



May 29, 2014

Mr. Shawn Dewane
President
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Dear Chairman Dewane and District Directors:

I am writing in response to the request from the Orange County Water District's Board of Directors for an update on the Huntington Beach Desalination Project.

The desalination project is in the final phase of the permitting process and the Coastal Commission's approval of a Coastal Development Permit is the only remaining discretionary entitlement action necessary to allow for construction. On November 13, 2013, the Coastal Commission voted unanimously to direct Poseidon and the Commission staff to jointly conduct an independent, third-party evaluation of the feasibility of constructing and operating a Seafloor Infiltration Gallery as an alternative to Poseidon's proposal to use the Huntington Beach Power Station's existing seawater intake facilities. In May, 2014, Poseidon and Commission staff reached an agreement (see enclosed *Terms of Reference* document) on the process for an Independent Scientific & Technical Advisory Panel ("ISTAP") to evaluate the feasibility of alternative seawater intakes.

To enable an inclusive and transparent process, the public will be invited to attend portions of the ISTAP meetings and to comment on the panel's interim and final work products. The first meeting of the Coastal Commission's ISTAP will take place during the week of June 9th and the process is anticipated to extend approximately six months, after which point Poseidon plans to return to the Commission for consideration of the project's Coastal Development Permit.

In January, 2014, the District's staff released a report entitled "*Poseidon Resources Huntington Beach Ocean Desalination Project Information and Update.*" The information in the report is current and accurately represents the design, construction and cost of the proposed desalination project. The report also includes a description and an initial cost estimate for the retrofit of the power station's seawater intake facilities based on our review of the draft requirements from the expected State Water Resources Control Board ocean desalination policy should such a retrofit be required when the power station decommissions its seawater intake facilities.

The ISTAP's evaluation of alternative intake feasibility will require additional consideration of project cost estimates. The alternative seawater intake cost estimates will be made available in the coming weeks to the District and its financial and technical consultants in conjunction with ISTAP process outlined above. This information will enable the District to conduct its own thorough evaluation of the cost of the construction and operation of the project and any impact the alternative intakes would have on the cost of the project if implemented.

Poseidon Water LLC

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www.poseidonwater.com

Thank you for your continued support for the Huntington Beach Desalination Project and please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Maloni".

Scott Maloni
Vice President, Poseidon Water

cc: Mike Markus

Enclosure: *Terms of Reference for an Independent Scientific and Technical Advisory Panel (IS TAP) to Examine the Feasibility of Subsurface Intakes*

**Terms of Reference
for an Independent Scientific and Technical Advisory Panel (ISTAP)
to Examine the Feasibility of Subsurface Intakes
and Advise the California Coastal Commission on Poseidon Water's Proposed Huntington
Beach Desalination Project
April 18, 2014**

Headings Included Here

- A. Background
- B. Mission Statement and Purpose
- C. Criteria to Guide the Panel's Assessment of Feasibility
- D. Initial Work Program
- E. Qualifications and Recruitment Criteria for Panel Members
- F. Method of Panel Recruitment
- G. Administrative Arrangements/Operating Procedures
- H. Meeting Formats
- I. Authorship Attribution, Distribution and Dissemination of the Panel's Report
- J. Final Report as Part of Public Record
- K. Statement of Concurrence

A. Background

As part of its review of a permit application from Poseidon Resources to construct and operate a desalination facility in Huntington Beach, the California Coastal Commission directed the applicant to undertake a more complete independent analysis of intake alternatives. Due to concerns over impacts on the coastal environment and marine ecosystems [Coastal Act Sections 30230 and 30231 in particular], the Commission recommended that Poseidon examine in more detail the feasibility of subsurface intakes.

In order to establish a review process that is responsive to the Commission's guidance and appropriately engages Poseidon, both parties have agreed to undertake an independent scientific review. To help implement this guidance, Poseidon has agreed to contract with CONCUR, Inc., a firm specializing in analysis and resolution of complex environmental issues and in structuring independent review processes. While the Commission is not contracting with CONCUR, the agency staff agrees on the choice of CONCUR as the facilitator and convener of this independent review.

