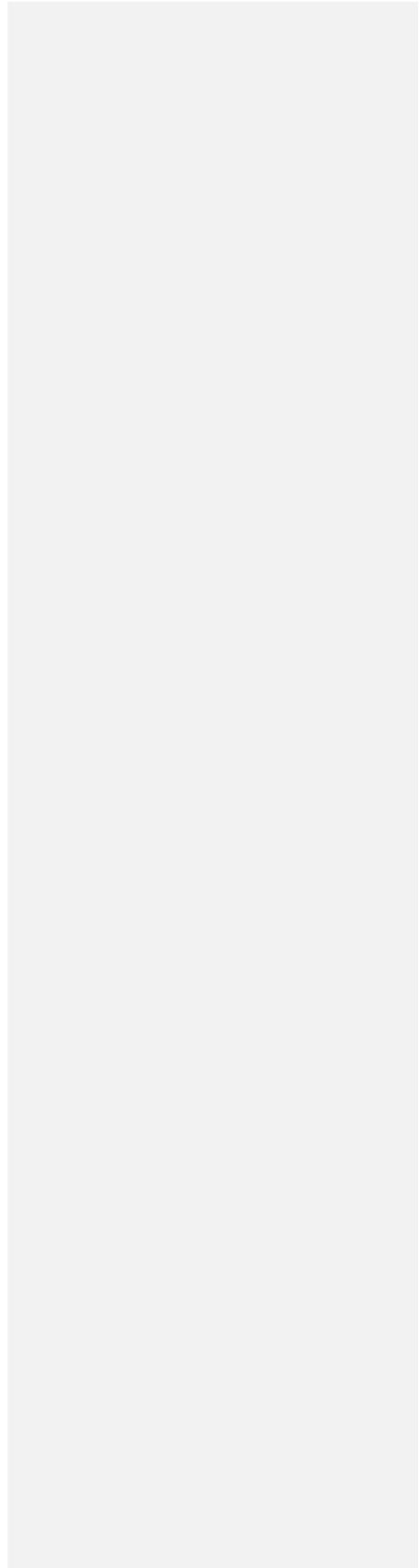
<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>that it is adversely affected by Uncontrollable Circumstances.</p> <p><u>C. No Seller Price or Water Quality Relief</u> Unless otherwise stated in the Contract, an Uncontrollable Circumstance will not entitle Seller to any price relief or any water quality guarantee relief.</p> <p><u>D. Mitigation and Restoration</u> In the event of an Uncontrollable Circumstance, the affected Party will use commercially reasonable efforts to respond to the event and to mitigate its effects and, as soon as is practicable, to restore conditions to the level at which it can fully perform its obligations under the Contract.</p> <p><u>E. Buyer Performance Relief</u> The Buyer will be entitled to relief from its obligation to take and purchase Product Water to the extent its ability to receive delivery of Product Water is adversely affected by a Distribution System Emergency. The Buyer will use all reasonable efforts to purchase “make-up” Product Water following any such occurrence in accordance with Section 9H.</p>
20.Environmental Mitigation & Governmental Risk	<p><u>A. Compliance With Environmental Mitigation Measures</u> Seller will bear the risk of complying with all environmental mitigation measures required by or in connection with the Plant and governmental approvals for the Plant. Buyer will bear the risk of complying with all environmental mitigation measures required by or in connection with the Delivery System and governmental approvals for the Delivery System.</p> <p><u>B. Government Approval Risk</u> Seller will be responsible for obtaining and maintaining all governmental approvals required for the Plant during construction and acceptance testing (including the California Department of Public Health’s drinking water permit) through the Commercial Operation Date and during operations through the end of the Contract term. Other than schedule relief, Seller will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental</p>

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	approval and of compliance with all such governmental approvals. Buyer will be responsible for obtaining and maintaining all governmental approvals required for the Delivery System (other than as already acquired by Seller) during construction and through the Commercial Operation Date and during operations through the end of the Contract term. <del>Buyer</del> <del>Seller</del> will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental approval and of compliance with all such governmental approvals.
21. Events of Default and Termination	<p><u>A. Events of Default</u> The Contract will include negotiated events of default.</p> <p><u>B. Remedies</u> Upon the occurrence of an event of default, the non-defaulting Party may pursue any remedies available at law or in equity.</p> <p><u>C. Buyer Step-In Rights</u> The Buyer will have the right, but not the obligation, to step in and cure defaults that are not cured by Seller or Seller's debt holders.</p>
22. Record Keeping, Reporting	<p><u>A. Seller Maintenance and Retention of Records</u> Seller will maintain records pertaining to its performance under the Contract, the Operations Agreement and the Operation and Maintenance Manual. The Buyer will have the right to inspect and audit such records during regular business hours (including audit rights for up to five years after each year of the Contract, or as provided for under applicable law, whichever is longer), to verify performance, quantity, quality, delivery of Product Water to the Delivery Point and price. Seller will establish and maintain accounting records of all costs in conformance with the MWD Agreement between the Buyer and MWD. MWD and the Buyer will have the right to inspect and audit Seller's books and records relating to the MWD Agreement.</p> <p><u>B. Seller Reporting Requirements</u> Seller will provide monthly and annual reports to the Buyer regarding Plant performance, including: Product Water quantities produced; Product Water quality (subject</p>

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	<p>to additional water quality reporting requirements); maintenance and capital repairs and replacements performed; any operating problems encountered and corrective measures taken; regulatory and Contract compliance.</p> <p><u>C. Measurement Devices Inspection</u> The Buyer will have the right to inspect Seller's measurement devices periodically during regular business hours following reasonable notice to verify that calibration is accurate. The Buyer will also have the right to conduct independent verification of calibration at Buyer's cost. Notwithstanding the foregoing, if Seller's measurement devices are found to be in need of recalibration, Seller will pay for and undertake such recalibration, and will also reimburse the Buyer for all costs associated with the Buyer's inspection and testing.</p>
23. Security for Performance by Project Contractors	<p><u>A. Construction Bond</u> Seller will obtain and maintain or will cause the EPC contractor to obtain and maintain performance and payment bonds in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the Parties) for the construction of the Plant.</p> <p><u>B. Operations Bond</u> Seller will obtain and maintain or will cause the Operating Contractor to obtain and maintain an operations performance bond in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the Parties) for the operation and maintenance of the Plant.</p>
24. Security for Performance by Seller	At a date no later than the Construction Financing Deadline, and for the Term), Seller shall provide to Buyer an annually renewable letter of credit in the amount of \$5 million, which amount shall escalate annually with the CPI up to a maximum of \$8.5 million or as the Parties negotiate in the Contract, as security for its obligations to Buyer under the Contract.
25. General Indemnity	The Parties will indemnify the other Party for claims arising from misrepresentation, negligence or breach of the Contract.

<b>Subject</b>	<b>Proposed Term/Condition</b>
26. Litigation Risk Indemnity	Seller will indemnify the Buyer against third party litigation related to the Plant and the Seller Delivery System Permits, whether such litigation is brought against the Buyer or the Seller (such as litigation involving environmental reviews, permits, and legal entitlements), provided that Seller will not indemnify the Buyer against third party litigation resulting from: (a) the Buyer's breach of the Contract, (b) the Buyer's construction of the Delivery System or (c) the Buyer's additional environmental review and permitting of the Delivery System that is not covered or addressed by Seller's environmental review and permitting related to the Plant and the Seller Delivery System Permits.
27. Representations and Warranties	The Contract will include customary representations and warranties regarding: legal standing in California; legal authority to enter into the Contract; absence of material adverse litigation or legal conditions; no conflict with other agreements or commitments; proper approvals of Contract. Seller will make representations and warranties as to CEQA compliance with respect to the Plant, the SEIR and any other Seller Delivery System Permits (to the extent CEQA applies).
28. Tax Risks	Seller will bear all tax risks related to the Plant (including its ownership, design, construction and operation) and sale of Product Water under the Contract. This includes all existing taxes payable with respect to construction, operation, maintenance, management, services on water purchases; income, sales, possessory interest, excise and value added taxes; tax law changes; new taxes; and adverse tax law determinations pertaining to tax accounting treatment, tax credit depreciation, amortization or otherwise. A tax is a governmental imposition of any kind, and includes fees and charges.
29. Liability Limitations	The Contract will contain no stated dollar limitation on damages for non-performance. Special, consequential and punitive damages will be mutually waived.
30. Dispute Resolution	The Parties will agree to attempt to resolve disputes, first, through negotiation and non-binding mediation and, if negotiations and mediation are unsuccessful, then to

<b>Subject</b>	<b>Proposed Term/Condition</b>
	pursue other remedies available at law or in equity.
31. Assignment	Neither Party will assign the Contract without the prior written approval of the other Party. Notwithstanding the foregoing, Seller will have the right to collaterally assign the Contract to its lenders, and the Buyer will reasonably consent to such assignment.
32. Seller's Contractors and Subcontractors	The Contract will specify minimum financial, technical and experience qualifications, standards and requirements for the EPC Contractor and the Operating Contractor and for any party it may engage to replace or substitute for the EPC Contractor or the Operating Contractor. Seller will provide adequate information to the Buyer regarding the qualifications of any proposed initial or substitute EPC Contractor and Operating Contractor. Notwithstanding the above, Seller may not replace or substitute the EPC Contractor or the Operating Contractor without Buyer approval, which will not be unreasonably withheld.



**Water Reliability Agreement Term Sheet  
Attachment A**

Quality Parameter	Analytical Method <sup>(1)</sup>	Sampling		Units	Mean <sup>(3)</sup>	Maximum <sup>(4)</sup>
		Sampling Period <sup>(2)</sup>	Sample Frequency			
Total Dissolved Solids	2540C	One year	Weekly Grab	mg/L	350	500
Chloride	4110B	One year	Weekly Grab	mg/L	75	100
Boron	3120B	One year	Weekly Grab	mg/L	0.75	1.0
Turbidity	2130B	Daily	Continuous <sup>(5)</sup>	NTU	0.5	1.0
DBP – THM <sup>(6)</sup>	5710C	One Year	Weekly Grab	µg/L	80% of maximum contaminant level ("MCL")	90% of MCL
DBP – HAA <sup>(6)</sup>	5710D	One Year	Weekly Grab	µg/L	80% of MCL	<del>90% of MCL</del>
DBP – NDMA <sup>(6)</sup>	521	One Year	Weekly Grab	µg/L	80% of <del>NLMCL</del>	Notification Level (0.010 µg/L)
Temperature	2550	One Year	Daily Grab	°F	74	85
pH	4500	Daily	Continuous <sup>(5)</sup>	pH units	7.0-8.0	>6.5,<8.5
Sodium	200.7	One Year	Weekly Grab	mg/L	60	80
Calcium	200.7	One Year	Weekly Grab	mg/L	20	<20
Magnesium	200.7	One Year	Weekly Grab	mg/L	TBD	TBD
Sodium Adsorption Ratio	Footnote (7) below	One Year	Monthly	none	5	6

1. All methods taken from Standard Methods On-Line, published by APHA, AWWA, and WEF or current EPA methods.
2. Sample period - concentration limits are calculated for this period.
3. Mean – not to exceed (or go below for certain of the Quality Parameter) the average over the Sampling Period.

## Water Reliability Agreement Term Sheet Attachment A

4. Maximum Concentration Limit - cannot be exceeded at any time with the exception of Temperature which cannot exceed the Maximum over a 30 day average.
5. Continuous analysis - values at 15 minute intervals used in all calculations.
6. Disinfection By-Product (DBP) Formation tests will be used to determine compliance with THM and HAA requirements for the samples collected at the compliance point.

Product Water is to be collected for the DBP tests and held with no modifications in a water bath. The following describes the test conditions:

- (a) pH: No adjustment to collected sample.
- (b) Temperature: Same as Product Water at time of collection  $\pm 3^{\circ}\text{C}$ .
- (c) Total  $\text{Cl}_2$  residual at test end: No adjustment to collected sample.
- (d) Sample to be quenched and analyzed at the end of this period.
- (e)

7. The formula for calculating sodium adsorption ratio is:

$$\text{S.A.R.} = \frac{\text{Na}^+}{\sqrt{\frac{1}{2}(\text{Ca}^{2+} + \text{Mg}^{2+})}}$$

where [sodium](#), [calcium](#), and [magnesium](#) are in [milliequivalents](#)/liter.



**Term Sheet**  
**Water Reliability Agreement**  
**Huntington Beach Seawater Desalination Project**

**Orange County Water District**  
**and**  
**Poseidon Resources (Surfside) LLC**

**May, 2015**

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## TERMINOLOGY

<b>Subject</b>	<b>Meaning</b>
1. Parties	<p>Seller Poseidon Resources (Surfside) LLC (“Seller”). Seller is a special purpose project company established and controlled by Poseidon Water LLC.</p> <p>Buyer Orange County Water District (“Buyer”).</p> <p>Together, the “Parties.”</p>
2. Plant	<p>A reverse osmosis seawater desalination plant, including the seawater intake, concentrate disposal facilities, product water pump station (“Product Water Pump Station”), and appurtenant facilities to be located on a site adjacent to the AES Huntington Beach Generating Station (“Plant”), capable of delivering a baseload of 56,000 acre-feet/year of desalinated water (“Product Water”) to the boundary of the Plant site (“Delivery Point”) consistent with the Subsequent Environmental Impact Report (SEIR).</p>
3. Delivery Point	<p>The Delivery Point is defined as the boundary between the Plant and the Delivery System, currently expected to be the edge of the Plant site at Newland Street. The Product Water Pump Station that is part of the Plant will be adequate to transport and deliver Product Water at the quantity and pressure required by the Contract.</p>
4. Delivery System	<p>The Delivery System shall be defined as any offsite facilities (i.e., pipeline and booster pumps) to deliver the Product Water after the Delivery Point.</p>
5. Water Reliability Agreement	<p>A contract (“Contract”) between the Seller and the Buyer under which the Seller shall permit, construct, own, operate and maintain the Plant and deliver water to the Delivery Point, and the Buyer shall construct, own, operate and maintain the Delivery System and purchase all Product Water produced under terms set forth in the Agreement (up to 56,000 acre-feet/year), except for any water sold to the City of Huntington Beach under the Huntington Beach Agreement (defined below).</p>
6. Contract Date	<p>The date on which the Contract is executed and delivered by the Parties.</p>

<b>Subject</b>	<b>Meaning</b>
7. EPC Contractor; EPC Contract	A proposed contract between Seller and the Plant's engineering, procurement and construction contractor and with its principal process subcontractor (the "EPC Contractor") for the design, construction and startup of the Plant (the "EPC Contract"). The EPC Contract will be consistent with the Contract.
8. Operations Agreement	A proposed contract between Seller and the Operating Contractor for the operation, maintenance, repair and equipment replacement of the Plant on behalf of Seller. The Operations Agreement will be consistent with the Contract and will have terms and conditions that will provide a reasonable assurance that the Seller will be able to meet its operating performance obligations under the Contract.
9. MWD	Metropolitan Water District of Southern California.
10. MWD Agreement	The MWD Local Reliability Program Agreement between the Buyer and/or Orange County MWD Member Agencies and MWD.
11. SEIR	The Subsequent Environmental Impact Report for the Huntington Beach Seawater Desalination Project (the "Project") certified by the city of Huntington Beach in September, 2010.
12. Huntington Beach Agreement	The agreement contemplated to be entered into between Poseidon and the City of Huntington Beach ("HB") that grants HB the right to purchase 3,360 acre-feet/year at a discounted price.
13. Regulatory Water Quality Standards	All potable water health and safety requirements and maximum contaminant levels established by state and federal agencies and applicable to the Product Water.

## NEGOTIATION AND APPROVAL PROCESS

<b>Subject</b>	<b>Understanding</b>
1. Purpose	<p>The purpose of this Term Sheet is to set forth the preliminary and non-binding terms of subsequent negotiations toward a possible Contract between the Parties. The proposed terms and conditions set forth herein represent the current intention of the Parties, do not bind either Party in any manner, do not commit any Party to a particular course of action (e.g., entering into a Water Reliability Agreement), do not limit the Buyer’s discretion under CEQA, and in particular do not commit the Buyer to design or construct the Delivery System or to purchase Product Water.</p> <p>This Term Sheet is a summary only and is not comprehensive or definitive. The Parties do not intend to be legally bound until, among other things, any required CEQA review, including any required public hearings, are completed, and definitive agreements related to the Project are executed by the Parties, any additional conditions or changes to the Project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and all required permits and approvals needed to enter into the transactions contemplated herein have been obtained by Buyer and Seller in accordance with all applicable laws and regulations. Either Party is free to terminate negotiations at any time following written notice to the other Party without any liability or obligation to the other Party.</p> <p>As required by law, prior to entering into the transactions contemplated herein, Buyer retains the sole and independent discretion to, among other things, balance the benefits of the proposed Project against any potential environmental impacts prior to taking final action if such impacts cannot be avoided, consider alternatives to the proposed Project (including the “no project” alternative”), and determine not to proceed with the proposed Project.</p> <p>The Parties understand that substantive terms and detailed provisions not noted or fully developed in this Term Sheet are expected to be included in any final Contract. Buyer shall have no obligation to enter into any definitive transaction documents (including but not limited to the Contract).</p>

<b>Subject</b>	<b>Understanding</b>
2. Schedule	<p data-bbox="521 233 1057 268">A. Schedule Milestones for Project</p> <p data-bbox="475 285 756 321">Seller anticipates:</p> <ul data-bbox="521 363 1495 699" style="list-style-type: none"> <li data-bbox="521 363 1455 432">• that the Contract will be executed by the Parties no later than December 31, 2016;</li> <li data-bbox="521 438 1468 548">• that it shall obtain the full construction financing of the Plant (“Financial Close”)no later than June 30, 2017 (the “Construction Finance Deadline”);</li> <li data-bbox="521 554 1495 699">• that the Commercial Operation Date will be by a date that is 42 months following the Financial Close, as such date may be extended due to Uncontrollable Circumstances (the “Scheduled Commercial Operation Date”).</li> </ul> <p data-bbox="475 741 846 777">B. Schedule Extensions</p> <p data-bbox="475 783 1503 926">The Contract shall provide for extensions of such dates due to the occurrence of Uncontrollable Circumstances and, in the absence of Uncontrollable Circumstances, as mutually agreed to by the Parties.</p> <p data-bbox="475 968 919 1003">C. Failure to Meet Deadlines</p> <p data-bbox="475 1010 1503 1409">In the event that, after extensions that may be provided for in the Contract, Seller has not been able to meet the Construction Finance Deadline, or the Scheduled Commercial Operation Date, Buyer will have the remedies set forth below in the Section of this Term Sheet entitled TERMS AND CONDITIONS OF THE PROPOSED WATER RELIABILITY AGREEMENT Sections 4 &amp; 7. Similarly, if Buyer fails to complete construction of the Delivery System by the Scheduled Commercial Operation Date, the Seller will have the remedies set forth below in the Section of this Term Sheet entitled TERMS AND CONDITIONS OF THE PROPOSED WATER RELIABILITY AGREEMENT Section 7.</p>
3. Contract Negotiations	<p data-bbox="475 1451 1503 1560">The Parties acknowledge that either Party may suspend, terminate or renew negotiations at any time and for any reason without consequence.</p>
4. Buyer Due Diligence	<p data-bbox="475 1604 1503 1932">During the negotiating period and through the execution of the Contract, the Buyer intends to conduct such due diligence relating to the Project, the Seller and its proposed contractors and financing arrangements as it reasonably determines is necessary for entering into the Contract. Seller will fully cooperate with the examination, and provide all documents and information reasonably requested by the Buyer in connection therewith, subject to the terms of the existing confidentiality agreement between the Parties. Buyer will have the right to (a)</p>

<b>Subject</b>	<b>Understanding</b>
	<p>review and comment on the EPC Contract, including but not limited to the provisions related to the design basis (including future optionality on expansion), process equipment and material specifications, prior to the EPC Contract being executed, (b) review and comment on the Operations Agreement, including but not limited to the provisions related to delivery of Product Water and repair and replacement of process equipment, prior to the Operations Agreement being executed, and (c) approve the EPC Contractor and Operating Contractor, in each case, which approval will not be unreasonably withheld.</p>
<p>5. Responsibility for the Plant</p>	<p>Seller understands and acknowledges Buyer does not assume any responsibility for the Plant whatsoever for the term of the Contract. Seller has planned and developed and will implement the Plant completely at its own risk. Seller will be solely responsible for the efficacy of the Plant and its permitting, financing, design, construction, commissioning and capability of successfully passing acceptance tests producing Product Water to the standards of the Contract. Seller will warrant in the Contract that the Plant will reasonably perform. No due diligence performed by the Buyer shall constitute any transfer of liability to the Buyer for the Plant or its performance.</p>
<p>6. Water Supply Arrangement</p>	<p>The Parties recognize that Buyer may be discussing the supply of Product Water from the Project with Orange County and other Southern California water agencies.</p>

