



December 12, 2019

Chair William Ruh and Board Members
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

Sent via electronic mail to: santaana@waterboards.ca.gov.

RE: Board Member Murray Recusal – Draft Waste Discharge Requirements for Poseidon-Huntington Beach Desalination Facility, Order No. R8-2020-0005, NPDES No. CA8000403

Dear Chair Ruh and Regional Board Members:

California Coastkeeper Alliance (CCKA) is a network of California Waterkeeper organizations working to protect and enhance clean and abundant waters throughout the state for the benefit of Californians and California ecosystems. On behalf of the California Waterkeepers, including Orange County Coastkeeper, we write in concern of Board Member Murray’s participation in the proposed Poseidon – Huntington Beach project and respectfully request her recusal in any Santa Ana Regional Water Quality Control Board action regarding the proposed Poseidon – Huntington Beach ocean desalination facility (Order No. R8-2020-0005, NPDES No. CA8000403).

I. MS. MURRAY HAS DEMONSTRATED BIAS CONCERNING THE POSEIDON – HUNTINGTON BEACH OCEAN DESALINATION FACILITY.

To promote fairness and just decision-making within our government, California law provides that a presiding officer of an administrative adjudication is subject to disqualification for bias, prejudice, or interest in a proceeding.

- (a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:
 - ...
 - (5) The presiding officer¹ is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.40.²

This disqualification for bias, prejudice, or interest applies to all Water Board members, given that the State and Regional Water Boards perform adjudicative actions where a decision is reached after determining specific facts and applying laws and regulations to those facts. Adjudicative proceedings include, but are not limited to, enforcement actions and permit issuance.³ Regional Board Members are thus subject to conduct rules under the California Government Code, specifically the Administrative Adjudication Bill of Rights, and may be disqualified and/or recused from specific Regional Water Board actions if evidence is presented that demonstrates a Board Members’ bias or prejudice in the outcome of a specific action.

Ms. Murray’s prior public statements of support for the Poseidon – Huntington Beach ocean desalination project demonstrate her bias and predetermined position regarding the outcome of the project. On February

¹ Gov. Code § 11405.80 (“Presiding officer” means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding).

² Gov. Code § 11425.10 (“Administrative Adjudication Bill of Rights”).

³ SWRCB OCC, Transmittal of Ex Parte Communications Questions and Answers Document (April 25, 2013), available at https://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

8, 2019, Ms. Murray participated in her first Santa Ana Regional Water Board meeting as a member of the Board, where she disclosed previous events where she spoke in direct support of ocean desalination, and the Poseidon – Huntington Beach ocean desalination project, on the following occasions:

- Feb. 2018: Santa Ana Regional Water Quality Control Board Meeting
- Oct. 2017: State Lands Commission Hearing
- July 2013: Orange County Water District

Despite stating that she has not advocated for or against a specific project, that she has no bias, and “does not have a predetermined position on the project,”⁴ Ms. Murray has a demonstrated history of directly supporting the project. For example, during the October 2017 State Lands Commission hearing, Ms. Murray spoke beyond the scope of the agenda topic – the project’s Environmental Impact Report – and directly supported the project, stating that “it will create thousands of jobs, millions in new tax revenue, but most importantly will ensure billions of gallons in fresh drinking water, which is essential to our quality of life, to our quality of our economy, and the quality of our communities.”⁵

Critically, Ms. Murray’s most recent public support of the project took place exactly one year prior to her first day serving on the Santa Ana Regional Water Board – where Ms. Murray spoke before the very Board she sits on now, the Santa Ana Regional Water Board, in support of ocean desalination and indicated that she would make herself available to Board members and staff regarding “technical capacity” of the project. Specifically, Ms. Murray stated:

“I know we’re not allowed to speak about specific projects, so I won’t, but I do want to be available to your Board members, your staff ... if I can ever be of assistance as you’re exploring the technical capacity before you ... if you want to go deeper and have questions, I am here as a resource.”⁶

We urge Ms. Murray, at a minimum, be recused from any action or decision regarding the Poseidon – Huntington Beach ocean desalination project to avoid the appearance of any bias by the Regional Water Board in this matter.

II. MS. MURRAY HAS A DEMONSTRATED CONFLICT OF INTEREST IN THE POSEIDON – HUNTINGTON BEACH OCEAN DESALINATION FACILITY.

Under the Political Reform Act, every Water Board member must refrain from “mak[ing], participat[ing] in making or in any way attempt[ing] to use his official position to influence a governmental decisions in which he [or she] knows or has reason to know he [or she] has a financial interest.”⁷ Water Code section 13207 further outlines the activities – such as actions impacting a waste discharge permit – that a Regional Board member must recuse themselves due to a “disqualifying financial interest,”⁸ which is generally

⁴ Santa Ana Regional Water Quality Control Board, February 8, 2018 hearing, *available at* <https://cal-span.org/unipage/?site=cal-span&owner=RWQCB-SA&date=2019-02-08>.

