Response to Board Member Murray Recusal Request, Proposed Huntington Beach Desalination Facility, Tentative Order No. R8-2020-0005, NPDES No. CA8000403

Dear Mr. Bothwell,

The Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) received California Coastkeeper Alliance’s (CCKA’s) request for Board Member Kris Murray to recuse herself from proceedings for Tentative Order No. R8-2020-0005, the proposed permit for Poseidon Water’s proposed Huntington Beach Desalination Facility (Facility). CCKA claims that Board Member Murray has a demonstrated bias in favor of the Facility and that she has a demonstrated financial conflict of interest. As counsel for the Santa Ana Water Board, the Office of Chief Counsel has reviewed the issues raised in CCKA’s letter and concludes that Board Member Murray is not legally required to recuse herself from the proceedings due to bias or a financial conflict of interest.

First, CCKA has not shown that Board Member Murray has a demonstrated bias that requires recusal. The due process protections in the Administrative Adjudication Bill of Rights require impartial decisionmakers who are free from bias and prejudice.1 “Bias and prejudice are not implied and must be clearly established. A party’s unilateral perception of bias cannot alone serve as a basis for disqualification. Prejudice must be shown against a particular party and it must be

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1 See Gov. Code, § 11425.40; State Water Resources Control Board Cases (State Water Board Cases) (2006) 136 Cal.App.4th 674, 840 (“The contention that a fair hearing requires a neutral and unbiased decision maker is a fundamental component of a fair adjudication . . . .”), quoting BreakZone Billiards v. City of Torrance (2000) 81 Cal.App.4th 1205, 1234. The federal and state constitutions also afford the same due process protections. (See Today’s Fresh Start, Inc. v. L.A. Cnty. Office of Educ.(Today’s Fresh Start) (2013) 57 Cal.4th 197, 212, 214 (“When, . . . an administrative agency conducts . . . adjudicative proceedings, the constitutional due process of law requires a fair tribunal. A fair tribunal is one in which . . . the decision maker is free of bias for or against the party.”)
significant enough to impair the adjudicator's impartiality."² Adjudicators are presumed to be impartial unless they have a financial interest.³ This presumption of impartiality is not easily overcome: "due process violations generally are confined to the exceptional case presenting extreme facts" and must be supported by "specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias."⁴ Board Member Murray does not have a financial conflict of interest in the Tentative Order,⁵ so the presumption of impartiality applies and CCKA's assertions do not overcome that presumption. During a Santa Ana Water Board meeting on February 8, 2019, Board Member Murray disclosed statements she previously made regarding the proposed Facility and the contributions she received from Poseidon Water:

I would like to disclose that I previously served as a member of the Anaheim City Council from 2010 to 2018. I also served as a Director on the Board of Directors of the Metropolitan Water District of Southern California as an appointee of the City of Anaheim from 2009 to 2013.

In my role as a City Council Member and as a Director on the Metropolitan Board, I made many statements in support of increasing local drought-proof water supplies in Orange County, including desalination opportunities.

In February of 2018, I made a statement on the desalination amendment informational item that was presented to this Regional Board. My statement was made in my capacity as a City Council Member and as a representative of the City of Anaheim. In my statement to the Regional Board, I expressed general support of desalination and the need for desalinated water in Orange County to increase local drought-proof water supplies. I did not advocate for or against a specific project.

In October of 2017, I made a statement before the State Lands Commission in support of the approval of a lease amendment and supplemental EIR for the Huntington Beach Desalination Facility. Again my statement was made in my capacity as a Council Member and as a representative of the City of Anaheim.

In July of 2013 as a representative of the Anaheim City Council and the Metropolitan Water Board, I spoke at an Orange County Water District meeting in support of the district moving forward with due diligence, a due diligence process, to partner with Poseidon Water on the Huntington Beach Desalination Facility Project. My statement focused on the project's potential to provide a drought-proof local water supply.

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³ Today's Fresh Start, supra, 57 Cal.4th at pp. 215, 219.
⁴ Today's Fresh Start, supra, 57 Cal.4th at pp. 219, 221, internal quotation marks omitted. See also id. at p. 214 ("The standard of impartiality required at an administrative hearing is less exacting than that required in a judicial proceeding."), quoting Gai v. City of Selma (1998) 68 Cal.App.4th 213, 219.
⁵ See discussion infra regarding the lack of a financial conflict of interest.
And finally, I would like to disclose that in my 2014 campaign for Anaheim City Council, I received contributions from Poseidon Water and receipt of these contributions are public record and predated my tenure on the Regional Board and their application to this Board and will not bias my decision on the project.

