

Staff Report 49

APPLICANT/CO-LESSEE:

Poseidon Resources (Surfside) LLC (Poseidon Resources)

PROPOSED ACTION:

Acceptance of a lease quitclaim deed to terminate Poseidon Resources' rights and obligations as Co-Lessee under Lease No. PRC 1980.1, a General Lease – Industrial Use, pertaining to its proposed Huntington Beach Desalination Plant.

AREA, LAND TYPE, AND LOCATION:

11.78 acres, more or less, of sovereign tide and submerged land located in the Pacific Ocean, offshore Huntington State Beach, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of one existing 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 (Lease Facilities). The pipelines are currently utilized as components of the “once-through cooling” (OTC) system associated with the upland AES Huntington Beach Generation Station. Poseidon Resources is authorized to modify the intake pipeline by adding four active (self-cleaning) stainless steel wedgewire screen manifolds with 1 millimeter spacing at the end of the pipeline along with foundations to support screens; install a multiport seawater diffuser on the offshore end of the discharge pipeline to enhance brine mixing with seawater; and reduce seawater intake volume, as a result of the above technology modifications, to 106.7 million gallons per day from the 152 million gallons per day volume for the proposed Huntington Beach Desalination Plant.

TERM:

20 years, beginning August 8, 2006.

CONSIDERATION:

Under the current lease, the Lessees' monetary obligations are: (1) AES pays annual rent to the Commission in the amount of \$111,060 (due to an annual adjustment of the original Base Rent amount of \$82,000 by Consumer Price Index (CPI) for all Urban Consumers, Los Angeles Riverside-Orange County, California); and (2) Poseidon Resources is obligated to pay \$115,500 annually beginning on the first day of the operation of the desalination facility to compensate for the use of Public Trust resources on sovereign land affected by increases in salinity from the desalination facility's brine-concentrated seawater discharge to the Pacific Ocean.

SPECIFIC LEASE PROVISIONS:

- Lessee shall obtain all approvals necessary for construction prior to the beginning of any construction and necessary for operation prior to the beginning of commercial operations within the Lease Premises from all agencies having jurisdiction over this project. Upon Lessor's request, Lessee shall submit to Lessor copies of all such approvals and/or permits.
- 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's rights or obligations under this Lease subject to the notice provision in Section 4, paragraph 11(b) of this Lease. In the event that AES fails to comply in any material respect with any and all of its separate obligations under this Lease, Lessor may terminate AES's rights under this Lease without affecting any or all of Poseidon Resources' rights or obligation [sic] under this Lease subject to the notice provision in Section 4, paragraph 11(b) of this Lease.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6210.7, 6216, 6219, 6220, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 5, 2007, the Commission authorized a General Lease – Industrial Use to AES Huntington Beach, LLC, for the use and maintenance of one existing 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 (Lease Facilities). The pipelines are currently utilized as components of the

“once-through cooling” (OTC) system associated with the upland AES Huntington Beach Generating Station ([Item 43, February 5, 2007](#)).

On October 29, 2010, the lease was amended to include Poseidon Resources as a Co-Lessee and authorize the use of the existing improvements for the proposed Huntington Beach Desalination Plant ([Item 62, October 29, 2010](#)).

In 2017, the Commission authorized an amendment of lease to modify the offshore pipelines by adding four active (self-cleaning) stainless steel wedgewire screen manifolds with 1 millimeter spacing at the end of the pipeline along with foundations to support screens; install a multiport seawater diffuser on the offshore end of the discharge pipeline to enhance brine mixing with seawater; and reduce seawater intake volume, as a result of the above technology modifications, to 106.7 million gallons per day from the 152 million gallons per day volume for the proposed Huntington Beach Desalination Plant ([Item 97, October 19, 2017](#)). The lease will expire on August 7, 2026.