**TERMS AND CONDITIONS OF  
THE PROPOSED WATER RELIABILITY AGREEMENT**

<b>Subject</b>	<b>Proposed Term/Condition</b>
1. Conditions Precedent	<p>The Contract will include the following conditions precedent that will need to occur prior to Buyer having a firm obligation to purchase Product Water:</p> <ul style="list-style-type: none"> <li>A. Seller shall obtain all discretionary permits necessary to authorize Plant construction (including a Coastal Development Permit), and provide copies to Buyer.</li> <li>B. Seller shall provide fully-executed copies of the EPC Contract and Operations Agreement to Buyer.</li> <li>C. Seller shall achieve Financial Close (with all construction financing in place for the Plant).</li> <li>D. Buyer (or Orange County MWD Agencies) shall execute the MWD Agreement.</li> <li>E. Buyer shall complete all required CEQA processing and approvals, and the time period for challenging such CEQA documents shall have passed (or any such challenges shall be fully and finally resolved), and shall obtain all of its discretionary permits to perform its Delivery System improvement obligations and have a sufficient schedule to perform the Delivery System improvements.</li> <li>F. The desalination project in the City of Carlsbad will have demonstrated 90 days or more of successful operation.</li> <li>G. Buyer certifies or adopts a CEQA document and makes all findings and adopts all mitigation measures in accordance with CEQA and all other applicable laws. In this regard, Buyer shall find that (i) the proposed project is reviewed in accordance with the requirements of CEQA, (ii) any additional conditions or changes to the project based upon CEQA review or other review undertaken by Buyer have been resolved in a manner acceptable to both Buyer and Seller, and (iii) all required permits and approvals have been obtained by Buyer and Seller in accordance with all applicable laws and regulations.</li> <li>H. Buyer can feasibly sell and deliver at rates</li> </ul>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>favorable to Buyer, and/or Buyer can feasibly and cost effectively beneficially use all of Product Water to be purchased from Seller,</p> <p>I. The Delivery System can feasibly be designed, constructed and operated by Buyer at costs acceptable to Buyer,</p> <p>J. Buyers design and construction of the Delivery System and Buyers purchase of the Product Water will not have an adverse impact on Buyer’s financial rating or Buyer’s ability to issue debt for other purposes of Buyer,</p>
2. Term	<p><u>A. Term</u> The initial term (“Term”) of the Contract shall begin upon the execution of the Contract and shall terminate 50 years from the Commercial Operation Date.</p> <p><u>B. Responsibility for Plant Upon Expiration of Term.</u> Buyer shall have no responsibility for any costs or obligations with respect to decommissioning the Plant at the end of the Term.</p>
3. Roles of the Parties	<p><u>A. Seller</u> Seller shall design, permit, construct, start-up and acceptance test the Plant all in conformity to applicable law, prudent industry practices and the requirements of the Contract and the EPC Contract. Seller shall finance the Plant and cooperate with Buyer in the financing of the Delivery System. Upon the commencement of the commercial operation of the Plant (“Commercial Operation Date”), Seller shall operate and maintain the Plant in accordance with prudent industry practices and applicable laws and regulations sufficient to meet the reliability, Product Water quality, product water quantity, and permitting requirements of the Contract, the Operations Agreement and the Plant’s operation and maintenance manual (the “Operation and Maintenance Manual”) and all Regulatory Water Quality Standards.</p> <p>Upon the achievement of the Commercial Operation Date, Seller shall sell Product Water as provided for under the Contract and deliver the Product Water to the Delivery Point.</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p><u>B. Buyer</u>  Buyer shall design, permit as necessary (the anticipated Coastal Development Permit and any other permits obtained by Seller for the Delivery System prior to execution of the Water Reliability Agreement (the “Seller Delivery System Permits”) will be transferred to the Buyer solely to the extent necessary to design, construct, own, operate and maintain the Delivery System), construct, start-up and acceptance test the Delivery System. Upon the Commercial Operation Date, Buyer shall operate and maintain the Delivery System.</p> <p>Buyer shall cooperate with Seller during the period of the Project, as necessary and appropriate, with respect to activities such as permitting, financing and public information, but shall have no responsibility or liability regarding such activities of Seller.</p> <p>Upon the achievement of the Commercial Operation Date, Buyer shall purchase Product Water as provided for under the Contract and accept delivery of the Product Water at the Delivery Point.</p>
4. Financing Period	<p><u>A. Construction Finance Deadline</u>  In the event a Contract is successfully negotiated and executed, Seller shall achieve Financial Close (with all construction financing in place for the Plant) by the Construction Finance Deadline.</p> <p><u>B. Failure to Achieve Financial Close by the Construction Finance Deadline</u>  If, after extensions that may be provided for in the Contract, Seller fails to achieve Financial Close for the Plant by the Construction Finance Deadline, and if such failure to meet the Construction Finance Deadline is not caused by actions of the Buyer, the Buyer may terminate the Contract, and upon such termination Seller will reimburse Buyer’s third party costs incurred after execution of the Contract related to the permitting, design, construction, implementation and financing of the Delivery System (including the costs of its advisors and legal support), and Seller will have the right to use all work product related to such costs in connection with the</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>Project.</p> <p><u>C. Achievement of Financial Close</u>  If Seller succeeds in achieving Financial Close by the Construction Finance Deadline, Seller will proceed to construct the Plant and Buyer will proceed to construct the Delivery System, unless otherwise agreed by the Parties as part of the Contract. Buyer will not be obligated to construct the Delivery System if Seller fails to achieve Financial Close.</p>
5. Financing Plan	<p>Seller will be solely responsible for the financing of the Plant, and Buyer will be solely responsible for the financing of the Delivery System. Each Party will keep the other Party regularly informed of its progress in executing its respective plan of financing.</p>
6. Design and Construction of the Plant	<p><u>A. Construction Period Design Reviews for the Plant</u>  During the Construction Period, the Buyer will have the right, but not the obligation, to periodically review the design of the Plant for compliance with the design specifications as set forth in the Contract and the EPC Contract. The Buyer will not have approval authority over the design of the Plant, except as such may relate to compliance with the requirements of the Contract. Seller will agree to consider and respond to material comments or concerns made by the Buyer. Seller to the extent reasonably possible and without a material impact to its costs, permits or operations capability will design the treatment plant in a manner to accommodate possible future expansions, additions and changes to the treatment system.</p> <p><u>B. Construction Period Reporting and Review for the Project</u>  Seller and Buyer will attend monthly progress meetings and will provide the other Party access to information such Party has regarding the Project, including without limitation any material information Seller provides to the parties providing Plant debt financing or needed to obtain any federal, state, local or water agency subsidies. Seller will consider and respond to material comments or concerns made by the Buyer. The Buyer will have the right to observe and inspect construction of the Plant at</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>any reasonable time following reasonable notice. The Contract will detail the Buyer inspection rights and requirements, and Seller’s obligations during the construction of the Plant. The Buyer shall have the right to review information regarding the construction of the Plant to the extent reasonably necessary to confirm Seller’s compliance with the requirements of the Contract.</p> <p><u>C. Start-Up and Acceptance Testing of the Plant</u>  The Contract will set forth acceptance test standards and procedures designed to assure the Buyer that the Plant will be capable, on a long term basis, of meeting the requirements of the Contract. The Buyer will have the right to review and comment on the acceptance test protocol to be developed in accordance with the requirements of the Contract, and to observe Plant start-up and acceptance testing.</p>
<p>7. Scheduled Commercial Operation Date</p>	<p>After Financial Close, if, after extensions that may be provided for in the Contract, Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, Seller will owe the Buyer liquidated damages in an amount that will be based on the estimated fixed costs of the Buyer on the Delivery System (including without limitation financing costs) and for a period to be negotiated in the Contract. If the period ends before the Commercial Operation Date occurs, Seller may purchase the Delivery System from Buyer (and be assigned all Buyer rights in the Project) on terms and conditions that will be set forth in the Contract. If Seller elects not to purchase the Delivery System or if Seller has notified Buyer of its intent to abandon the Project, the Buyer may terminate the Contract and shall have the first right, but not the obligation, to purchase the Plant from Seller (and be assigned all Seller rights in the Project) on terms and conditions that will be set forth in the Contract. If, after extensions that may be provided for in the Contract, Buyer fails to complete construction of the Delivery System by the Scheduled Commercial Operation Date, the Buyer will owe the Seller liquidated damages in an amount that will be based on the estimated fixed costs of the Seller (including without limitation financing and operating costs) and for a period to be negotiated in the Contract. After such period of time, the Seller may then terminate</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>the Contract and shall have the right to sell the Product Water to third parties. Seller will make reasonable efforts to mitigate its damages by offering to sell Product Water to third parties during any delay in construction or operation of the Delivery System.</p>
<p>8. Operation and Maintenance</p>	<p><u>A. Seller's Obligation to Operate the Plant</u>  Upon the achievement of the Commercial Operation Date, Seller will operate, maintain, repair and replace the Plant in accordance with the terms of the Contract, the Operations Agreement, the Operation and Maintenance Manual, prudent industry practices and applicable laws and regulations sufficient to meet the contractual performance and regulatory requirements. Seller will operate the Plant to meet the distribution requirements of the Buyer, including the operation and maintenance of the Plant's product water storage tank and metering system necessary for Buyer to operate and maintain the Delivery System.</p> <p><u>B. Operation and Maintenance of the Delivery System</u>  The Delivery System will be operated and maintained by Buyer. .</p> <p><u>C. Operator</u>  Seller will, prior to the Contract Date, contract for the operation, maintenance, repair and equipment replacement of the Plant with the Operating Contractor. The Operating Contractor, which shall perform its duties under the Operations Agreement on behalf of Seller, will not be replaced without the Buyer's approval, which shall not be unreasonably withheld.</p> <p><u>D. Operation and Maintenance Manual</u>  Two months prior to the Commercial Operation Date, Seller will provide the Buyer with a draft copy of the Operation and Maintenance Manual. Upon its approval, Seller shall provide Buyer with a copy of the approved Operation and Maintenance Manual.</p> <p><u>E. Life-Cycle Maintenance</u>  The Contract will contain all necessary assurances that the Plant will be properly maintained, repaired and replaced over the term of the Contract. These will include</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>a requirement to have an industry standard Computerized Maintenance Management (CMMS) system and use it to perform ordinary and capital maintenance, and periodic maintenance inspections.</p> <p><u>F. Restoration of the Plant</u> In the event of damage to the Plant, Seller will be obligated to repair or replace damaged components to enable the restoration of full operations and the full performance of its obligations under the Contract, whether through the application of insurance proceeds, payments from the Operating Contractor or Seller’s own capital.</p> <p><u>G. Buyer Right to Monitor</u> The Buyer will have the right to monitor the operation and maintenance of the Plant in order to confirm compliance with the requirements of the Contract. The Buyer will have the right to conduct periodic inspections of the Plant, and will notify Seller of any operations and maintenance deficiencies found for rectification by Seller. The Buyer will have the right to engage consultants and advisors, at Buyer’s own cost, for inspections to review Seller performance and performance reports and to provide recommendations to the Seller.</p> <p><u>H. Future Technology Changes</u> If future commercially viable technology changes can be reasonably integrated into the Plant which will have a material reduction in the cost of providing ocean desalination water by the Seller to the Buyer, the Parties will negotiate an equitable adjustment to the price of the water, taking into account the costs to implement such new commercially viable technology (including the capital, operating, and maintenance costs and the time remaining in the Contract). These terms shall be negotiated within the final Contract</p>
9. Water Quantity	<p><u>A. Water Quantity Commitments</u> Seller will agree to produce and deliver, and the Buyer will agree to take, 56,000 acre-feet per year of Product Water (the “Committed Amount”). The Committed Amount will be reduced by (a) the amount of Product Water purchased by other entities agreed to by the Parties, including without limitation the City of Huntington Beach under the</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>Huntington Beach Agreement and AES under any direct purchase agreement, and (b) on a year by year basis, any reductions in the quantity of Product Water produced by Seller and for other reasons as permitted under the Contract. The amount of Product Water that Buyer is required to purchase shall never be more than the amount of Product Water that Seller produces and delivers to Buyer; provided that except as otherwise provided in the Contract, Product Water that is not produced or delivered solely due to Buyer's failure or refusal to take such Product Water will be treated as having been produced and delivered for all purposes under the Contract. For the quantity of Product Water produced and delivered under the Contract, the Buyer will pay a per-acre foot unit charge as set forth in Item 14.</p> <p><u>B. Payment for Available Water that is Not Taken</u>  Payment for Product Water the Buyer does not take will be based on the Delivery Schedule. Seller will make reasonable efforts to mitigate its costs by offering to sell Product Water to third parties during any period in which Buyer is unable to take Product Water. For water that is available but which Buyer does not take, and for which Seller is unable to deliver to a third party, Buyer will pay a price to be negotiated in the final Contract that covers all of Sellers fixed cost including an appropriate capital charge.</p> <p><u>C. Delivery Schedule</u>  The schedule for periodic deliveries of Product Water (daily, monthly, quarterly) will be mutually agreed to by the Parties prior to the Commercial Operation Date and thereafter on an annual basis.</p> <p><u>D. Operating Committee</u>  Seller, the Operating Contractor, and the Buyer will establish an Operating Committee to address daily flow changes and operations and other items to be set forth in the Contract.</p> <p><u>E. Water Ownership</u>  The Buyer will own all Product Water received and accepted at the Delivery Point.</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p data-bbox="578 302 1503 369"><u>F. Product Water Pressure and Hydraulic Transients Guarantee</u></p> <p data-bbox="578 375 1503 520">Seller will guarantee Product Water pressure, and will operate the Product Water Pump Station within agreed upon protocols so to minimize hydraulic transients in the Delivery System.</p> <p data-bbox="578 562 1146 596"><u>G. Distribution System Emergencies</u></p> <p data-bbox="578 602 1503 821">In the event of emergencies in its distribution system to be specified in the Contract (a “Distribution System Emergency”), the Buyer may demand a curtailment of Plant operation and Product Water deliveries, excusing the Buyer from its purchase obligation for the duration of the emergency.</p> <p data-bbox="578 863 1503 930"><u>H. Product Water Not Delivered Due to Uncontrollable Circumstances/Distribution System Emergency</u></p> <p data-bbox="578 936 1503 1564">Product Water which Seller would have delivered to the Buyer but which Seller is unable to deliver due to an Uncontrollable Circumstance affecting Seller or a Distribution System Emergency shall be delivered by Seller and purchased by the Buyer from any excess Product Water on a negotiated basis, or during an extension of the term of the Contract not to exceed three years. The Buyer will use all reasonable efforts to purchase “make-up” Product Water following the occurrence of Uncontrollable Circumstances affecting Seller and Seller will use all reasonable efforts to provide “make up” Product Water following a Distribution System Emergency if such Product Water can be provided while operating the Plant in accordance with applicable law and within its design limits. Seller will be compensated for any additional costs of providing “make up” Product Water following a Delivery System Emergency.</p> <p data-bbox="578 1606 1256 1640"><u>I. Respective Cost Obligations of the Parties</u></p> <p data-bbox="578 1646 1503 1824">Seller will be responsible for all costs incurred in producing and delivering Product Water to the Delivery Point, and the Buyer will be responsible for all costs incurred in receiving and distributing Product Water after the Delivery Point.</p> <p data-bbox="578 1866 878 1900">J. Additional Water</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	Buyer shall have right of first offer to purchase any additional Product Water beyond the amounts offered under the Huntington Beach Agreement that may become available for sale to third parties. .
10.Product Water Quality	<p><u>A. Product Water Quality Requirements Generally</u> Product Water delivered by Seller will meet all Contract specifications and requirements, and all Regulatory Water Quality Standards. A detailed set of water quality specifications will be incorporated in the Contract per Attachment A to this Term Sheet. Prior to Contract execution, specific disinfection requirements and any other local water quality conditions may also be added to the Attachment A conditions as are reasonably required for safe and prudent operations of the distribution system. If Buyer directs Seller to deliver Product Water different than as specified in the Contract or if there is a need to change the water quality specifications in the Contract other than as a result of a change in Regulatory Water Quality Standards, Seller will be entitled to an equitable adjustment to the Water Purchase Price.</p> <p><u>B. Third Party Claims Regarding Product Water Quality</u> Seller will be solely liable for any fines, penalties or damages that may be incurred by either Party due to Seller’s failure to meet Product Water quality requirements in the Contract. Seller will indemnify the Buyer against any fines, penalties or damages (including third party tort claims) that may be incurred by the Buyer due to the delivery of Product Water that does not meet such Product Water quality requirements.</p> <p><u>C. Limitation on the Buyer Obligation to Accept Product Water</u> The Buyer will not be obligated to accept or pay for Product Water that does not meet the Product Water quality requirements in the Contract.</p>
11.Performance Liquidated Damages	<p><u>A. Product Water Quantity Failures</u> The Contract will specify liquidated damages for Seller’s failure to deliver an agreed upon amount of Product Water required to be delivered by the Contract during any Contract Year (any period running from July 1 to the following June 30 during the term of the Contract). Seller</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>will be afforded a reasonable opportunity to make up delivery failures prior to the imposition of liquidated damages.</p> <p><u>B. Product Water Quality Failures</u> The Contract will specify liquidated damages for Product Water quality non-compliance.</p>
12.Raw Water Risks	<p>The Contract will set forth the assumed raw water quality parameters upon which Seller’s performance guarantees are based. If (1) actual raw water quality parameters are outside those assumed, or (2) specific negotiated events occur affecting raw water quality (such as pollution events), Seller will be entitled to relief from its water quantity production guarantee if operational changes to account for events in (1) and (2) above cannot be made..</p>
13.AES	<p>Seller shall bear all risks relating to AES and AES’s generating plant and property as they relate to the Plant, including AES sale, merger or bankruptcy, and AES lease breach, default and termination; provided Seller shall be entitled to relief from its water quantity production guarantee upon (1) the occurrence of force majeure events or other events effecting the construction and operations of the Plant including access to source water and the site and (2) other reasonable exceptions negotiated by the Parties.</p>
14.Water Purchase Price	<p><u>A. Buyer Obligation to Pay for Product Water</u> The Buyer will only pay for Product Water that meets the Product Water quality requirements in the Contract and is actually delivered or ready to be delivered to the Delivery Point.</p> <p><u>B. Water Purchase Price</u> The price payable by the Buyer for Product Water shall consist of (1) the negotiated Unit Price per acre-foot, multiplied by (2) the number of acre-feet of Product Water purchased by the Buyer. Any extraordinary items under the Contract (such as amounts payable by Seller for non-compliance with the MWD Agreement, liquidated damages or indemnity payments) shall be paid or credited as a separate element of the Water Purchase Price, or shall be reflected in a revised Unit Price, as the Parties mutually determine to be appropriate.</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p data-bbox="574 268 781 296"><u>C. Unit Price</u></p> <p data-bbox="574 302 1503 373">The negotiation of the Unit Price (to be finalized prior to execution of the Contract) will be based on the sum of:</p> <ol data-bbox="626 415 1503 1528" style="list-style-type: none"> <li data-bbox="626 415 1503 562">1. The MWD Treated Water Rate (subject to a minimum cumulative annual escalation rate of approximately 3% to be negotiated prior to possible execution of a final contract); plus</li> <li data-bbox="626 569 1503 783">2. Any other charges from the MWD or the Municipal Water District of Orange County (“MWDOC”) that are avoided by Buyer or its member agencies not purchasing the same amount of water from MWD or MWDOC, as the case may be (subsections 1 and 2 together, the “Base Rate”); plus</li> <li data-bbox="626 789 1503 1003">3. The amount of the MWD subsidy that should be received by Buyer and/or Orange County MWD Member Agencies under the MWD Agreement based on the costs and performance of the Project, so long as Poseidon performs its obligations under the MWD Agreement; plus</li> <li data-bbox="626 1010 1503 1308">4. A premium of up to 20% of the Base Rate for the first ten (10) years of the Term, up to 15% of the Base Rate for the second ten (10) years of the Term, up to 10% of the Base Rate for the third ten (10) years of the Term, up to 5% of the Base Rate for the fourth ten (10) years of the Term, and 0% for the final ten (10) years of the Term (each adjustment to the Base Rate a “Premium”).</li> <li data-bbox="626 1314 1503 1528">5. Starting with the fifteenth (15) anniversary of commercial operations and every five (5) years thereafter, the Premium amount will be reviewed and adjusted down (can go below zero) if the Seller is receiving an economic return above an agreed upon amount.</li> </ol> <p data-bbox="574 1577 1503 1717">Failure of Buyer to receive any amount of the expected MWD subsidy will not reduce the Unit Price, unless such failure is caused by the actions or inactions of the Seller as provided in the MWD Agreement and the Contract.</p> <p data-bbox="574 1759 1036 1787"><u>D. Plant Site Conditions Risk</u></p> <p data-bbox="574 1793 1503 1898">Seller shall bear all risk associated with any differing site conditions and regulated site conditions (such as hazardous substances and cultural resources) at the Plant</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>site.</p> <p><u>E. Delivery System Conditions Risk</u> Buyer shall bear all risk associated with any differing conditions and regulated conditions (such as hazardous substances and cultural resources) on the route of the Delivery System (regardless of any information in the Seller Delivery System Permits or other information provided by Seller to Buyer related to the Delivery System); provided that Seller will make customary representations and warranties related to the Seller Delivery System Permits.</p> <p><u>F. Grants and Subsidies Benefit Buyer</u> While the Buyer and Seller recognize that any potential benefits of private activity bond financing or the pricing support from the MWD Agreement are already included in the Unit Price terms in Section 14C, any other subsidy, grant or contribution received directly or indirectly by the Buyer or Seller from the MWD or any other local, regional, state or federal governmental agency (Grants and Subsidies) will be for the full benefit of the Buyer. The Parties will negotiate an equitable reduction in the Unit Price if the Grants and Subsidies, reduce the capital cost or operating cost of the Plant.</p> <p><u>G. Notification of Annual Price Adjustments</u> For budgetary purposes, Seller will notify the Buyer no later than a date to be specified in the Contract prior to the start of the next succeeding Contract Year of the Water Purchase Price that will be in effect for the coming Contract Year based on changes to the Base Rate and premium as specified in the Contract.</p>
<p>15.No Payment Obligation Before Commercial Operation Date; Exception</p>	<p><u>A. General</u> The Buyer will have no obligation to purchase Product Water or make any payment whatsoever to Seller prior to the Commercial Operation Date.</p> <p><u>B. Exception</u> Following approval by the State Department of Public Health of the introduction of Product Water into the Delivery System and prior to the Commercial Operation</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	Date, the Buyer will purchase Product Water meeting Product Water quality requirements in the Contract. The price of the Product Water will be equal to the Base Rate, and the duration of this commitment will be negotiated.
16.Plant Purchase Option	The Buyer will have the option to purchase the Plant for \$1 at the end of the Term of the Agreement. Additionally Buyer will have the option, starting on the 30th anniversary of the Commercial Operations Date and annually thereafter, to purchase the Plant from the Seller for the fair market value of the Plant taking into account the condition of the Plant and the terms and conditions of the Contract.
17.Site Access	<p><u>A. Plant Tours</u> Seller will make the Plant available for Buyer tours after start of commercial operations, subject to reasonable notice by the Buyer.</p> <p><u>B. Site Access</u> Buyer staff, consultants and contractors will be provided reasonable access to the site and all facilities owned or leased by Seller during the construction period and after the start of commercial operations, subject to reasonable notice by the Buyer.</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
18. Insurance	<p><u>A. Seller Insurance Obligations</u>  Seller will obtain and maintain, in reasonable amounts, insurance on the Plant as follows: commercial general liability insurance; builder’s risk (including earthquake coverage with an agreed sublimit) and property and casualty insurance that will provide for the full replacement value of the Plant; motor vehicle insurance; workers compensation; business interruption insurance in an amount sufficient to cover a minimum of one year of fixed operating and financing costs and, as appropriate, pollution liability insurance.</p> <p><u>B. Insurance Costs and Risks</u>  Seller will bear all costs associated with any insurance deductibles, and replacement cost exceedances associated with builders’ risk and property insurance coverage on the Plant. Seller will also bear the risk of any insurance unavailability related to the insurance it is required to maintain on the Plant.</p>
19. Uncontrollable Circumstances/ Performance Relief	<p><u>A. Defined</u>  Uncontrollable Circumstances are force majeure, changes in law and other events beyond a Party’s reasonable control (after exercising diligence to prevent the occurrence and to mitigate the effect of the occurrence) that materially and adversely affect such Party. Inclusions and exclusions will be negotiated.</p> <p><u>B. Seller Performance Relief</u>  An Uncontrollable Circumstance will entitle Seller to schedule and water quantity guarantee relief, to the extent that it is adversely affected by Uncontrollable Circumstances.</p> <p><u>C. No Seller Price or Water Quality Relief</u>  Unless otherwise stated in the Contract, an Uncontrollable Circumstance will not entitle Seller to any price relief or any water quality guarantee relief.</p> <p><u>D. Mitigation and Restoration</u>  In the event of an Uncontrollable Circumstance, the affected Party will use commercially reasonable efforts to respond to the event and to mitigate its effects and, as</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>soon as is practicable, to restore conditions to the level at which it can fully perform its obligations under the Contract.</p> <p><u>E. Buyer Performance Relief</u>  The Buyer will be entitled to relief from its obligation to take and purchase Product Water to the extent its ability to receive delivery of Product Water is adversely affected by a Distribution System Emergency. The Buyer will use all reasonable efforts to purchase “make-up” Product Water following any such occurrence in accordance with Section 9H.</p>
<p>20.Environmental Mitigation &amp; Governmental Risk</p>	<p><u>A. Compliance With Environmental Mitigation Measures</u>  Seller will bear the risk of complying with all environmental mitigation measures required by or in connection with the Plant and governmental approvals for the Plant. Buyer will bear the risk of complying with all environmental mitigation measures required by or in connection with the Delivery System and governmental approvals for the Delivery System.</p> <p><u>B. Government Approval Risk</u>  Seller will be responsible for obtaining and maintaining all governmental approvals required for the Plant during construction and acceptance testing (including the California Department of Public Health’s drinking water permit) through the Commercial Operation Date and during operations through the end of the Contract term. Other than schedule relief, Seller will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental approval and of compliance with all such governmental approvals. Buyer will be responsible for obtaining and maintaining all governmental approvals required for the Delivery System (other than as already acquired by Seller) during construction and through the Commercial Operation Date and during operations through the end of the Contract term. Buyer will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental approval and of compliance with all such governmental approvals.</p>
<p>21. Events of Default and</p>	<p><u>A. Events of Default</u></p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
Termination	<p>The Contract will include negotiated events of default.</p> <p><u>B. Remedies</u> Upon the occurrence of an event of default, the non-defaulting Party may pursue any remedies available at law or in equity.</p> <p><u>C. Buyer Step-In Rights</u> The Buyer will have the right, but not the obligation, to step in and cure defaults that are not cured by Seller or Seller’s debt holders.</p>
22. Record Keeping, Reporting	<p><u>A. Seller Maintenance and Retention of Records</u> Seller will maintain records pertaining to its performance under the Contract, the Operations Agreement and the Operation and Maintenance Manual. The Buyer will have the right to inspect and audit such records during regular business hours (including audit rights for up to five years after each year of the Contract, or as provided for under applicable law, whichever is longer), to verify performance, quantity, quality, delivery of Product Water to the Delivery Point and price. Seller will establish and maintain accounting records of all costs in conformance with the MWD Agreement between the Buyer and MWD. MWD and the Buyer will have the right to inspect and audit Seller’s books and records relating to the MWD Agreement.</p> <p><u>B. Seller Reporting Requirements</u> Seller will provide monthly and annual reports to the Buyer regarding Plant performance, including: Product Water quantities produced; Product Water quality (subject to additional water quality reporting requirements); maintenance and capital repairs and replacements performed; any operating problems encountered and corrective measures taken; regulatory and Contract compliance.</p> <p><u>C. Measurement Devices Inspection</u> The Buyer will have the right to inspect Seller’s measurement devices periodically during regular business hours following reasonable notice to verify that calibration is accurate. The Buyer will also have the right to conduct independent verification of calibration at Buyer’s cost. Notwithstanding the foregoing, if Seller’s measurement</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>devices are found to be in need of recalibration, Seller will pay for and undertake such recalibration, and will also reimburse the Buyer for all costs associated with the Buyer's inspection and testing.</p>
<p>23. Security for Performance by Project Contractors</p>	<p><u>A. Construction Bond</u>  Seller will obtain and maintain or will cause the EPC contractor to obtain and maintain performance and payment bonds in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the Parties) for the construction of the Plant.</p> <p><u>B. Operations Bond</u>  Seller will obtain and maintain or will cause the Operating Contractor to obtain and maintain an operations performance bond in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the Parties) for the operation and maintenance of the Plant.</p>
<p>24. Security for Performance by Seller</p>	<p>At a date no later than the Construction Financing Deadline, and for the Term), Seller shall provide to Buyer an annually renewable letter of credit in the amount of \$5 million, which amount shall escalate annually with the CPI up to a maximum of \$8.5 million or as the Parties negotiate in the Contract, as security for its obligations to Buyer under the Contract.</p>
<p>25. General Indemnity</p>	<p>The Parties will indemnify the other Party for claims arising from misrepresentation, negligence or breach of the Contract.</p>
<p>26. Litigation Risk Indemnity</p>	<p>Seller will indemnify the Buyer against third party litigation related to the Plant and the Seller Delivery System Permits, whether such litigation is brought against the Buyer or the Seller (such as litigation involving environmental reviews, permits, and legal entitlements), provided that Seller will not indemnify the Buyer against third party litigation resulting from: (a) the Buyer's breach of the Contract, (b) the Buyer's construction of the Delivery System or (c) the Buyer's additional environmental review and permitting of the Delivery System that is not covered or addressed by Seller's environmental review and permitting related to the Plant</p>

<b>Subject</b>	<b>Proposed Term/Condition</b>
	and the Seller Delivery System Permits.
27. Representations and Warranties	The Contract will include customary representations and warranties regarding: legal standing in California; legal authority to enter into the Contract; absence of material adverse litigation or legal conditions; no conflict with other agreements or commitments; proper approvals of Contract. Seller will make representations and warranties as to CEQA compliance with respect to the Plant, the SEIR and any other Seller Delivery System Permits (to the extent CEQA applies).
28. Tax Risks	Seller will bear all tax risks related to the Plant (including its ownership, design, construction and operation) and sale of Product Water under the Contract. This includes all existing taxes payable with respect to construction, operation, maintenance, management, services on water purchases; income, sales, possessory interest, excise and value added taxes; tax law changes; new taxes; and adverse tax law determinations pertaining to tax accounting treatment, tax credit depreciation, amortization or otherwise. A tax is a governmental imposition of any kind, and includes fees and charges.
29. Liability Limitations	The Contract will contain no stated dollar limitation on damages for non-performance. Special, consequential and punitive damages will be mutually waived.
30. Dispute Resolution	The Parties will agree to attempt to resolve disputes, first, through negotiation and non-binding mediation and, if negotiations and mediation are unsuccessful, then to pursue other remedies available at law or in equity.
31. Assignment	Neither Party will assign the Contract without the prior written approval of the other Party. Notwithstanding the foregoing, Seller will have the right to collaterally assign the Contract to its lenders, and the Buyer will reasonably consent to such assignment.
32. Seller's Contractors and Subcontractors	The Contract will specify minimum financial, technical and experience qualifications, standards and requirements for the EPC Contractor and the Operating Contractor and for any party it may engage to replace or substitute for the

<b>Subject</b>	<b>Proposed Term/Condition</b>
	<p>EPC Contractor or the Operating Contractor. Seller will provide adequate information to the Buyer regarding the qualifications of any proposed initial or substitute EPC Contractor and Operating Contractor. Notwithstanding the above, Seller may not replace or substitute the EPC Contractor or the Operating Contractor without Buyer approval, which will not be unreasonably withheld.</p>





Revised

# Poseidon Resources Huntington Beach Seawater Desalination Project

May 14, 2015



# Term Sheet



# Purpose of a Term Sheet

- There are different ways OCWD could partner with Poseidon
- Term Sheet defines the overall structure of the partnership
- Used as the basis to negotiate a final water purchase agreement
- If approved staff would develop an actual project for the Board to consider



## Term Sheet Details

- Poseidon owns, permits, designs, finances, constructs and operates the desalination treatment plant
- OCWD would purchase the plant water
- OCWD owns, permits, designs, finances, constructs and operates the necessary distribution facilities to transmit the water to the end users
- OCWD would find end users for water and/or use water to recharge the groundwater basin



## Term Sheet Details

- OCWD would pay Poseidon the MWD treated full service rate (\*) plus an additional premium (to be negotiated).
- Premium initially starts at up to 20% of the MWD rate
  - Up to 20% - First ten year period
  - Up to 15% - Second ten year period
  - Up to 10% - Third ten year period
  - Up to 5% - Fourth ten year period
  - 0% - Fifth ten year period

(\*) including an allowance for the MWD readiness to serve and capacity charges



## Term Sheet Details

- Starting with the fifteenth (15) year of operation and every five years thereafter, the premium amount will be reviewed and adjusted down if Poseidon is receiving an economic return above an agreed upon amount
- Poseidon guaranteed approximately 3% (to be negotiated) minimum MWD annual rate increases



## Term Sheet Year 1 Cost Figures

• Current MWD Volumetric Rate	\$923/af
• Additional RTS & CC (approximation)	<u>\$80/af</u>
• Sub Total	\$1,003/af
• Maximum possible 20% premium	\$201/af
• MWD LRP (for 15 years)	<u>\$475/af</u>
• <b>Sub Total - Paid to Poseidon</b>	<b>\$1,679/af</b>
• Distribution Cost Estimate (\$100/af – \$250/af)	<u>\$175/af</u>
• Total cost of water	\$1,854/af
• 2014 CEC Cost Estimate	1,931/af



## Term Sheet Details

- MWD LRP subsidy must be obtained
- OCWD can take possession of the treatment plant at the end of the contract for \$1
- Poseidon would provide water at an agreed to quality
- The Term Sheet is not definitive
- Does not legally commit either party to any future actions.
- Practically commits the District to fully consider the project and work towards developing a Water Purchase Contract