I have consulted with the Regional Board’s legal counsel and determined that these public statements I’ve made and the receipt of campaign contributions do not preclude me from participating in proceedings related to the Huntington Beach Desalination Facility Project. I do not have a disqualifying financial interest based on the campaign contributions I received and I am not biased for or against Poseidon, the desalination project, or the permit that will come before us.

Lastly, I have not had any ex parte communications with anyone about the project’s permit or Water Code section 13142.5(b) Determination pending before the Board. And to be clear, I do not have a predetermined position on the project. While I do support increasing local water supplies, including desalination opportunities, I’m well aware of my role and responsibilities on this Board to ensure these types of projects meet water quality laws and policies. I will, of course, keep an open mind during the proceedings and make my decision based on the information that’s presented.6

As stated in her disclosure, Board Member Murray’s previous statements related to the Facility were made in her official capacity as a city council member and on behalf of the City of Anaheim and, with respect to the statement made before OCWD, also on behalf of Metropolitan Water District. Board Member Murray stated that she is not biased for or against the specific project that is now before the Board or for or against the project applicant. She also stated that she does not have a predetermined position on the project and that she will make her decision based on the information presented to ensure that the decision meets the requirements of water quality laws and policies. Board Member Murray did indicate that she generally supports increasing local water supplies, including desalination opportunities, but this general attitude does not amount to a disqualifying bias.7 In addition, these statements were made well before the Tentative Order was drafted and released for public comment and do not show that she has a predetermined position on the Tentative Order.

Courts have typically found bias that requires recusal when a decisionmaker made specific statements or took actions that indicated he or she had a predetermined position on a matter that was before the deciding body or harbored personal animosity for a party. For example, in one case, a commissioner authored an article that was hostile to a project that was before the commission on appeal—this showed a predetermined position on the project.8 In another case, a city councilmember’s residential view would have been blocked by a development project that was before the council, and he actively opposed the project prior to joining the council—this showed a personal interest in the project and personal animosity against the project developer.9

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7 See Andrews v. Agricultural Labor Relations Bd. (1981) 28 Cal.3d 781, 790–91 (“the word bias refers to ‘the mental attitude or disposition of the judge towards a party to the [proceeding], and not to any views that he may entertain regarding the subject matter involved.’”), quoting Evans v. Superior Court (1930) 107 Cal.App. 372, 380).
Neither Board Member Murray’s previous statements nor her receipt of campaign contributions demonstrate any personal interest in the project, animosity or favoritism for Poseidon Water or the Facility, or a predetermined position. While Board Member Murray has stated she supports desalination opportunities in general, there is no evidentiary basis to conclude that she is biased or prejudiced in favor of this particular proposed desalination facility or that she will dismiss her duties as a member of the Santa Ana Water Board to consider whether the Tentative Order complies with the requirements of the applicable laws and policies. The facts here do not demonstrate actual bias or an unacceptable risk of bias that would require Board Member Murray’s recusal in this proceeding.

Second, turning to CCKA’s claim that Board Member Murray has a demonstrated financial conflict of interest, Board Member Murray’s prior receipt of campaign contributions from organizations that support the proposed Facility is not a financial interest that requires her recusal under Government Code section 87100. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on—

- The personal finances of the public official or a member of her immediate family;
- Any business entity in which the public official has an investment worth $2,000 or more;
- Any real property in which the public official has an interest worth $2,000 or more;
- Any source of income with an aggregate value of $500 or more that is provided or promised to and received by the public official within 12 months before a decision is made; or
- Any donor of a gift or gifts with an aggregate value of more than $500.

CCKA asserts that the contributions Board Member Murray received were gifts. However, a campaign contribution, by definition, is not a gift. Nor is a campaign contribution a source of income. The California Supreme Court has even opined on the issue and stated, “the [Political Reform] Act . . . expressly excludes from definition of ‘financial interest’ the receipt of campaign contributions.” Thus, Board Member Murray does not have a disqualifying financial interest under section 87100 based on the campaign contributions she received.

CCKA also argues that Board Member Murray should recuse herself due to impacts the Board’s decision will have on the “financial interests of those who have supported [her].” CCKA cites a finding in Government Code section 81001, subdivision (b), to support this argument. Government Code section 84308 is the applicable statute to determine whether the receipt of campaign contributions prohibits an officer of an agency from participating in a decision. We analyzed whether the contributions Board Member Murray received from Poseidon Water and the other organizations cited by CCKA prohibit her from participating in the Board’s decision on the Tentative Order for the proposed Facility under section 84308, and determined that they do not.