Pursuant to its requirements as Co-Lessee under the Lease, Poseidon Resources can only construct and operate the desalination plant if the design modifications of the existing offshore intake and discharge pipelines are approved by the Santa Ana Regional Water Board (Board) and the California Coastal Commission (CCC). In April 2021, the Board renewed Poseidon Resources' National Pollutant Discharge Elimination System Permit (NPDES). Subsequently, in March 2022, the CCC denied Poseidon Resources' application for a Coastal Development Permit. On May 31, 2022, Poseidon terminated a separate easement option agreement it had with AES related to the proposed desalination plant.

The lease provides that, in the event that Poseidon fails to comply in a material respect with its lease obligations, the Commission may terminate lease interest without affecting AES' rights or obligations under the lease. Poseidon's inability to obtain permits for the Project have rendered it incapable of complying with the terms of the lease and maintain its obligations as a Co-lessee. The lease, as amended in 2010, identifies that both Poseidon and AES, as Co-lessees, are jointly and severally liable for complying with the terms of the lease, but that if either failed to meet their respective obligations they could be removed from the lease through a termination action by the Commission and the remaining Co-lessee would be fully responsible for all lease obligations. In the spirit of the termination provision, and consistent with Public Resources Code Sections 6210.7 and 6220, either Co-Lessee can also quitclaim their relative interest in the lease, with proper notice, and the remaining Co-lessee assumes all responsibility for lease compliance. Through coordination with Co-lessee AES, and with staff's direction, Poseidon is tendering a quitclaim deed to the Commission to facilitate the removal

of Poseidon from Lease No. PRC 1980.1. The Commission's acceptance of Poseidon's lease quitclaim deed will terminate Poseidon's separate rights and obligations as a Co-Lessee under Lease No. PRC 1980.1, a General Lease – Industrial Use, without affecting any or all of AES's rights or obligations under this lease. Staff notified AES by email of the proposed acceptance of the quitclaim to terminate Poseidon as Co-lessee under the lease, and in response AES confirmed its agreement that Poseidon should be removed from the lease as Co-lessee.

Acceptance of the quitclaim deed is consistent with the Public Trust and the State's best interests because it will contribute to the orderly administration of state lands, since Poseidon no longer plans, and is unable, to pursue its development plans authorized by the lease. Staff recommends acceptance of the quitclaim deed, which will become effective upon approval of this item on December 9, 2022.

CONCLUSION:

For these reasons, staff recommends acceptance of a lease quitclaim deed to terminate Poseidon Resources' separate rights and obligations as a Co-Lessee will not substantially interfere with the common law Public Trust Doctrine and is in the best interests of the State

OTHER PERTINENT INFORMATION:

1. Approval or denial of the lease quitclaim 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. If the Commission denies the application, the Co-Lessee's rights and obligations under the lease would not be terminated. Removing Poseidon Resources as Co-Lessee from Lease No. 1980.1 does not give it any right to a new lease or to renewal of any previous lease.
2. The \$6 million bond associated with the lease was executed by AES and will remain in place to secure AES's lease obligations.
3. Lease No. PRC 1980.1 will expire on August 7, 2026. The lease requires all plans for removal and restoration of lease improvements to be made to the satisfaction of the Lessor and to be completed within 180 days after the expiration or sooner termination of the lease. The lease requires that in removing any improvements, the Lessee must restore the lease premises as nearly as possible to the conditions existing prior to their installation or construction.

4. This action is consistent with the “Meeting Evolving Public Trust Needs” and “Climate Activism” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
5. Acceptance of the quitclaim deed is not a project as defined by CEQA 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 acceptance of a lease quitclaim deed to terminate Poseidon Resources’ separate rights and obligations as a Co-Lessee under Lease No. PRC 1980.1, a General Lease – Industrial Use, without affecting any or all of AES’s rights or obligations under this lease, will not substantially interfere with the public rights to navigation or with the common law Public Trust Doctrine and is in the best interests of the State.

