

CALENDAR ITEM

62

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W 26204
PRC 1980.1
C. Connor
M. Meier
S. Mindt

AMENDMENT OF LEASE

LESSEE:

AES Huntington Beach LLC
21730 Newland Street
Huntington Beach, CA 92646

APPLICANT:

Poseidon Resources (Surfside) LLC (Poseidon Resources)
501 West Broadway, Suite 2020
San Diego, CA 92101

AREA, LAND TYPE, AND LOCATION:

11.78 acres, more or less, of tide and submerged lands in the Pacific Ocean, offshore of Huntington Beach State Park, near the city of Huntington Beach, Orange County

AUTHORIZED USE:

Continued use and maintenance of one 14-foot diameter seawater intake pipeline extending offshore approximately 1,650 feet and one 14-foot diameter discharge pipeline extending approximately 1,500 feet offshore. The pipelines are utilized as components of a once-through cooling system associated with the AES upland Huntington Beach Generating Station.

LEASE TERM:

20 years, beginning August 8, 2006.

CONSIDERATION:

As to the existing lease issued to AES Huntington Beach LLC (AES), the current annual rent is \$88,005. The "Base Rent", set at \$82,500 in August 2006, is adjusted annually using the Consumer Price Index (CPI) for all Urban Consumers, Los Angeles-Riverside-Orange County, CA. The State reserves the

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right to fix a different "Base Rent" periodically during the lease term, as provided in the lease.

PROPOSED AMENDMENT:

SECTION 1 – BASIC PROVISIONS is amended to include Poseidon Resources (Surfside) LLC as a Co-Lessee. **Location** is amended to include sovereign tide and submerged lands affected by increases in salinity from the desalination facility's concentrated seawater discharge.

SECTION 1 – LAND USE OR PURPOSE is amended to include desalination use of existing improvements by Poseidon Resources.

SECTION 1 – CONSIDERATION is amended to require that, in addition to the rent paid by AES, Poseidon Resources is to provide annual rental in the amount of \$115,500 beginning on the first day of the operation of the desalination facility, to compensate for use of Public Trust resources on sovereign lands affected by increases in salinity from the desalination facility's concentrated seawater discharge. This annual rent is subject to review and modification by the Commission subject to the terms of Section 2, paragraph 10, and Section 4, paragraph 2 of this Lease.

SECTION 2 – SPECIAL PROVISIONS is amended to include the following:

AES and Poseidon Resources, as Co-Lessees, or individuals, shall be required jointly and severally to comply with all of the reservations, terms, covenants and conditions of the Lease; provided, however, that: (i) AES shall be responsible for obligations under the Lease pertaining to its power plant facility; (ii) Poseidon Resources shall be responsible for obligations under the Lease pertaining to its desalination facility; and, (iii) If there is a disagreement between Poseidon Resources and AES as to their respective responsibilities under the Lease, that dispute shall be resolved by Lessor.

Poseidon Resources shall, at all times during the term of the Lease, comply at a minimum with the Energy Minimization and Green House Gas Reduction Plan (the GHG Plan), as adopted by the City of Huntington Beach on September 20, 2010. In the event that the GHG Plan adopted by the City of Huntington Beach on September 20, 2010, is modified in any way or is terminated, invalidated or suspended, Poseidon Resources shall, within 30 days after the effective date of modification, invalidation or suspension, notify Lessor's Executive Officer of the modification, termination, invalidation or suspension. If the Executive Officer determines that the effect of the modification, termination, invalidation or suspension constitutes a substantive weakening of the GHG Plan, then compliance with the GHG Plan as adopted by the City of Huntington Beach on

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September 20, 2010 shall remain a term of this Lease. The Executive Officer may allow the Lease to remain in effect subject to any new terms lawfully imposed on the GHG Plan by any and all applicable regulatory authorities, including, but not limited to, the California Coastal Commission and the South Coast Air Quality Management District, or require that Poseidon Resources continue to comply with the GHG Plan as adopted by the City of Huntington Beach on September 20, 2010.