We also sought formal advice from the Fair Political Practices Commission (FPPC) on behalf of Board Member Murray to confirm our analysis regarding the alleged financial conflict of interest. Our advice request is Attachment 1 to this letter. For brevity, our analysis is included in the

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10 See Gov. Code, § 87103; Cal. Code Regs., tit. 2, §§ 18700, subd. (c)(6), 18702.
11 Gov. Code, §§ 82028, subd. (b)(4) (“The term ‘gift’ does not include . . . [c]ampaign contributions”).
12 Gov. Code, § 82030, subd. (b)(1) (“Income’ also does not include . . . [c]ampaign contributions”).
14 See FPPC Advice Request (June 29, 2020), Attachment 1.
request and not repeated here. On July 28, 2020, the FPPC advised that neither section 87100 nor section 84308 prohibit Board Member Murray from participating in the Board’s decision on the Tentative Order.\(^{15}\)

CCKA has not demonstrated that Board Member Murray has an actual bias or that there is an unacceptable risk that she may be biased that would require her recusal. Nor has CCKA shown that Board Member Murray has a financial conflict of interest that requires her recusal. Accordingly, we have determined that Board Member Murray may legally participate in the Santa Ana Water Board’s decision on Tentative Order No. 2020-0005.

Sincerely,

\[\text{signature}\]

Teresita J. Sablan
Attorney III
Office of Chief Counsel
State Water Resources Control Board

cc:  Kris Murray, Board Member, Santa Ana Water Board
     Hope Smythe, Executive Officer, Santa Ana Water Board
     Michael Lauffer, Chief Counsel, State Water Board
     Jennifer Fordyce, Assistant Chief Counsel, State Water Board

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\(^{15}\) See Sablan Advice Letter (2020) FPPC No. A-20-083, Attachment 2. The FPPC cannot advise on past conduct, so the advice letter does not address whether section 84308 prohibited Board Member Murray from participating in prior informational proceedings concerning the proposed Facility or Tentative Order. However, we analyzed the issue and determined that section 84308 did not prohibit Board Member Murray from participating in those prior proceedings because (1) she did not receive campaign contributions from Poseidon Water within 12 months of her participation in the proceedings; and (2) the organizations that contributed to her Orange County Board of Supervisors campaign and that have actively supported the Board’s approval of the Tentative Order do not have a demonstrated financial interest in the Board’s decision. (See FPPC Advice Request (June 29, 2020.) pp. 9–12.)
State Water Resources Control Board

June 29, 2020

[via email]
David Bainbridge
General Counsel
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
Advice@fppc.ca.gov

POLITICAL REFORM ACT QUESTIONS FOR SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD MEMBER KRIS MURRAY

Dear General Counsel:

Pursuant to Government Code section 83114, subdivision (b), I ask for written advice regarding the conflict-of-interest provisions of the Political Reform Act (Act) on behalf of Kris Murray, a member of the Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board). I am an attorney in the Office of Chief Counsel of the State Water Resources Control Board (State Water Board), and I represent the Santa Ana Water Board. Ms. Murray has authorized the Office of Chief Counsel to submit this letter. Our questions, the relevant facts, and our analysis of the issues are provided below.

QUESTIONS

We ask for formal advice on the following questions:

1. Does Ms. Murray have a financial interest in the Santa Ana Water Board’s decision on an NPDES permit for the proposed Huntington Beach Desalination Facility (Facility) under Government Code section 87100 due to campaign contributions she received between December 27, 2018, and March 8, 2019, from organizations that have supported the approval of the permit before the Santa Ana Water Board?

2. Is Ms. Murray required to disclose the campaign contributions she received between December 27, 2018, and March 8, 2019, from organizations that have supported the approval of the permit before the Santa Ana Water Board, recuse herself from the Santa Ana Water Board’s upcoming proceedings concerning the proposed Facility, or both disclose and recuse pursuant to Government Code section 84308?

   a. Are the organizations that contributed to Ms. Murray’s campaign considered “participants” in Santa Ana Water Board proceedings concerning the proposed Facility if it is not apparent from the record that the organizations have a financial interest in the Board’s permitting decision for the proposed Facility?
FACTUAL BACKGROUND

Ms. Murray was appointed to serve on the Santa Ana Water Board on November 16, 2018. Her appointment became effective when she took the oath of office on November 28, 2018. She was confirmed by the Senate on August 22, 2019. Ms. Murray is one of seven members on the Santa Ana Water Board.

