

~ MINUTES ~  
CALIFORNIA STATE LANDS COMMISSION  
MEETING OF AUGUST 22, 2008

RONALD REAGAN STATE BUILDING  
1<sup>ST</sup> FLOOR AUDITORIUM  
300 SOUTH SPRING STREET  
LOS ANGELES, CALIFORNIA 90013

**APPEARANCES**

**COMMISSIONERS PRESENT**

John Chiang, Controller, Chair  
John Garamendi, Lieutenant Governor  
Anne Sheehan, Chief Deputy Director, Department of Finance, representing  
Michael C. Genest, Director, Department of Finance

**STAFF MEMBERS IN ATTENDANCE**

Paul Thayer, Executive Officer  
Curtis Fossum, Acting Chief Counsel

**REPRESENTING THE OFFICE OF THE ATTORNEY GENERAL**

Joseph Rusconi, Deputy Attorney General

**NOTE:** *A list of individuals making statements before the Commission and the entities they represent, along with the Executive Officer's Report, are included in a complete transcript of the proceedings, which is on file in the Sacramento offices of the Commission and posted on the Commission's website [www.slc.ca.gov](http://www.slc.ca.gov). Also included on the website is the voting record of the meeting with the staff report for each agenda item linked to the respective consent or regular item number.*

**RECORD OF ACTION TAKEN BY THE  
CALIFORNIA STATE LANDS COMMISSION  
MEETING OF AUGUST 22, 2008**

State Controller John Chiang, Chair, called the regular meeting of the California State Lands Commission to order at 9:04 A.M. at the Ronald Reagan State Building Auditorium, 300 South Spring Street, Los Angeles, California 90013. Also present were Commissioner John Garamendi and Commissioner Alternate Anne Sheehan.

The Minutes of the June 24, 2008 meeting were approved as presented by a vote of 3-0.

**CONSENT CALENDAR:** Consent items C43, C46 and C52 were postponed and removed from the agenda. Consent items C01-C42, C44, C45, C47-51, C53 and C54 were approved as presented by a vote of 3-0.

**REGULAR CALENDAR:** Regular item 55 was amended as set forth below and approved by a vote of 3-0.

The terms of the lease proposed by the staff of the State Lands Commission, attached as Exhibit F to the Staff Report, are amended by replacing the relevant Exhibit F paragraphs with those set forth below:

1. Paragraph 10.a) In addition to Poseidon's offset requirements under the GHG Plan, Poseidon shall be deemed to have fully offset construction and operational impacts of the desalination facility by obtaining an additional 25,000 tons of carbon offsets/Renewable Energy Certificates (RECs), subject to the verification procedures in the GHG Plan, as a one-time obligation, to be purchased prior to operation of the desalination facility;

Paragraph 10.b) The provisions of Section III(E) of the Energy Minimization and Greenhouse Gas Reduction Plan (the GHG Plan), as adopted by the California Coastal Commission on August 6, 2008, entitled, "Contingency if No GHG Reduction Projects are Reasonably Available," shall apply to Poseidon's lease, except that if: (i) offsets in an amount necessary to mitigate the Project's GHG emissions are not reasonable available; (ii) the "market price" for carbon offsets or RECs is not reasonably discernable; (iii) the market for offsets or RECs is suffering from significant market disruptions or instability; or (iv) the market price has escalated to a level that renders the purchase of offsets/RECs economically infeasible to the Project, then: Poseidon may delay or postpone acquisition of carbon offsets or RECs required under this lease for a period of up to three years from the date acquisition of the offset is due, provided that: (i) Poseidon shall bank the minimum purchase price of \$10 per ton of carbon required to be offset per year during the market disruption as required under Section III(E) of the GHG Plan; and (ii) that within three years from the date that acquisition of the annual offset would otherwise be due, Poseidon shall acquire

those carbon offsets or RECs as required under this lease for that annual offset, regardless of cost per ton of carbon offsets required.