Poseidon Resources, as a separate obligation, shall implement a Salinity Monitoring and Reporting Program (SMRP), which supplements the effluent and receiving water monitoring performed by Poseidon Resources under requirements established by the California Regional Water Quality Control Board (CRWQCB) Order No. R8-2006-0034, National Pollutant Discharge Elimination System (NPDES) Permit No. CA 8000403 (see http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2006/06_034_wdr_poseidon_resources_surfside_08252006.pdf). The SMRP will include the following:

- a) Six months prior to the commencement of pre-discharge monitoring under the SMRP, Poseidon Resources shall submit for review and approval by Lessor's Executive Officer a protocol that will contain sufficient detail to ensure implementation of monitoring and reporting consistent with this paragraph.
- b) In addition to the receiving water salinity monitoring stations designated by the CRWQCB under Order No. R8-2006-0034, NPDES Permit No. CA 8000403, Poseidon Resources shall establish three additional monitoring stations offshore, at locations reasonably acceptable to Lessor's Executive Officer, in an array adequate to characterize the salinity plume and to sample the biota. All sampling and monitoring to be conducted at these three supplemental stations pursuant to this paragraph shall be conducted at the same time if feasible.
- c) Poseidon Resources shall provide for random quarterly sampling, during low-flow conditions if feasible, of salinity, temperature, and pH at the three supplemental stations established pursuant to Paragraph b), above, for the following durations:
 - for one year under pre-discharge conditions;
 - for two years under post-discharge conditions; and
 - for two years after commencement of stand-alone operations.
- d) Poseidon Resources shall provide for quarterly benthic monitoring, at the three supplemental stations established pursuant to Paragraph b), above,

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for the following durations:

- for one year under pre-discharge conditions;
 - for two years under post-discharge conditions; and
 - for two years after commencement of stand-alone operations.
- e) Benthic samples shall be collected using a 0.1 square meter grab sampler. Three size classes to be monitored include meiofauna (invertebrates passing through a 1.0 millimeter (mm) mesh sieve and retained in a 40-42 μ m mesh sieve), macrofauna (invertebrates retained on a sieve or 0.25-0.30 mm mesh sieve with the exception of meiofauna taxa such as Nematoda, Copepoda, Ostracoda, and Foraminifera), and megafauna (epibenthic vertebrates and invertebrates visible to the naked eye). Benthic infaunal organisms retained on the sieve shall be counted and identified to the lowest taxon possible. Analysis of benthic community structure at each sampling station shall include determination of the:
- Number of species per 0.1 square meter (species richness);
 - Number of individuals per species per station;
 - Total numerical abundance;
 - Shannon's diversity index (H'); and
 - Biomass.
- f) Salinity, temperature, pH and benthic sampling identified above shall be conducted by a third-party contractor approved by Lessor's Executive Officer and reasonably acceptable to Poseidon Resources. The third-party contractor may be the same contractor taking sampling under the CRWQCB Order and NPDES permit identified above.
- g) Poseidon Resources shall also provide all NPDES permit monitoring data and results to the Lessor's Executive Officer in accordance with the timeframes established by the CRWQCB Order and NPDES permit identified above.
- h) At the conclusion of two years of post-discharge monitoring under the SMRP, Poseidon Resources shall prepare and submit a report (the "SMRP Report") to Lessor's Executive Officer that:
- Summarizes all collected monitoring data (including receiving monitoring data collected per requirements of the CRWQCB);
 - Presents a comparison of pre-discharge and post-discharge data and characterizes statistical trends in benthic species richness, abundance, population, or diversity; and
 - Evaluates receiving water salinity data to assess the characteristics (i.e., size and density) of the plume.

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Poseidon Resources shall prepare a similar report at the conclusion of two years of stand-alone post-discharge monitoring under the SMRP.