At the time of her appointment, Ms. Murray was a candidate in a special election for a vacant seat on the Orange County Board of Supervisors. Ms. Murray was not elected, and her campaign and candidacy ended on March 11, 2019. Prior to her appointment on the Santa Ana Water Board, Ms. Murray served on the Anaheim City Council from December 2010 to December 2018.

PROPOSED HUNTINGTON BEACH DESALINATION FACILITY

The Santa Ana Water Board issues waste discharge requirements that serve as permits under the federal Clean Water Act’s National Pollutant Discharge Elimination System (NPDES) program for discharges of pollutants from point sources to waters of the U.S. within its region. Specific to desalination facilities, the Board also reviews proposed facilities to determine whether they use the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life in compliance with California Water Code section 13142.5, subdivision (b) (section 13142.5(b)).

Poseidon Resources (Surfside) LLC (Poseidon) proposes to construct and operate a desalination facility in Huntington Beach that would produce 50 million gallons per day of

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1 The federal Clean Water Act (33 U.S.C. § 1251 et seq.) regulates water quality standards for the waters of the United States (U.S.) and prohibits the discharge of pollutants from point sources to waters of the U.S. except in compliance with an NPDES permit.
potable water. The proposed Huntington Beach Desalination Facility (Facility) would discharge pollutants into the Pacific Ocean and requires an NPDES permit for the discharge. In issuing an NPDES permit for the Facility, the Santa Ana Water Board determine whether the Facility complies with section 13142.5(b). The Santa Ana Water Board issued an NPDES permit for the Facility in 2006 (Santa Ana Water Board Order R8-2006-0034) and renewed the permit in 2012 (Santa Ana Water Board Order R8-2012-0007). In the 2012 permit, the Board found that the Facility complied with section 13142.5(b). However, the Facility has not been constructed and did not discharge under the previous permits.

In May 2015, the State Water Board adopted an amendment to add chapter III.M to the Water Quality Control Plan for the Ocean Waters of California (Ocean Plan) to establish a statewide framework for regional water boards to apply when making determinations for desalination facilities under section 13142.5(b). The Ocean Plan provisions apply to “new” and “expanded” desalination facilities. Poseidon’s proposed Facility is considered a “new” facility under the Ocean Plan and must comply with the requirements of the Ocean Plan.

On March 15, 2016, Poseidon submitted a request to the Santa Ana Water Board for a determination that the proposed Facility complies with section 13142.5(b). Poseidon also submitted an application for the renewal of its NPDES permit for the Facility on June 30, 2016. Poseidon has submitted over 100 appendices to support its application and request. Santa Ana Water Board staff has spent tens of thousands of hours reviewing highly technical documents for the proposed Project and distilling the information for the Board’s consideration. Since 2018, the Santa Ana Water Board has heard several informational items at public meetings regarding the Ocean Plan requirements and various aspects of the proposed Facility. The Board also held two workshops on the Facility’s tentative NPDES permit and Water Code section 13142.5(b) determination (Tentative Order); one on December 6, 2019, and the other on May 15, 2020. The Board received oral comments from the public during these meetings and provided the public with an opportunity to submit written comments on the Tentative Order between November 22, 2019, and January 21, 2020.

The Tentative Order for the Facility is pending before the Santa Ana Water Board. The Board is currently scheduled to act on—that is, approve, disapprove, or continue consideration of—the Tentative Order on July 30–31 of this year, with a third hearing day scheduled for August 7 if needed.

Poseidon must also obtain approvals from other state agencies before beginning construction or operation of the proposed Facility. These approvals include a Coastal Development Permit from the California Coastal Commission and approval of an amendment to its lease agreement from the State Lands Commission.

**RECUSAL REQUEST**

On December 12, 2019, California Coastkeeper Alliance (CCKA) sent a letter to the Santa Ana Water Board asking that Ms. Murray recuse herself from participating in the upcoming

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2 According to its letter, 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.”
proceedings related to the Facility. CCKA claims that Ms. Murray has a disqualifying financial interest in the Board’s decision on the Tentative Order for the Facility due to contributions she received during her campaigns for Anaheim City Council and the Orange County Board of Supervisors. CCKA asserts that the campaign contributions are either sources of income for Ms. Murray or gifts to Ms. Murray. (CCKA Letter, pp. 2–3.) Relevant here, CCKA takes issue with the following contributions:

