

Staff Report 36

Assignment of Lease

CO-LESSEE/ASSIGNOR:

Cabrillo Power I LLC

CO-LESSEE/ASSIGNEE:

Poseidon Resources (Channelside) LP

LEASE TERMS:

AREA, LAND TYPE, AND LOCATION

5.548 acres, more or less, of sovereign land in the Pacific Ocean, adjacent to Agua Hedionda Lagoon, Carlsbad, San Diego County.

AUTHORIZED USE:

Use and maintenance of existing seawater intake and outfall structures, and the desalination use of existing improvements to include the commingling of brine discharge by the upland Carlsbad Desalination Plant.

TERM:

20 years, beginning December 14, 2006.

CONSIDERATION:

First year's rent of \$123,000, referred to as the "Base Rent." The "Base Rent" to be adjusted annually be the Consumer Price Index (CPI) for All Urban Consumers, San Diego, California, with the State reserving the right to fix a different "Base Rent" periodically during the term of the lease, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$5,000,000 per occurrence.
- Non-cancelable operational performance deposit in an amount of not less than \$1,000,000.

- Non-cancelable wetland performance deposit in the amount of \$3,700,000.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6106, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On May 10, 2007, the Commission authorized a 20-year General Lease – Industrial Use to Cabrillo Power I LLC, for use and maintenance of existing intake and outfall structures, each of which is comprised of two rock groins separated by an open water channel. The structures were used as components of a once-through cooling (OTC) system associated with the upland Encina Power Plant ([Item 89, May 10, 2007](#)). The lease will expire on December 13, 2026.

On August 22, 2008, the Commission authorized an amendment of lease to include Poseidon Resources (Channelside) LLC as a co-lessee and allow the intake of seawater and the commingling of brine water discharge for the Carlsbad Desalination Plant ([Item 55, August 22, 2008](#)). In 2010, the Commission authorized an amendment and consent to encumbrancing of the lease with Union Bank, N.A., as Secured Party for its interest in the lease premises, in connection with the financing of Poseidon's new Carlsbad Desalination Plant ([Item C76, June 28, 2010](#)). In 2012, the Commission authorized an assignment of lease from Poseidon Resources Limited Liability Company (LLC) to Poseidon Resources Limited Partnership (LP) and an agreement and consent to encumbrancing of the lease interest ([Item C58, December 5, 2012](#)).

On December 11, 2018, Cabrillo Power I LLC ceased electrical generation and OTC operations at the Encina Power Station. As required by the Lease, Cabrillo notified Commission staff in writing prior to discontinuing use of the lease premises for the production of electricity. The Co-Lessee assumed exclusive control of the seawater intake and discharge structures for supply to the Carlsbad Desalination Plant.

Cabrillo is requesting Commission authorization to assign its obligations associated with Lease 8727 to the Co-Lessee Poseidon Resources (Channelside) LP (Poseidon). Poseidon agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease. Poseidon is registered with the office of the Secretary of State (Entity Number 201023200003). Poseidon holds a California Coastal Development permit for the facility and is currently in compliance with its permit.

Poseidon holds a current National Pollutant Discharge Elimination System permit with the San Diego Regional Water Board (NPDES No. CA0109223). Due to the COVID-19 pandemic and Governor Newsom's Executive Order No. N-33-20 (Stay Home Order), the Water Board allowed Poseidon to make specific adjustments to its compliance protocols for the NPDES permit:

- Poseidon typically uses the salinity probe at the end of Scripps Pier as the reference location for natural background salinity, but during the Stay Home Order, the salinity probe is not being maintained or calibrated by the Scripps Institution of Oceanography. The Water Board gave Poseidon temporary permission to use specified alternate locations for background salinity.
- The Water Board temporarily suspended offshore monitoring requirements of the NPDES permit because of the closure of the Oceanside boat ramp and the difficulty of maintaining social distancing for several personnel in a small boat to collect samples safely. It is expected that Poseidon's commercial laboratory will continue operations during the pandemic.

Additionally, the Lease requires Lessee to comply with all federal, state, and local agencies having jurisdiction over the operating facilities.

Poseidon's Carlsbad Desalination Plant began operation on December 14, 2015 and has since provided drinking water to the San Diego region, pursuant to the 2012 30-year Water Purchase Agreement between Poseidon and the San Diego County Water Authority. Following the December 11, 2018 retirement of Encina Power Station, Poseidon assumed exclusive ocean water intake and discharge via Agua Hedionda Lagoon and Cabrillo's intake structure for supply of water to the desalination plant. The desalination plant produces approximately 50 million gallons of potable water per day through a reverse osmosis process and discharges the commingled brine waste to the Pacific Ocean through the existing discharge structure.