- i) If after two years of post-discharge monitoring or two years of stand-alone post-discharge monitoring, as applicable, Lessor's Executive Officer reasonably determines that the results in the SMRP Report are sufficient to assess the extent of use of Public Trust resources due to increases in salinity levels, then the SMRP shall be discontinued and Poseidon Resources may submit to the Commission a request regarding the modification or elimination of the consideration established in SECTION 1 for the use of the Public Trust resources related to increases in salinity levels.

Poseidon Resources, as a separate obligation, shall provide notice and sufficient details to Lessor 60 days prior to any changes in ownership or assignment of interest as defined in Section 4, Paragraph 10 of the Lease.

AES shall notify Lessor in writing prior to discontinuing its use of the Lease Premises in connection with the production of electricity using Once-Through-Cooling (OTC). Upon receipt of notification by Lessor, AES may apply to Lessor for approval of an assignment of its obligations under the Lease to Poseidon Resources. In considering AES application for approval of an assignment, Lessor will take into account Poseidon Resources' past performance and the likelihood that Poseidon Resources could and would carry out all obligations under the Lease as sole lessee. In the event that Lessor finds that there is a substantial probability that Poseidon Resources would not or could not carry out all such obligations, then Lessor may disapprove the assignment, in which case, at AES's option, the Lease would terminate or AES would remain as Co-Lessee. If Lessor agrees to the assignment, then as compensation for the use of Public Trust resources on sovereign lands affected by the stand-alone entrainment and impingement impacts, Poseidon Resources shall assume the maintenance obligations for the existing entrainment and impingement mitigation program that is being maintained by AES as of the date of this Lease Amendment.

Poseidon Resources, as a separate obligation, shall provide copies of all regulatory monitoring and compliance reports pertaining to the operation of its desalination facility to Lessor at the time of submitting such reports with any regulatory agency.

Poseidon Resources, as a separate obligation, shall provide Lessor with a performance deposit in the amount of \$500,000 prior to commencement of project construction. At any time during the term of the Lease, Lessor may require an increase in the amount of the performance deposit to reflect economic

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inflation or to cover any additionally authorized improvements, alterations, or of modification of rental. Additionally, should AES's interest in this Lease be assigned to Poseidon Resources, then Lessor may require an increase in the amount of the performance deposit. Such increase may not initially exceed an additional \$500,000, but shall otherwise be subject to Paragraph 9 of Section 4, General Provisions, of the Lease.

Poseidon Resources, as a separate obligation, shall provide to Lessor, in a form approved by Lessor's staff, an unconditional guarantee by parent company Poseidon Water LLC for full performance by Poseidon Resources of all the obligations under the Lease.

Poseidon Resources, as a separate obligation, shall provide to Lessor any and all permits and authorizations issued by any and all other State, local or federal agencies as a result of this project. This includes, but is not limited to, a detailed report of compliance with Order No. R8-2006-0034, NPDES Permit No. CA 8000403, and any subsequent NPDES permit. Copies of all permits and authorizations issued prior to operation of the desalination facility on the Lease Premises shall be provided to Lessor prior to operation, and copies of each and every permit or authorization issued after operations begin will be provided within 30 days after Poseidon Resources receives the permit or authorization.

Poseidon Resources acknowledges that Lessor may conduct a public hearing five years after the effective date of commencement of the desalination facility's operations in order to publicly review and evaluate Poseidon Resources' compliance with the terms of the Lease as provided for in Section 4, Paragraph 6, including, but not limited to, compliance with the federal Clean Water Act, and California's Porter-Cologne Water Quality Control Act.

In the event that Poseidon Resources fails to comply in any material respect with any and all of its separate obligations under this Lease, Lessor may terminate Poseidon Resources rights under this Lease without affecting any or all of AES' rights or obligations under this Lease subject to the notice provisions in Section 4, paragraph 11(b) of this Lease.

Poseidon Resources shall not make any changes in use or operation of the intake and outfall pipelines without prior authorization by Lessor.