## Major Recent Changes to the Term Sheet

1. Demonstrate 90 days of successful operation with Carlsbad plant
2. Take advantage and share technological advances
3. OCWD can purchase plant after 30 years
4. Premiums (above the MWD rate) are negotiated
5. Ceiling for OCWD purchase price
6. Floor for minimum MWD rate increases



## Term Sheet Structure Advantages

- Pushes more risk on to Poseidon
- Keeps relationship simple and easy to understand
- Avoid complicated Public Private Partnership deal
- Poseidon continues handling Coastal Commission and State Water Quality Control Board issues
- Should be easier for OCWD to work through distribution institutional issues
- OCWD can apply for grant money



# Poseidon Risk

- New regulations once plant is operational
- Increase to energy rates
- Increase to interest rates / plant financing
- Construction change orders
- Permitting the plant



## Risk OCWD Would Need To Manage

- Have to construct distribution system improvements on time to match completion of the treatment plant
- Take or Pay arrangement
- Avoid a pipeline to no where scenario



# Ocean Desalination Citizen Advisory Committee



# Ocean Desalination Citizens Advisory Committee

- Facilitator Paul Brown
- Four meetings
- Documents
  - Paul Brown report
  - Summary of each Committee members key input to the Board
  - Question and Answer document
  - Meeting summaries



## Committee Key Findings

- Concerns with tying what OCWD pays to the MWD rate
  - Unrelated to Poseidon's actual cost
  - Don't want excessive profit if MWD rates increase dramatically
  - Future technology could lower Poseidon's cost
  - Would low MWD increases jeopardize the project's financial integrity
  - Approach could work but need safeguards



## Committee Key Findings

- Questioned a 50 year contract life - too long
  - Need periodic reviews and adjustments
    - Technology
    - Excessive MWD rate increases
- Could OCWD meet the deadline to construct the distribution facilities and avoid liquidated damages?
- Will OCWD be able to find customers for the water?
- What are alternatives to the project
- Expand/Continue the role of the Committee



# Moving Forward If the Board Approves the Term Sheet



# Determine How Water Will Be Distributed and the Cost

- How much water can OCWD take to recharge the Groundwater Basin?
- Which cities and retail water districts will sign-up to receive water?
  - Meet with cities and retail water districts
  - Need firm commitments - Develop and process some type of MOU
  - Develop a pricing structure – what will OCWD sell the water for?
- Work with MWDOC
- Work with City of Huntington Beach
- Institutional Issues
- CEQA
- Outside consulting assistance up to \$60,000



# Potential Water Quality Integration Issues

Poseidon water will meet all state and federal drinking water requirements - However the water will have a different chemistry as compared with imported or groundwater

- Blending a third source of water in a Producers distribution system
- Injection of RO water – ensure we don't mobilize elements naturally occurring in the aquifer formations
- GWRS Pipeline type issues
- Potential corrosion issues
- Disinfectant By-products formation
- Water will travel in different pipe materials in different directions
- MWD requirements to use EOCFD#2
- Watereuse Research Foundation - \$200k Carlsbad Study
- Outside consulting assistance up to \$40,000



# Reliability Analysis

- Assess reliability of MWD imported water system
- Review of assumptions behind the MWD Integrated Resources Plan
- What other projects/programs are available?
- Estimated cost of not having sufficient water supplies
- Review of SDCWA reliability analysis
- Utilize recent MWDOC OC Reliability Study
- Outside consulting assistance up to \$70,000



# Financial Analysis

- Review Poseidon's plan of finance and debt/equity percentage
- Can Poseidon finance the project under the revenues provided in the Term Sheet
- Ensure Poseidon is not making an excessive return on investment
- Provide an Opinion/Assessment of MWD rate projections – past and future
- Outside consulting assistance up to \$60,000



# Recommendation

- Approve the Term Sheet
- Establish a project budget of \$230,000
- Authorize staff to hire consultants for project issues relating to distributing the project water, water quality, considering alternative supplies and financial assistance and execute the necessary contracts



End of Presentation





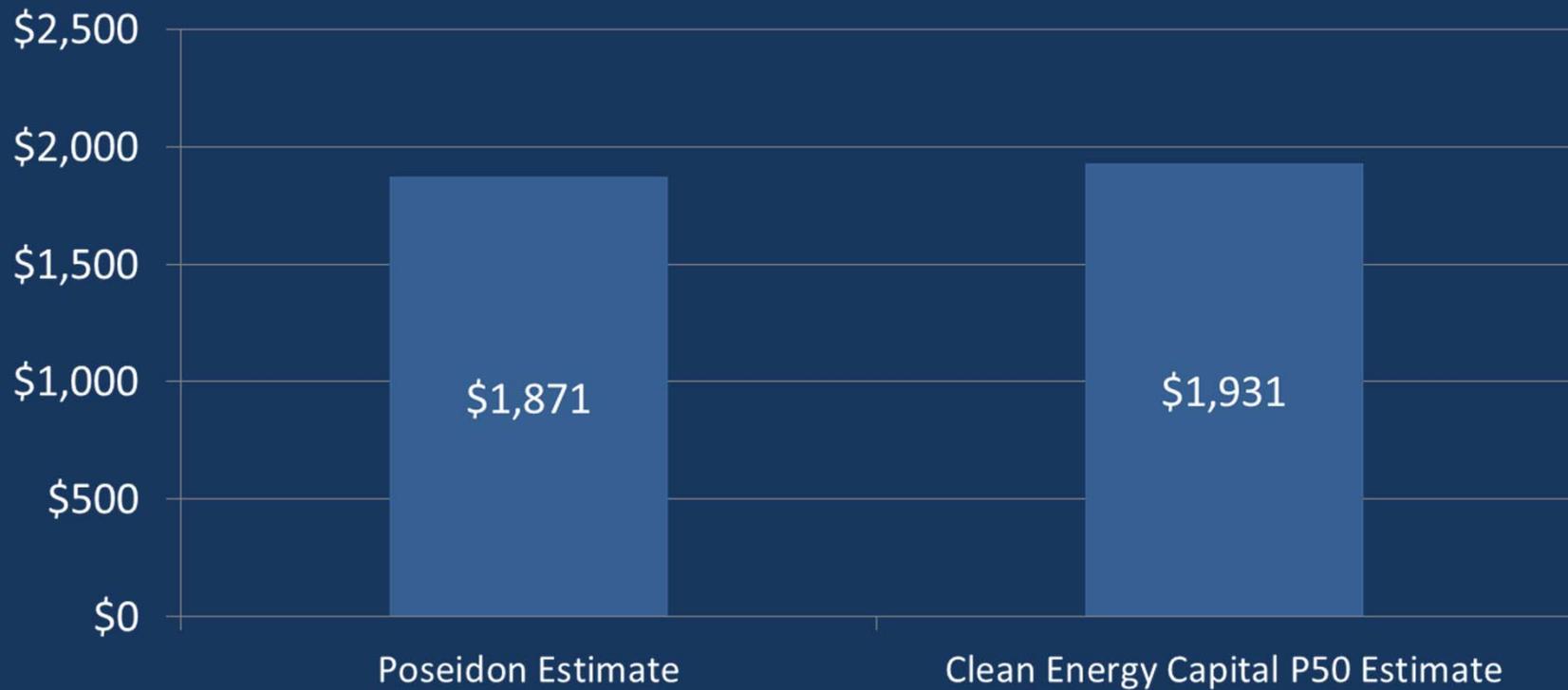
# Issues Prior to Considering a Water Purchase Contract

- How to distribute the water
- OCWD financial analysis
- MWD reliability analysis
- Alternative projects
- Develop retail pricing structure
- Retail purchase commitments
- Any water quality issues
- CEQA
- Carlsbad project review
- Review of Poseidon Finances
- Review of Poseidon's design, cost estimates and operation and maintenance plans.

Issues that would be studied within the context of the provided Term Sheet



# 2014 Project Unit Cost Estimate





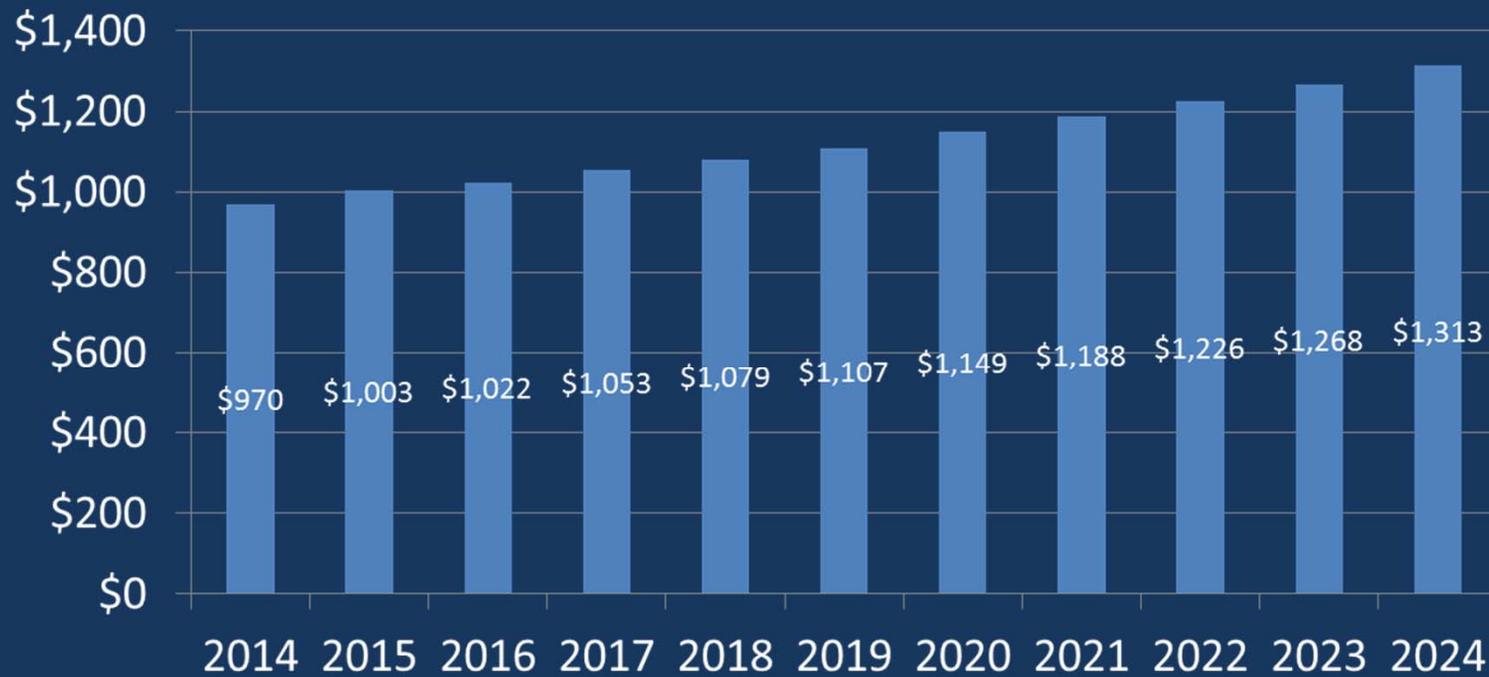
## MWD Rates

- Historically increased at over 6% annually
  - Built out MWD import system
  - Ozone retrofit of treatment plants
  - Greatly increased storage capability
- 2014 - 3% average annual increase projected for next 10 years
- MWD future could be more of a maintenance mode?



# April 2014 MWD Ten Year Rate Forecast

3% Average Annual Rate Increase over 10 years



Rates Include additional \$80/af for the Readiness To Serve and Capacity Charges



## MWD Readiness To Serve Charge

- MWD is collecting \$155.5 million in RTS charges from its member agencies
- Based upon average MWD deliveries to its member agencies
- MWDOC Share - ~\$21 million in FY15-16
- After Property Tax Standby charge - \$12.9 million
- Total RTS Charges collected by MWDOC from its member agencies in FY15-16 - \$12,939,246
- MWDOC Average Water Sales – 240,000 acre-feet
- Average cost = \$54/acre-feet



## MWD Capacity Charge

- MWD is collecting \$11,100/cfs x summer time peak delivery amount.
- MWDOC is for a delivery amount of 401.1 cfs
- MWDOC paying \$4,452,210 in CY 2015
- MWDOC Average Water Sales over past 10 years – 240,000 acre-feet
- Average cost = \$19/acre-feet

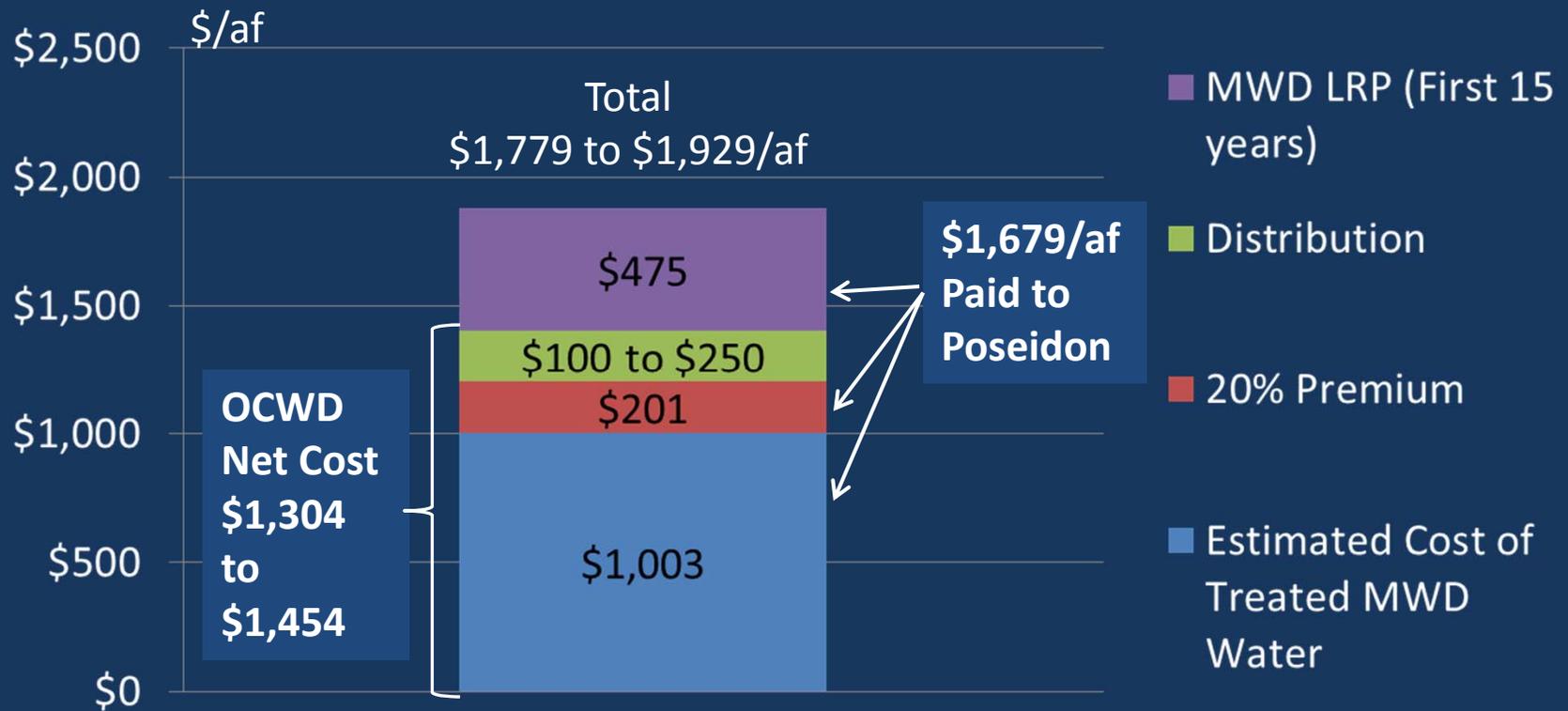


# 2014 Estimated Financial Impacts

	No MWD Subsidy or Savings	With MWD \$475/af Subsidy
Estimated 2014 Unit Cost of Water	\$1,931/af	<b>\$1,456/af</b>
2014 MWD Treated Full Service Rate (Includes \$80/af for RTS and CC)	<u>\$970/af</u>	<u><b>\$970/af</b></u>
Difference	\$961/af	<b>\$486/af</b>
Total Additional Area Water Supply Cost (Currently \$242 M/yr)	\$54 M	<b>\$27 M</b>
Approximate Replenishment Assessment Increase (320,000 afy of groundwater pumping)	\$169/af	<b>\$84/af</b>
Approximate necessary one-time increase to retail monthly water rates	11%	<b>5.6%</b>
Approximate increase to a typical \$50/month residential water bill	\$5.50	<b>\$2.80</b>



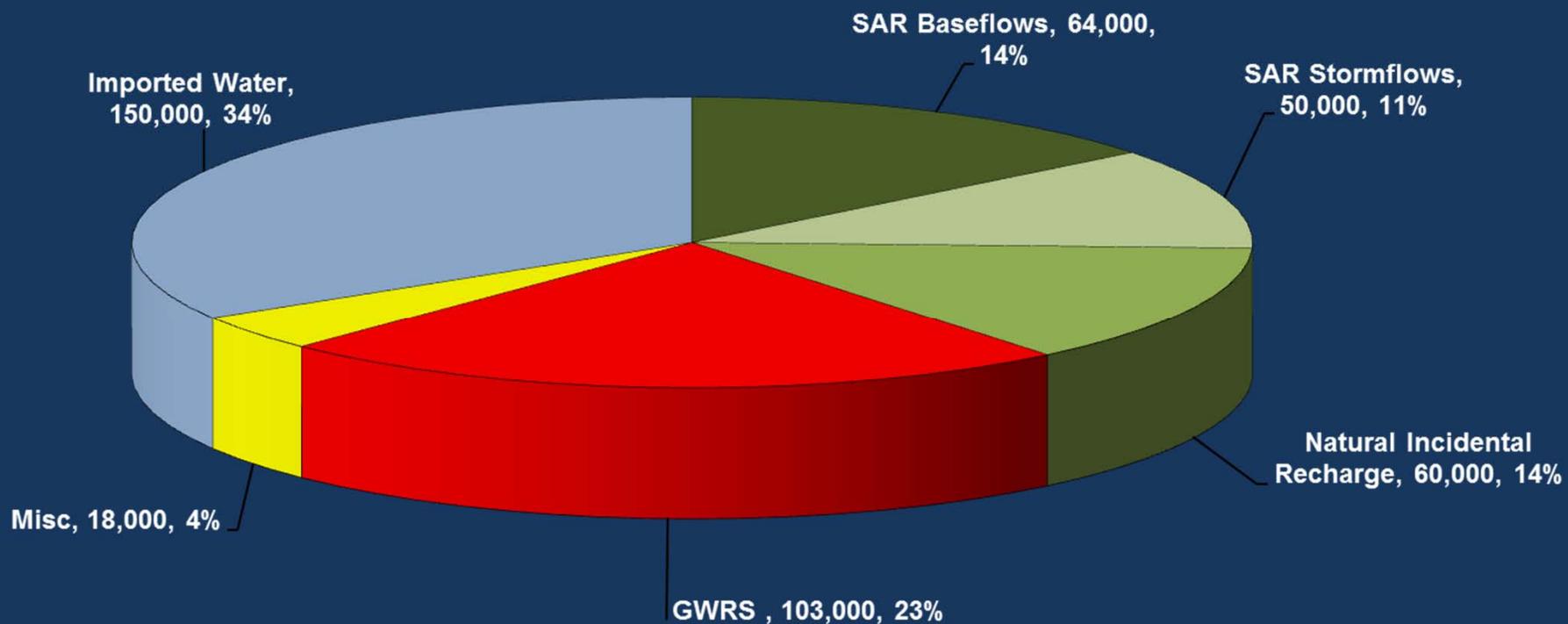
# Year 1 Cost of Water





# Current OCWD Service Territory Water Supply Sources

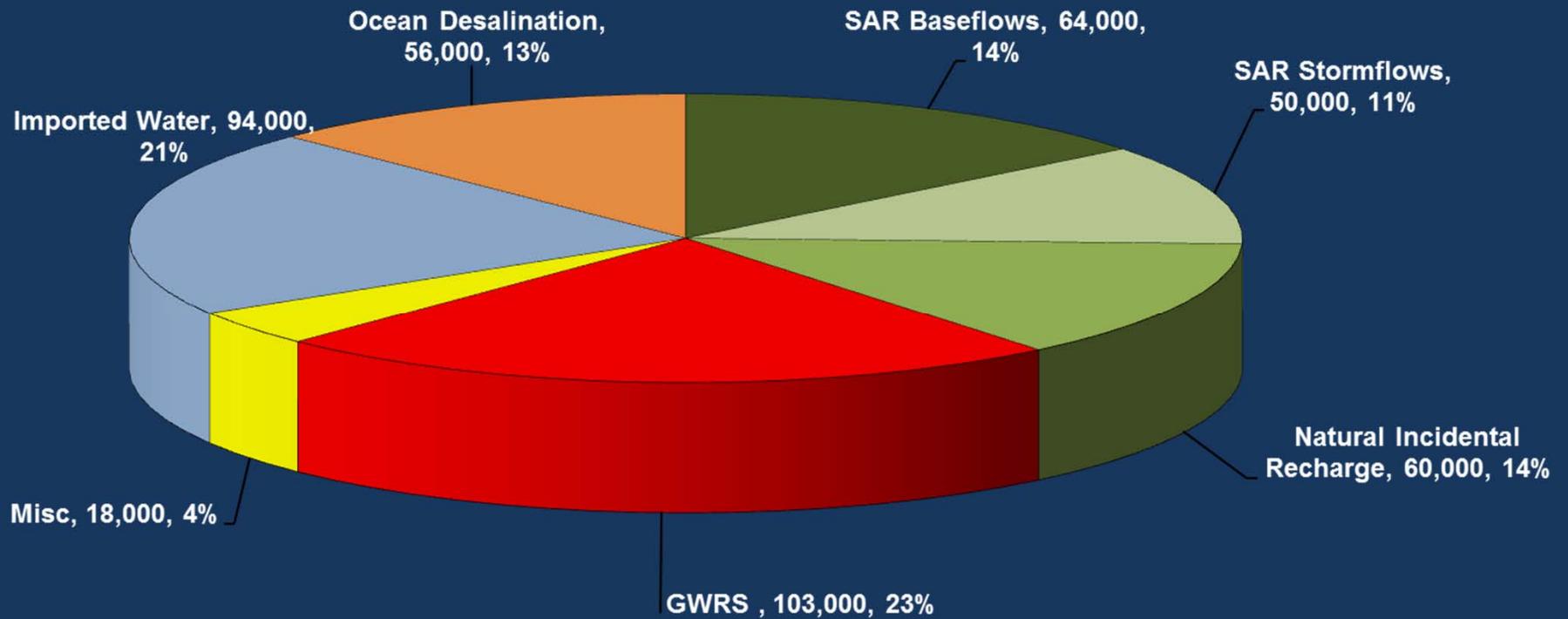
Total Water Demands 445,000 afy





# Current OCWD Service Territory Water Supply Sources

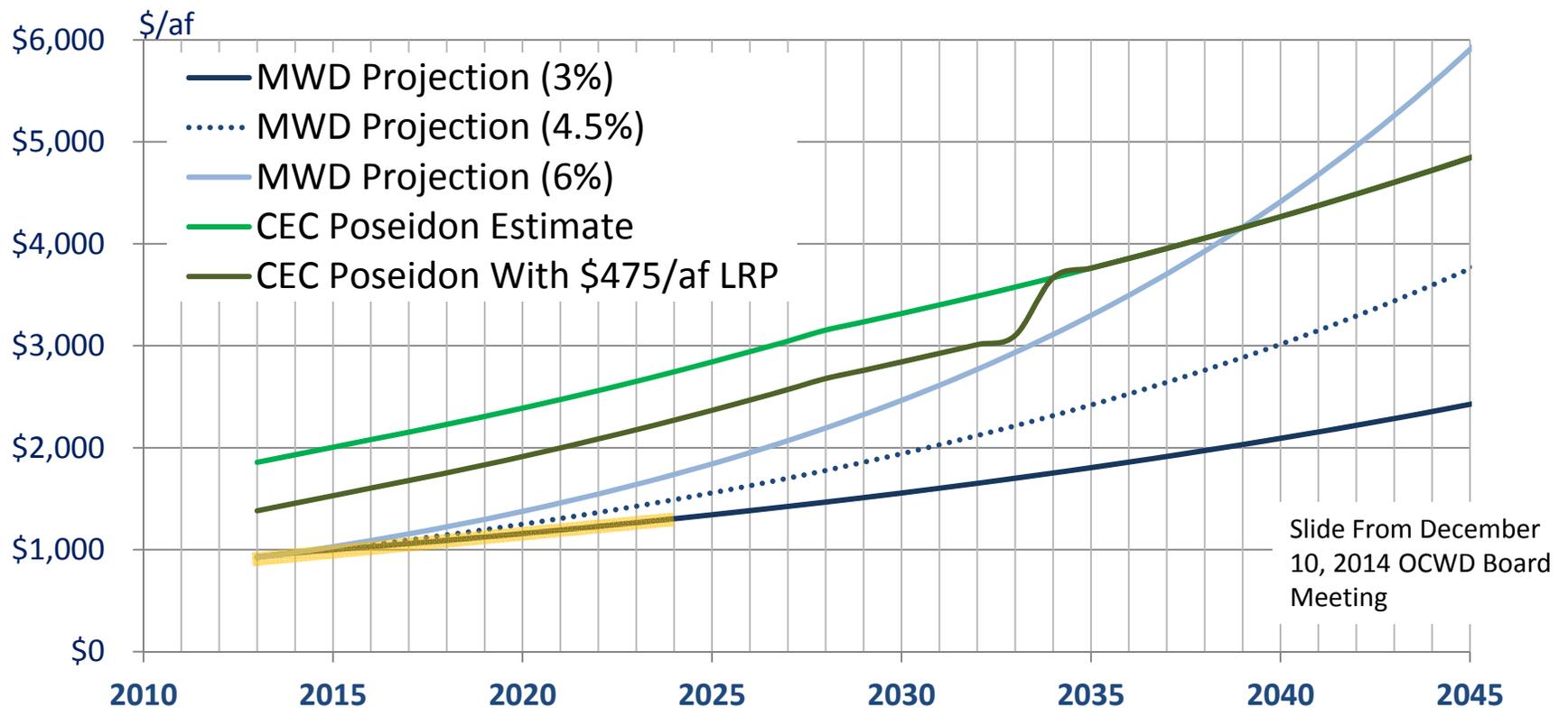
Total Water Demands 445,000 afy





# Proposed Project Water Supply Unit Cost vs MWD

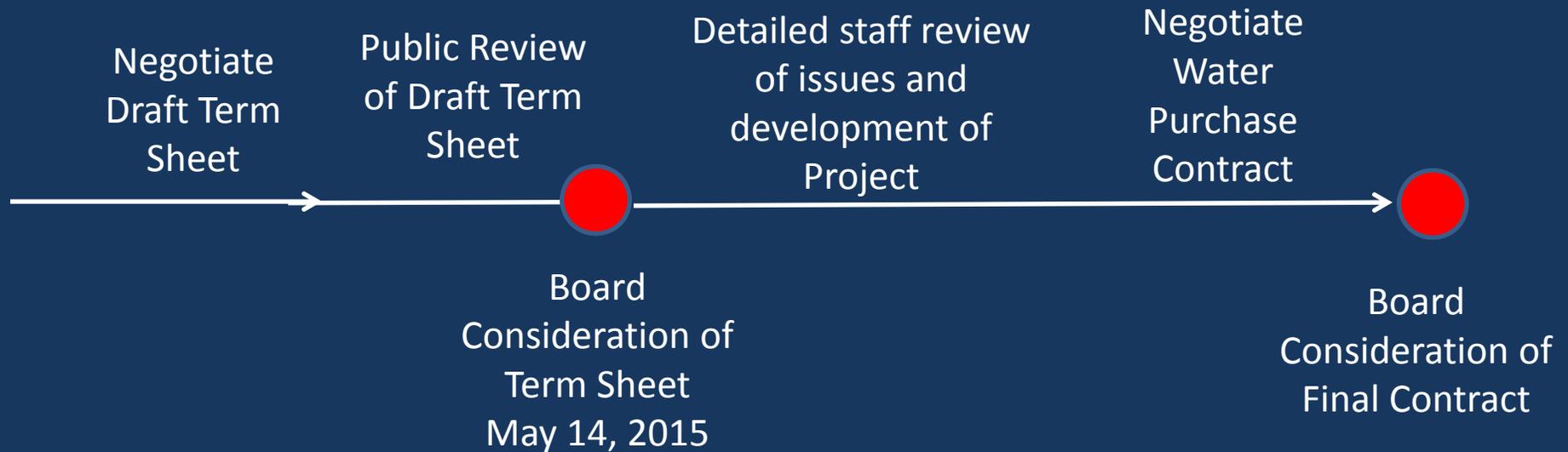
## CEC Estimate minus MWD LRP Subsidies



Slide From December 10, 2014 OCWD Board Meeting



# Term Sheet Water Purchase Contract Overall Process





## March 18, 2015 Board Action

- Term Sheet was provided to the local community for review
- Board approved meeting with the Ocean Desalination Citizens Advisory Committee
  - Four meetings occurred
  - Focused on the Term Sheet
- Staff has continued meeting/negotiating with Poseidon - some changes in Term Sheet



# Director Appointments to Ocean Desalination Citizens Advisory Committee

	Member	Member	Alternate
Anthony	Garry Brown	Diana Carey	Debbie Cook
Bilodeau	Steve Aceti	Roger Butow	Richard Bannister
Dewane	Allen Bernstein	Patrick Brenden	Dallas Weaver
Flory	Jerry King	Joe Geever	Kelly Rowe
Green	Shirley Detloff	George Mason	Frank LoGrasso
Nguyen	Steve Sullivan	Duy Nguyen	Brenda Fizer
Reyna	John O'Neill	Carl Benninger	Keith Bohr
Sheldon	Edwin Laird	Michael Rudinica	
Sidhu	Susan Fasell	Gail Eastman	Lon Cahill
Yoh	Stacey Berry	Dan Mole	Dr. Wayne Miller



End



**RECEIVED**

APR 30 2015

**O.C.W.D**

April 24, 2015

Board Members  
Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708

Dear Orange County Water District Board members,

I urge you to vote "no" on moving forward with negotiations with Poseidon Water on its proposed Huntington Beach desalination facility. The facility is a bad deal for ratepayers and the environment. Poseidon is proposing to use obsolete technology for the plant that will kill marine life and pollute our ocean. The project is also dependent on subsidies from the Metropolitan Water District that will spread the costs for the plant to most of Southern California. This sets a bad precedent. There are better alternatives, including increased conservation and recycling that cost less to the ratepayer, provide more public benefits, and protects the environment.