<table>
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<th>Amount</th>
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<tr>
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<td>03/01/2019</td>
<td>OC Tax PAC</td>
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<td>02/08/2019</td>
<td>Sprinkler Fitters UA Local 709</td>
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<tr>
<td>02/08/2019</td>
<td>So. California Pipe Trades District Council 16</td>
<td>$2,000</td>
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<td>02/08/2019</td>
<td>Building Industry Assoc. of So. California</td>
<td>$2,000</td>
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</tr>
<tr>
<td>12/27/2018</td>
<td>UA Plumbers &amp; Steamfitters Local Union 582</td>
<td>$2,000</td>
<td>890440</td>
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CCKA states that “[i]t is well known and documented that at least one of [the] labor unions stand to benefit from the Poseidon-Huntington Beach ocean desalination project.” (CCKA Letter, p. 3.) As support for this statement, CCKA cites a list of purported supporters of the proposed Facility that appears on a third-party Web site that is not operated by the Santa Ana Water Board. Moreover, the list itself does not indicate that the listed supporters will “stand to benefit” from the Facility. CCKA also states that OC Tax PAC is “a well-known supporter for the Poseidon-Huntington Beach ocean desalination project.” (CCKA Letter, p. 3.) CCKA, however, does not provide support for this statement.

**CONTRIBUTORS THAT HAVE SUPPORTED THE PROPOSED FACILITY BEFORE THE SANTA ANA WATER BOARD**

Of the contributors identified by CCKA, two have expressed support for the approval of the Tentative Order for the proposed Facility on the record before the Santa Ana Water Board: Sprinkler Fitters UA Local 709 (UA Local 709) and UA Plumbers & Steamfitters Local Union 582 (Local Union 582). Additionally, the Orange County Chapter of the Building Industry Association of Southern California (OC BIA of Southern California)—but not the Building Industry

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3 Other members of the public have commented during Santa Ana Water Board meetings and asked that Ms. Murray recuse herself from proceedings for the proposed Facility. At least one other commenter has cited campaign contributions that Ms. Murray received as a basis for recusal.

4 CCKA also raises issues related to bias that are not within the purview of the Political Reform Act or this request.

5 CCKA also takes issue with these earlier contributions that are not relevant to our advice request:

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<thead>
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<th>Date</th>
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<tr>
<td>06/22/2015</td>
<td>Poseidon</td>
<td>$650</td>
<td>--</td>
</tr>
<tr>
<td>06/06/2014</td>
<td>Poseidon</td>
<td>$1,000</td>
<td>--</td>
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<tr>
<td>04/23/2014</td>
<td>UA Plumbers &amp; Steamfitters Local Union 582</td>
<td>$1,000</td>
<td>--</td>
</tr>
<tr>
<td>04/14/2014</td>
<td>Lear Pierce</td>
<td>$250</td>
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Ms. Murray received these contributions more than 12 months before she was appointed to the Santa Ana Water Board in November 2018. Additionally, although she was not required to do so under the Act, Ms. Murray disclosed the contributions she received from Poseidon on the record for the proposed Facility at a Santa Ana Water Board meeting.
Association of Southern California itself—has expressed support for the approval of the Tentative Order for the proposed Facility.

**UA Local 709**

On February 9, 2018, Roy Afusia spoke on behalf of Sprinkler Fitters UA Local 709 during an informational item on the Ocean Plan’s desalination requirements at a Santa Ana Water Board meeting. (See Excerpt of Feb. 9, 2018 Meeting Transcript, Attachment B.) Mr. Afusia stated that “there’s a need for projects like this”; “[t]here will also be a handful of vocal opponents who try to stop anything, and do everything to stop a project like this from being built, but you can’t let that stop you”; “today we had water leaders from Orange County that are here that want this project or projects like this be approved”; and “[d]esalination not only provides local water, but also provides thousands of jobs and millions of tax money.” Ms. Murray was not a member of the Santa Ana Water Board at the time these statements were made, but she did attend the meeting as a representative of the Anaheim City Council and commented on the same informational item.

**Local Union 582**

Next, on behalf of UA Plumbers & Steamfitters Local Union 582, Luis Andres Perez commented in support of the proposed Facility at the Board’s May 15, 2020 workshop: “as we’re getting more dense and more populated, we need to look towards other aspects of importing our water or, rather, in this case through the desalination project with Poseidon. And I think more than anything, if we’re investing in our water infrastructure at the moment, we are able to mitigate those costs and long-term effect.” (See May 15, 2020 Workshop, video recording at 8:28:49 <https://cal-span.org/unipage/?site=cal-span&owner=RWQCB-SA&date=2020-05-15> [as of June 24, 2020].)

