



**MINUTES OF THE SPECIAL BOARD OF DIRECTORS' MEETING**  
**September 20, 2012**

**1. Call to order.**

Chair Hogan called the meeting to order at 1:30 p.m.

**2. Roll call.**

Directors present were Bailey, Brady, Dailey, Dion, Douglas, Heidel, Hilliker, Hogan, Knutson, Lewinger, Lamb, Linden, Miller, Morrison, Pocklington, Price, Sanford, Saunders, Saxod, Smith, Topolovac, Tu, Weston, Wight, Wilson, and Wornham. Directors absent were Arant, Barnum, Bond, Boyle, Croucher, Mudd, Steiner, Watton, Williams, and Representative Slater-Price. There was a quorum of the Board.

Staff present included General Manager Stapleton, General Counsel Hentschke, Deputy General Manager Kerl, Assistant General Manager Cushman, Director of Water Resources Weinberg, and Water Resources Manager Yamada. David Moore, Managing Director of Clean Energy Capital, Peter MacLaggan, Senior Vice President, Project Development Poseidon Resources LLC and Eric Peterson, Special Counsel, Hawkins, Delafield & Wood LLP, were also present.

**2-A Report on proxies received.** There were no proxies received.

**3. Public Comment.**

There were three public speakers:

1. Jack Monger, Executive Director of the Industrial Environmental Association spoke in favor of the Carlsbad Desalination project.
2. Tom Lemmon of the San Diego Building & Construction Trades Council spoke in favor of the Carlsbad Desalination project.
3. Livia Borak from the Coast Law Group requested to speak after the presentations.

**4. Workshop on issues related to the Carlsbad Desalination Project.**

4-A Review of key terms of the Draft Water Purchase Agreement.

Chair Hogan announced the Water Purchase Agreement was not ready for release and there was not a date scheduled. He stated there had been more than 24 meetings pertaining to the project including the workgroup meetings this calendar year.

Mr. Weinberg began the presentation covering the assignment of risk between the parties. Mr. Petersen then reviewed the project structure, Poseidon responsibilities, Water Authority responsibilities, performance guarantees, risks transferred to Poseidon, risks retained by the Water Authority, mechanism for handling retained risks, managing the “pipeline to nowhere” risk, security for contract performance and other Water Authority protections. He also reviewed the Water Authority project purchase options and the cumulative cap on adjustment to the price of water.

Directors asked questions clarifying the legal responsibilities between the Water Authority and Poseidon. Mr. Peterson answered the Board members questions.

Mr. Yamada presented on the Water Purchase Agreement Technical Appendices. He stated the Water Purchase Agreement would include 18 technical appendices. The key topics that would be covered included: documentation supporting construction and operation of the plant, specific Water Authority requirements for equipment and operation connected to operation of the aqueduct system, specific standards for completion, performance testing and operation of the plant, details regarding electricity charges and water purchase payment calculations, and finally project condition at the end of the term. Mr. Yamada reviewed Appendices 1- 8. Dr. Moore reviewed Appendices 9 & 10 on electricity charges and schedules relating to monthly water purchase payments.

Directors asked questions about water quality and pricing. Mr. Yamada answered their questions. Director Lewinger asked about water temperature, was the cost of colder water factored in due to the closure of the Encina Power station. Dr. Moore replied that had been factored in, in Appendix 9, it was a very small number. Director Lewinger asked for more information. Mr. Weinberg replied that staff would return to the Board with a breakdown of that number. Director Wight asked for information regarding the investor return. Dr. Moore replied the all in return would be approximately 12 – 15% for infrastructure equity and the equity return charge would be approximately 9%. Director Price asked for a summary of the existing litigation that Poseidon was involved in with the Regional Water Quality Control Board. Mr. MacLaggan provided a review of the lawsuits. Mr. Yamada reviewed Appendices 11 – 18.

Ms. Borak spoke in opposition to the project. She expressed concern regarding the risk of energy prices increasing over the 30 year timeline. She also expressed concern regarding permitting and greenhouse gas litigation.

- 4-B Incorporating costs of the proposed project into the Water Authority's rates and charges.

This item was continued to the September 27, 2012 Board meeting.

**5. Adjournment.**

There being no further business to come before the Chair Hogan adjourned the meeting at 4:00 p.m.

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Michael T. Hogan, Chair