This Terms of Reference document (TOR) sets the structure and operating procedures of the scientific review and sets the specific charge to the Panelists. The intention of this Terms of Reference is that, while Poseidon and the agency staff may have some divergent interests, they will collaborate and strive to reach agreement on these elements of the review process.¹

¹ In this TOR, Poseidon Resources (Surfside) LLC will be referred to simply as "Poseidon", the term "Commission" refers to the agency and its governing board, and the staff of the Coastal Commission will be referred to as "agency staff". The term "both parties" means Poseidon and agency staff.

CONCUR will convene a panel of scientific experts—the Independent Scientific and Technical Advisory Panel—to review the issues at hand and make recommendations to bolster the scientific underpinning of the permit application and review process.

Both parties agree that this “joint fact-finding process” is a credible and effective way to respond to the guidance provided by the Commission. The Panel will consider a defined set of questions, deliberate, and prepare reports that will be delivered to both parties. These reports will provide evidence for the Commission and agency staff to consider when staff prepares its recommendation to the Commission regarding the proposed project. The Panel’s final reports will be part of the Commission’s record for Poseidon’s permit application.

B. Mission Statement and Purpose

The broad goal of the Independent Scientific and Technical Review Panel is to provide credible, legitimate and independent scientific advice and guidance to support permit review.

The Panel’s specific and limited purpose is to investigate whether alternative intakes would be a feasible method to provide source water to Poseidon’s proposed desalination facility. It will focus on the extant site at Huntington Beach, but may investigate alternate sites on the Orange County coast. If subsequent phases of work are initiated, the expectations are that the Panel will compare the relative degree of feasibility of alternative intakes as described below.

Poseidon will fund the Panel and CONCUR. To ensure the Panel’s independence, it will be guided by CONCUR and will report directly to agency staff with input from but without alteration by Poseidon. To provide transparency, the public will be invited to participate in some Panel meetings (but not Panel work sessions) and to comment at intervals on the Panel’s interim and final work products for each phase of work as may be undertaken.

C. Criteria to Guide the Panel’s Assessment of Feasibility

Both parties will set forth criteria they find important to the consideration of “feasibility” as defined in the Coastal Act, which will be reviewed and considered by the Panel in determining the feasibility criteria to be used for each phase that is undertaken.

D. Initial Work Program

The scope of work may include one or more phases as set forth below.

After each phase, both parties will consider the results of the phase and advise on next steps.

Both parties agree that the intent of the review is to work through to a final product for each phase that is undertaken. Both parties commit to at least the first phase of work outlined. Both parties would need to concur to go beyond Phase 1 and involve the Panel in later phases. Both parties anticipate that the disciplines composing the Panel would need to be rethought between Phase 1 and Phase 2. The disciplinary composition of the Panel may be revised at each phase to provide the necessary expertise.

Both parties agree that multiple phases will be necessary to generate the information the Commission needs to proceed to a final decision.

The Phase 1 scope of work is as follows:

Phase 1: Technical Feasibility at Huntington Beach.² Investigate whether alternative subsurface intake designs would be technically feasible at the proposed site at Huntington Beach. This assessment of technical feasibility will include a characterization of the geophysical, hydrogeological and geochemical features of the site and will identify the expected size and hydrogeological effects of the range of subsurface intakes that could be accommodated on the site, including those that could provide source water for the proposed 50 mgd facility. For Phase 1, both parties agree that the working definition of technically feasible is: able to be built and operated using currently available methods. This phase will include gaining command of the project and context, clarification of the goals and scope of this phase, review of published literature, case reports, and on-site studies. The Panel would prepare a report at the end of this phase that describes technically feasible alternative intake designs at or near the site and may also be asked to prepare interim informal reports.