2. Paragraph 10.c) This sub-paragraph was intentionally left blank.
3. Paragraph 10.d) This sub-paragraph was intentionally left blank.
4. Paragraph 11.b) The provision of the Marine Life Mitigation Plan notwithstanding, Poseidon shall request an amendment to Lease PRC 8727.1 if Poseidon desires to receive mitigation credits for direct benefits to marine life from dredging that would otherwise be required pursuant to compliance with the Marine Life Mitigation Plan.
5. Paragraph 11.c) Poseidon shall at all times during the term of the Lease, comply with the post restoration monitoring and remediation requirements set forth in Marine Life Mitigation Plan Section 5.4 for ensuring the success of the wetlands restoration site(s), provided that the standards include success criteria from four existing successful sites and that Poseidon achieve a 95% confidence level of success for the restoration required. Should the Coastal Commission amend Section 5.4 at any time, Poseidon shall request amendment of this Lease.
6. Paragraph 13. Replace the term "Lessor's Executive Officer" with "Lessor".
7. Paragraph 14. Replace the term "Lessor's Executive Officer" with "the Lessor".
8. Paragraph 16.a) ii) a non-cancelable wetland performance deposit in the amount of \$3,700,000 prior to commencement of operation of the desalination facility to ensure the implementation of compensatory mitigation, monitoring and maintenance as described in the approved plan. Fifty percent (50%) of the wetland performance deposit shall be released when the Lessor's Executive Officer determines that construction has been completed in conformance with the plans approved by the California Coastal Commission. The remainder of the wetland performance deposit for Phase I of the restoration project shall be proportionally and incrementally released based upon the productivity of the wetlands as determined by Lessor's Executive Officer, based upon the performance standards as outlined in the Marine Life Mitigation Plan, as adopted by the California Coastal Commission on August 6, 2008, provided that any further modification to the performance standards in Marine Life Mitigation Plan Section 5.4 shall require amendment of Lease PRC 8727.1.
9. Paragraph 16.c) Regardless of the form in which Poseidon elects to make said performance deposit(s), all or any portion of the principal sum shall be available unconditionally to Lessor for correcting any default or breach of this lease by Poseidon, its successors or assigns or for payment of reasonable and actual expenses incurred by Lessor as a result of the failure of Poseidon, its

successors or assigns, to perform faithfully any and all of the terms, covenants, and conditions of this Lease. The wetland performance deposit referenced in subsection (a)(ii) above shall only be available to cure defaults related to section 11 of this lease. The performance deposit referenced in subsection (a)(i) above shall be available to cure all other defaults under the lease.

Regular items 56 and 57 were approved as presented by a vote of 3-0.

The Commission adjourned into Closed Session at 1:11 P.M.

**PUBLIC ADDRESSING THE FOLLOWING CALENDAR ITEMS  
CALIFORNIA STATE LANDS COMMISSION MEETING**

**AUGUST 22, 2008**

**CALENDAR ITEM 5 – OWENS LAKE**

- David Nawi, Environmental Mediator
- William Van Wagoner, Manager of Owens Lake Regulatory

**CALENDAR ITEM 12 – AT&T FIBER OPTIC CABLE**

- Jim Burroughs, AT&T

**REGULAR ITEM 55 – POSEIDON**

- Gary Arant, General Manager, Valley Center Municipal Water District
- Livia Borak, Clinic Associate, San Diego Coastkeeper
- Judy Brown, Public Land Manager, Land Management Division, CLSC
- Andrea Cook, Program Manager-Climate Change, CA Center for Sustainable Energy
- Rachel Davis, Director of Research, The Desal Response Group
- Nancy Donovan, R4RD, Residents for Responsible Desalination
- Barbara Dugal, Chief, Land Management Division, CSLC
- Conner Everts, Executive Director, Desal Response Group
- Joe Geever, CA Policy Coordinator, Surfrider Foundation
- Lorena Gonzalez, CEO/Secretary-Treasurer, San Diego Imperial Counties Labor Council
- Eric Larson, Executive Director, Farm Bureau of San Diego County
- Tom Lemmon, Business Manager, San Diego Building & Construction Trades Council
- Bud Lewis, Mayor, City of Carlsbad
- Renee Maas, Food and Water Watch
- Peter MacLaggan, Senior VP, Poseidon Resources
- Jack Minan, Professor of Law, University of San Diego School of Law
- Steve Mindt, Staff Environmental Staff Scientist, DEPM, CSLC
- Jonas Minton, Senior Water Policy Advisor, Planning and Conservation League
- Merle Moshiri, President, R4RD, Residents for Responsible Desalination
- Eileen Murphy, R4RD, Residents for Responsible Desalination
- Julie Nygaard, Councilmember, City of Carlsbad
- Paul O'Neal, Chairman, San Diego North Economic Development Council

### **REGULAR ITEM 55 – POSEIDON (Continued)**

- Ted Owen, Chief Executive Officer, Carlsbad Chamber of Commerce
- Larry Porter, Newport Beach resident
- Bruce Reznik, Executive Director, San Diego Coastkeeper
- Bob Smith, Professor Emeritus, R4RD, Residents for Responsible Desalination
- Joy Shih, La Jolla resident
- Andrew Sienkiowich, Resource Implementation Manager, Metropolitan Water District
- Deanna Spehn, Policy Director, State Senator Christine Kehoe
- Charlotte Stevenson, Staff Scientist, Heal the Bay
- Charlie Stringer, Consultant for Poseidon
- Kim Thorner, General Manager, Olivenhain Municipal Water District
- Susan Varty, President, Olivenhain Municipal Water District
- Brett Wertz, Graduate Researcher
- Rick Zbur, Latham and Watkins, Counsel for Poseidon Resources

### **REGULAR ITEM 57– OIL AND GAS LEASING**

- Robin Vills, Vice President, Fugro West Inc.

### **PUBLIC COMMENT PERIOD**

- Ray Ergas, Director, Dana Point Boaters Association
- Lorena Gonzalez, CEO/Secretary-Treasurer, San Diego-Imperial Counties Labor Council