**OC BIA of Southern California**

Finally, on behalf of the OC BIA of Southern California, Steven LaMotte submitted a comment letter on the Tentative Order for the proposed Facility on January 15, 2020. (See OC BIA of Southern California Letter, Attachment C.) In the letter, Mr. LaMotte stated, “I would hope that the Santa Ana Regional Water Quality Control Board would follow the lead of the San Diego Regional Water Board and approve the NPDES permit that is supported by both the science and your staff.” Mr. LaMotte also commented during the Santa Ana Water Board’s workshop for the Tentative Order on May 15, 2020: “The home building community stands strongly behind this project as they work to enhance water reliability in Orange County and ensure this project is structured in a way that provides maximum benefit and minimum risk to the taxpayers. Again, we support this.” (See May 15, 2020 Workshop, video recording at 8:55:39 <https://cal-span.org/unipage/?site=cal-span&owner=RWQCB-SA&date=2020-05-15> [as of June 24, 2020].)

**Other Contributors**

UA Journeymen & Apprentices Local 250 (UA Local 250), OC Tax PAC, Southern California Pipe Trades District Council 16 (District Council 16), and BIA of Southern California have not

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6 According to its Web site, OC Tax PAC’s mission is to “endorse candidates and ballot initiatives in accordance with their compliance with the Mission Statement of the Orange County Taxpayers Association.” (OC Tax PAC Web site <https://www.octaxpac.org/> [as of June 17, 2020].) Although OC Tax PAC has not spoken in support of the proposed Facility, the Orange County Taxpayers Association did speak in support of the approval of the permit for the Facility at the May 15, 2020 workshop. However, OC Tax PAC has its own board of directors and is financed separately from the Orange County Taxpayers Association. (See OC Tax PAC Web site <https://www.octaxpac.org/about> [as of June 17, 2020].)
supported or opposed the proposed Facility in person or through written comments in the proceedings before the Santa Ana Water Board.

**LA/OC TRADES COUNCIL’S SUPPORT OF THE PROPOSED FACILITY AND PURPORTED MEMORANDUM OF UNDERSTANDING WITH POSEIDON**

The Los Angeles/Orange Counties Building and Construction Trades Council (LA/OC Trades Council) has expressed support for the approval of the permit for the proposed Facility on several occasions in Santa Ana Water Board proceedings. Additionally, though it is not in the Santa Ana Water Board’s record for the proposed Facility, LA/OC Trades Council executed a memorandum of understanding (MOU) with Poseidon in 2013 regarding the project labor agreement for the construction of the proposed Facility.\(^7\) LA/OC Trades Council did not contribute to Ms. Murray’s campaign. However, this information is included because LA/OC Trades Council “represent[s] 140,000 men and women in the construction industry” and it “[has] 49 local unions and 19 district council representing all 14 trades.” (See Excerpt of Feb. 8, 2019 Meeting Transcript, Attachment D.) And, though LA/OC Trades Council did not state it on the record, four of the labor organizations that contributed to Ms. Murray’s campaigns—UA Local 709, District Council 16, UA Local 250, and Local Union 582—are among those unions and district councils affiliated with and purportedly represented by LA/OC Trades Council.\(^8\)

**LA/OC Trades Council’s Statements**

On February 8, 2019, Ernesto Medrano, on behalf of LA/OC Trades Council, commented on an informational item on the proposed Facility. Mr. Medrano stated—

> [W]e support the Huntington Beach Desalination Project . . . We estimate that the desalination project will create more than 2,000 high-wage, high-skilled jobs during the construction phase and it will generate hundreds of millions of dollars of local economic activity and tax revenue benefits . . . we urge you to continue to approve this project because we think it’s extremely important.

(Excerpt of Feb. 8, 2019 Meeting Transcript, Attachment D.)

Mr. Medrano spoke again during the December 6, 2019 workshop on the Tentative Order for the proposed Facility:

> This project is very important to our skilled and trained members. It will also create 3,000 jobs over the three-year construction period. It will also provide career opportunities for many local men and women through our Apprenticeship

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\(^7\) As part of our due diligence, I learned of this MOU while researching the potential conflict. During a phone call in March of this year, counsel for Poseidon informed me that Poseidon and LA/OC Trades Council executed a memorandum of understanding concerning the terms of the project labor agreement for the proposed Facility. I received a redacted copy of the MOU on June 25, shortly before submitting this request. (MOU, Attachment G.) Ms. Murray was not aware of this MOU until she reviewed a draft of this letter.