At the end of Phase 1, both parties would consider the Panel report and the makeup of the Panel needed for the next Phase. Based upon the discussions to develop the Phase 1 scope of work, both parties have developed the following scope of work for Phase 2, if both parties decide to initiate a second phase.

Phase 2: Additional Review of Components of Feasibility at Huntington Beach. Still focused on the Huntington Beach site, the Panel would characterize the technically feasible subsurface intakes identified in Phase 1 relative to a broader range of evaluation criteria, as recommended by the parties and determined by the Panel, such as size, scale, cost, energy use, and characteristics related to site requirements and environmental concerns consistent with the Coastal Act's definition of feasible, and as compared to the proposed open intake. The Panel would prepare a report at the end of this Phase and may also be asked to prepare interim informal reports.

Both parties will decide after Phase 2 whether to conclude the ISTAP or whether to conduct additional studies and review. For instance, if initial review indicates that constructing a subsurface intake at the Huntington Beach site may not be feasible, a potential third phase could consider other locations on the Orange County Coast that might offer superior conditions for construction of subsurface intakes. The Panel could perform a reconnaissance-level review to identify alternative sites that should be the subject of a more in-depth analysis by the Panel or others and studied concurrently or at a later date. This reconnaissance level review should be considered a coarse screening. A fourth phase may entail a more in-depth analysis of alternate sites and if the ISTAP is involved may require additional expertise.

E. Qualifications and Recruitment Criteria for Panel Members

In Phase 1, the Panel is expected to include disciplines that as a whole should provide coverage of all of the following areas:

² The parties are aware that State Water Board staff is developing an amendment to the Ocean Plan that would address issues associated with desalination facilities. The parties intend that the ISTAP process would be able to receive briefings on the progress and outputs of the SWRCB process (perhaps with State Board staff as technical advisors to this process).

- Subsurface intake design, construction, and/or operation
- Geophysical and/or hydrogeological study design and modeling
- Coastal processes and/or physical oceanography – hydrodynamics, sediment transport, sediment characterization, etc.
- Coastal engineering/construction methods/cost analysis
- Geophysical and/or hydrogeological characteristics of Orange County coastal areas
- Groundwater geochemistry

At each later phase both parties will work to define needed qualifications and disciplinary recruitment criteria. Other later phases of the Panel may include such disciplines as marine ecology or cost-benefit analysis.

Additional Recruitment Criteria

Panel members should possess demonstrated aptitude and capability in the following areas:

- Able to operate as an independent expert representing their professional discipline and experience in their participation in this ISTAP
- Experience providing scientific advice for developing public policy
- Ability to integrate multiple disciplinary perspectives
- Experience with highly contentious issues and high stakeholder interest
- Experience preparing reports for policy audiences
- Availability to work in a team setting
- Willingness to work with the expectation that the Panelists will author the report, accept attribution to the entire report, and sign the final report (Note: CONCUR will support the drafting and production of the report in all stages of work.)

Method of Panel Selection

Both parties, working with CONCUR, will jointly select the Panel. The credentials of potential members will be considered on their merits relative to the selection criteria listed above.

F. Technical Advisors

Individuals may also be considered for a potential Technical Advisor role. It is expected that a small number of Technical Advisors may be asked to make short presentations to contribute to the deliberations of the Panel and provide additional detail and context to support the Panel's work. It is understood that Technical Advisors are not expected to meet the Panelists' rigorous criteria for independence. Technical Advisors are not expected to participate in the entire duration of the Panel's work, but may be called in for specific topics. Technical Advisors will not participate in the internal Panel deliberations, nor will they be asked to co-author or co-sign the final Panel report.

G. Method of Panel Recruitment

Both parties will consider criteria for the recruitment of Panelists and will use their professional networks to identify and suggest potential candidates. CONCUR will also use its professional network and make suggestions for potential candidates. Together, all parties will form a pool of candidates, which the agency staff, Poseidon, and CONCUR will jointly review with the aim of reaching agreement on the full Panel.