The expanding Ground Water Replenishment System and the water it produces will easily satisfy the water needs for Northern and Central California.

Since the water from the Poseidon desalination plant is only needed for South Orange County, then it would make more sense (cost and environmental reasons) to build it in South Orange County.

It is time to stop negotiating with Poseidon and focus on options that are in the public's best interest.

Thank You,



Mary Jo Baretich  
President, Cabrillo Wetlands Conservancy  
Board Member, Residents for Responsible Desalination

21752 Pacific Coast Hwy # 23A  
Huntington Beach, CA 92646  
[mjbaretich@hotmail.com](mailto:mjbaretich@hotmail.com)  
(714) 960-9507

**RECEIVED**  
APR 29 2015  
O.C.W.D

Board Members  
Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708

Dear Orange County Water District Board members,

I urge you to vote "no" on moving forward with negotiations with Poseidon Water on its proposed Huntington Beach desalination facility. The facility is a bad deal for ratepayers and the environment. Poseidon is proposing to use obsolete technology for the plant that will kill marine life and pollute our ocean. The project is also dependent on subsidies from the Metropolitan Water District that will spread the costs for the plant to most of Southern California. This sets a bad precedent. There are better alternatives, including increased conservation and recycling that cost less to the ratepayer, provide more public benefits, and protects the environment.

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It is time to stop negotiating with Poseidon and focus on options that are in the public's best interest.

Thank You,

JOHN BANGERT  
PLAINTIFF MOBILE HOME VILLAGE H.O.A. PRESIDENT

April 7, 2015

Orange County Water District – Board of Directors  
18700 Ward Street  
Fountain Valley, Ca 92708

**RECEIVED**

APR 13 2015

**O.C.W.D**

To Whom It May Concern:

As a resident of south Orange County and native Californian, I am deeply concerned about the current drought situation we are facing in California. Although conservation helps us in slowing the consumption of water resources, it **WILL NOT** put off the inevitable – obtaining a constant flow of usable water to this county and state.

In order to meet the current and future water needs of our residents, commercial businesses and especially for California's agricultural industries that supply food to our entire country, we need to use our ocean water and desalinate it for human consumption and usage.

With that said, it is crucial that we aggressively plan and build the necessary **DESALINATION PLANTS** off our coast as soon as possible in order to solve the water issues we face now, and could possibly face in our future as our weather rainfall cycle is completely unpredictable.

I fully support the building of as many desalinization plants as needed, and support any increase in state or local taxes and/or water rate fees in order to accomplish this goal as quickly as possible. We must be proactive with this issue! With this water crisis at hand and with limited water reserves, I believe we must suspend any and all potential coastal environmental regulations or concerns in order to use our ocean water to meet the water needs of our population. I'm sorry, but human survival comes first!

Sincerely,



Frank Caruso  
29 Calle Verano  
Rancho Santa Margarita, Ca 92688

Cc: Office of California Governor Jerry Brown  
California Coastal Commission  
Orange County Board of Supervisors  
South Coast Water District, Laguna Beach, CA

**RECEIVED**

**APR 30 2015**

**O.C.W.D**

April 27, 2015

Board Members  
Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708

Dear Orange County Water District Board members,

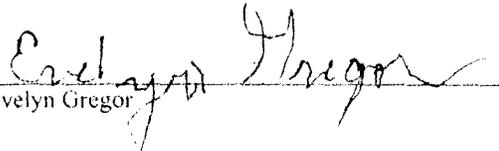
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It is time to stop negotiating with Poseidon and focus on options that are in the public's best interest.

Thank You,

  
Evelyn Gregor

19251 Brookhurst Street, Spc. 95  
Huntington Beach, CA 92646

*Dear Mr. Markus:*

*I respectfully request a moratorium on the contract discussion with Poseidon UNTIL AFTER THE CARLSBAD PLANT IS UP AND OPERATIONAL. Why not wait to see and evaluate that plant in operation? The sensible and prudent course seems to be to postpone any decision until that operation can be evaluated.*

*As Michael Hiltzik points out in The Los Times on Sunday, April 26, 2015, "Enthusiasm for desalination tends to overlook its high costs, which stem in part from its enormous energy demand and weighty environmental footprint. Mr. Hiltzik quotes Heather Cooley, "...it's still among the most expensive water supply options."*

*Pacific Institute Water Program Director Heather Cooley testified on September 25, 2014 in front of the Assembly Select Committee on Coastal Protection regarding desalination impacts. Ms. Cooley spoke separately on desalination intakes and broader policy issues of desalination facilities. (Ms. Cooley has received the U.S. Environmental Protection Agency's Award for Outstanding Achievement).*

*The article also quotes Vaux, a contributor to the blue-ribbon desalination study in 2008. Vaux states, "Dumping water that is saltier than seawater into the ocean isn't harmless. Some organisms can't survive, others move in – the ocean isn't a great big garbage can."*

*Let us remember what happened to Santa Barbara and in Australia with their experiences with desalination plants. "It would be much cheaper, efficient and fair to reduce Californians' demand for water before engaging in expensive supply augmentation" according to David Zetland, author of Living with Water Scarcity. I trust that OCWD would continue to perform "**due diligence**" to gather pertinent information including all costs, benefits, and risks involved.*

*Thank you,  
Ann Tweedy  
Resident in proximity to OCSD Plant #2, Ascon Landfill and AES Power Plant*



**RECEIVED**

**APR 13 2015**

**O.C.W.D**

Dr. Allan Bernstein  
Chairman, OC WISE

Robert Sulnick,  
Executive Director, OC WISE

*Association of California Cities  
–Orange County*

*Huntington Beach Chamber  
of Commerce \**

*LA-OC Building and  
Construction Trades Council*

*Orange County Association  
of REALTORS®*

*Poseidon Water*

*South Orange County  
Economic Coalition*

April 7, 2015  
Cathy Green, President  
Orange County Water  
District  
18700 Ward Street  
Fountain Valley, CA  
92708

Dear President Green,

OC WISE is writing to urge the Orange County Water District (OCWD) to approve the pending Term Sheet between the Board and Poseidon Resources (Surfside) LLC (Poseidon) at the upcoming scheduled April 30th board meeting.

In his Executive Order, issued April 1, 2015, Governor Brown not only focused on the severity of the on-going drought California and Orange County are facing but specifically called for: "*the prioritizing and approval of water infrastructure projects and programs that increase local water supplies including...desalination plants*". In so far as your Board, citing climate change, the drought and the District's need for new water, has twice supported Poseidon's application before the California Coastal Commission (CCC) we respectfully urge that you expeditiously proceed to adopt the Terms at your up-coming meeting.

As you know, OCWD and its member agencies currently imports 25% of its water from northern California and the Colorado River (with the County relying on approximately 50% of its water from these sources) and relies for 19% of its water on the Santa Ana River. Given Orange County's semi-arid, drought prone environment these sources are neither reliable or drought-proof. The Sierra Nevada snowpack is now at 5% of normal, the lowest ever. The State Water Project (SWP), which delivers northern California water to the OCWD, cut its deliveries to 5% in 2014 and is estimating short deliveries due to lack of water in 2015. Deliveries from the Colorado River were at their lowest ever in 2014; 2015 is expected provide either the same or even less water. Santa Ana River flows are drying and are unlikely to provide future yields above minimum entitlement. It is reasonable to assume that the District cannot rely on imported water to service its needs.

A community coalition dedicated to the independence, sustainability and efficiency of Orange County's water supplies.

**OCWISE.org**



Dr. Allan Bernstein  
Chairman, OC WISE

Robert Sulnick,  
Executive Director, OC WISE

*Association of California Cities  
–Orange County*

*Huntington Beach Chamber  
of Commerce*

*LA-OC Building and  
Construction Trades Council*

*Orange County Association  
of REALTORS<sup>SM</sup>*

*Poseidon Water*

*South Orange County  
Economic Coalition*

In this context, any call for studying alternatives to desalinated water is unreasonable; the alternatives have been studied and found lacking from the perspective of creating water independence for the OCWD. The Governor's Order specifically points out that voluntary conservation measures did not work (reaching only 9.7% state-wide instead of the 20% he called for). Given that Orange County's population is expected to grow by 300,000 by 2020 we don't think even mandatory conservation measures alone can supply the 75,000 acre-feet a year short fall projected by your agency for 2035.

We support storm water capture and OCWD's Ground Water Replenishment System (GWRS) program and will enthusiastically aid OCWD in promoting both programs. However, storm water capture relies on rain, and wastewater reclamation even with increased conservation will not, in our view, reach the level of providing water independence for OCWD.

We have reviewed the financial terms of the potential relationship with Poseidon. In the context of the water emergency Orange County is facing, we find them eminently acceptable. The costs of imported water, which will continue to rise, make the projected costs to rate payers, of between \$1.00 and \$2.00 a very good insurance policy against the threat of decreased water from: nature, the State Water Project (SWP), and the Colorado River. Moreover, under the terms being presented Poseidon assumes essentially all of the risks associated with the project including: electricity pricing, permitting, project financing, construction, interest rate fluctuations, operations and maintenance, and any changes in the law impacting the desalination facility.

OC WISE is a coalition of individuals, businesses, labor, community groups and non-profit organizations united to support and advocate for all forms of new water for Orange County. The coalition was formed as a direct response to both the unpredictability of the County's water supply and the need to develop new supplies capable of ensuring adequate water for the County.

Sincerely,

Dr. Allan Bernstein  
Chair

A community coalition dedicated to the independence, sustainability and efficiency of Orange County's water supplies.

**OCWISE.org**



# **SUMMARY OF OCEAN DESALINATION CITIZENS ADVISORY COMMITTEE DELIBERATIONS AND FINDINGS**

**Facilitator Paul Brown**

## **Background**

In response to a request from the Orange County Water District (OCWD) Board of Directors (Board) the Ocean Desalination Citizens Advisory Committee (CAC) completed a series of four meetings to provide the Board with comments and feedback regarding a draft Term Sheet negotiated between OCWD and Poseidon Resources (Surfside) LLC (Poseidon) dated March 2015 for the provision of desalinated seawater. The CAC is comprised of 20 members and nine alternates. Open public meetings were held on March 26, April 9, April 23, and April 30, 2015. Minutes from those four meetings are attached along with all documents that were distributed at the meetings. In addition, all of the meetings were recorded and can be reviewed on the OCWD website.

## **Meeting #1 March 26, 2015**

An opportunity for public comments was provided at the beginning of each meeting and a summary of remarks is included in the meeting minutes. Following those comments, CAC members discussed the Board's specific charge to provide comments on the Term Sheet. The Committee agreed to a process that involved: (1) clarification of committee objectives and process, (2) review and discussion of several background presentations, and (3) a section-by-section review and discussion of each element of the Term Sheet.

Several members of the Committee requested that it be clearly stated that while they accepted the Board's charge to focus primarily on the Term Sheet, their participation should not be construed as support for the project. At the same time, other CAC members were also clear that they supported proceeding with the proposed project. On this issue, while CAC member views vary considerably, it was agreed that as requested by the Board the CAC's primary focus should be directed to a review, analysis, and feedback on the draft Term Sheet.

## **Meeting #2 April 9, 2015**

During its second meeting, the CAC undertook the section-by-section review of the term sheet as agreed during Meeting #1. OCWD legal counsel Joel Kuperberg offered a brief description of each section including the intent and meaning of the proposed language. OCWD Executive Director Engineering and Local Resources John Kennedy assisted attorney Kuperberg. A summary of the key concerns and observations offered by CAC members is provided below. Meeting #2 adjourned at approximately 9:15 PM without having completed the presentation and discussion of the entire document.

### **Meeting #3 April 23, 2015**

At its third meeting, the CAC completed its section-by-section review and discussion of the contents of the Term Sheet. Following completion of the Term Sheet review, CAC members were asked to summarize their thoughts and primary message to the OCWD Board regarding the Term Sheet and other topics. Each CAC member shared his or her thoughts and views with the committee and OCWD staff. CAC members generally expressed their appreciation to the other members of the Committee for the quality and insights offered during the meetings, as well as thanking the OCWD staff. Attachment #12 includes a summary of the individual comments received at Meeting #3. CAC members were also informed that they could provide individual written comments to the Board. Some members provided such comments, and they are also attached.

### **Meeting #4 April 30, 2015**

At its final meeting, CAC members reviewed and revised this summary document for transmittal to the OCWD Board.

### **Summary of Key Findings**

The summary below identifies those issues and topics that CAC members identified as important for the OCWD Board to consider as it deliberates on the approval of the Term Sheet. In this summary, CAC views and observations are described in terms of the general level of agreement they elicited from the group. These characterizations are admittedly subjective (no votes were taken), but the CAC members were asked to review this document and verify that the descriptions are consistent with their perceptions of what took place at the meetings. For reference purposes, the term “several” refers to one or more CAC members, “many” refers to less than half, “most” refers to more than half, and “all” is self-explanatory.

#### **Water Purchase Price**

Most CAC members expressed concern regarding basing the water purchase price on prevailing MWD treated water rates. It was noted that the approach differed from that used by the San Diego County Water Authority for the Carlsbad Desalination Project, which is based on Poseidon’s actual cost of financing facilities and producing water, plus a negotiated profit and return on investment. CAC members discussed the advantages and disadvantages of both approaches. Many of the committee members, however, cautioned against the current MWD-based pricing approach. Specific comments on this issue included:

- An issue regarding the complexity associated with fully understanding the ramifications of Orange County’s purchase of MWD water, the MWD rate impacts associated with receiving LRP payments, and the possible unintended

consequences of those somewhat “circular” transactions also raised concerns for several CAC members.

- OCWD may be exposed to uncertain future increases in the MWD rate that are not connected to Poseidon’s actual cost and may result in windfall profits for the Poseidon.
- While future technology advances may reduce Poseidon’s costs, those savings will benefit Poseidon only and may result in additional windfall profits that could otherwise be shared.
- On the other hand, possible future reductions in the MWD rate could have the opposite effect and jeopardize Poseidon’s financial condition to the detriment of both parties.
- The proposed approach insures that the price of desalination water will always be greater than the cost of imported water (years 1 through 40 of the contract) even if the cost for creating desalinated water is less than imported water.
- It was noted that with OCWD taking responsibility for Delivery System costs under a 50-year term agreement, the estimated total cost of the water is effectively unknown, making it difficult to evaluate the pricing proposal.
- Given that the cost of GWRS is known, it was suggested that as an alternative perhaps the price could be tied to GWRS costs rather than the cost of MWD water.
- Similarly, it was also suggested that the price could be based on a Marginal Cost methodology reflecting the price of the next available water source able to meet OCWD’s projected water needs. This approach would be reflective of the then current fair-market value for water.
- If the price is tied to MWD rates, a final agreement should include safeguards and periodic reopeners of the pricing structure to protect ratepayers.

Additional details on several of these suggestions can be found in the written statements prepared by CAC members from the April 23<sup>rd</sup> meeting.

### **Term of the Contract**

Most CAC members expressed concerns regarding the 50-year term of the contract. In general, CAC members expressed the belief that the extent of change likely to occur over the next 50 years related to technology advances, water availability, and cost indices are significant enough to warrant special caution in the execution of a contract of this length. If the overall contract term must remain at 50 years, it was suggested that OCWD develop terms and conditions allowing for periodic re-opening of specific contract terms.

### Securing Customers for the Water

Many questions and concerns were raised regarding the obligation and ability of OCWD to secure commitments to purchase the water produced by the desalination plant, as well as the plans for using the water in the event customers aren't forthcoming. While the OCWD staff made it clear that if the Board approves the Term Sheet there will be significant work undertaken to determine exactly how the desalinated water will be used and the cost of facilities needed to accomplish it, several CAC members believed the risks related to this issue are high. Others stressed the need to secure customers (off-takers) for the water prior to entering a contract with Poseidon. There was also a discussion regarding the appropriateness of OCWD providing Poseidon water to agencies outside its boundaries. If the Board approves the Term Sheet, many CAC members believe there will be a lot of interest in this subject, as well as related issues regarding the allocation of costs to OCWD member agencies.

### Advances in Technology

All CAC members anticipate the possibility of technological advances in desalination over the term of the agreement. These advances are likely to increase the efficiency of desalination processes and reduce the operating costs of the treatment facilities. CAC members encouraged OCWD to explore approaches that would both create incentives to adopt new technologies and provide for the sharing any resulting savings.

### Failure to Meet Deadlines

Several CAC members are concerned about OCWD's ability to complete construction of the Delivery System by the Scheduled Commercial Operation Date (defined as 42 months following the Financial Close). Given the obligation to pay liquidated damages in the event of a failure to meet the date, OCWD staff is encouraged to take steps to insure that there is sufficient time allowed for completing construction of the delivery system. The actual time needed to construct the Delivery System for a final water purchase contract should be estimated after it is determined who will be receiving the water and the actual scope of the Delivery System needed.

### Alternatives to the Project

While the entire membership of the CAC focused its deliberations on the contents of the Term Sheet as directed by the Board, several CAC members expressed lingering concerns regarding advancing the Term Sheet prior to further studies and evaluations of other alternatives to an ocean desalination project. OCWD staff indicated that the requested analyses would be undertaken when and if the Board approves the Term Sheet. On a related topic, many CAC members expressed concerns regarding both private ownership and a sole-source contract for the desalination facility, suggesting that OCWD, with its GWRS experience, should be considered as a viable alternative to Poseidon for the development and implementation of the desalination project.

### Ongoing Role of the CAC

Many CAC members suggested that the OCWD Board consider ongoing engagement of the CAC in an advisory role.

### Revisions to the Term Sheet

As a result, in part, of input received from the CAC during its meetings, OCWD staff has already made some changes to the Term Sheet document. The Term Sheet provided to the CAC was originally presented to the OCWD Board on March 20, 2015. The Term Sheet that will be presented to the OCWD Board on May 14, 2015 contains edits and changes many of which were generated by the CAC.

### Additional Information

During the course of its meetings, CAC members raised many significant questions regarding the project, Poseidon, and the specific terms of the agreement. These questions were documented, and OCWD staff prepared and distributed written responses to them between meetings. Board Members are encouraged to review the attached Q&A document (as well as the other attachments provided below). They contain a lot of good information and reflect the seriousness and depth of CAC members' inquiries and discussions.

### Closing Thoughts

In closing I would like to thank the Committee for its hard work, professional demeanor, and focused attention to the sometimes-complex issues associated with the Term Sheet and the project. Given the relatively short time available for the review, the process required Committee members to rapidly come up to speed on issues that were new to many. Committee members have diverse backgrounds and a wide variety of knowledge. They were very respectful of each other despite the obviously different opinions held regarding the project. I also believe that all CAC members are appreciative of the Board's willingness to allow for citizen committee deliberation and participation in the process. Lastly, I want to express my personal gratitude to the Board and CAC for the opportunity to have been involved.

Respectfully submitted,

Paul R. Brown, CAC Facilitator  
May 4, 2015

### Attachments to this document

- A Questions and Answers document
- March 26, 2015 meeting minutes
  - March 26, 2015 presentation on OCWD

- March 26, 2015 presentation on the Poseidon project
- March 26, 2015 general presentation on the Term Sheet
- April 9, 2015 meeting minutes
  - Detailed presentation on the Term Sheet
- April 23, 2015 meeting minutes
  - Individual summary comments provided by the CAC members
- April 30, 2015 meeting minutes
- Information regarding the individual Committee members



## **Ocean Desalination Citizens Advisory Committee Questions and Answers**

1. Has Poseidon Resources actually operated any ocean desalination plants?

**Poseidon itself does not operate and maintain the treatment plants. Their business model is to develop, permit and finance the construction of water infrastructure projects and then hire operations experts to actually run and maintain the plant. If the Huntington Beach project is successfully permitted and constructed, Poseidon plans to hire IDE-Tech to operate the plant (see [www.IDE-tech.com](http://www.IDE-tech.com)). IDE-Tech has constructed and operated large ocean desalination plants in other countries. They will also operate the City of Carlsbad plant.**

2. The Poseidon Coastal Development Permit with the California Coastal Commission will have to include some of the distribution system which is OCWD's responsibility. How will that be coordinated?

**It is the District's understanding that Coastal Development Permits (CDP) terms and regulations allow the addition of other parties to the CDP entitlement and conditions at any time as long as that additional party agrees to be bound by the conditions of the permit. Generally speaking Poseidon would simply assign to OCWD that portion of the Coastal Development Permit covering the distribution system that is OCWD's responsibility. The District does not anticipate any issues here.**

3. How reliable will the Poseidon plant be?

**The treatment plant should be highly reliable once any start-up issues are resolved. Seawater desalination is drought proof and immune from climate and economic effects. The Project does not depend on rain in Orange County, snow in the Sierra Mountains or a strong economy generating ample supplies of wastewater.**

**Ocean desalination treatment plants are relatively new to the United States but have been successfully operated worldwide for many years. The reverse osmosis treatment technology that is used is proven and reliable.**

**Additionally Poseidon would only get paid for water they deliver so there is a strong financial incentive to design and construct a plant that can continually operate with minimal problems.**

4. Why is the Term Sheet for 50 years?

**The original Term Sheet considered by the Orange County water community in previous years had an initial duration of 30 years and two possible 15 year extensions for up to a total of 60 years.**

**The duration of the current Term Sheet came about as part of the negotiations between Poseidon and OCWD staff. In general as OCWD staff pushed down on the amount of the premium above the MWD rate to be paid for the water, Poseidon correspondingly asked for a longer contract term to amortize their debt and recover their costs.**

5. Poseidon previously attempted to get local cities and retail water districts to sign up for their water with limited success. What will be different this time?

**The prior discussions were more preliminary in nature. If the Term Sheet is approved by the OCWD Board, OCWD and the Municipal Water District of Orange County (MWDOC) staff will meet with these agencies to share more recent information to determine who wants the water and how the distribution of the new water supplies could occur. The cost and institutional approvals necessary to deliver water to these agencies will be analyzed and compared with options where OCWD purchases a majority of the water for groundwater basin recharge. OCWD and MWDOC staff will also have to determine the cost of the water being sold to the cities and retail water districts. Given the drought conditions and the District's involvement in the project, we anticipate that there will be more interest in the project.**

6. What happens if Poseidon cannot deliver the water?

**If Poseidon is unable to deliver water they would incur liquidated damages, the amount of which would be negotiated in the final water purchase contract.**

7. Will there be any changes to the terms the City of Huntington Beach has with Poseidon if OCWD becomes involved in the project?

**OCWD has not investigated all of the documents, agreements and conditions of approval that exist between the City and Poseidon Resources. Poseidon has agreed to pay several different types of fees to the City at different stages of the project. The evaluation of these agreements would occur if the OCWD Board decides to move forward with the project. The District believes the following has been agreed to by Poseidon.**

- Provide 3 mgd or 3,360 acre-feet per year of water at 95% of either the current MWD price or the cost to make the desalinated water whichever is less. Thus about 52,640 acre-feet per year of water will be available for sale to other agencies.

- Gave the City the right to purchase 4 mgd on a short-term basis during water emergencies.
- Pay annual property tax in-lieu fee to redevelopment agency of \$1.865 million. OCWD understands with the recent dissolution of California redevelopment agencies there may be some issues with this payment.
- Pay \$1.9 million to the City after close of project financing for right-of-way improvements.
- Pay \$2.0 million to the City prior to project operation.
- Pay a pipeline franchise fee of \$8.00 per linear foot. The amount of this annual fee would depend upon what distribution system is ultimately designed. In general OCWD as a special water district does not have to pay franchise fees. This District and the City would ultimately need to meet to discuss and resolve this issue.
- Pay utility user tax of between \$50k to \$840k annually. The District understands the City and Poseidon are working to determine the exact amount.
- Give the 10 million gallon reservoir they are constructing to modulate their plant output and operations to the City if they cease operations.