Poseidon Resources shall be responsible for reimbursing all of Lessor's reasonable staff expenses incurred by Lessor and its staff to monitor compliance by Poseidon Resources of all of its reservations, terms, covenants and conditions of the Lease for the term of the Lease. Upon execution of the Lease Amendment, Poseidon Resources shall execute a Reimbursement Agreement

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with the Lessor specifying the mechanism by which all actual costs by Lessor shall be reimbursed. An expense deposit of \$150,000 shall be paid to and held by the Lessor as a cash surety to ensure performance of this paragraph.

Poseidon Resources shall complete construction of the desalination facility within eight years of the authorization of this amendment.

SECTION 4 – GENERAL PROVISIONS is amended as follows:

Paragraph 11, Default and Remedies, (a) Default, Paragraph (4) is hereby deleted in its entirety and is replaced with the following:

(4) Co-Lessee's failure to obtain, maintain and comply with all necessary governmental permits or other entitlements;

All other terms and conditions of the Lease shall remain in effect without amendment.

The complete copy of the Lease Amendment is on file in the Sacramento office of the California State Lands Commission.

1) PROJECT DESCRIPTION

On February 6, 2007, Poseidon Resources submitted an application to the Commission for consideration of a desalination use of the existing intake and outfall structures. Poseidon Resources notified CSLC staff on December 1, 2009 that it was withdrawing its application in order to provide sufficient time to undertake additional CEQA review of the project as a stand-alone operation. On June 15, 2010, Poseidon Resources submitted a revised application to the Commission.

Poseidon proposes to co-locate an 11-acre desalination facility within the Huntington Beach Generating Station site currently owned by AES. The desalination facility as designed would produce up to 50 million gallons per day (MGD) of potable drinking water for use by residents and businesses in Orange County. The project includes a 10,120 square foot administration building, a 38,090 square feet reverse osmosis (RO) building, a 26,305 square foot product water storage tank, and miscellaneous accessory structures. Proposed improvements include up to 8-10 miles of water transmission lines in Huntington Beach and Costa Mesa to connect to an existing regional transmission system in Costa Mesa and two offsite pump stations, one in unincorporated Orange County and one in the city of Irvine. From the desalination plant, the product water

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would be distributed along several pipeline routes (some proposed, some planned, and some existing) to various local water districts in Orange County.

The construction period for the plant and ancillary facilities is estimated at 24 months, with another six months of testing upon completion. If all permits and approvals are received by mid to late 2011, then the plant should be operational some time in 2014.

The cost of the desalination plant and related facilities (pipeline, etc.) is estimated at approximately \$350 million. While a financing plan is currently not available, Poseidon Resources reports that they will try to fund it in a similar manner as the Carlsbad desalination facility, using tax-exempt private activity bonds.

In September of 2005, Poseidon Resources and AES executed a Ground Lease and Easement for a term of 35 years from the anniversary of the commercial operation date of the desalination facility with an option to extend the term for up to two consecutive additional periods of ten years that is binding on successors in interest.

The AES power plant currently uses Once-Through Cooling (OTC) technology to cool its generators, and the desalination facility would reuse this water as its supply source. This source water would be desalinated using RO technology, producing approximately 50 MGD of product water and up to 75 MGD of concentrated 57 parts per thousand (ppt) seawater (brine) as a by-product. The brine solution would then be co-mingled, diluted, and discharged with the OTC flows originating from the power plant. Total sea water volumes that would be needed for the desalination process under current conditions would be approximately 124 MGD.

AES and Poseidon Resources have entered into an Agreement that specifies the operational and maintenance responsibilities for co-locating the proposed desalination plant adjacent to the existing power plant.