\(^8\) The LA/OC Trades Council’s Web site states that it “represents” local unions and district councils and includes a list of its affiliate unions and councils. (LA/OC Trades Council Web site [http://laocbuildingtrades.org/about-building-trades/](http://laocbuildingtrades.org/about-building-trades/) [as of June 17, 2020].) Among the listed affiliates are four of the organizations that contributed to Ms. Murray’s campaigns: UA Local 709, District Council 16, UA Local 250, and Local Union 582. (LA/OC Trades Council Web site [http://laocbuildingtrades.org/council-affiliates-union/](http://laocbuildingtrades.org/council-affiliates-union/) [as of June 17, 2020].) I came across this information while researching the potential conflict, but it is not in the record for the Santa Ana Water Board proceedings for the proposed Facility.
Training Program... we will build this with the most technologically advanced, energy efficiency and environmental sound desalination plant in the world. ... I would ask that, when the item comes before you on a vote in March, you'll abort the delay and you approve this project as it will provide water and jobs to the residents of Orange County.

(Excerpt from Dec. 6, 2019 Meeting Transcript, Attachment E.)

In addition to these oral comments, Ron Miller submitted a written comment on behalf of LA/OC Trades Council advocating for the approval of the proposed project. Mr. Miller stated that “this project will also result in thousands of new jobs for the hard-working skilled and trained men and women in the building trades. Electricians, Laborers, Pipefitters, Cement Masons and countless other trades men and women will bring this project to fruition on time and on budget. This will also create a pathway for entry into apprenticeship programs in the building and constructions trades for community members that live around the project and result in life long careers in construction.” (R. Miller Letter, Attachment F.)

2013 MOU

The redacted MOU states that it is entered into between LA/OC Trades Council, “its affiliated Unions,” and “those other Unions representing employees working on the construction of the [Facility]” and it was executed by LA/OC Trades Council “on behalf of its affiliated unions and others.” (MOU, pp. 1, 2.) As noted above, four of the labor organizations that contributed to Ms. Murray’s campaign are—according to LA/OC Trades Council’s Web site—affiliated with LA/OC Trades Council.

The findings of the redacted MOU state that Poseidon and the Trades Council are “interested in furthering the development of construction of seawater desalination plants and providing for continuing economic development . . . in Los Angeles and Orange County” and that they are “desirous of working together to advance the [Facility] and to obtain all necessary regulatory approvals and permits to move the [Facility] forward.” (MOU, p.1.) The findings further state that the Trades Council “wishes to provide their members . . . with opportunities to work on the construction of the [Facility].” The agreement portion of the MOU is largely redacted, aside from the portion of one provision: “Poseidon agrees that, as a condition of a contract award, the successful bidder for the construction of the [Facility] shall be required to enter into a Project Labor Agreement with the Trades Council . . . .” (MOU p. 2.)

DISCUSSION

Based on our review of the facts, applicable law, and FPPC advice letters, we conclude that Ms. Murray does not have a disqualifying conflict under the Act. Ms. Murray’s receipt of campaign contributions from supporters of the proposed Facility does not create a disqualifying financial interest that would require her to recuse herself under Government Code section 87100. Nor is she required to disclose the contributions she received or recuse herself from the upcoming proceedings under Government Code section 84308 because the campaign contributors are not “parties” or “participants” in the proceedings. Moreover, even if the contributors are considered “participants,” neither recusal from the upcoming proceedings nor

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9 To reiterate, the MOU executed by LA/OC Trades Council and Poseidon was not raised in Santa Ana Water Board proceedings, and it is not part of the record for the Facility. See supra n. 7.
10 As used in the MOU, “Trades Council” means LA/OC Trades Council, its affiliated unions, and those other unions representing employees working on the construction of the Facility.
disclosure of the contributions is required because more than 12 months have passed since Ms. Murray received the last contribution.

**MS. MURRAY’S RECEIPT OF CAMPAIGN CONTRIBUTIONS IS NOT A DISQUALIFYING FINANCIAL INTEREST**

Ms. Murray’s receipt of campaign contributions from organizations that support the proposed Facility is not a financial interest that requires her recusal under Government Code section 87100. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on—

- The personal finances of the public official or a member of her immediate family;
- Any business entity in which the public official has an investment worth $2,000 or more;
- Any real property in which the public official has an interest worth $2,000 or more;
- Any source of income with an aggregate value of $500 or more that is provided or promised to and received by the public official within 12 months before a decision is made; or
- Any donor of a gift or gifts with an aggregate value of more than $500.

(See Gov. Code, § 87103; Cal. Code Regs., tit. 2, §§ 18700, subd. (c)(6), 18702.)