8. What is the estimated cost to distribute the Poseidon water?

**If the OCWD Board decides to approve the Term Sheet, OCWD staff will estimate this cost. The cost will depend upon which cities and retail water districts commit to take any water, how much water OCWD takes to recharge the groundwater basin, and the necessary new facilities to distribute and recharge the water. A “ball park” range for the distribution cost is from \$250/af to \$100/af.**

9. What will be the ultimate cost of the project to the rate payers?

**After the distribution cost for the project is determined per question number 8 above, the District will be in a position to determine the ultimate cost of the project to the rate payers. Previous preliminary estimates by the District indicated that the project would increase a typical residential water bill by about \$3 per month. A more precise estimate will be made in the future once the distribution costs are determined.**

10. Does OCWD have the legal authority to sell Poseidon water to other cities and retail water districts?

**A memorandum from the OCWD legal counsel has been made available on this issue. In general the District does have the authority to sell water to other cities and retail water districts as long as the project is benefiting the management of the groundwater basin. It should be noted that MWDOC could also become involved in the project to help address this issue.**

11. Why will the AES power plant discontinue using the existing intake for cooling purposes?

**The State Water Resources Control Board's Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Once Through Cooling Policy) requires AES to discontinue using ocean water to cool their equipment. Staff believes that AES has requested to have until December 2022 to accomplish such.**

12. How does the MWD Local Resources Program subsidy work?

**The Metropolitan Water District (MWD) of Southern California offers a Local Resources Program (LRP) financial operating subsidy on a sliding scale to water agencies to encourage the construction of local water supply projects that cost more than existing MWD water. The amount of the subsidy received varies based upon the unit cost of the new project. As an example, if a new local water supply project cost \$1,300/acre-foot and the current MWD rate is \$1,000/acre-foot, a subsidy of \$300/acre-foot would be received. If the unit cost of the new project ever becomes less than the cost of MWD water the subsidy discontinues. The typical maximum subsidy is \$340/acre-foot for up to 25 years. Poseidon Resources has indicated they desire the MWD subsidy program that pays a maximum of \$475/acre-foot for 15 years. After 15 years, the subsidy is no longer available. Poseidon would need to develop an overall project financing plan that incorporates the subsidy discontinuing in 15 years.**

**The requirements of MWD's LRP Program are such that an eligible project must replace an existing demand or prevent a new demand on Metropolitan's imported water deliveries either through direct replacement of potable water or increased regional groundwater production. What MWD is looking for is whether the "potable" demand on MWD would be lower with the project in operation compared to without the project being in operation. The analysis is not a rigorous one but seeks to verify that the project will ultimately result in lower potable demands on MWD. Any eligible project (desalination, recycling, or groundwater recovery) that produces potable supplies qualifies because as long as the supply is produced it will result in offsetting a potable demand on MWD. The Poseidon project would reduce demands upon the MWD system and would meet the requirements for the MWD LRP subsidy.**

**A recycling project that produces non-potable supplies has to demonstrate that potable demands on MWD will be reduced by using the recycled water to meet a demand that otherwise would have been met by potable supplies.**

**To receive incentive payments from MWD under the program, monthly certifications of supply production are submitted and then an annual reconciliation and review are completed with an auditing process to ensure the cost of the local water production is sufficient to continue receiving the maximum**

**incentive amount or a portion of the maximum incentive amount. “OCWD demands” for imported water include both the replenishment purchases and the direct purchases by the OCWD members to determine whether the project has “reduced a potable demand on MWD.” Even though the OCWD purchases vary from year to year, they are always greater than the 56,000 AF being considered by the Poseidon Project.**

**It was noted by a member of the Citizens Advisory Committee that if MWD approves an LRP subsidy for the project, the price of MWD water will slightly increase to fund this new expense. This means the price OCWD pays Poseidon for the water will slightly increase also.**

**The Municipal Water District of Orange County (MWDOC) has submitted an application to MWD for the project however the LRP application is on hold pending the Coastal Commission process. MWD, MWDOC, OCWD and Poseidon would all enter into agreements for the LRP funding. OCWD staff has indicated that the project would not go forward without the LRP funding.**

**OCWD would not enter into a final water purchase contract with Poseidon unless the LRP subsidy has been secured. Per the Term Sheet, OCWD is essentially guaranteeing to Poseidon that it would always receive the LRP revenue. If MWD somehow terminated the LRP subsidy contract, OCWD is still obligated to make the LRP payment to Poseidon. OCWD believes the odds of such a thing occurring with MWD are very low.**

**13. Why doesn't OCWD recharge all of the Poseidon water?**

**The Poseidon water would be treated to potable standards and could be pumped into local city and retail water district systems for direct use. In general this would be the preferable way to utilize the water.**

**However, one of the biggest issues with successfully developing the Poseidon project is obtaining the necessary institutional approvals to utilize existing infrastructure to distribute the water. Additionally, new facilities must also be constructed to send the water to various cities and retail water agencies potentially throughout the County. Thus in general, the more agencies there are directly receiving the Poseidon water, the more complex and difficult the distribution issues become.**

**If the District were to receive a large block of the Poseidon water or even potentially all of the water, the distribution issues become simpler to overcome and manage as less agencies would be involved in developing and permitting the project. By recharging the water into the groundwater basin, OCWD is using the basin to distribute the Poseidon water. Additionally with recharging the water, the Basin Production Percentage can be increased allowing all OCWD Producers to benefit from increased groundwater pumping levels.**

**The city and retail water agency variable cost to pump groundwater into it's distribution system is in the area of \$80/acre-foot. This includes power cost, disinfection and a small amount for incremental additional operation and**

**maintenance cost when using a production well. If the Poseidon water was directly pumped into the local retail water systems, this additional cost is avoided. Thus the overall cost of the project in general would increase by the \$80/acre-foot for water recharged into the groundwater basin by OCWD (not accounting for any necessary distribution and recharge facilities).**

**A study will be completed to assist in determining what facilities would be needed for OCWD to take a portion or all of the Poseidon water and estimate the associated cost with those options. This type of OCWD-centric distribution plan can then be compared with traditional distribution plans that would send the Poseidon water directly into the retail distribution systems of various Producers.**

14. With respect to the quantity and quality of the water, a) should there be metrics for performance/trial runs of the plant before formally accepting water; and b) should the damages clause be on a semi-annual rather than annual basis?

**These are good issues that will need to be addressed but are too detailed to include in the proposed Term Sheet. OCWD would plan to address these issues in a final water purchase contract if one is ever developed.**

15. Regarding intellectual property rights, Seller, at their expense, holds harmless and indemnifies OCWD for any claim that the Seller's process infringes any patent or trade secret in their possession. If Seller's use of these products, processes and materials are prohibited, then Seller, at their expense, will procure a license to use the infringing elements or with the approval of OCWD, secure replacement and non-infringing elements. Such modifications do not amend any other requirements of the contract. Benefits resulting from a patent or trade secret will accrue to either the organization of the inventor(s) or to both Seller and OCWD, if the IP is jointly discovered. Benefits accrued from Seller's inclusion of third party or Seller improvements remain with Seller.

**This question was emailed to OCWD staff from one of the Committee members. The question raises interesting issues that will have to be considered. However this issue is also too detailed to include in the proposed Term Sheet. OCWD would plan to address these issues in a final water purchase contract if one is ever developed.**

16. Why has the District structured the Term Sheet to be tied to the price of MWD water?

**There are different options to consider in structuring the Term Sheet and each of the options have different pros, cons and risk profiles. Determining what option is best is complicated by the uncertainty of the future with respect to MWD water rates, energy prices, possible technological advances, possible regulatory changes, and other factors. It should be noted the District has received comments that the price of Poseidon water will never be less than imported MWD water and "the lines will never cross". The District has also received comments**

that the price of Poseidon water will be less than imported MWD water sometime in the future. However no one can know for certain what the future will hold.

The Term Sheet places the responsibility of constructing the treatment plant on Poseidon and the distribution system on OCWD. This plays into the strength of both parties. Poseidon will only be paid for water they deliver so they are highly motivated to construct and operate a very reliable plant. OCWD can use its relationships with other water agencies and local cities to develop the best plan to distribute the water. OCWD also has the option of recharging a portion of the water into the groundwater basin.

The San Diego County Water Authority has structured their Poseidon contract under the assumption that the water supply cost of the City of Carlsbad ocean desalination plant will eventually be lower than imported MWD water. Under this belief and arrangement the SDCWA has accepted more risk in their partnership with Poseidon with the hope and expectation of future savings.

The current OCWD Term Sheet is less speculative as the District is tying its payments to Poseidon to the MWD water rate. Thus there is less risk and less potential future reward under this arrangement as compared to the SDCWA deal. Over the life of the Term Sheet OCWD would pay Poseidon an average of 10% more than the cost of imported water. Given the greater reliability of creating water within OCWD's own service territory versus importing water from Northern California and the Colorado River, this additional 10% premium is reasonable.

Specific risk that has been transferred to Poseidon as compared to the SDCWA deal includes:

- OCWD has no exposure to rising energy prices. This is a concern given California's increasing push toward sustainable green energy projects which could drive up the cost of energy and the cost of operating the plant.
- Poseidon must deal with all requirements of the California Coastal Commission (CCC) and the State Water Resources Control Board. Although it should be noted that if the CCC places too costly permit requirements on the project then Poseidon would not execute a final water purchase contract with the District.
- Poseidon must absorb any increases to the construction cost of the plant or any change orders that could arise due to changing conditions.
- Poseidon must comply with any new regulatory requirements.
- Interest rates are relatively low. Poseidon will have to deal with any changes in the financial markets.

The Term Sheet as it is currently structured raises concerns/issues that would have to be successfully managed by the District. They include:

- The District will have to construct the necessary distribution system in time to match the completion of the treatment plant being constructed by Poseidon to avoid any liquidated penalties. If the OCWD Board approves

the Term Sheet and the District develops a plan to distribute the Poseidon water, the District will have to ensure that sufficient time is included in the final water purchase contract to avoid such penalties.

- Technological advances could potentially lower Poseidon's cost to treat the water. A clause is being included into the Term Sheet to address this possibility to avoid a scenario where Poseidon could be realizing excessive profit from the project.
- This is a "take or pay" type arrangement. The District will need to convince itself that guaranteeing the purchase of 56,000 afy of Poseidon water will always provide beneficial reliability insurance to the region no matter what future water demand and water supply scenarios can be envisioned.
- Safeguards need to be put in place to avoid a scenario where the District has constructed the distribution facilities but Poseidon has not constructed the treatment plant.

17. How did the District pick a premium of 20% above the MWD rate?

The 20% amount was the result of negotiations between the District and Poseidon. As previously discussed this percentage steps down over 10 year increments over the life of the contract. While a lower amount is obviously preferable, Poseidon must also realize sufficient revenues to obtain financing for the project.

The District previously hired Clean Energy Capital (CEC) in 2014 to prepare a unit cost estimate for the Poseidon project. Poseidon had previously estimated the unit cost of the new water supply to be \$1,850/af. CEC estimated the unit cost at \$1,922/af. The average of these two amounts is \$1,886/af.

With the 20% premium the District is agreeing to pay the following for the Poseidon water in the first year of the contract.

• Current MWD Volumetric Rate	\$923/af
• Additional RTS & CC (See Question 18)	<u>\$80/af</u>
• Sub Total	\$1,003/af
• 20% premium	\$200/af
• MWD LRP	<u>\$475/af</u>
• Sub Total Paid to Poseidon	\$1,678/af
• Distribution Cost Estimate	<u>\$175/af</u>
• Total cost of water	\$1,853/af

As the \$1,853/af total amount is slightly less than the previous estimate average cost of the water of \$1,886/af, the 20% premium amount is reasonable.

18. Explain the MWD Readiness-To-Serve (RTS) and Capacity Charges (CC) which are estimated to add about another \$80/acre-foot to the cost being paid to Poseidon.

The RTS and CC charges are charges by MWD, in addition to the commodity cost of treated water which is currently \$923/af. These cost increase the overall price of imported water and therefore increase the costs being paid to Poseidon. These charges are passed onto MWDOC who then passes them on to each of the member agencies. The RTS is a fixed charge from MWD to fund reliability cost for MWD's imported water system. The costs of providing standby service, such as emergency storage capacity, standby services for conveyance, distribution, and aqueduct services are recovered by the RTS charge.

In 2015 MWD will charge its member agencies \$158 million. MWD uses historical water purchases by its member agencies to allocate this charge on a percentage basis. MWDOC's share will be about \$20.6 million. MWDOC is allowed to deduct approximately \$7.4 million that is collected from MWDOC service area residents on their property tax bill (MWD Standby fee on the property tax bill) reducing the net payment to approximately \$13.2 million. Using historical water purchases MWDOC then charges its member agencies their share of this expense. Given that MWDOC on average sells about 240,000 af of water, the average cost of the RTS is about \$55/af ( $\$13.2 \text{ million} / 240,000 \text{ af}$ ).

The CC is an \$11,100 per cubic foot per second (cfs) flow rate charge to discourage MWD member agencies from taking high volumes of water (peaking) during the summer months which can operationally strain the MWD system. An agencies highest single day flow rate during the summer months is used to calculate the charge. For example if Agency A took 100 cfs of imported MWD water during one day in August, the agency would then be charged \$1,110,000 ( $11,100 \times 100$ ) annually for three years. The total MWDOC CC is approximately \$4.45 million. Again given that MWDOC on average sells about 240,000 af of water, the average cost of the CC is about \$19/af ( $\$4.45 \text{ million} / 240,000 \text{ af}$ ).

Combined the RTS and CC using these examples add \$74/af to the cost of MWD water. OCWD staff has been using \$80/af. This calculation changes annually as MWD annually changes the RTS and CC amounts. Additionally as MWDOC's overall purchases of MWD water decline or increase the \$/af amount will change. If a final water purchase contract is developed a formula for calculating these charges moving forward will have to be developed.

19. Does using the Poseidon water for agricultural purposes change the water quality requirements for the plant?

**No, the water will meet all federal and state drinking water standards. Any agricultural users of the water would need to adjust their operations around the quality of the water being provided.**

20. Does expanding the GWRS to its full 130 mgd capacity preclude the need for the Poseidon project?

**No. At the March 23, 2015 Committee meeting OCWD provided a water supply pie chart which indicated about 154,000 af of imported MWD water is currently**

**needed to meet the total water demands within the OCWD service area. This amount is expected to increase with current projections of increased total water demands by the cities and retail water districts. OCWD is planning to expand the GWRS up to 130 mgd in the next five to six years. This will create another 30,000 afy of new local water supply. Not accounting for expected growth in total water demands, about 124,000 afy of imported MWD water would still be needed.**



Minutes  
 ORANGE COUNTY WATER DISTRICT  
**Ocean Desalination Citizens Advisory Committee Meeting**  
 18700 Ward Street, Fountain Valley, CA 92708  
 Thursday, March 26, 2015, 5:30 p.m. - OCWD Boardroom

<b>Committee Members</b>	<b>Alternates</b>
Garry Brown x Diana Carey x	Debbie Cook
Steve Aceti Roger Butow x	Richard Bannister
Allan Bernstein x Patrick Brenden x	Dallas Weaver
Jerry King x Joe Geever x	Kelly Rowe
Shirley Detloff x George Mason x	Frank Lograsso
Steve Sullivan x Duy Nguyen x	Brenda Fizer
John O'Neill x Carl Benninger x	Keith Bohr
Edwin Laird x Michael Rudinica x	
Susan Fasell x Gail Eastman x	Lon Cahill
Stacey Berry x Dan Mole	Dr. Wayne Miller x

Committee members who participated in the meeting are shown with an "x"

**General meeting Notes**

1. A recording of the meeting has been provided on the OCWD website.
2. The facilitator will attempt to keep meetings to a maximum of 3 hours.
3. The Committee will focus most of its attention to the Term Sheet however it was made clear by some committee members that doing such did not mean they endorsed the project.
4. The Committee will walk through the Term Sheet at the second meeting and OCWD legal counsel will attend to help answer any questions.

5. If a final document is prepared by the facilitator summarizing the Committees' conclusions it was requested that the Committee members be given a chance to review the document before it is finalized.

6. Poseidon Resources offered a tour of their City of Carlsbad ocean desalination treatment plant.

**Action items from the meeting are provided below**

1. OCWD will provide a form for Committee members to provide the following information: (1) Brief background, (2) Past affiliations with Poseidon and/or the project, and (3) Personal objectives and expectations.

2. OCWD should provide information regarding the entire County's water supply portfolio and how the project would fit in.

3. OCWD legal counsel has provided a memorandum regarding the District's legal authority in considering a partnership with Poseidon. This memo will be distributed to the Committee.

4. A Committee member requested that OCWD distribute its Long Term Facilities Plan which provides a list and description of future projects the District will be considering.

**Specific Questions from the meeting are provided below.**

1. Has Poseidon Resources actually operated any ocean desalination plants?

**Poseidon itself does not operate and maintain the treatment plants. Their business model is to develop, permit and finance the construction of water infrastructure projects and then hire operations experts to actual run and maintain the plant. If the Huntington Beach project is successfully permitted and constructed, Poseidon plans to hire IDE-Tech to operate the plant (see [www.IDE-tech.com](http://www.IDE-tech.com)). IDE-Tech has constructed and operated large ocean desalination plants in other countries. They will also operate the City of Carlsbad plant.**

2. The Poseidon Coastal Development Permit with the California Coastal Commission will have to include some of the distribution system which is OCWD's responsibility. How will that be coordinated?

**It is the Districts understanding that Coastal Development Permits (CDP) terms and regulations allow the addition of other parties to the CDP entitlement and conditions at any time as long as that additional party agrees to be bound by the conditions of the permit. Generally speaking Poseidon would simply assign to OCWD that portion of the Coastal Development Permit covering the distribution system that is OCWD's responsibility. The District does not anticipate any issues here.**

**3. How reliable will the Poseidon plant be?**

**The treatment plant should be highly reliable once any start-up issues are resolved. Seawater desalination is drought proof and immune from climate and economic effects. The Project does not depend on rain in Orange County, snow in the Sierra Mountains or a strong economy generating ample supplies of wastewater.**

**Ocean desalination treatment plants are relatively new to the United States but have been successfully operated worldwide for many years. The reverse osmosis treatment technology that is used is proven and reliable.**

**Additionally Poseidon would only get paid for water they deliver so there is a strong financial incentive to design and construct a plant that can continually operate with minimal problems.**

**4. Why is the Term Sheet for 50 years?**

**The original Term Sheet considered by the Orange County water community in previous years had an initial duration of 30 years and two possible 15 year extensions for up to a total of 60 years.**

**The duration of the current Term Sheet came about as part of the negotiations between Poseidon and OCWD staff. In general as OCWD staff pushed down on the amount of the premium above the MWD rate to be paid for the water, Poseidon correspondingly asked for a longer contract term to recover their cost.**

**5. Poseidon previously attempted to get local cities and retail water districts to sign up for their water with limited success. What will be different this time?**

**If the Term Sheet is approved by the OCWD Board, District staff will meet with these agencies to determine who wants the water and the necessary distribution system to deliver the supplies. The cost and institutional approvals necessary to deliver water to these agencies will be analyzed and compared with options where OCWD purchases a majority of the water for groundwater basin recharge. OCWD staff will also have to determine the cost of the water being sold to the cities and retail water districts. Given the drought conditions and the District's**

**involvement in the project, we anticipate that there will be more interest in the project.**

6. What happens if Poseidon cannot deliver the water?

**If Poseidon is unable to deliver water they would incur liquidated damages, the amount of which would be negotiated in the final water purchase contract.**

7. Will there be any changes to the terms the City of Huntington Beach has with Poseidon if OCWD becomes involved in the project?

**OCWD has not investigated all of the documents, agreements and conditions of approval that exist between the City and Poseidon Resources. This work would occur if the OCWD Board decides to move forward with the project.**

8. What is the estimated cost to distribute the Poseidon water?

**If the OCWD Board decides to move forward with the Term Sheet on April 30, 2015, OCWD staff will estimate this cost during the summer and fall of 2015. The cost will depend upon which cities and retail water districts commit to take any water, how much water OCWD takes to recharge the groundwater basin, and the necessary new facilities to distribute and recharge the water. A “ball park” range for the distribution cost is from \$250/af to \$100/af.**

9. What will be the ultimate cost of the project to the rate payers?

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**A memorandum from the OCWD legal counsel has been made available on this issue. In general the District does have the authority to sell water to other cities and retail water districts as long as the project is benefiting the management of the groundwater basin. It should be noted that the Municipal Water District of Orange County could also become involved in the project to help address this issue.**

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# Poseidon Resources Huntington Beach Seawater Desalination Project

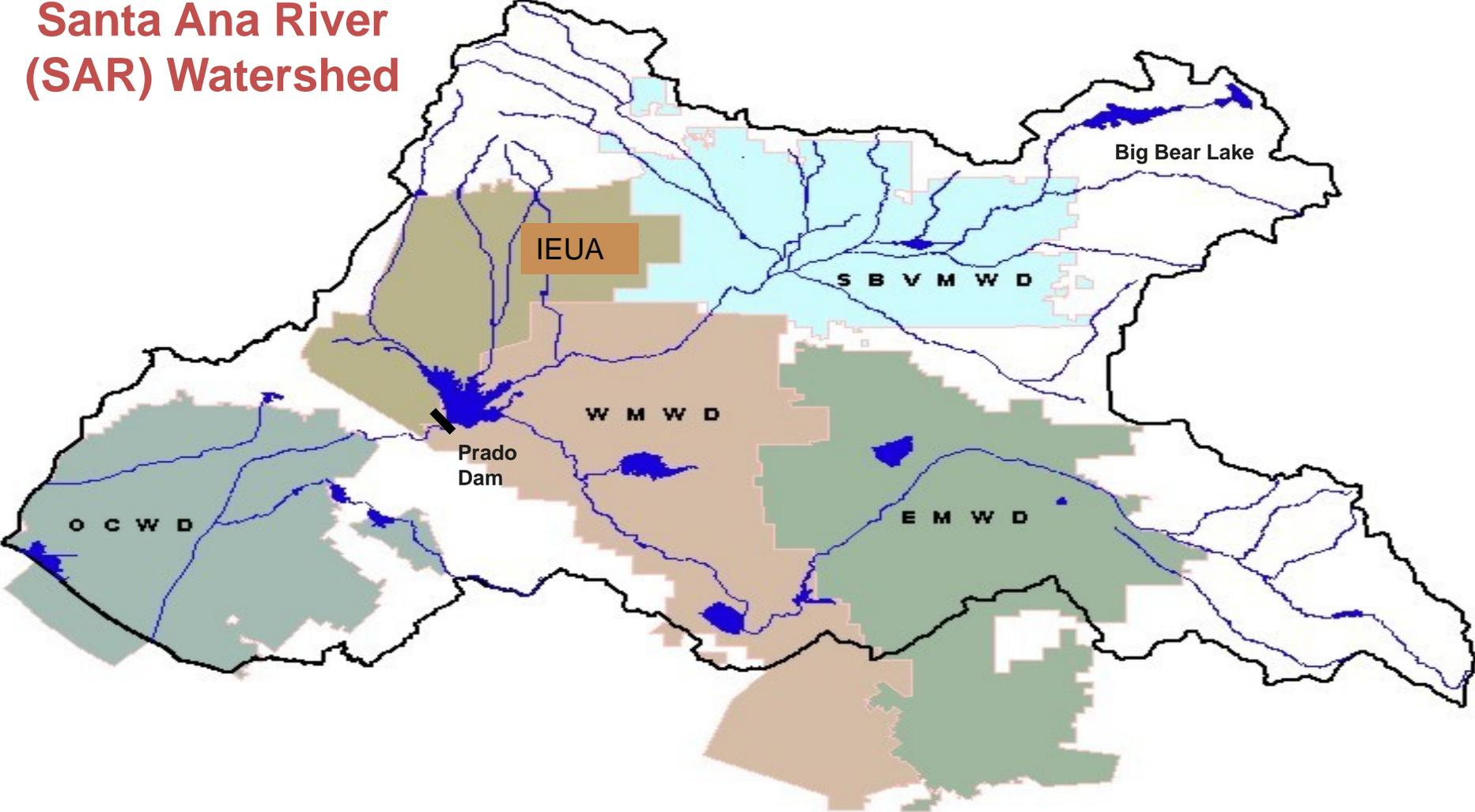
Orange County Water District Background Information

# Orange County Water District

- Created in 1933
- Manage and protect the groundwater basin
- Serve approximately 2.4 million residents
- 19 Groundwater Producers (cities and retail water districts)
- 10 member board
- Total water demands (groundwater and imported water)  
~ 450,000 afy