To date, Poseidon Resources has received non-binding Letters of Intent (LOI) from 17 local cities and water agencies to receive desalinated water from the Huntington Beach desalination plant. The municipalities include the Cities of Huntington Beach, Newport Beach, Anaheim, Garden Grove, Santa Ana, Seal Beach, Fullerton, and Fountain Valley. The water agencies include the Municipal Water District of Orange County, the Santa Margarita Water District, Laguna Beach County Water District, and Irvine Ranch Water District. The LOIs total 80,960 acre feet of water, which represents demand in excess of what the desalination plant will actually produce.

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2) CITY OF HUNTINGTON BEACH – ENVIRONMENTAL IMPACT REPORT

On September 7, 2010, the City, acting as the Lead Agency under the California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*) and the State CEQA Guidelines (California Code of Regulations § 15000 *et seq.*), certified a Subsequent Environmental Impact Report (“SEIR”) (State Clearinghouse No. 2001051092) and adopted CEQA Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Project. The City found that the preparation and certification of the SEIR was appropriate because changes to the Project and the circumstances surrounding the Project had occurred and new information had become available since the City certified the Final Recirculated Environmental Impact Report (“REIR”) for the Project on September 6, 2005 (“2005 REIR”).

The CSLC will be acting as a Responsible Agency under CEQA and, as such, must generally use the SEIR certified by the Lead Agency. Section 15096 of the CEQA Guidelines requires a Responsible Agency to consider the environmental effects of the project as shown in the EIR prepared by the Lead Agency and reach its own conclusions on whether and how to approve the project involved, based upon that previously certified EIR. Section 15162 of the CEQA Guidelines provides the only criteria under which a Responsible Agency may prepare a subsequent or supplemental EIR, and those relate essentially to major changes in the project or in the circumstances under which the project is built or to address new information of substantial importance. In this case, SEIR 10-001 did address impacts in the event that the co-located power plant no longer needed cooling water and that the proposed desalination project is to draw directly all the seawater it needs. CSLC staff is not aware of any changes in the project, in circumstances under which the project would be built, or in information of substantial importance concerning the project subsequent to the City’s certification of the SEIR. Preparation of a supplemental or subsequent EIR by the CSLC would therefore not appear to be permitted under Section 15162 of the CEQA Guidelines. After considering the City’s SEIR, the CSLC is required under 15096(a) to reach its own conclusion on whether and how to approve the proposed project.

3) DESALINATION BACKGROUND INFORMATION

Desalination is a process that removes dissolved minerals (including, but not limited to, salt) from seawater, brackish water, or treated wastewater. A number of technologies have been developed for desalination, including reverse osmosis (RO), distillation, electrodialysis, and vacuum freezing. The proposed Poseidon Resources desalination project utilizes the RO process. In the RO process, ocean water is pretreated to remove particles and then pumped at high pressure

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through permeable membranes to separate the salts from the water. The quality of the water produced depends on the pressure, the concentration of salts in the water, and the salt permeation constant of the membranes. Product water quality can be improved by forcing water through the membranes twice.

4) ONCE-THROUGH COOLING BACKGROUND INFORMATION

If the desalination facility were operated separately from the power plant, it would require substantial volumes of water to be drawn directly from the ocean. In many respects, use of seawater directly for the proposed facility would be very similar in effect to once-through-cooling operations at the coastal power plants. "Once-through cooling" (OTC) is the process wherein ocean water is pumped through power plants for cooling and then discharged back into the ocean. Environmental impacts from OTC include the potential for marine organisms to be impinged and entrained as a result of the large volume of seawater intake required for cooling. Impingement occurs when marine organisms are trapped against components of the cooling water system, such as screens, where they die. Entrainment is the induction of smaller marine organisms into and through the cooling water system where most, if not all, of the organisms are destroyed by mechanical systems, temperature increases, or toxic stress. In addition, OTC results in biological impacts through thermal discharge. Thermal discharge refers to the release of cooling water at temperatures above ambient conditions resulting in elevation of the temperature of marine waters in the immediate vicinity of the outfall. These effects adversely impact coastal and ocean resources and uses as well as public trust resources that are within the jurisdiction of the Commission.