⁵ California State Lands Commission, October 19, 2017 meeting transcript, *available at* https://www.slc.ca.gov/Meeting_Transcripts/2017_Documents/10-19-2017_Transcripts.pdf.

⁶ Santa Ana Regional Water Quality Control Board, February 2018 Board Meeting, audio file obtained December 9, 2019.

⁷ Gov. Code § 87100.

⁸ Gov. Code § 87103 (“A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, *or* on any of the following ... Any

limited to any decision that is “reasonably foreseeable” to have a material financial effect on the member, or any source of income provided to the official within twelve months of the decision.

Prior to an agenda item before the Santa Ana Regional Water Board concerning the proposed Poseidon – Huntington Beach ocean desalination project, Ms. Murray disclosed she had previously received campaign contributions from Poseidon and did not have a disqualifying financial interest in the project. While Ms. Murray did not receive campaign contributions from Poseidon within twelve months of the Regional Water Board meeting, Ms. Murray received \$2,000 from Southern California Pipe Trades District Council 16 (Committee ID # 760715) and \$2,000 from Sprinkler Fitters United Assoc 709 (Committee ID # 901643) on the date of the first Santa Ana Regional Water Board meeting in which Ms. Murray served in an official capacity: February 8, 2019. Ms. Murray received an additional \$2,000 from UA Journeymen & Apprentices Local #250 (Committee ID # 743959) on March 1, 2019. It is well known and documented that at least one of these labor unions stand to benefit from the Poseidon – Huntington Beach ocean desalination project.⁹ Ms. Murray further received \$2,000 on March 1, 2019 from OC Tax PAC (Committee ID # 1288619), a well-known supporter for the Poseidon – Huntington Beach ocean desalination project.

To determine whether a Water Board member has a disqualifying financial interest and therefore a prohibited conflict of interest under the Political Reform Act, the California Fair Political Practices Commission has provided the following three-step analysis:¹⁰

- (1) Is it reasonably foreseeable that the decision will have a financial effect on any of the board member’s financial interests?
- (2) Will the reasonably foreseeable financial effect be material?
- (3) Can the board member demonstrate that the material effect on the board member’s financial interest is indistinguishable from its effect on the public generally?

First, a financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, the decision before the board. As described under the California Code of Regulations, “the financial interest is the subject of the proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of a permit to, or contract with, the financial interest, including any decision affecting real property.”¹¹ Even if the financial interest is not explicitly involved, the financial effect may still be presumed if it is reasonably foreseeable – such as changes to a labor contract in light of decisions made by the Santa Ana Regional Water Board that impact the Poseidon – Huntington Beach ocean desalination proposal.

Second, the financial effect of a government decision is material if the decision will have a significant effect on an official, his or her immediate family, or on the source of income or source of gifts that is a financial interest of the official. Again, the decisions made by Ms. Murray as a Regional Water Board member will have a significant effect on the source of gifts she has received – such as those received by Poseidon and labor unions – that would be implicated by any changes to the Poseidon – Huntington Beach ocean desalination proposal.

source of income ... provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.”).

⁹ See e.g., Seawater Desalination: Huntington Beach Facility (accessed December 10, 2019), *available at* <https://www.hbfreshwater.com/supporters.html>.

¹⁰ See Cal. Code Regs., tit. 2 § 18700; See also SWRCB OCC, Conflicts of Interest Principles Applicable to State and Regional Water Board Members at p. 8 (October 28, 2019).

¹¹ Cal. Code Regs., tit. 2 § 18701, subd. (a).

Third, the board member must demonstrate that their financial interest is indistinguishable from its effect on the public generally. Given Ms. Murray’s successful political career in Orange County and the City of Anaheim, Ms. Murray may be individually implicated by the outcome of the Poseidon – Huntington Beach ocean desalination project, given the number of maximum campaign contributions (i.e., \$2,000) she has received that would be foreseeably impacted by the outcome of the project. While the project will have a public effect on Orange County’s water supply, the decisions made by the Santa Ana Regional Water Board have a significant potential to either adversely or positively impact Ms. Murray’s financial contributors – which may in turn impact her local political career. Therefore, the impact of proposed Poseidon – Huntington Beach ocean desalination project has the ability to individually impact Ms. Murray and therefore implicates a conflict of interest between Ms. Murray and the project.

In light of the thousands of dollars that Ms. Murray has received since her initial public statement before the Santa Ana Regional Water Board on February 8, 2019 that are foreseeably implicated by the project, Ms. Murray has a disqualifying financial interest in the Poseidon-Huntington Beach ocean desalination project. In such circumstances when a Regional Water Board member has a disqualifying financial interest, the board member must refrain from participating in both staff- and board-level actions regarding that interest.¹² Despite this limitation and the thousands of dollars received since Ms. Murray began serving on the Santa Ana Regional Water Board, Ms. Murray has continued to participate in matters concerning the Poseidon – Huntington Beach ocean desalination project, as recently as the Santa Ana Regional Water Board hearing on December 6, 2019.