AUTHORIZATION:

Authorize acceptance of a lease quitclaim deed to terminate Poseidon Resources (Surfside) LLC’s rights and obligations as Co-Lessee of Lease No. PRC 1980.1, a General Lease – Industrial Use, for existing seawater intake and discharge pipelines pertaining to its proposed Huntington Beach Desalination Plant, effective December 9, 2022.

EXHIBIT A

PRC 1980

LAND DESCRIPTION

A parcel of tide and submerged land lying in the Pacific Ocean, in the City of Huntington Beach, County of Orange, State of California, more particularly described as follows:

COMMENCING at the intersection of the north and south centerline of Section 13, Township 6 South, Range 11 West, S.B.B. & M., in the Rancho Los Bolsas, with the northeasterly line of the Pacific Coast (State) Highway, as same is shown 100.00 feet wide, on a Record of Survey Map filed in Book 29, Record of Surveys, Page 27 in the Recorder Office of the County of Orange, said intersection being South 00° 40' 50" East 2507.07 feet, more or less, from the center of said Section 13; thence along said northeasterly line, South 55° 24' 30" East 37.07 feet; thence at right angle to said northeasterly line, South 34° 35' 30" West 580.00 feet, more or less, to a point on the mean high tide line of the Pacific Ocean, said point being the POINT OF BEGINNING; thence southeasterly along said mean high tide line, to a line that is parallel with and 180.00 feet southeasterly, measure at right angle, from that certain course, and its southwesterly prolongation, hereinabove described as having a bearing of South 34° 35' 30" West and a length of 580 feet, more or less; thence along said parallel line South 34° 35' 30" West 1702.50 feet, more or less, to a line that is parallel with and 2187.50 feet southwesterly, measured at right angle, from the southwesterly line of said Pacific Coast (State) Highway; thence along said parallel line North 55° 24' 30" West 300.00 feet; thence North 34° 35' 30" East 1717.50 feet, more or less, to said mean high tide line; thence southeasterly, along said line, to the POINT OF BEGINNING.

END OF DESCRIPTION

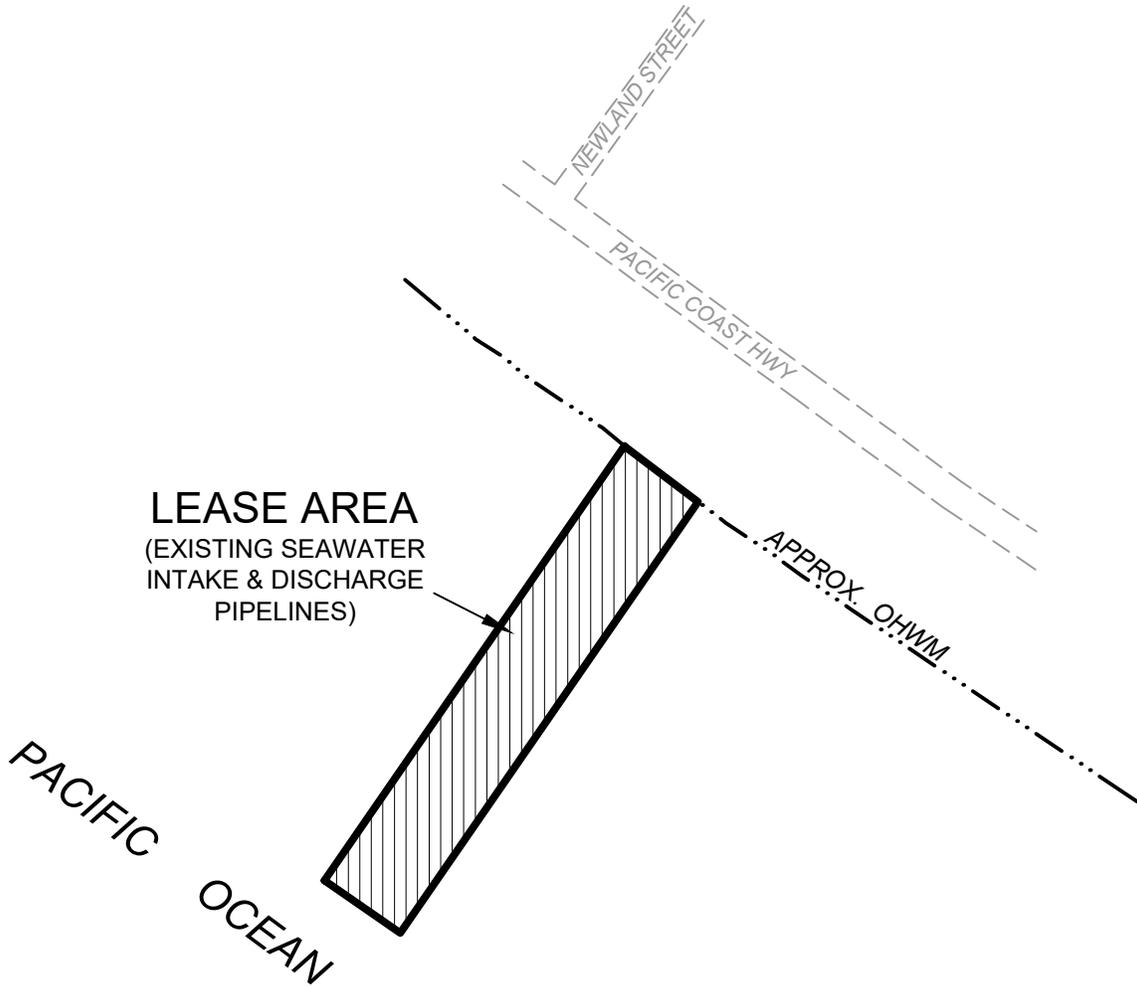
The above description is based on that original description prepared by CSLC on December 12, 1957, as found in PRC 1980 file, Minute Item 97.