The assignment of the lease will not affect the terms of the lease or Poseidon's obligation. Poseidon is in compliance with the lease terms. The lease assignment will not change the use of, or impacts to, Public Trust resources.

CLIMATE CHANGE:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located in the Pacific Ocean, offshore of Carlsbad, which is a tidally influenced site.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-

high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The La Jolla tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for La Jolla¹

Year	Projection (feet)
2030	0.9
2040	1.3
2050	2.0
2100	7.1

Source: Table 31, State of California Sea-Level Rise

Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run-up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run-up, potentially resulting in greater beach erosion than previously experienced.

Rising sea levels can lead to increased flooding through regular inundation and larger flooding events, when combined with tidal events and storm surges. These climate change and sea-level rise impacts can also affect erosion and sedimentation rates through increased wave action and scour, which in turn can lead to decreased shoreline stability and structure.

The lease is a 20-year General Lease – Industrial Use that began on December 14, 2006, and the lease area may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the end of the lease term in 2026 if an application for a new lease is submitted and would be based on projected sea-level rise scenarios at that time.

CONCLUSION:

Staff believes approval of this assignment will not substantially interfere with Public Trust uses and values and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for assignment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. The assignment of lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment of the lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the assignment of Lease PRC 8727, a General Lease – Industrial Use, of sovereign land, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof, from Cabrillo Power I LLC to Poseidon Resources (Channelside) LP; effective August 20, 2020.

EXHIBIT A

PRC 8727

PARCEL 1 (Formerly PRC 1409)

A parcel of tide and submerged land lying within the Pacific Ocean, City of Carlsbad, County of San Diego, State of California, described as follows:

COMMENCING at Corner No. 1 of Rancho Agua Hedionda according to map number 823, filed November 16, 1896 in the Office of the County Recorder of said County, said Corner No. 1 having CCS27, Zone 6 coordinates of N = 358,014.6 feet, E = 1,665,348.0 feet per the October 1953 survey of the ordinary high water mark by the California State Lands Commission, and shown on map CB 512 on file in the Office of said Commission; thence S 30°17'50" E 3060.36 feet; thence S 65°53'36" W 187.10 feet to said survey of the ordinary high water mark and TRUE POINT OF BEGINNING; thence N 21°09'41" W 95.13 feet along said survey of the ordinary high water mark; thence leaving said survey of the ordinary high water mark the following five (5) courses:

1. S 65°52'36" W 226.46 feet;
2. S 24°07'24" E 110.00 feet;
3. S 65°52'36" W 60.00 feet;
4. S 24°07'24" E 70.00 feet;
5. N 65°52'36" E 275.00 feet to said survey of the ordinary high water mark;

thence along said survey of the ordinary high water mark N 19°18'03" W 66.23 feet; and N 21°09'41" W 19.03 feet to the point of beginning.

TOGETHER WITH any tide and submerged lands lying between the 1953 survey of the ordinary high water mark and the ordinary high water mark.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

The description of Parcel 1 is based on the California Coordinate System 1927, Zone 6.

PARCEL 2 (Formerly PRC 871)

A strip of tide and submerged land 364 feet wide in the City of Carlsbad, County of San Diego, State of California, extending into the Pacific Ocean from the ordinary high water mark as established in the October 1953 survey by the California State Lands Commission, and shown on map CB 511 - 513, on file in the Office of said Commission, the side lines of which lie 197 feet northwesterly and 167 feet southwesterly, measured at right angles from and parallel with the following described line:

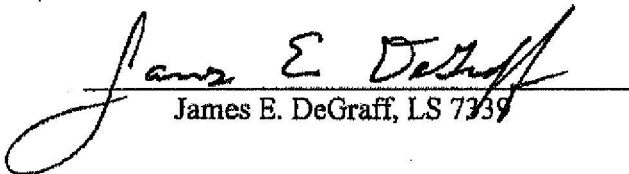
feet from Corner No. 1 of Rancho Agua Hedionda, according to Partition Map thereof number 823, filed November 16, 1896 in the Office of the County Recorder of said County; thence from said point of beginning S 53°05'45" W a distance of 680.00 feet.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

END OF DESCRIPTION

This description shall not be construed as a waiver or limitation of State sovereign land interests in the event that the ordinary high water mark is determined to be landward of said 1953 survey of the ordinary high water mark.