Finally, the California Government Code discourages public officers from performing their duties in a manner that impacts “their own financial interests, or the financial interests of those who have supported them.”

- (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;
- (b) Public officials, whether elected or appointed, should perform their duties in an *impartial manner, free from bias* caused by their own financial interests or *the financial interests of persons who have supported them*.¹³

While Ms. Murray’s previous contributions from Poseidon were not received within twelve months of her tenure on the Santa Ana Regional Water Board, Ms. Murray did receive the following contributions in direct connection to Poseidon during her last City Council term and election:

- \$650 from Poseidon on June 22, 2015
- \$250 from Lear Pierce (Publicist for Poseidon) on April 14, 2014
- \$1000 from Poseidon on June 6, 2014

Given Ms. Murray’s history of direct financial support from Poseidon and a number of labor unions that stand to benefit from the potential ocean desalination project, Ms. Murray has an implicit bias toward the Poseidon – Huntington Beach ocean desalination project caused by the financial interests of her supporters. Ms. Murray must avoid the appearance of impropriety and bias and recuse herself from any decision or action by the Santa Ana Regional Water Board that impacts the Poseidon – Huntington Beach ocean desalination project in order to conduct herself in a manner that will not impact the financial interests of her current and former campaign supporters.

¹² SWRCB OCC, Conflicts of Interest Principles Applicable to State and Regional Water Board Members at p. 3 (October 28, 2019).

¹³ Gov. Code § 81001.

California's Water Boards are charged with immense responsibility to oversee the permitting and overall health of California's inland and coastal waters. We are committed to ensuring that all Water Board decisions are made without disqualifying conflicts of interest and that all decisions made by the Water Boards uphold California law. Given both Ms. Murray's previous support of the proposed Poseidon – Huntington Beach ocean desalination project and disqualifying financial interests, we request Ms. Murray be disqualified and removed from any Water Board action involving the project. At minimum, it is necessary that Ms. Murray recuse herself from any decision or action involving the proposed Huntington Beach ocean desalination facility to avoid any appearance of impropriety and avoid conflicts of interest in her role as a Regional Water Board member.

Please do not hesitate to contact me with any questions regarding this request: (949) 291-3401.

Sincerely,



Sean Bothwell
Executive Director
California Coastkeeper Alliance

cc: Kristin Stauffacher, Appointments Advisor, Office of Governor Gavin Newsom
Jared Blumenfeld, Secretary, California Environmental Protection Agency
Michael Lauffer, Chief Counsel, State Water Resources Control Board

Appendix I

List of Conflicts between Ms. Murray and the Poseidon – Huntington Beach Project

Self-Reported Conflicts¹⁴

Date	Forum	Activity
02/2018	Santa Ana Regional Water Quality Board	Spoke in support of desalination in Orange County and offered to speak about the project offline at the Regional Water Board Informational Item on the proposed project.
10/2017	State Lands Commission	Spoke in support of the Poseidon – Huntington Beach CEQA process and lease.
2014 - 2015	Campaign Contributions	Received campaign contributions from Poseidon (listed in table below)
07/2013	Orange County Water District	Supported Orange County Water District’s partnership with Poseidon.

Political Contributions Received¹⁵

Date	Donor	Amount Received	Committee ID #
03/01/2019	UA Journeymen & Apprentices Local #250	\$2,000.00	743959
03/01/2019	OC Tax PAC	\$2,000.00	1288619
02/08/2019	Sprinkler Fitters United Assoc. 709	\$2,000.00	901643
02/08/2019	So. California Pipe Trades District Council 16	\$2,000.00	760715
02/08/2019	Building Industry Assoc. of So. California	\$2,000.00	741733
12/27/2018	UA Plumbers & Steamfitters Local Union 582	\$2,000.00	890440
02/08/2017	UA Plumbers & Steamfitters Local Union 584	\$1,900.00	890440
09/28/2016	UA Plumbers & Steamfitters Local Union 582	\$1,900.00	890440
06/22/2015	Poseidon	\$650.00	<i>Unknown</i>
06/06/2014	Poseidon	\$1,000.00	<i>Unknown</i>
04/23/2014	UA Plumbers & Steamfitters Local Union 582	\$1,000.00	<i>Unknown</i>
04/14/2014	Lear Pierce *Poseidon <i>Publicist</i>	\$250.00	890440

¹⁴ Santa Ana Regional Water Quality Control Board, February 8, 2018 hearing, available at <https://cal-span.org/unipage/?site=cal-span&owner=RWQCB-SA&date=2019-02-08>.

¹⁵ As disclosed on Kris Murray’s Anaheim City Council and Orange County Board of Supervisors Campaign reporting forms.