Revised August 31, 2022 by the California State Lands Commission Boundary Unit.



NO SCALE

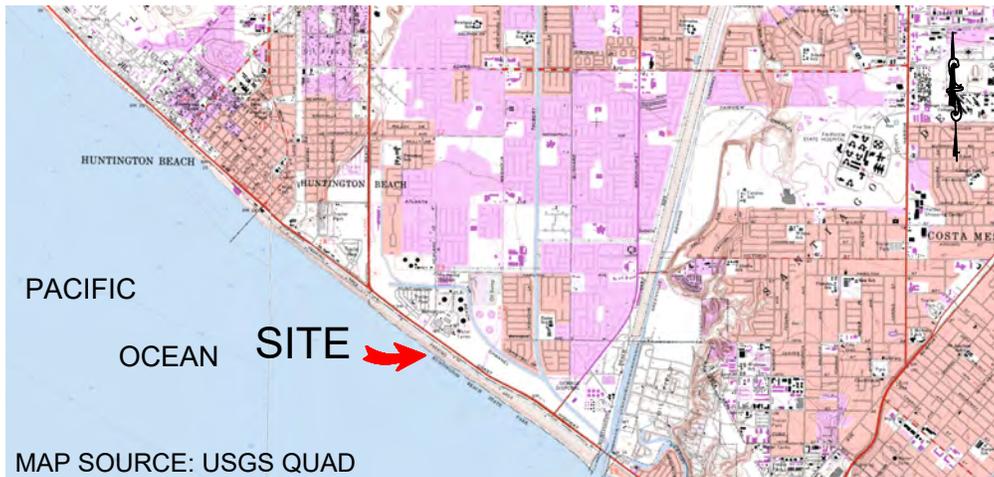
SITE



PACIFIC OCEAN, CITY OF HUNTINGTON BEACH

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 1980
 AES HUNTINGTON
 BEACH LLC
 GENERAL LEASE -
 INDUSTRIAL USE
 ORANGE COUNTY



TS 08/31/2022