# Santa Ana River (SAR) Watershed





# California Imported Water



# Water Agencies and Supplies

**Colorado River Northern California**

**Metropolitan Water District  
(MWD) of Southern California**

**Local Rainfall**

**Santa Ana River**

**GWRS**

**Municipal Water District of  
Orange County (MWDOC)**  
**Imported Water**

**Orange County Water  
District (OCWD)**  
**Groundwater**

~ 28%

~ 72%

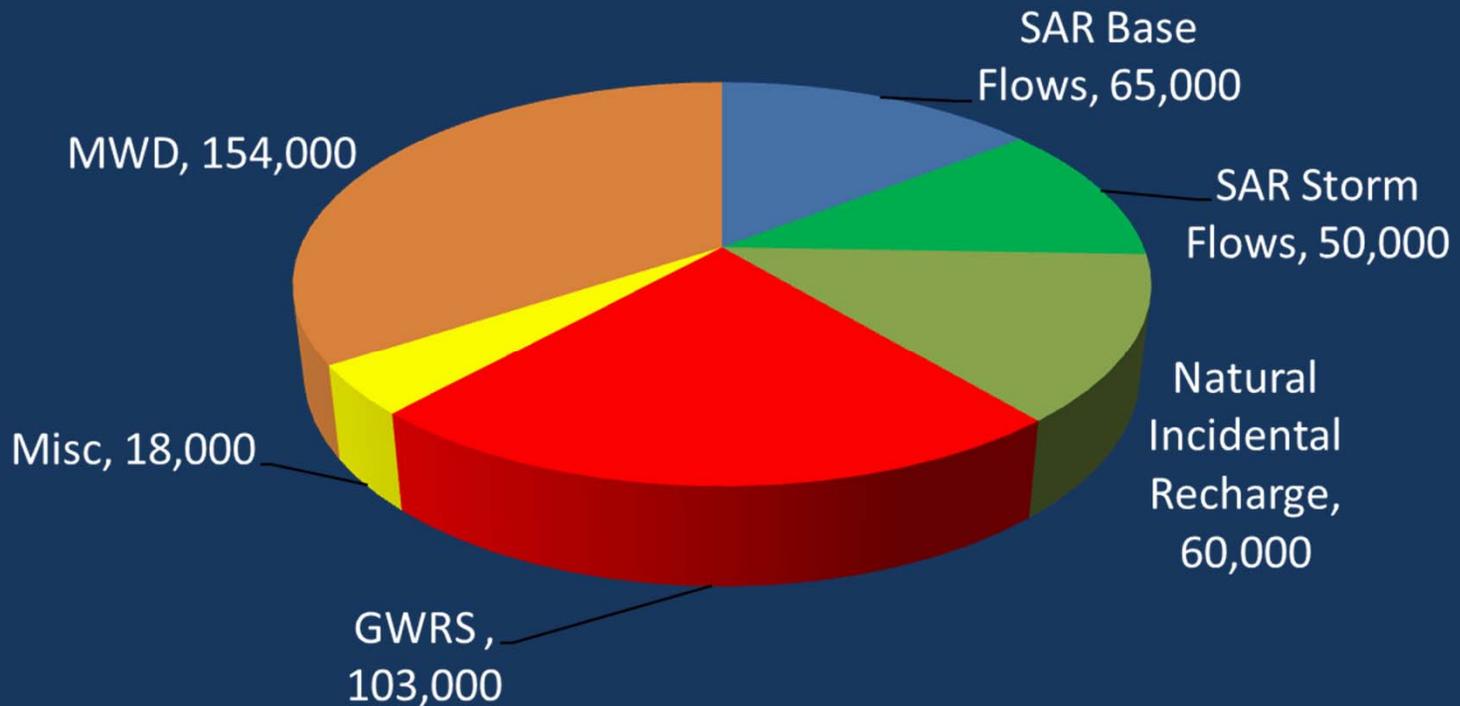
OCWD Retailers

19 Retail agencies such as City of Buena Park, City of Anaheim, City of Santa Ana, etc.



# Current Water Supply Portfolio

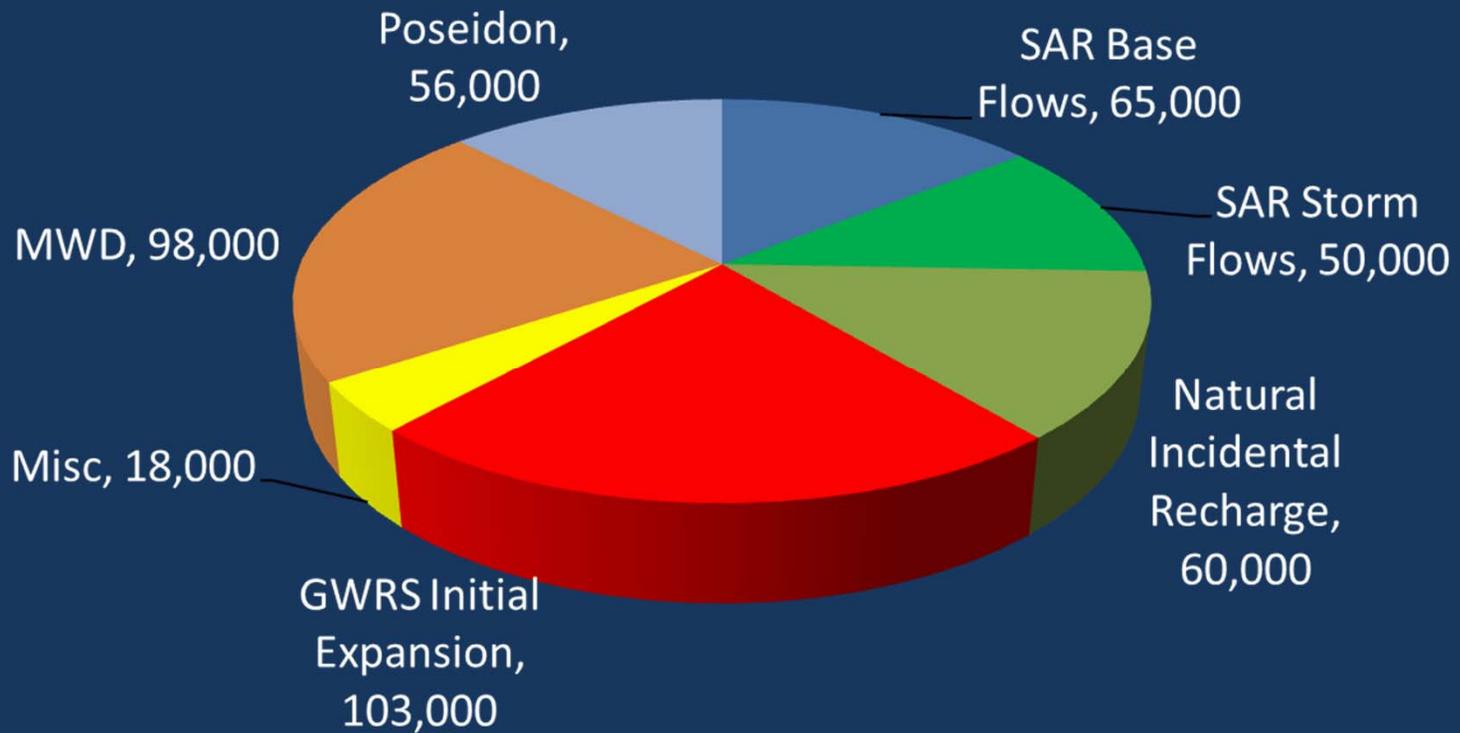
Total Water Demands ~ 450,000 afy





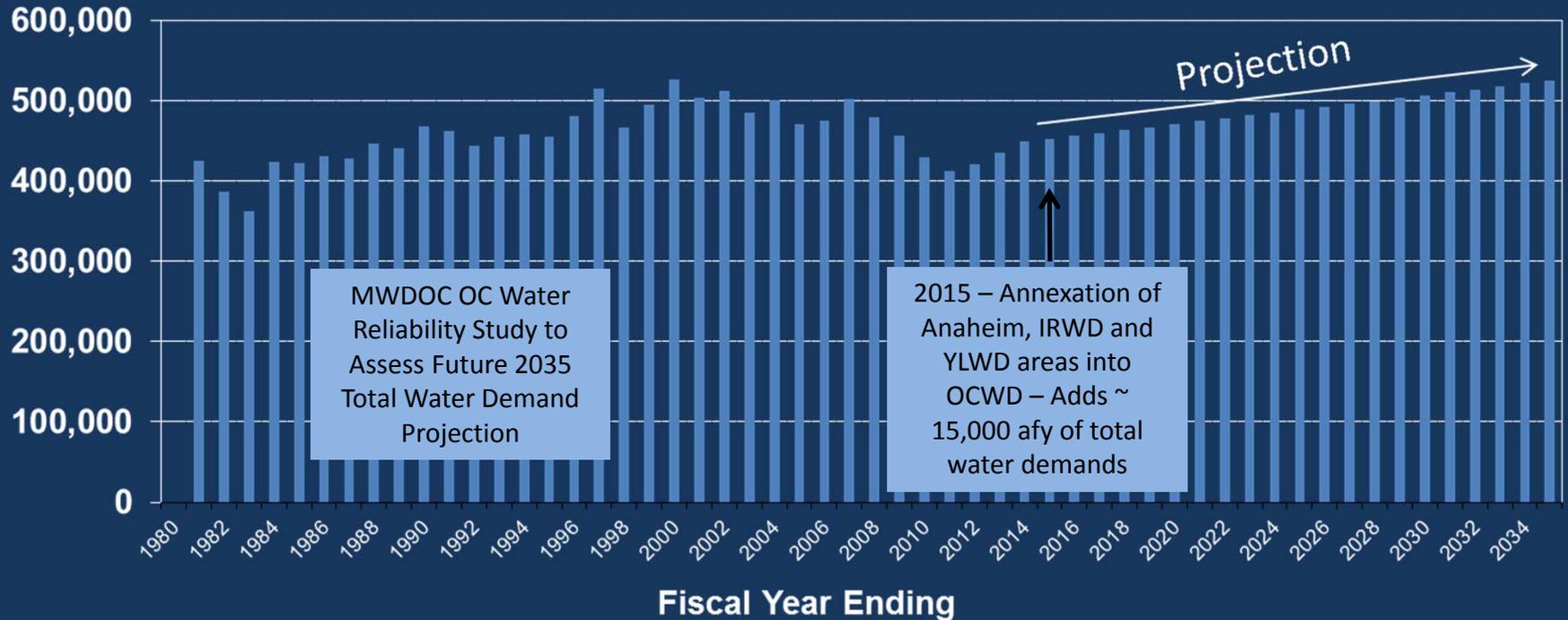
# Water Supply Portfolio with Ocean Desal.

Total Water Demands ~ 450,000 afy





# Historical and Projected Total Water Demands (afy)



# OCWD Groundwater Basin Accumulated Overdraft





# Ocean Desalination History

- Early 1970's
  - Constructed a pipeline from the ocean to bring ocean water to Fountain Valley Campus
  - Constructed a 15 mgd ocean desalination distillation plant
  - Operated for less than a year
- 2004 time frame
  - Requested RFP's from construction companies to estimate the cost of an ocean desalination plant at the AES site
- March - 2010
  - Along with other OC agencies OCWD enters into a MOU and a Confidentiality agreement with Poseidon Resources to study the project



# Ocean Desalination History

- July - 2013
  - Amended the confidentiality agreement with Poseidon Resources to receive confidential info to study purchasing the entire 50 mgd from the plant
- January 2014
  - District report summarizing the project was released
- October 2014
  - OCWD Consultant Clean Energy Capital provides a financial report for the District
- January 2015
  - OCWD Begins negotiating a Term Sheet with Poseidon



End of Presentation



# Poseidon Resources Huntington Beach Seawater Desalination Project

Poseidon Project Background Information

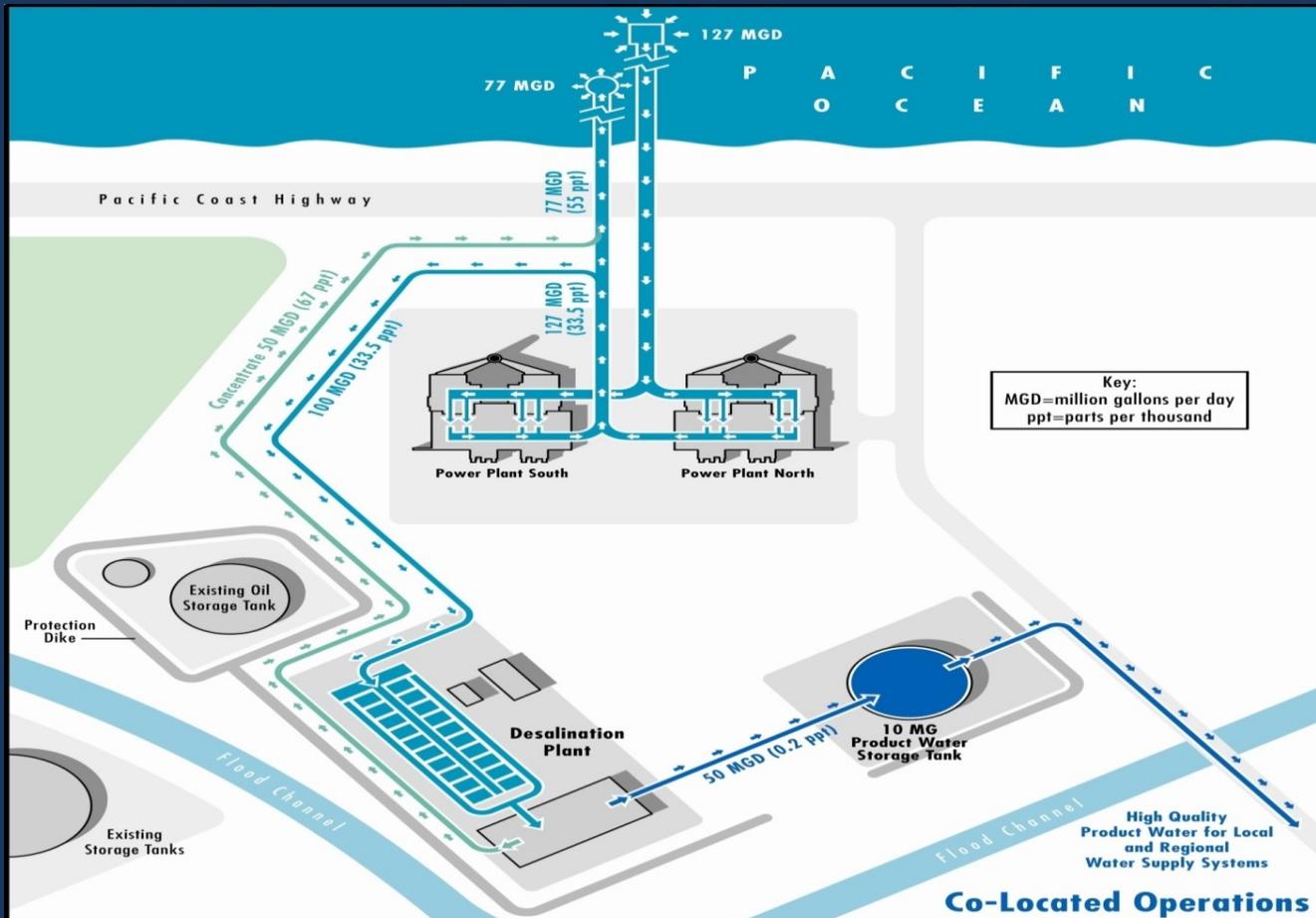
## Huntington Beach Site Existing



# Huntington Beach Desalination Project



# Huntington Beach – Diagram





## Poseidon Resources at a Glance

- Founded in 1995 to develop water infrastructure projects through a public-private partnership approach
- Headquartered in Boston, MA with regional offices in Carlsbad, CA, Huntington Beach, CA, St. Augustine, FL and Houston, TX
- Principally focused on seawater reverse osmosis (SWRO) desalination projects
- Have invested tens of millions of dollars and ~ 15 years permitting the AES Huntington Beach site

## Approximate 2014 Project Cost

- Design/Construction Cost - \$670 million
- Private Financing Cost - \$218 million
- Total Capital Budget - \$888 million
  
- Annual O&M Cost - \$47 million
- Approximately 30 to 36 months to construct

# Treatment Plant Technology

- Utilize reverse osmosis membranes
- Proven technology used around the world
- Reverse osmosis membranes used by GWRS

# San Diego County Water Authority

- Partnering with Poseidon Resources to construct a 50 mgd ocean desalination plant in the City of Carlsbad
- Plant expected to come on line this fall
- SDCWA will pay the actual cost of constructing, financing and operating the project along with a reasonable return on the private investment
- Poseidon has offered a tour of the plant for those committee members interested

# California Coastal Commission Permit

- Reviewing alternative subsurface intake systems versus modifying existing AES intake
- Independent Scientific and Technical Advisory Panel (ISTAP) process
- Poseidon working towards a Coastal Commission decision in late 2015
- Draft Term Sheet requires Poseidon to comply with all Coastal Commission requirements

# State Water Resources Control Board

- May 5, 2015 Meeting
- Adopting new “Ocean Plan” amendments
- Will require modifications to existing AES intake and outfall
- Poseidon previously estimated cost to comply with new requirements at approximately \$42 million
- Draft Term Sheet requires Poseidon to comply with all SWQCB requirements



End of Presentation



# Poseidon Resources Huntington Beach Seawater Desalination Project

Term Sheet



## Term Sheet

- January 7, 2015 – OCWD began negotiating a term sheet with Poseidon Resources
- Term sheet provides the overall business terms and structure of how OCWD and Poseidon could partner to develop the project
  - Price of the water
  - Who constructs, owns and operates the plant
  - Who constructs, owns and operates the distribution system
  - How will the project be financed
  - Risk allocation
- Use the Term Sheet to negotiate a final water purchase agreement



## Term Sheet Details

- Poseidon owns, permits, designs, finances, constructs and operates the desalination treatment plant
- OCWD would purchase the plant water at the “fence line”
- OCWD owns, permits, designs, finances, constructs and operates the necessary distribution facilities to transmit the water to the end users
- OCWD would find end users for water and/or use water to recharge the groundwater basin



## Term Sheet Details

- OCWD would pay Poseidon the MWD treated full service rate <sup>(\*)</sup> plus a reliability premium.
- Reliability premium starts at 20% of the MWD rate and declines to zero after 40 years
  - 20% - First ten year period
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- Reliability premium averages 10% over 50 year life of contract

(\*) including an allowance for the MWD readiness to serve and capacity charges)

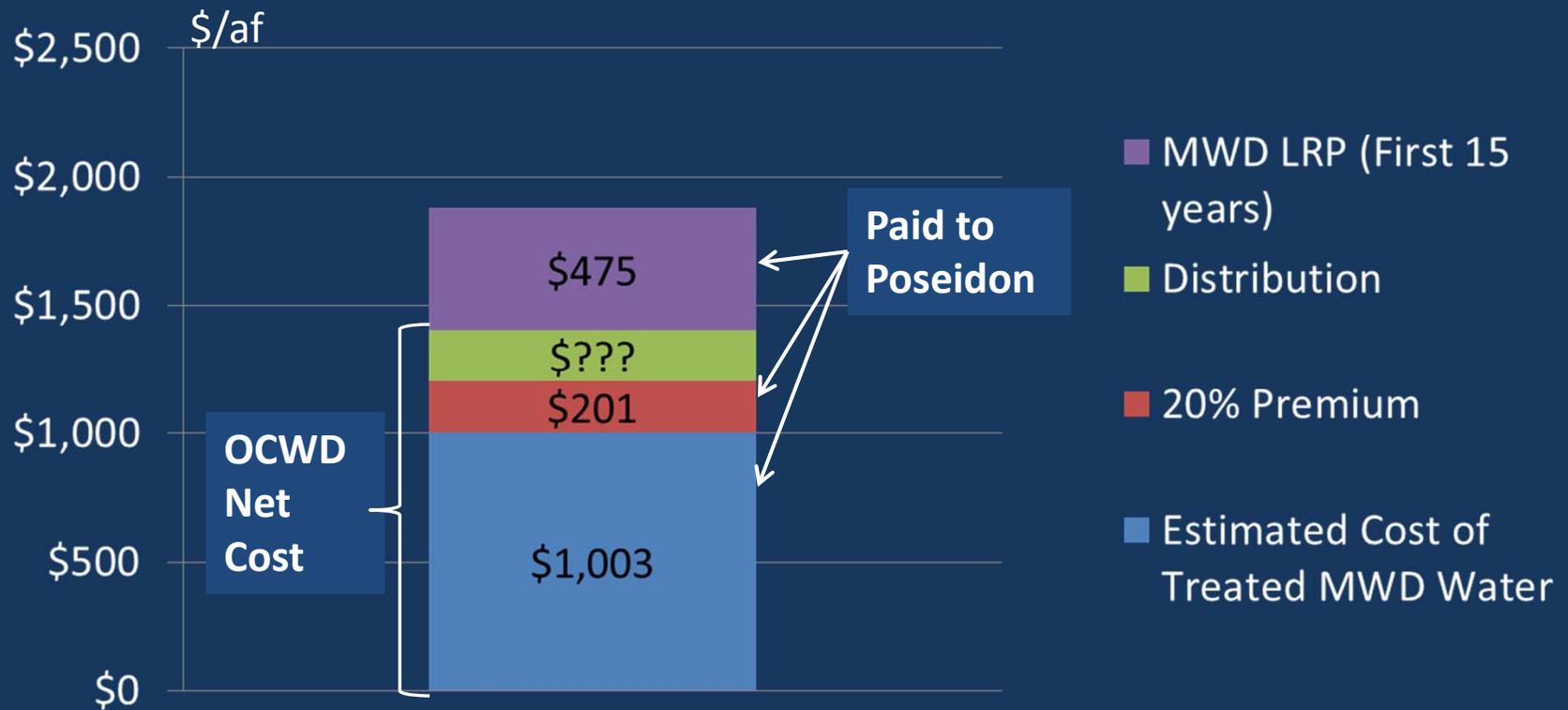


## Term Sheet Details

- MWD LRP subsidy must be obtained
- OCWD can take possession of the treatment plant at the end of the contract for \$1
- Poseidon would provide water at an agreed to quality
- The Term Sheet is not definitive
- Does not legally commit either party to any future actions.
- Practically commits the District to fully consider the project and work towards developing a Water Purchase Contract



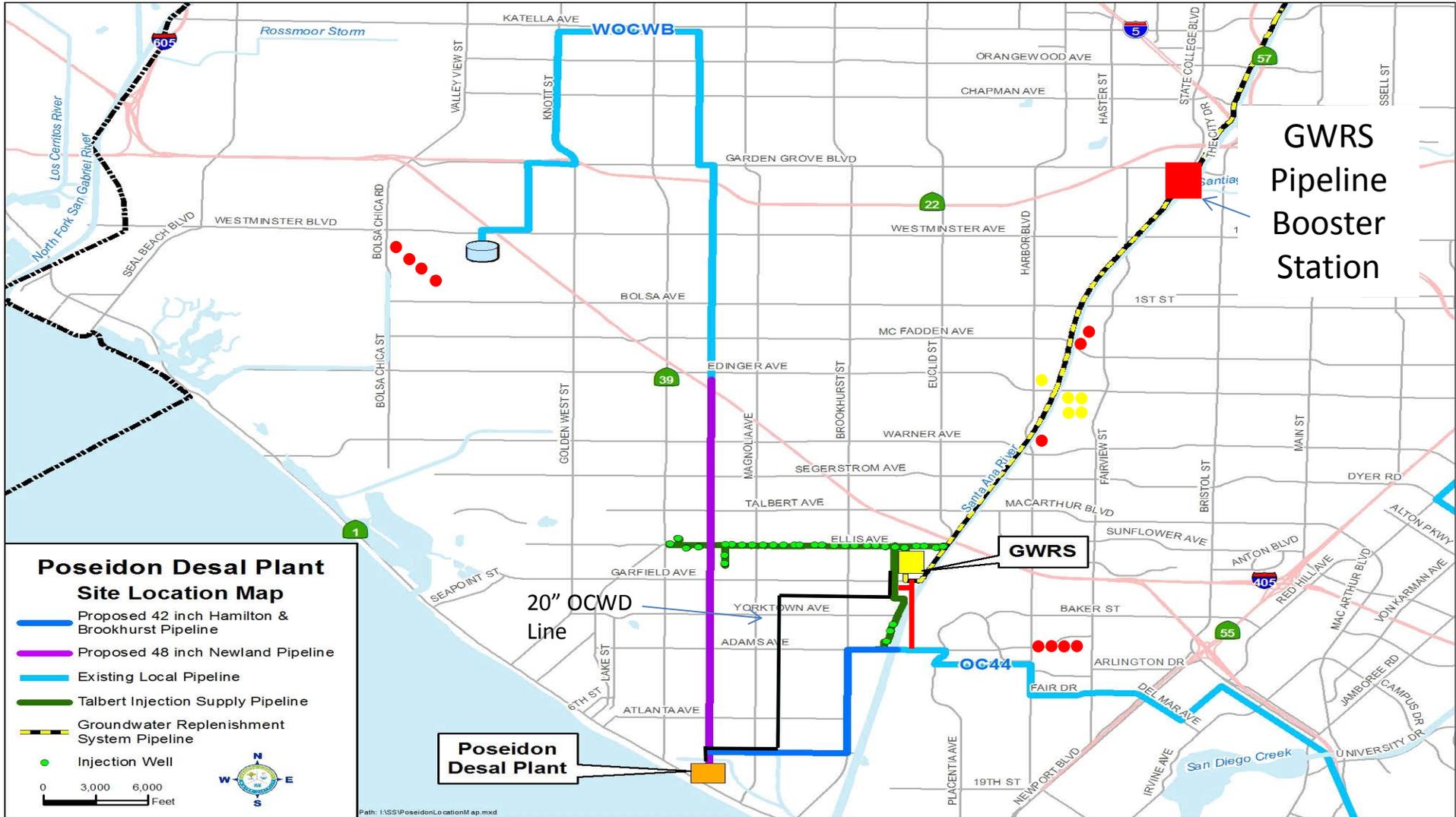
# Year 1 Cost of Water





## Term Sheet Structure Advantages

- Keeps relationship simple and easy to understand
- Avoid complicated Public Private Partnership deal
- Poseidon continues handling Coastal Commission and State Water Quality Control Board issues
- Should be easier for OCWD to work through distribution institutional issues
- OCWD can apply for grant money and low interest state loans





## Brady and Associates Distribution Study

- Review options for OCWD to take all or a portion of the Poseidon water to recharge the groundwater basin
  - Inject along the coast
  - Connect into the GWRS Pipeline
- Automatically adds approximately \$80/af to the cost of the water to pump the water out of the groundwater basin
- Could reduce parties involved in the project - Institutionally simpler approach – easier to permit
- Allows for a higher BPP from which all Producers would benefit
- Compare against other distribution options

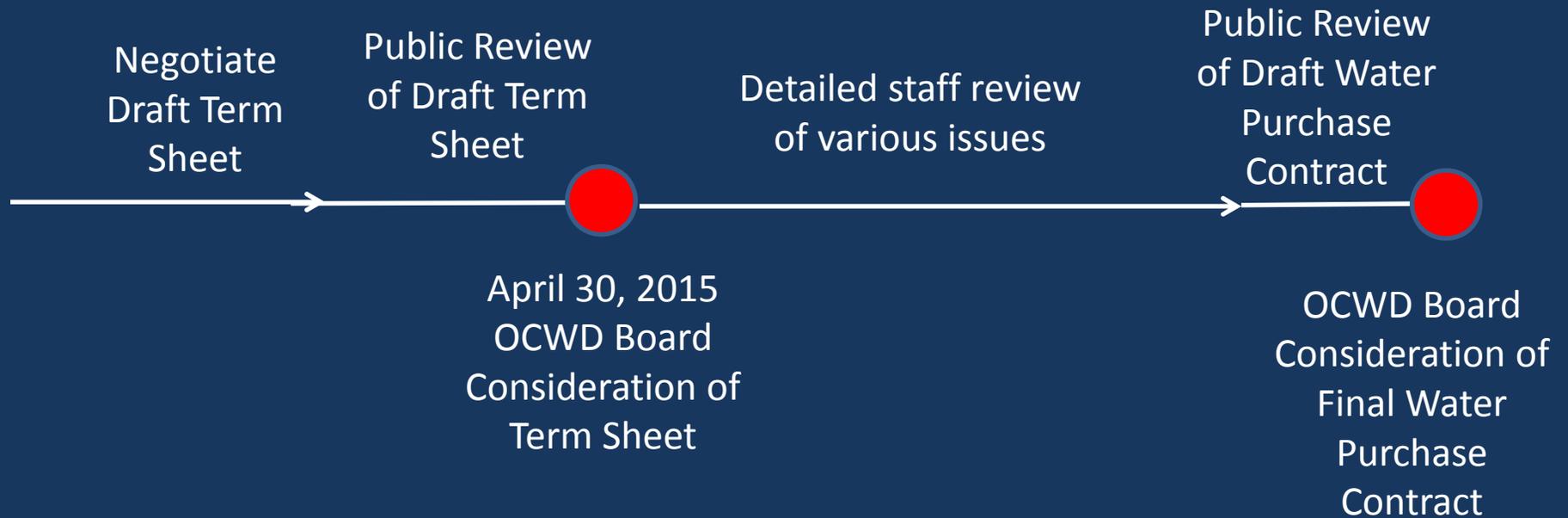


## Term Sheet – Moving Forward

- 45 day review period
- Citizens Advisory Committee review
- Other water agency review
- April 30, 2015 OCWD Board meeting - Consider the Term Sheet



# Term Sheet Water Purchase Contract Overall Process





# Issues Prior to Considering a Water Purchase Contract

- OCWD financial analysis
- Reliability analysis/alternative projects
- Develop retail pricing structure
- How to distribute water
- Retail purchase agreements
- MWD LRP Received?
- Any water quality issues
- CEQA
- Coastal Commission and State Water Resources Control Board terms of approval
- Carlsbad project review
- Review of Poseidon Finances

Issues that would be studied within the context of the provided Term Sheet



End of Presentation



**Ocean Desalination Citizens Advisory Committee  
April 9, 2015 Meeting Minutes**

<b>Committee Members</b>	<b>Alternates</b>
Garry Brown     x	
Diana Carey    x	Debbie Cook
Steve Aceti	
Roger Butow    x	Richard Banister    x
Allan Bernstein	
Patrick Brenden	Dallas Weaver       x
Jerry King      x	
Joe Geever      x	Kelly Rowe           x
Shirley Detloff   x	
George Mason   x	Frank Lograsso
Steve Sullivan   x	
Duy Nguyen	Brenda Fizer
John O'Neill     x	
Carl Benninger	Keith Bohr
Edwin Laird     x	
Michael Rudinica	
Susan Fasell    x	
Gail Eastman    x	Lon Cahill
Stacey Berry    x	
Dan Mole         x	Dr. Wayne Miller

Committee members who participated in the meeting are shown with an “x”

**Public Speakers and their comments are shown below.**

Debbie Cook

- The GWRS can be expanded further to 130 mgd
- Regarding the water supply pie charts showing imported water purchases, not all of that water is purchased by OCWD
- Groundwater could be allocated more equitable based upon how much water residents use within the retail agencies
- Agencies can overestimate their future total water demands such as Seattle did.
- There is a risk of a stranded pipeline with this Term Sheet
- There is a risk of a Prop 218 challenge

Paul Weghorst of IRWD

- IRWD supports cost effective projects
- Alternative water supply options should be considered
- Receiving the MWD LRP could reduce hurt the reliability aspects of the project as you need to offset MWD purchases

### Clem Dominguez

- The Committee's focus is too narrow.
- The Coastal Commission process will take a lot more time
- The Poseidon LLC can be purchased by anyone including a foreign country
- How can we get out of the Term Sheet?
- Be specific about what OCWD has committed to in the Term Sheet
- Concerns about ownership of Poseidon Resources
- Huntington Beach will not get the \$400,000 pipeline franchise fee?