On February 5, 2007, the Commission authorized a 20-year General Lease – Industrial Use No. PRC1980.1 to AES for the continued use and maintenance of existing intake and outfall structures, for the use as components of an OTC system associated with the upland Huntington Beach Generating Station. As a result of the Commission's concerns over the impacts of OTC, AES's lease contains special language that assures that AES will be in compliance with various regulations governing the use of facilities involving intake of seawater, including but not limited to, the Clean Water Act Section 316 (b) and federal and state regulations. The existing lease allows the Commission to modify the terms and conditions of the lease should that become necessary based on changes to the technology of cooling for power plants that may be required in their authorized capacities by other governmental regulatory agencies.

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5) RELATIONSHIP OF DESALINATION TO OTC

As stated, OTC impacts for power plant operations and desalination operations are similar, but not exactly the same. Seawater intake for desalination purposes, in some cases, results in less mortality of aquatic organisms impinged on the intake screens due to lower flow rates, but may increase effects on aquatic organisms due to higher rates of salt brine in the discharge water. Both operations are similar in that organisms will be impinged and entrained within the system. The extent of the impacts of each operation are primarily dependent upon flow rates, water temperatures used for cooling the power generators and water temperatures used in cleaning organisms attached to the interior walls of the pipes utilized for intake, process and discharge of seawater.

The benefit afforded to desalination projects co-located with power plants comes from use of the power plants discharged cooling water. The desalination facility operator does not have to construct new intake and discharge facilities. Feed water has already been pumped out of the ocean by the power plant. Most importantly, the desalination facility is not imposing an additional entrainment and impingement impact when it uses only water discharged by a power plant.

In May 2010, the State Water Resources Control Board adopted a statewide policy on the use of coastal and estuarine waters for power plant cooling (Once-Through-Cooling (OTC); Title 23, Section 2922). The policy became effective October 1, 2010. This policy and anticipated new regulations adopted by both state and federal agencies, along with the trend towards repowering existing power plants with new technology, is likely to reduce or eliminate the use of OTC. Should the Poseidon Huntington Beach desalination facility be successful, many more such facilities could be proposed. If power plants no longer use OTC, the desalination facilities will have to operate independently, and entrainment and impingement would therefore continue. The State Water Resources Control Board's OTC policy, however, does not currently apply to seawater desalination plants. Because the project would use Public Trust resources on sovereign lands affected by entrainment and impingement during stand-alone operations, Poseidon has agreed, as compensation for that use, to assume the maintenance obligations for the existing entrainment and impingement mitigation program currently being maintained by AES.

6) GREENHOUSE GAS EMISSIONS (GHG) ASSOCIATED WITH THE PROJECT

As part of its August 2008 approval of Poseidon's desalination facility in the City of Carlsbad, San Diego County, the Commission added lease conditions to ensure that Poseidon would offset all direct GHG emissions generated during construction and operation, including construction materials, transportation and

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equipment, as well as emissions generated indirectly through energy consumed during all aspects of the facilities operations. With these conditions, Poseidon could meet its announced objective that its project would be “carbon neutral.”

Commission staff has reviewed the analysis of GHG emissions contained in SEIR 10-001, certified by the City of Huntington Beach on September 7, 2010, for the proposed Poseidon Huntington Beach desalination facility, and the GHG Plan adopted by the city on September 20, 2010. It is Commission staff’s opinion that these documents do address GHG emissions from both construction and operation of the facility and ancillary impacts. The information provided in these documents may be subject to subsequent review by any and all applicable regulatory authorities, including but not limited to, the California Coastal Commission and the South Coast Air Quality Management District. Therefore, staff recommends that the Poseidon’s lease include a condition that would authorize the Executive Officer to incorporate any new terms lawfully imposed on the GHG Plan by any and all applicable regulatory authorities.