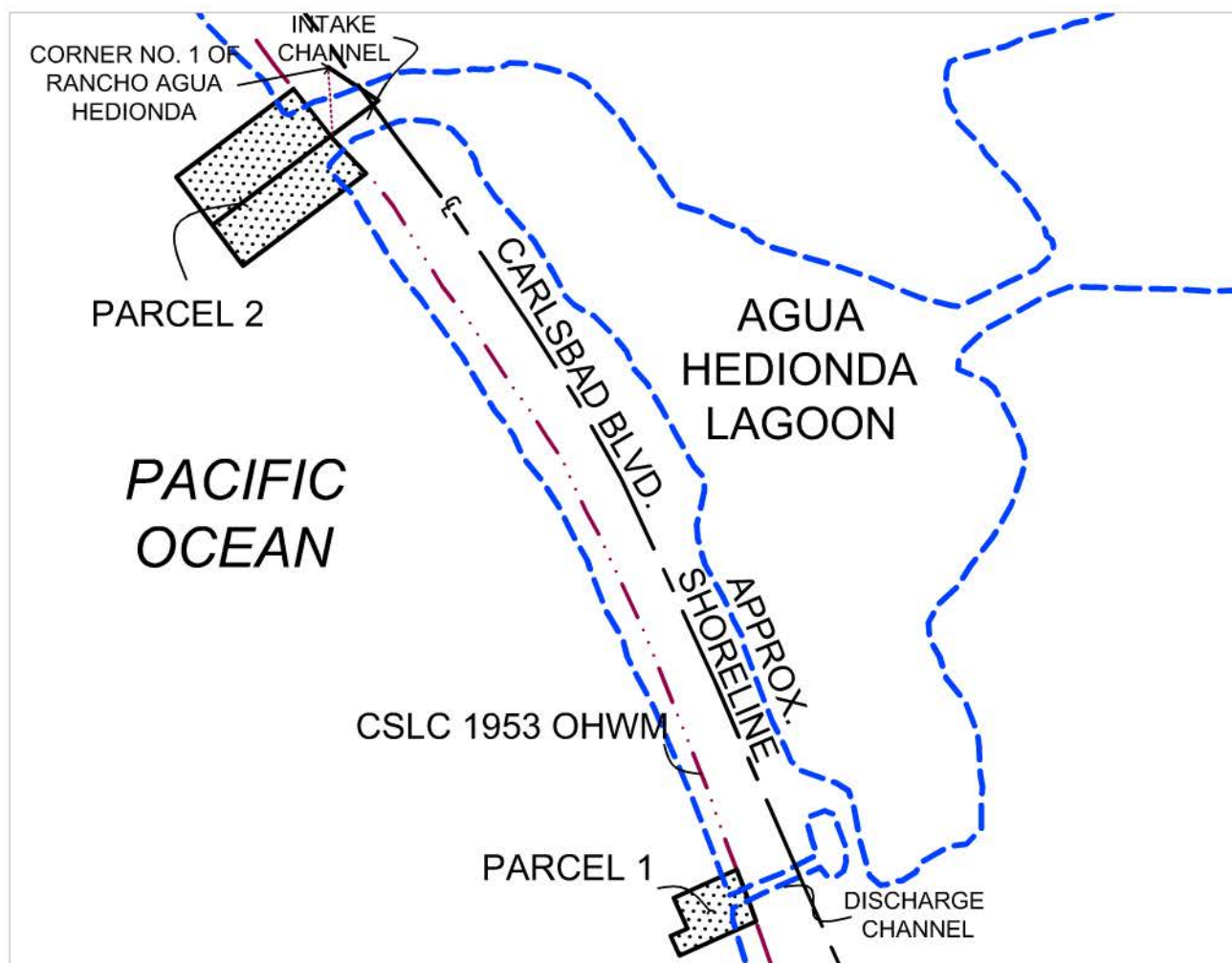
Prepared December 19, 2006 by the California State Lands Commission Boundary Unit


James E. DeGraff, LS 7339



NO SCALE

SITE



EXISTING GROIN STRUCTURES, AGUA HEDIONDA LAGOON

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 8727
POSEIDON RESOURCES
(CHANNELSIDE) LP
GENERAL LEASE -
INDUSTRIAL USE
SAN DIEGO COUNTY



MJF 7/24/2020