### Garry Brown

- What's the end game – how much is enough water

### Richard Armendariz

- Committee members should have no preconceived notions of the project
- Committee members should disclosure monetary gains from this decision
- OCWD Board members benefiting from Poseidon should recuse themselves from any action
- The Poseidon Florida project went bankrupt.

### Steven Keese ([www.efdCorp.com](http://www.efdCorp.com))

- Has a new thermal effluent free desalination process, there is no brine disposal, can sell the salt extracted from the water. A demo plant is being constructed that should be ready by fall

### Scott Maloni

- Here to answer questions

### Frank Lograsso

- Why are Poseidon's rates tied to MWD rate – should be tied to actual production costs. MWD rates will fluctuate. MWD could increase prices due to a lack of water.

### Rob Hunter –

- Here to answer questions

## General meeting Notes

1. A recording of the meeting has been provided on the OCWD website.
2. No changes were made to the March 26, 2015 meeting minutes.
3. OCWD was requested to email the Term Sheet presentation.
4. One of the big issues for the meeting was that some Committee members did not like tying what the District pays Poseidon for water to the MWD rate for the following reasons:
  - Changes to the MWD rate will change what OCWD pays for the water and that is not connected to Poseidon's actual cost.

- If technological advances reduce Poseidon's cost, excess profit could be made from the water. These savings should be shared.
- Large future MWD rate increases would increase what is being paid to Poseidon and potentially cause excess profits.

Other Comments related to this issue included

- Does the deal motivate Poseidon to keep up with technology?
- Perhaps a committee operated by the National Water Resources Institute should be established to monitor changing technologies.
- If the plant can increase output due to technological advances OCWD should get the first option to purchase that water.
- There should be a reopener in the contract to address this issue.

OCWD was asked to describe why the Term Sheet ties the amount paid to Poseidon to the MWD rate. This information is provided on the attached Questions and Answers document, see question #16.

5. This deal is structured as a take or pay contract. General comments included;
- Could this liability of having to take Poseidon water be placed on south county agencies?
  - If OCWD has to take water it does not receive, the District should only pay Poseidon's fixed cost.

6. OCWD was asked to explain the additional MWD readiness to serve charge and the capacity charge which will add about \$80/af to what is paid to Poseidon for the water. This is explained on question #18 of the Questions and Answers document.

7. There was discussion and questions on the MWD LRP program. OCWD was asked to provide additional information. See question #12 on the Questions and Answers document.

8. OCWD was asked to explain how the 20% premium above the MWD water rate was derived. See question #17 on the Questions and Answers document.

9. Poseidon should provide audited financial statements. This will be required as part of receiving the MWD LRP and is described in Section 22 of the Term Sheet

10. Specific Comments in the **Negotiation and Approval Process** section of the Term Sheet Included.

- Section 2 - There was a concern that OCWD could potentially owe Poseidon liquidated damages if the delivery system was not completed in time to match when the treatment plant would be constructed. Is 42 months enough time?
- Section 4 – The last sentence is confusing to read and could use some editing.
- Section 5 –
  - Add at the end of the first sentence “for the term of the contract”
  - Add that seller will warrant that plant construction will last for 50 years

#### 11. Specific Comments in the **Terms and Conditions of the Proposed Water**

##### **Reliability Agreement** included.

- Section 1 – Seller should demonstrate 90 days of successful operations for the Carlsbad Plant
- Section 3 – Add “Product Water Quality” to section A right after “Producer Water Quality”
- Section 6 – OCWD needs to know the design of the plant will provide a reliable water supply – Should OCWD have some design approval authority?
- Section 7 – Make sure there is time to remedy any problems.
- Section 8 – Paragraph B. Poseidon should have the option to operate OCWD valves at the interface of the treatment plant.
- Section 8 – Paragraph E. include “an industry standard” after the word “have” in the fourth sentence.
- Section 9 – OCWD should get the first option to purchase any additional water that might become available. OCWD should only pay Poseidon’s fixed cost if it has to pay for water not received. Should Poseidon have to guarantee a minimum quantity except for uncontrollable circumstances?
- Section 12 – Poseidon should be required to adjust the treatment plant process to meet quality and quantity standards due to changes in the ocean water quality.



# Poseidon Resources Huntington Beach Seawater Desalination Project

Term Sheet



## Term Sheet

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- Term sheet provides the overall business terms and structure of how OCWD and Poseidon could partner to develop the project
  - Price of the water
  - Who constructs, owns and operates the plant
  - Who constructs, owns and operates the distribution system
  - How will the project be financed
  - Risk allocation
- Use the Term Sheet to negotiate a final water purchase agreement



## Different Term Sheet Structures

- City of Carlsbad Plant – SDCWA pays Poseidon's actual cost to make water including a return on equity
- OCWD – OCWD payments to Poseidon based upon the MWD rate for water
- Have Poseidon responsible for plant and distribution
- OCWD helps Poseidon finance the treatment plant
- OCWD becomes an equity partner on the project



## Term Sheet Structure Advantages

- Keeps relationship simple and easy to understand
- Avoid complicated Public Private Partnership deal
- Poseidon continues handling Coastal Commission and State Water Quality Control Board issues
- Should be easier for OCWD to work through distribution institutional issues
- OCWD can apply for grant money and low interest state loans



# Term Sheet Water Purchase Contract Overall Process

Negotiate  
Draft Term  
Sheet

Public Review  
of Draft Term  
Sheet

Detailed staff review  
of various issues

Public Review  
of Draft Water  
Purchase  
Contract

April 30, 2015  
OCWD Board  
Consideration of  
Term Sheet

OCWD Board  
Consideration of  
Final Water  
Purchase  
Contract



# Issues to be Reviewed Prior to Considering a Water Purchase Contract

- How to distribute water
- Retail purchase agreements
- OCWD financial analysis
- Reliability analysis/alternative projects
- Develop retail pricing structure
- MWD LRP Received?
- Any water quality issues
- CEQA
- Coastal Commission and State Water Resources Control Board terms of approval
- Carlsbad project review
- Review of Poseidon Finances

Issues that would be studied within the context of the provided Term Sheet



## Term Sheet Structure/Sections

1. Terminology
2. Negotiation and Approval Process (Six subjects)
3. Terms and Conditions of the Proposed Water Reliability Agreement (Thirty-two subjects)



## Negotiating & Approval Process

- Subject 1 – Purpose of Term Sheet
  - Basis for negotiating a possible water purchase contract or “water reliability agreement” (contract or agreement)
  - Term Sheet is a summary and is not comprehensive
  - Parties not legally bound
  - Substantive terms and detailed provisions not in the Term Sheet are expected in a final contract



# Negotiating & Approval Process

- Subject 2 – Schedule
  - A. Milestones
    - Final water purchase contract executed by December 31, 2016
    - Construction Financing Close by June 30, 2017
    - Operation date – 42 months later
  - B. Extensions
    - Can extend contract due to Uncontrollable Circumstances or as mutually agreed
  - C. Failure to Meet Deadlines
    - If seller or buyer don't meet schedule – remedies will be provided in Sections 4 & 7 of final contract



## Negotiating & Approval Process

- Subject 3 – Contract Negotiations
  - Either party can discontinue negotiations without consequence
- Subject 4 – Buyer Due Diligence
  - Buyer will conduct due diligence
  - Seller will cooperate
  - Buyer can comment on
    - final design of plant
    - O&M agreement
  - Buyer gets to approve Seller's construction contractor and O&M contractor



## Negotiating & Approval Process

- Subject 5 – Responsibility for the plant
  - Buyer has no responsibility for the plant
  - Seller will plan, develop, finance, construct, commission & operate the plant
- Subject 6 – Water Supply Arrangement
  - Buyer will be discussing the sale of plant water with other water agencies



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 1 – Conditions Precedent (prior to Buyer having to purchase the water)
  - Seller will obtain all discretionary permits
  - Seller will provide copies of the EPC (Engineering Procurement Construction) & Operations Contract
  - Seller will achieve financial close
  - Buyer shall execute MWD LRP agreement
  - Buyer will have all distribution system permits and CEQA completed



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 2 – Term
  - A. Term - 50 years
  - B. Buyer has no decommissioning cost responsibility



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 3 – Roles of the Parties
  - A. Seller
    - Finance, design, permit, construct, start-up, operate & maintain the treatment plant in accordance with applicable laws and regulations
    - Meet water quality requirements
    - Meet reliability requirements
  - B. Buyer
    - Design, permit, construct, start-up, finance, operate & maintain the delivery system
    - Delivery system completed by time treatment plant is in operation (Commercial Operation Date)
    - Purchase water from treatment plant



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 4 – Financing Period
  - A. If a contract is executed Seller will obtain financing (Achieve Financial Close)
  - B. If Seller does not achieve close by a certain deadline - Buyer may terminate contract – Seller reimburses Buyer’s cost from after execution of contract
  - C. If Seller achieves financial close, Seller will construct treatment plant and Buyer will construct delivery system
- Subject 5 – Financing Plan
  - Seller finances treatment plant
  - Buyer finances delivery system



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 6 – Design and Construction of the Plant
  - A. Buyer can review plant design - Buyer will not have design approval authority
  - B. Seller and Buyer will attend monthly progress meetings - Buyer can observe and inspect plant construction
  - C. Will establish in the contract start-up and acceptance test procedures and standards



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 7 – Scheduled Commercial Operations Date
  - If Seller fails to achieve commercial operations – Seller will owe liquidated damages
    - Terms for Seller to purchase delivery system
    - If Seller abandons project Buyer has first right to purchase the plant
  - If Buyer fails to complete delivery system on time, buyer will owe seller liquidated damages
    - Seller can then terminate contract



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 8 – Operations and Maintenance
  - A. Seller will operate and maintain the plant per the terms of the contract
  - B. Buyer will operate and maintain the delivery system
  - C. Seller will hire a private company to maintain the plant (Operating Contractor)
  - D. Buyer will approve the treatment plant Operation and Maintenance Manual
  - E. Seller will properly maintain the plant over the contract term
  - F. Seller will restore the plant in the event of damage
  - G. Buyer will monitor and inspect the operations of the plant



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 9 – Water Quantity Commitments
  - A. Seller will produce and deliver 56,000 acre-feet per year – This amount is reduced by the City of Huntington Beach agreement (~3,300 afy)
  - B. Buyer pays for water produced but not taken
  - C. A delivery schedule shall be mutually agreed to on an annual basis
  - D. Seller and Buyer will have an operating committee
  - E. Buyer will own all water received
  - F. Seller will provide water at an agreed to pressure
  - G. In the event of a distribution system emergency, Buyer does not have to purchase water
  - H. Uncontrollable Circumstances – Buyer will attempt to purchase make-up water
  - I. Cost Obligations



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 10 – Water Quality
  - A. Quality will meet all contract specifications and all regulatory standards – Attachment A
  - B. Seller will be liable for failing to meet WQ requirements
  - C. Buyer is not obligated to purchase water not meeting WQ requirements
- Subject 11 – Performance Liquidated Damages
  - A. If Seller fails to deliver water during the year – Seller gets an opportunity to make up for delivery failure
  - B. Contract will specify WQ liquidated damages



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 12 – Raw Water Risks  
Contract will specify the raw water quality parameters upon which Seller's performance is guaranteed
- Subject 13 – AES  
Seller bears all risk relating to AES  
Seller gets relief due to force majeure events  
Other reasonable exceptions in the final contract



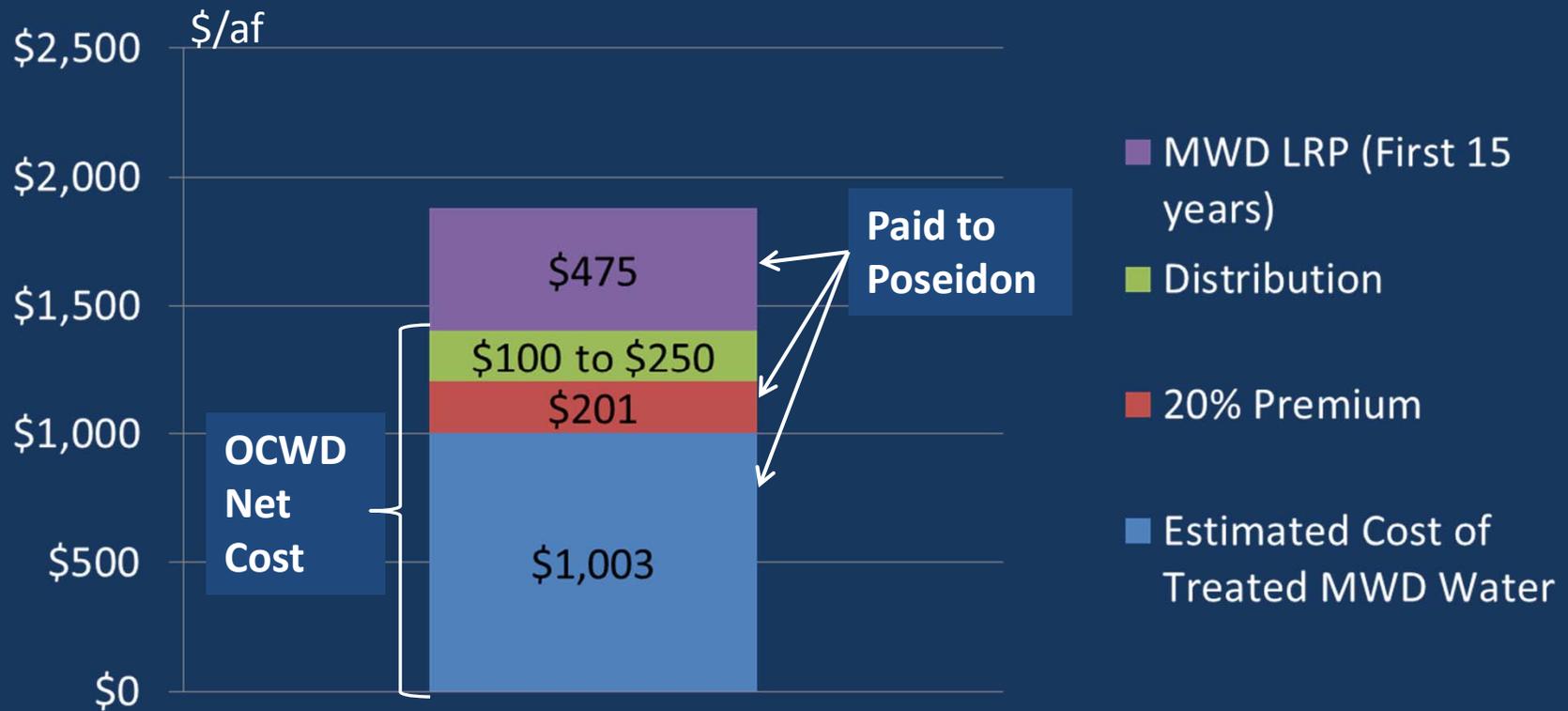
# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 14 – Water Purchase Price
  - A. Buyer pays for water meeting WQ standards that is delivered or ready to be delivered
  - B. Pay \$/af price x af delivered
  - C. Unit price is tied to the MWD rate
    - 1. Treated MWD rate
    - 2. Other MWD / MWDOC charges
      - a. RTS
      - b. Capacity charge
    - 3. Premium of the base rate (20% 1st 10 years, 15% 2<sup>nd</sup> 10 years, etc)
    - 4. MWD LRP Subsidy

Base Rate



# Year 1 Cost of Water





## Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 14 – Water Purchase Price (continue)
  - D. Plant site conditions – Seller bears all risk
  - E. Delivery System conditions - Buyer bears all risk
  - F. Grants and Subsidies – Benefit of the Buyer
  - G. Notification of Annual Price Adjustments



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 15 – No Payment Obligation Before Commercial Operation Date
  - A. General
  - B. Exception – Buyer will purchase water approved by the State Dept of Public Health prior to the Commercial Operation Date
- Subject 16 – Plant Purchase Option
  - Buyer can buy the plant at the end of the contract term
- Subject 17 – Site Access
  - A. Plant tours
  - B. Site Access



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 18 – Insurance
  - A. Seller will obtain insurance on the plant
  - B. Seller will bear all insurance costs
- Subject 19 – Uncontrollable Circumstances/Performance Relief
  - A. Defined – force majeure, changes in law, other events, to be negotiated
  - B. Seller performance relief
  - C. No Seller Price or Water Quality Relief
  - D. Mitigation and Restoration – need to have commercially reasonable response to restore conditions
  - E. Buyer Performance Relief – If Distribution system emergency



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 20 – Environmental Mitigation & Governmental Risk
  - A. Compliance with Environmental Mitigation Measures – Seller will bear the risk of Env. Mitigation measures and government approvals for the plant – Buyer bears risk with Delivery system
  - B. Governmental Approval Risk – Seller has all responsibility to obtain and maintain approvals for plant – Buyer has same for delivery system but Seller will assume delay in permit issuance
- Subject 21 – Events of Default and Termination
  - A. To be negotiated in a final water purchase contract
  - B. Remedies
  - C. Buyer can step in and cure Seller’s defaults



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 22 – Record Keeping Reporting
  - A. Seller will maintain records, Buyer can inspect and audit records
  - B. Seller will provide monthly and annual plant performance reports
  - C. Buyer can inspect measurement devices and verify calibration



# Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 23 – Security for Performance by Project Contractors
  - A. Construction Bond
  - B. Operations Bond
- Subject 24 – Security for Performance by Seller - Seller provide \$5 million Letter of Credit to Buyer as security for its obligations



## Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 25 – General Indemnity - Parties will indemnify each other
- Subject 26 - Litigation Risk Indemnity - Seller will indemnify Buyer against third party plant litigation



## Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 27 – Representations and Warranties- Legal standing – legal authority – no adverse material litigation- etc.
- Subject 28 – Tax Risks - Seller bears all plant tax risks



## Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 29 – Liability Limitations - No stated dollar limitation on non- performance damages. Waive special, consequential and punitive damages
- Subject 30 – Dispute Resolution - Resolve differences first through negotiation and non-binding mediation



## Terms and Conditions of the Proposed Water Reliability Agreement

- Subject 31 – Assignment - Can't assign without other party approval – However Seller can assign to its lenders
- Subject 32 – Seller's Contractors & Subcontractors - The contractor and operating contractor shall meet minimum financial, technical and experience qualifications standards and requirements – Buyer approves substitute contractors



End of Presentation



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<b>Ocean Desalination Citizens Advisory Committee</b> <b>April 23, 2015 Meeting Minutes</b>
--

**Committee Members**
**Alternates**

Garry Brown x	
Diana Carey x	Debbie Cook
Steve Aceti	
Roger Butow x	Richard Banister
Allan Bernstein x	
Patrick Brenden x	Dallas Weaver
Jerry King x	
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George Mason	Frank Lograsso x
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Carl Benninger x	Keith Bohr
Edwin Laird	
Michael Rudinica	
Susan Faesell	
Gail Eastman x	Lon Cahill x
Stacy Berry x	
Dan Mole x	Dr. Wayne Miller

Committee members who participated in the meeting are shown with an “x”

**Public Speakers and their comments are shown below.**

James Taurus

- Ocean Desalination can solve the drought problem but it needs to be affordable, environmental friendly and sustainable,
- There are new “no discharge” technologies available
- A plant is being constructed in Texas using new technology.
- Don’t need to use high energy RO process
- We are required to use best available technology

Clem Dominguez

- Doesn’t like tying what OCWD pays Poseidon to the MWD rate. Tie payments to an inflation index instead.
- There needs to be a cap
- Wants to evaluate alternative supplies
- The Term Sheet needs more detail regarding what Poseidon/OCWD will be paying the City of Huntington Beach

## **General Notes from the meeting**

1. Can OCWD consider preparing a non-legalize Term Sheet summary type document that is easier to read.
2. OCWD should have the option of buying the plant. This will be added to the Term Sheet.
3. There was discussion of the scenario of Poseidon going bankrupt and what the remedy would be. If there is a final water purchase contract this scenario will have to be fully considered.
4. OCWD should describe more fully what the City of Huntington Beach will receive as far as payments from Poseidon and the District. This will be added to the Question and Answer document.
5. There were no changes to the April 9, 2015 meeting minutes
6. The question of how OCWD will decide on who gets the Poseidon water was asked. OCWD agreeing to pay a 20% premium for the water could impact what retail water districts or cities will want to take the water. This will be determined if the OCWD board approves the Term Sheet.

## **Notes/Questions from completing the review of the Term Sheet**

1. Section 19 of Term Sheet – What happens if Poseidon goes bankrupt? Can OCWD quickly take over the plant?
2. Section 20 – It was indicated that Poseidon's permits will expire and have to be renewed in 2020. Poseidon will be responsible for obtaining and complying with all permits for the plant.
3. Section 31 – What if Poseidon wants to sell all or a portion of the LLC established for this project. This will need to be addressed in a final water purchase contract.

## **Individual Committee Comments to the OCWD Board**

Each Committee member was asked to provide overall summary comments that the OCWD Board should consider in its deliberation of the Term Sheet and the project. A separate document is being prepared with those comments.

**Ocean Desalination Citizens Advisory Committee  
Individual Summary Comments to the OCWD Board**

Committee Member	Summary Comments
Frank Lograsso	<ol style="list-style-type: none"> <li>1. Concerned with tying OCWD payments to the price of MWD water, is there a better way that also works for Poseidon.</li> </ol>
Stacy Berry	<ol style="list-style-type: none"> <li>1. Even with the Term Sheet there are still unknowns with the project such as the distribution issues and cost;</li> <li>2. What is the incentive for Poseidon to reduce their cost if OCWD payments are tied to the MWD rate?</li> </ol>
Carl Benniger	<ol style="list-style-type: none"> <li>1. The proposed RO technology is good and we should proceed with it;</li> <li>2. Don't want agencies opting out of the deal;</li> <li>3. It's good OCWD is not financing the project.</li> </ol>
Steve Sullivan	<ol style="list-style-type: none"> <li>1. If the Term Sheet is approved it will be important to compare Poseidon against alternative projects;</li> <li>2. This is a regional project and it's good that OCWD will consider selling to south county agencies;</li> <li>3. For a 50 year contract you need to recalibrate the price OCWD is paying every 5 or 10 years;</li> <li>4. A cost plus or indexed Term Sheet; both have their pluses and minuses.</li> </ol>
Shirley Dettloff	<ol style="list-style-type: none"> <li>1. The Term Sheet is well done;</li> <li>2. A good job was done answering questions;</li> <li>3. OCWD Board is responsible and will ultimately decide if the project makes sense;</li> <li>4. If go forward good attorneys will negotiate a final water purchase contract</li> </ol>
Jerry King	<ol style="list-style-type: none"> <li>1. The OCWD Board needs to ask tough questions to understand how the entire imported water system works;</li> <li>2. MWD is now buying water from agricultural users in the central valley to transfer to Southern California;</li> <li>3. MWD has built a lot of infrastructure that goes into their cost;</li> <li>4. The MWD rate structure needs to be understood;</li> <li>5. Where does MWD source water come from?</li> <li>6. MWD can be a target.</li> </ol>
Roger Butow	<ol style="list-style-type: none"> <li>1. The Term Sheet is an evolving living document;</li> <li>2. Good relationships have been developed with the Committee and there is a lot of talent;</li> <li>3. The Committees mission statement could be broadened to investigate other issues such as technology</li> </ol>

Gail Eastman	<ol style="list-style-type: none"> <li>1. This is a good group which has shared a lot of information;</li> <li>2. Does not like tying OCWD payments to the MWD rate/look at a cost plus payment strategy;</li> <li>3. Look closely at technological improvements, don't fall behind the curve;</li> <li>4. 50 years is a long time for a contract without the ability to re-negotiate terms periodically.</li> <li>5. What will plant be worth in 50 years?</li> </ol>
Allan Bernstein	<ol style="list-style-type: none"> <li>1. Advocates for water recycling and conservation;</li> <li>2. This project will bring reliability;</li> <li>3. Term Sheet is good at an average premium of 10% above MWD;</li> <li>4. Poseidon does plant/OCWD takes care of distribution;</li> <li>5. We need more local control.</li> </ol>
Joe Geever	<ol style="list-style-type: none"> <li>1. Good group with diversity;</li> <li>2. Need to compare the project with other alternatives;</li> <li>3. Why was Poseidon picked?</li> <li>4. Put project out to bid;</li> <li>5. What are we getting for an additional 20% premium;</li> <li>6. How often does MWD go into allocations;</li> <li>7. What does getting the MWD LRP rebate mean?</li> </ol>
John O'Neill	<ol style="list-style-type: none"> <li>1. From Legal &amp; Business perspective, well written draft.</li> <li>2. Poseidon is taking the most risk, Needs to be profitable.</li> <li>3. Would like to see 5 or 10 year reviews for rate fairness.</li> <li>4. Demand will not decrease, doing nothing has a greater risk.</li> <li>5. Must pursue all, Supply, Conservation &amp; Replenishment.</li> <li>6. Not Opposed to rate/tie to MWD, but must have realistic <u>Value</u> to the District &amp; Rate Payers.</li> <li>7. OCWD should have first right to any future water production.</li> <li>8. Within the Law, OCWD should be able to use or distribute the water as it sees fit for the benefit of the district and rate payers.</li> </ol>
Gary Brown	<ol style="list-style-type: none"> <li>1. Entitlement process has been political campaign, not a typical public works project</li> <li>2. Southern California could be sustainable with imported water a secondary source and without needing desalinated water</li> <li>3. We have GWRS-world class successful project-2013 produced water for \$433 a.f.</li> <li>4. Linking cost for Poseidon water to MWD rate is not valid comparison</li> <li>5. A valid comparison would be to tie desal rate to GWRS costs of water</li> <li>6. We need to get serious with the amount of water we use for landscape -60% of potable</li> <li>7. No analysis of need—How much water do we need?</li> <li>8. Do not know full cost of Poseidon water as distribution system is not even designed</li> </ol>