OTHER PERTINENT INFORMATION:

Poseidon Resources has agreed to provide, in addition to the \$500,000 bond already posted by AES, a Performance Deposit in the amount of \$500,000 that will ensure the financial wherewithal to accomplish restoration of the lease premises in the event that the facilities are no longer being used and to ensure compliance with all of the terms of the lease. This includes removal of the seawater intake and outfall pipelines. Additionally, a parent guaranty must be provided by Poseidon Water LLC to ensure Poseidon Resources’ compliance with the terms of the lease. The amendment would not be executed by Lessor until after those items are provided.

Commission staff has received many letters of support for favorable consideration of the proposed desalination project from a variety of sources including, but not limited to, five State Senators, nine State Assemblymembers, the Secretary for the California Natural Resources Agency, union representatives, members of the Huntington Beach Chamber of Commerce, a local trade council, a taxpayers association, and private citizens.

In addition, Commission staff has received a letter in opposition, in 2007, to the project from the Coast Law Group on behalf of the Surfrider Foundation.

Salinity

The City’s SEIR identifies a concentrated brine discharge stream, but states that the environmental impacts from this discharge are not significant. However, not

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addressed was the use of Public Trust resources that would result from increased salinity offshore of the outfall. According to the SEIR, elevated salinity, while not environmentally significant, would affect an area from seven to 20 acres, an area that marine life is likely to avoid. The project is therefore expected to use an area of at least seven acres of sovereign tide and submerged lands, although the actual area occupied may ultimately prove different. As a consequence, Poseidon has agreed to pay annual rent, commencing with the start of the desalination operation, in the amount of \$115,500 for the use of these lands, based upon the value of seven acres expected to be occupied. After two years of monitoring, if it is determined that the area is not so affected or if the area affected is different, then Poseidon may apply to the Commission for elimination or modification of that rent.

Commission Staff Review and Recommendations

Commission staff has reviewed SEIR 10-001 certified by the City of Huntington Beach, the NPDES permit issued by the Santa Ana Regional Water Quality Control Board, and subsequent reports provided by Poseidon Resources. As a result, Commission staff recommends approval of the proposed lease amendment.

A Mitigation Monitoring and Reporting Program in conformance with State CEQA Guidelines (Title 14, California Code of Regulations, section 15097) is attached as Exhibit B.

Findings made in conformance with State CEQA Guidelines (Title 14, California Code of Regulations, sections 15091 and 15096) are attached as Exhibit C.

A Statement of Overriding Considerations made in conformance with State CEQA Guidelines (Title 14, California Code of Regulations, section 15093) is attached as Exhibit C.

This activity involves lands identified as possessing significant environmental values pursuant to public Resources Code sections 6370, et seq. Based upon the Staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

City of Huntington Beach
Santa Ana Regional Water Quality Control Board
California Department of Public Health

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FURTHER APPROVALS REQUIRED:

California Coastal Commission

EXHIBITS:

- A. Site and Location Map
- B. Mitigation Monitoring and Reporting Program
- C. CEQA Findings, Statement of Overriding Considerations

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Subsequent EIR SCH# 2001051092 was prepared for this project by the City of Huntington Beach and certified on September 7, 2010 and that the Commission has reviewed and considered the information contained therein and reached its own conclusion regarding approval of the project.

Adopt Mitigation Measures, as stated in the Mitigation Monitoring and Reporting Program, as attached in Exhibit B.

Adopt the Findings made in conformance with Title 14, California Code of Regulations, Sections 15091 and 15096(h), as attached in Exhibit C.

Adopt the Statement of Overriding Considerations made in conformance with Title 14, California Code of Regulations, Section 15093 and 15096, included in Exhibit C.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code Sections 6370, et seq.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 1980.1, a General Lease – Industrial Use, issued to AES Huntington Beach LLC to include Poseidon Resources (Surfside) LLC as a Co-Lessee and certain provisions pertaining to the operation of the desalination facility, of lands shown on Exhibit A attached (for reference purposes only), effective October 29, 2010; all other terms and conditions of the lease will remain in effect without amendment.