H. Administrative Arrangements and Operating Procedures

Both parties agree to the following provisions to ensure proper administration of the independent Panel:

1. Poseidon will provide funds to CONCUR, Inc. in advance of convening the Panel in an amount outlined by the Scope of Work developed by the facilitator.
2. Panel members will be remunerated by CONCUR, with the panelist's client understood to be the ISTAP.
3. Poseidon and agency staff will work with the facilitator to draft and proceed jointly to agree to the Terms of Reference (TOR). By mutual agreement of all parties, supplemental Terms of Reference may be incorporated at a later time.
4. The Panel, once constituted, will be asked to verbally communicate with Poseidon or agency staff only with representatives of both parties participating via the facilitator (*or with cc's to CONCUR*). Questions or comments (including requests for additional information, data, or documents) should be stated in writing, with copies to both parties.
5. The Panel's work products are to reflect its independent scientific and technical judgment. Both agency staff and Poseidon will contribute information and review, but neither agency staff nor Poseidon will alter the work products, and there will be clear identification as to their independent status. Both parties will not alter work products, but will have opportunities to comment on draft work products, as will members of the public.
6. Questions will be posed to the Panel via a written program of work and supplementary memoranda. The Panel will respond with written statements, which may be supplemented with briefings.
7. CONCUR shall designate Principal Scott McCreary as the facilitator for directing the activities of the Panel and as the point of administrative contact. The Poseidon point of contact is Stan Williams. The Coastal Commission point of contact is Tom Luster.
8. The Panel's formal contacts with agencies, stakeholders and the public will be via procedures established through the Terms of Reference in consultation with Poseidon, agency staff, and CONCUR to strike a balance between the Panel's independence and ensuring fair and open access to the Panel and its work products.

I. Meeting Formats

Meetings of the Panel will be of three types:

- **Panel meetings** with structured opportunities for observers, representatives of agencies, and Technical Advisors (as described in F. above) to hear and make presentations and public comments.
- **Work sessions**, where the Panel may interact with invited Technical Advisors
- **In person or by-telephone work sessions** of the Panel.

CONCUR will prepare summaries of deliberations of all meetings. Summaries will be made available to the public. CONCUR will be the primary point of contact for handling press inquiries. Agency staff and Poseidon may consider the use of short, joint statements at intervals.

Panel members will need to review critical Commission and other documents so that their comments and recommendations are based on:

- The best possible understanding of the physical requirements of desalination, local land use conditions and limitations, marine ecosystems in the region of the proposed project;
- An understanding of the policy and administrative context of Commission deliberations;
- The timelines and targets for Commission permit review and related actions;
- The timelines and targets for Poseidon's corporate planning.

J. Authorship, Attribution, Distribution and Dissemination of the Panel's Report

The expectation is that Panel members will author, accept attribution, and sign the final report in its entirety. The Panel will submit the results of its review to Poseidon and agency staff simultaneously. If requested, the Panel may present the findings of its report in a Workshop format or briefing to the Commission.

K. Final Report Becomes Part of the Public Record

Upon its presentation, this Report becomes part of the public record.

L. Statement of Concurrence

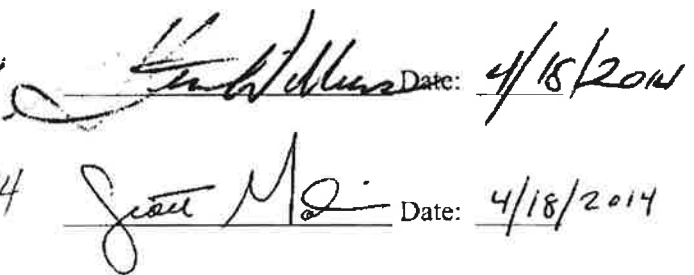
We hereby concur and agree to this Terms of Reference document and funding requirements as described in this document.

Coastal Commission:

Poseidon Resources (Surfside) LLC:


Tom Luster

Date: 4/30/14


Scott M. [unclear]

Date: 4/18/2014