	<ol style="list-style-type: none"> <li>9. 20% guaranteed profit—SCE only is authorized by State PUC for 9% - Poseidon will not be motivated to save rate payers money with this term sheet--50 years is too long</li> <li>10. Continue utilizing the CAC to review the purchase agreement</li> </ol>
Patrick Brenden	<ol style="list-style-type: none"> <li>1. Citizen participation is good;</li> <li>2. ODCAC is a talented diverse group;</li> <li>3. Doesn't like tying OCWD payments to the MWD rate/Tie the price to the cost of the plant;</li> <li>4. Will City of Huntington Beach still receive a franchise fee from OCWD? It's not a lot of money when compared to the total project cost. It's represents roughly \$7/af."</li> <li>5. If Poseidon fails there is still risk to OCWD;</li> <li>6. The Term Sheet approach could possibly work with a floor and ceiling to future rate increases.</li> </ol>
Diana Carey	<ol style="list-style-type: none"> <li>1. Concerned about 50 year length of contract;</li> <li>2. Don't like tying OCWD payments to MWD rate;</li> <li>3. 42 months for OCWD to do the distribution system improvements may not be enough time;</li> <li>4. Impressed with GWRS/OCWD could do project/don't need Poseidon.</li> </ol>
Lon Cahill	<ol style="list-style-type: none"> <li>1. Committee has done serious good work;</li> <li>2. There are diverse approaches.</li> </ol>
Dan Mole	<ol style="list-style-type: none"> <li>1. Because of MWD forward thinking we all enjoy better reliability;</li> <li>2. OCWD has done a good job with GWRS and the groundwater basin;</li> <li>3. Desalination could be one more arrow in the quiver;</li> <li>4. Don't tie payments to the MWD rate;</li> <li>5. Poseidon will always be a higher cost;</li> <li>6. New technology could lower the cost/this would be a benefit to future rate payers;</li> <li>7. 50 years is too long for the contract term.</li> </ol>



<b>Ocean Desalination Citizens Advisory Committee</b> <b>April 30, 2015 Draft Meeting Minutes</b>
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**Committee Members**
**Alternates**

Garry Brown x	
Diana Carey x	Debbie Cook
Steve Aceti	
Roger Butow x	Richard Banister
Allan Bernstein x	
Patrick Brenden x	Dallas Weaver
Jerry King x	
Joe Geever x	Kelly Rowe
Shirley Detloff x	
George Mason x	Frank Lograsso
Steve Sullivan x	
Duy Nguyen	Brenda Fizer
John O'Neill x	
Carl Benninger x	Keith Bohr
Edwin Laird	
Michael Rudinica	
Susan Faesell	
Gail Eastman x	Lon Cahill x
Stacy Berry	
Dan Mole x	Dr. Wayne Miller x

Committee members who participated in the meeting are shown with an “x”

**Public Speakers and their comments are shown below.**

Kim Hendricks

- Not in favor of the project
- It's not cost effective
- Not good for the environment
- Monitor Carlsbad plant first before we do here
- There is too much development occurring
- Research shows this is not a good idea

John Earl

- Issues continue to be put off until later phases
- Imported water is 1/3 the cost of Poseidon water
- The Poseidon water has to replace imported water - water not being imported to OCWD because of the project will go to other areas

Glenn Howland

- Had general comments about the Coastal Commission process and was directed to talk with Poseidon employees

#### Milt Dardis

- OCWD did not need Poseidon to construct the GWRS
- Why give Poseidon a 20% return – should cut out the middleman
- The ODCAC has been stacked in favor of Poseidon
- Will OCWD directors respond to questions
- OCWD should have live streamed the ODCAC meetings

#### Deborah Koken

- OCWD is being irresponsible as this is a no bid contract
- The Tampa Bay plant was a debacle
- Why have a 50 year contract with obsolete technology
- The plant will be worthless in 50 years

#### Paul Weghorst

- Impressed with the Committee process
- To truly evaluate the Term Sheet you need to compare the project against other alternatives
- What need is the project solving
- Poseidon water isn't needed in most years
- The project will not provide much greater reliability
- Offered to make a presentation

#### Richard Armendariz

- The Term Sheet is not complete
- You can't consider the Term Sheet without considering the entire project
- Contracts have to be definitive and certain

#### Jeff Coffmen

- How will water be taken into the plant
- What will happen with the brine
- What is the cost of the project
- This is all smoke and mirrors
- Why can't a smaller plant be built

### **Notes from the meeting**

The meeting was generally dedicated to Paul Brown who reviewed his summary report with the Committee. This report will be provided to the OCWD Board on May, 14, 2015. Report edits were discussed and debated. A revised report showing the edits will be sent out to the Committee for review. Committee members were asked to provide any final comments on the report by May 6<sup>th</sup>.



# **Ocean Desalination Citizens Advisory Committee**

## **Member Information**

Ocean Desalination Citizens Advisory Committee Member  
Information Request

4/10/15

Name

RICHARD M. BANISTER

Provide a brief summary of your background

RETIRED MANAGER AND CONSULTANT IN THE ELECTRIC POWER INDUSTRY. RETIRED AS MANAGER, GEOTHERMAL OPERATIONS FROM MISSION ENERGY. WORKED A TOTAL OF 20 YEARS WITH EDISON/MISSION INCLUDING SAN ONOFRG UNIT 1.

Describe any past or current affiliations or involvement you may have had with Poseidon

Resources and/or the proposed project

NONE

SONGS I WAS ONE OF THE 10 LARGEST DESALINATION FACILITIES IN THE WORLD AT THE TIME.

What are your personal objectives and expectations for the Committee?

- (1) KEEP TRACK OF PROGRESS ON THE POSEIDON WB FACILITY,
- (2) DO WHAT I CAN TO SUPPORT THE PROJECT GOING FORWARD. DISCOURAGE EVALUATION OF OTHER SOURCES OF WATER, THAT IS FOR OTHERS TO DO AFTER WE EVALUATE POSEIDON WB.
- (3) UNDERSTAND THE EFFECT OF THIS PROJECT ON OUR WATER SUPPLIES IN SOUTH COUNTY,

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name            Stacy Berry

Provide a brief summary of your background

- BS in Business Administration – Marketing and Sales background, Elderly Caregiver
- Currently serving first term as Council Member for the City of Cypress

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project

- No past or present affiliations with Poseidon.

What are your personal objectives and expectations for the Committee?

Clearly, we need to find sustainable water solutions, not merely mandate conservation. There are several issues I'd like addressed:

- How will this affect end user rates? What is the pricing structure?
- How will the water be allocated/distributed? Cost of distribution?
- What impact will this have on the environment?

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## Ocean Desalination Citizens Advisory Committee Member Information Request

Name PATRICK BRENDEN

Provide a brief summary of your background

Owner of Home Run Media Group for 23 years. Services included printing, signs, and promotional products.

Current Planning Commissioner for City of Huntington Beach

Current Chairman of the Board for Huntington Beach Chamber of Commerce

Currently serving on General Plan Advisory Committee. Previous experience on Public Works Commission, Infrastructure Committee, and Charter Review Committee.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project

No direct affiliation or involvement. I am acquainted with Scott Maloni of Poseidon because we serve together on the Huntington Beach Chamber of Commerce Board of Directors.

What are your personal objectives and expectations for the Committee?

The best possible term sheet for ratepayers AND for the host city of Huntington Beach.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name Garry Brown

### **Provide a brief summary of your background:**

I am the Founder and President of Orange County Coastkeeper and the Inland Empire Waterkeeper. Coastkeeper promotes and restores swimmable, drinkable, fishable, and sustainable water. We provide watershed education, advocacy, research, restoration, and enforcement. Coastkeeper built and maintains a 2 ½ acre water sustainability demonstration garden and has installed larger drought tolerant landscapes.

Coastkeeper is a 501 (c)3 Non-Profit California Corporation and regularly and directly communicates with approximately 20,000 Orange County supporters.

I serve on the GWRS Oversight Panel since 2004 to the current time.

I serve on the SAWPA OWOW Steering Committee since it began.

I serve as Chairman of the Statewide Advisory Panel mandated by the legislature on Direct Potable Reuse.

### **Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project:**

We met with Poseidon Resources 15 years ago and made suggestions to explore better technologies and alternative sources of water. The project proposed today is the same project we saw 15 years ago. Coastkeeper has opposed the project on basis of need, environmental impacts, energy consumption and cost.

We have no relationship with Poseidon other than cordial conversation.

Approximately 10 years ago, Poseidon was a sponsor at our annual fundraiser that year.

### **What are your personal objectives and expectations for the Committee?**

My personal objectives are to learn and listen with an open mind and not advocate.

The committee is by no means a level playing field. It has some very obvious Poseidon spokespeople. I expect the Committee will recommend a term sheet, which will commence the Board negotiating a purchase agreement. It was designed to accomplish just that.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

**Ocean Desalination Citizens Advisory Committee Member  
Information Request**

**Name:**

Roger E. Bütow Founder & Executive Director of Clean Water Now (Est. 1998)

**Provide a brief summary of your background:**

43-year builder in OC (Commercial & Residential)

50-year resident of OC

17-years as an NGO leader & Land use/Regulatory compliance advisor

**Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project:**

None.

**What are your personal objectives and expectations for the Committee?**

I hope to learn more about not only this specific project, but also become more informed about the general economic/physical dynamics and challenges of ocean desalination and distribution thereof. It's also a forum for interacting with other NGOs, interested parties plus experts on this subject. What I learn can both assist my NGO and me as a professional, also help me to bring that information back to South OC.

I think that I bring a unique perspective, and as I wrote, I want to stay engaged if for no other reason than assuring that South OC has eyes, ears and boots on the HB desalination ground for reconnaissance. Regardless if OCWD doesn't agree to send the HB water south, keeps it all, the greater good will be that OC needs emergency supplies available and this project could make a difference, cover a few days of such life-or-death supplies.

*Roger E. Butow*

*April 5, 2015*

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name: Diana Lee Carey

Provide a brief summary of your background:

Councilwoman – Westminster; Biology Instructor; High School Principal and District Office Administrator; small business owner

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project: none

What are your personal objectives and expectations for the Committee? To represent the interest of the people and to ensure that all important questions are answered regarding the environment and the fiscal ramifications.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name: Debbie Cook

Provide a brief summary of your background. Attorney, former HB City Council member. Currently serve on the board of directors of Post Carbon Institute.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project. In 2003 I was appointed as the League of Cities representative to the California Desalination Task Force. I have spent the last 12 years learning about energy and water issues and in particular, ocean desalination. I have written and spoken extensively on both subjects.

What are your personal objectives and expectations for the Committee? I would like a thorough examination of the issues surrounding this project as well as consideration of alternatives to this project and this particular project proponent.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name Shirley Dettloff

Provide a brief summary of your background

I have lived in Huntington Beach since 1964. I graduated from U.C. Santa Barbara. I have owned two businesses, a Travel Agency and Teacher Designed Learning, worked for the State Legislature and taught Special Ed in Ocean View School District. I have been involved in the City of H.B. Serving on the Planning Commission, various boards, and the City Council for 8 years, serving as Mayor. I am on the Board of Directors of the Amigos de Bolsa Chica, Shipley Nature Center, the Boys and Girls Club and the AltaMed Community Clinic. I was also a member of the State Coastal Commission for 5 years.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project

I spoke with a representative of Poseidon on two occasions for an update of their project. At the time I was not a member of any governmental body, but as an individual.

What are your personal objectives and expectations for the Committee?

I hope that this committee will be able to provide the OCWD Board of Directors with a fresh look at the Poseidon Project, not based on a bias or political motivation, but on facts that will be provided by the staff of both OCWD and Poseidon. Hopefully we will be able to do an analysis of the Term Sheet so that the board will have the thoughts and possibly changes to make a qualified decision. This committee will be able to bring to the board the various positions of the community.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name; Gail Eastman

Provide a brief summary of your background;

Community activist, historian and author who served 8 years on Anaheim Planning Commission, three years as Chair. Served 4 years on Anaheim City Council, one year as Mayor ProTem, while on council I served on multiple area boards and commissions including OCTA, OCSD, TCA & Board of directors of ACC-OC.

Serve on boards of non-profits for; TIP (Trauma Intervention Program) International and the Orange County Children's Education Foundation as a founder and board chair.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project: I have been introduced to members of the Poseidon organization and attended an awards luncheon seated at their table as their guest on 11/7/2014. The value of that lunch was reported on my 2014 700 Form.

What are your personal objectives and expectations for the Committee? To gain a good practical understanding of all aspects of the proposed project, its costs to the district and potentially the rate payers vs. benefits, so as to represent the citizens of Anaheim in the groups best recommendations to the board who will make the ultimate decision on the viability and benefit of this proposed project if they choose to move forward with it.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

**Name** Susan Faessel

**Provide a brief summary of your background:**

I am a retired 35 year special education educator from the public school system.

I have been an active citizen in the City of Anaheim. I have served 7 years on the Anaheim Public Library board, 2 years on Community Services Board, and currently completing my first four-year term on Anaheim Public Utilities Board. I have served 2 years on the APU Legislative Sub committee and currently one year on the Undergrounding Subcommittee.

**Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project**

I have no affiliation or involvement with Poseidon Resources.

**What are your personal objectives and expectations for the Committee?**

My personal objectives are to be a good listener to hear both sides of concerns pro and con for this desalination project. As an average citizen and community advocate, I want to explore and comment on the water concerns. For me the topic of water goes beyond turning on a faucet and expecting it to be there and for me to have access to any amount of water. I am aware that there are concerns for quality, safety, reliability, infrastructure and distribution with costs associated. I am aware of potable and reclaimed water. I am aware of the drought.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

### **Name**

Joe Geever

### **Provide a brief summary of your background**

I'm a 3<sup>rd</sup> generation native of Los Angeles.

I have a degree in Economics and a Law Degree – both from the University of Virginia.

I grew up a commercial fisherman. For the past 15 years, since graduating from law school, I spent some time as a law clerk at the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, and then as a coast and ocean management policy advisor and advocate for the American Oceans Campaign and then Surfrider Foundation.

### **Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project**

I am not affiliated with Poseidon in any way. I have advocated for modifications to the Poseidon project proposals in Carlsbad and Huntington Beach. In that advocacy I was involved in several administrative appeals, two of which are still pending on the Huntington Beach proposal: one before the State Water Resources Control Board and one before the California Coastal Commission. I was also involved in several lawsuits challenging the adequacy of the agencies' actions issuing EIRs and permits for the 2 facilities. And I have in the past, and I am currently preparing comments for the State Water Resources Control Board on the Ocean Plan Amendment for Desalination that conflict with Poseidon's comments and advocacy.

Indirectly, I have worked on several efforts to implement integrated water management reforms. I have crafted and launched the Ocean Friendly Gardens program at Surfrider to promote multi-benefit landscape retrofits, and served on the California Urban Water Conservation Council to promote those practices. I have also advocated on behalf of enhanced wastewater recycling programs in several areas in California (including the OCWD GWRS program). And I crafted and launched the Know Your H2O campaign at Surfrider to promote broad integrated water management reforms.

I have also served on several Department of Fish and Game committees and federal fishery management agencies to implement ecosystem-based fishery management plans and a network of marine protected areas in California.

Finally, I have worked on numerous campaigns and issues involving coastal zone management and enforcement of the California Coastal Act, as well as water pollution campaigns and issues to enforce the Clean Water Act and Porter-Cologne Act in California.

All of these efforts are arguably adverse to Poseidon's interests to develop seawater desalination.

**What are your personal objectives and expectations for the Committee?**

To explore alternatives to seawater desalination that will meet the objectives of the Poseidon proposal that are cheaper to ratepayers and beneficial to the environment -- or to ensure the proposal is designed to meet strict environmental protections in State and federal law.

I have also made a commitment to a residential group from south-east Huntington Beach to bring their interests up for committee consideration because they do not have a representative on the committee.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name Jerry A. King

Provide a brief summary of your background:

Owner of Land Use and Regulatory Advisory consulting firm: MA in Urban and Regional Planning; Sixteen years Santa Ana RWQCB – Chairperson 4-5 times, Former Board member Metropolitan Water District; Former Board member/Chair Orange County Water District; Former Board member, Chair of Santa Ana Watershed Planning Authority; Comm. Member Santa Ana River study group; Former Newport Beach Planning Commissioner, Library Board of Trustee; Advisory Council UCI Social Ecology, Planning, Policy and Design School; Former County of Orange Harbors, and Parks Commission; Newport Beach Economic Development Committee Founding Chairman; Irvine-Newport Planning Advisory Group for the San Diego Creek Comprehensive Storm Water Sedimentation Control Plan; Urban Land Institute, former National Executive Committee, former Vice Chairperson Inland Empire-Orange County Infrastructure Comm.; Board member Cal Water PAC; Former Board member Association of Environmental Professionals; Former Advisory member, Newport Tidelands Committee; Federal Clean Water Act 208 Program for Back Bay Restoration Dredging – former Board and past Chairman; Bolsa Chica Conservancy, Board member; Newport Bay Conservancy, former Board member; San Joaquin Wildlife Sanctuary, Board member; Former Steering Committee member for the Orange County Annual Report; former Program Development Chair for Urban Water Research Center; Former Lecturer- UCI Graduate School of Management, Professional MBA Program; partial history.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project. Approximately ten or eleven years ago I participated in consulting with the Santa Ana Regional Water Quality Control Board regarding permitting criteria for ocean water de-sal intake projects that preceded Poseidon's proposed Huntington Beach Project. The Board had not processed an intake de-sal water project before and I came with sixteen years of membership on this Board and knew all the staff, so it seemed at the time that we could save time and establish a protocol for processing such projects. I have had no employment or professional relationship with Poseidon since that time beyond seeing them at conferences and local meetings at Water Boards.

What are your personal objectives and expectations for the Committee? Exactly as the Orange County Water District Board directed us to do; review the Term Sheet, bring our knowledge of

water and water quality and related impacts to the defined terms and determine to the best of our ability what impacts, cost or benefits there may be for the District and provide input to the Board on items affecting the general public as they relate to the management and delivery of water and services to their customers.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## Ocean Desalination Citizens Advisory Committee Member Information Request

Name : Frank LoGrasso

Provide a brief summary of your background: A resident of Huntington Beach for 29 years. I was appointed to the city Finance Board and served for 6 Years, the last year as Co-Chair. I was an elected member of the South East Huntington Beach Neighborhood Association (SEHBNA).

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project: I have no involvement with the project or the company. However, I was once given a tour of the intended sight by Poseidon about 8 years ago when I was a member of SEHBNA.

What are your personal objectives and expectations for the Committee?

I would hope that the committee would be able to produce a recommendation to the OCWD Board regarding the terms of the proposed desalination plant.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name: George Mason

Provide a brief summary of your background

BS Eng, USCG Academy, BSCE, University of Illinois

Civil Engineering assignments in USCG followed shipboard duty. Following USCG retirement, employed by a Defense contractor developing computer systems for defense applications. Consultant for USCG Vessel Traffic Systems nationwide. Consultant for shipboard computer systems used for weather forecasts and route planning on commercial vessels.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project

Provided personal comments on the Poseidon EIR concerning potential noise generation. No direct or indirect contact with Poseidon.

What are your personal objectives and expectations for the Committee?

To better understand the problems facing OCWD, and what role Poseidon (or another desalination plant owner) would play in maintaining reliability of the water systems that distribute to residents.

What are the projected cost implications to the rates of end users of financing OCWD's distribution requirements, and what are the long term impacts expected as a "take or pay" billing system is put in place by Poseidon for a 50 year period?

Is a desalination plant best financed and managed by a private or a public entity?

Is a desalination plant necessary, and is it the best use of current and future funds over a long term period?

What happens if weather changes or future state water projects enable the aquifers to become saturated with lower cost water and desalinated water is no longer necessary?

What is the impact on Poseidon's billing rates if MWD's treated water rates decrease because of future state wide system improvements?

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name: **Daniel Mole**

Provide a brief summary of your background

- \* **Underground Utility Contractor**
- \* **YLWD Citizen Advisory Committee Chairman**
- \* **City of Yorba Linda Planning Commissioner**
- \* **44 Year Orange County Resident**

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project: **None**

What are your personal objectives and expectations for the Committee?

**To greater understand the how the Poseidon Project impacts the management of the OC ground water basin, long term rate impacts and infrastructure needs to deliver water to potential customers.**

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

**Name** John R. O'Neill

### **Provide a brief summary of your background**

I am a lifelong resident of Orange County and more specifically Garden Grove. I am a State Licensed Electrical Contractor and State certified General Electrician. My wife Sylvia and I are celebrating 30 Years together this year and we have 3 children. At present I am proud to serve as Chairman of the Planning Commission for the City of Garden Grove and was previously the Chairman of the Garden Grove Neighborhood Improvement and Conservation Commission for two years. In 2012 & 2014 I was a candidate for Garden Grove City Council and in 2014 was the runner up out of nine candidates. I currently sit on the Board of Trustees for the Orange County Electrical Training Trust. My working career spans over 36 years, thirty of those years have been spent in the Electrical construction industry. From apprentice to CEO I have been part of many major multi-million dollar and even Billion dollar projects in Southern California. I have the experience needed to understand the complexities, challenges and forethought required for projects of this size and magnitude.

### **Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project**

I have been following this project for a number of years now, I am not a water professional, but have educated myself on the issue of Desalinization and the proposed Poseidon project in Huntington Beach. As someone who is active in the community, I want to be able effectively communicate the facts of the project back to the community. I have no past or current relationship with Poseidon Resources.

### **What are your personal objectives and expectations for the Committee?**

As a Garden Grove resident I am very blessed to have such a well-managed water department where I live. Most people take for granted that when they open their faucet, the water will be there. I know and value what it takes to make that happen each and every day. My personal goal is to take an objective, common sense, fact based approach to this process. If I can positively contribute to this process and communicate to the Directors and the public the facts of this project and term agreement, I believe I will have done my job.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

**Name - Kelly E. Rowe, CFM, PG, CEG, CH**

### **Provide a brief summary of your background**

*Presently an independent watershed, water resources and environmental consultant. Total 35 years as a hydrogeologist/engineering geologist working for large engineering and environmental consulting firms in Southern California. Was the project or program manager on numerous water resources development and management and environmental investigation and remediation projects. Personally installed over 600 groundwater monitoring, remediation and municipal production wells using all types of drilling exploration and construction techniques. In 1996-98, completed a 2-year program as project manager for OCWD, the first major repairs to the 81 Talbert Seawater Intrusion Barrier Injection wells, tied to operation of Water Factory 21. Former OCWD board member representing Division 7, mainly Costa Mesa.*

### **Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project**

*I have had no involvement with Poseidon Resources and the proposed project. As an OCWD board member in 1999, I told the Poseidon project manager, Virginia Grebbien, that Poseidon was wasting its efforts (pre-mature) trying to sell an ocean water desalting plant to Orange County at that time, as we were trying to build the GWRS project, replacing Water Factory 21. After GWRS was built out, construction and operation of ocean desalting plant(s) would likely make more sense to pursue.*

### **What are your personal objectives and expectations for the Committee?**

*The CAC provides an opportunity for interested and knowledgeable folks from a wide variety of backgrounds to provide questions, answers and perspectives on the important future ocean water desalting plans for Orange County. There is no substitute for folks meeting face-to-face to discuss issues and to come to a consensus on how to move forward, or at least know how their ideas fit. The OCWD board can count on the CAC to provide additional objective viewpoints to support its decisions moving forward with ocean water desalting plans.*

## Ocean Desalination Citizens Advisory Committee Member Information Request

### Name

Steven R. Sullivan

### Provide a brief summary of your background

#### **Southern California Edison (Former Executive)**

Steve Sullivan retired from Edison International in October 2013, after 35 years with the company. Edison is the parent company of Southern California Edison, a regulated electric utility. Mr. Sullivan led the two largest SCE organizations dedicated to serving government customers: first as Director of Local Public Affairs, and second as Director of Government & Institutional within the Customer Service organization. Since retiring from Edison, Sullivan has become actively involved in cutting edge businesses within the energy sector – that advance emerging technologies and/or public policy issues affecting the electric industry in California. Some of his business ventures include:

- **ARES North America (Chief Operating Officer):** a firm pioneering in the use of electric locomotive technology for large-scale energy storage. By providing a completely non-polluting and low-cost solution to the need for grid-scale storage and grid stability, ARES will allow America and the world to successfully and reliably integrate unprecedented amounts of clean energy.
- **Ice Energy (Board Advisor):** is the leading provider of smart grid-enabled, distributed energy storage to the local utility industry. Ice Energy delivers cost-effective solutions at grid-scale to reduce peak demand, improve energy system efficiency and reliability, and transform the way the utility system operates.
- **Business Radar (Board Advisor):** is an intelligent assistant that helps utility workers assess damage to the electric grid and respond more effectively to emergencies.
- **Chai Energy (Consultant):** Chai is building products that give consumers a simple and mobile way to understand and reduce their energy use up to 20%. Leveraging these consumer products, Chai will provide multiple services for utility companies including customer engagement, behavioral energy efficiency, and interactive demand response.

**Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project**

In my former capacity as SCE's Director of Government & Institutional Segment within the Customer Service organization, members of my staff were assigned to both servicing Poseidon as well as the Orange County Water District. Services typically included: (1) delivery of energy efficiency and demand response programs that are intended to (a) reduce customer operating costs, (b) manage energy wisely, (c) optimize opportunities to limit the demand for electric power during critical operating periods, and (d) minimize the customer's carbon emissions footprint and (2) provision of "customer care," whereby SCE assists customers in understanding their energy options more clearly and managing their business operations more effectively.

**What are your personal objectives and expectations for the Committee?**

To make positive steps towards securing a viable, sustainable water supply for residents and businesses within Orange County; and to assist the OCWD in achieving both a timely and economic decision for securing potable water via the desalination process as proposed by Poseidon.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).

## **Ocean Desalination Citizens Advisory Committee Member Information Request**

Name

Dallas E. Weaver, Ph.D., P.E.

Provide a brief summary of your background

I ended up working in environmental engineering for a decade while creating by own business (part time) by developing the technology necessary to recycle all the water in a fish hatchery as a critical missing technology in my business plan. I then designed, build and operated a fish hatchery in Huntington Beach producing and selling 20 to 25 million fish per year. I was recycling about 2 MGD of fresh, brackish and saltwater to produce my product.

I am now semi-retired consulting in Aquaculture, Waste treatment, Water treatment, water chemistry area for an international clientele.

Describe any past or current affiliations or involvement you may have had with Poseidon Resources and/or the proposed project

Living close to the proposed plant (Newland and Atlanta) and being involved with the HUBBS white seabass hatchery and knowing the owners of the mussel farm next to the site of Poseidons other plant in Carlsbad, while having a friend and business client who was very familiar with Poseidons Tampa bay operation (long sold off), I have had multiple indirect contacts with Poseidon over the decades. I have gone to most of the local hearing and knowing a significant amount about the impingement and entrainment type environmental issues. I have actually read many of the environmental impact reports and studies along with the relevant scientific literature. I have been shocked by the amount of miss information, lack of perspective and general nonsense being stated about these issues and, being a scientist in this field with in-depth knowledge, I got further drawn in as this issue dragged on over the decade.

Poseidon is not and never has been a client.

What are your personal objectives and expectations for the Committee?

Want to make sure Orange County gets a good deal, while minimizing our water availability risk. I want to make sure the decisions are based on science, economics and rational considerations of reality, with a reasonable perspective. I want to avoid emotional based decision making with no perspective.

Please give this information to John Kennedy either at the April 9, 2015 meeting or by email at [JKennedy@ocwd.com](mailto:JKennedy@ocwd.com).