The receipt of campaign contributions is not a financial interest under the Act’s conflict-of-interest provisions. (See *Woodland Hills Residents Assn., Inc. v. City Council* (1980) 26 Cal.3d 938, 945–946 [“the Act . . . expressly excludes from definition of ‘financial interest’ the receipt of campaign contributions.”].) A monetary campaign contribution is plainly not a business entity or real property. Nor, by definition, is a campaign contribution a source of income or a gift. (See Gov. Code, §§ 82028, subd. (b)(4) [“The term ‘gift’ does not include . . . [c]ampaign contributions”; 82030, subd. (b)(1) [“‘Income’ also does not include . . . [c]ampaign contributions”].) As for personal finances, the Act does not define the term, but there is a definition on the Commission’s Web site: “The official’s personal finances including his or her expenses, income, assets, or liabilities, as well as those of his or her immediate family.” (FPPC Web site <http://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html> [as of June 17, 2020]; see also Cal. Code Regs., tit. 2, § 18707, subd. (a)(1)(A)(v).) Campaign contributions are not personal expenses, income, personal liabilities, or personal assets. (See Cal. Code Regs., tit. 2, § 18215, subd. (a) [“A contribution is any payment made for political purposes for which a donor does not receive full and adequate consideration.”]; see also Gov. Code §§ 82015, subd. (a).)

Further highlighting the distinction between personal finances and contributions, the Act prohibits the recipient or any other person from commingling contributions with personal funds.11

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11 If a campaign committee has a debt, campaign contributions could affect an official’s personal finances under certain circumstances where the official’s committee has a debt and the agency’s decision would affect campaign contribution limitations. (See *Larocque Advice Letter* (1999) No. I-99-161, pp. 2–3; *Gwinn Advice Letter* (2003) No. I-03-217, p. 3.) Specifically, a committee’s debt could give rise to a personal financial interest in the following circumstances: 1) where the public official (or member of his or her immediate family) makes a personal loan to his or her committee and intends to pay off the loan with additional contributions; and 2) when a public official’s committee has an outstanding debt that he intends to pay with the additional contributions and the creditor has filed a collection action to recover $250 or more.” (See *Gwinn Advice Letter* (2003) No. I-03-217, p. 3.) This exception does not apply because the Santa Ana Water Board’s decision will not impact campaign contribution limitations. Moreover, Ms. Murray personally covered the debts of her campaign committee and closed her committee account on April 28, 2020. So, she can no longer receive contributions for this campaign committee account.
Ms. Murray does not have a disqualifying financial interest under section 87100 based on the campaign contributions she received.

Section 84308 prohibits an officer of a public agency who has run for an elective office from participating in decisions affecting her campaign contributors. (Miklos Advice Letter (2007) No. A-07-125, p.3.) The statute has three primary components: a prohibition, a disclosure requirement, and a recusal requirement. First, the prohibition: an officer of an agency shall not accept a contribution of more than $250 from any party or participant, or his or her agent, while a proceeding involving a permit is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the party or participant has a financial interest in the decision. (Gov. Code, § 84308, subd. (b).) Next, the disclosure requirement: if an officer received a contribution of more than $250 from a party or participant in a pending proceeding within the preceding 12 months, the officer must disclose the contribution on the record of the proceeding. (Gov. Code, § 84308, subd. (c).) Finally, the recusal requirement: an officer must recuse herself from a proceeding “if the officer has willfully or knowingly received a contribution . . . of more than two hundred fifty dollars ($250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision. . . .” (Ibid.)

Under section 84308, an officer has actual knowledge of a campaign contribution if her committee reported the contribution on applicable forms and is presumed to have willfully or knowingly received such reported contributions. (Attebery Advice Letter (2014) No. I-14-041, p. 4; Faust Advice Letter (1988) No. I-88-066, p. 1.) Ms. Murray’s committee reported contributions from UA Local 709, BIA of Southern California, Local Union 582, UA Local 250, OC Tax Pac, and District Council 16; however, these contributors are neither “parties” nor “participants” in the proceedings before the Santa Ana Water Board. Moreover, of the contributions at issue, Ms. Murray received the most recent one on March 8, 2019—more than 12 months ago and outside of the time period prescribed in section 84308.

The contributors are not “parties” in the Santa Ana Water Board’s proceedings for the proposed Facility

Section 84308 defines “party” as “any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.” (Gov. Code, § 84308, subd. (a)(1).) None of the contributors is a party—Poseidon, as the permit applicant, is the only party in the Santa Ana Water Board’s permit proceedings for the proposed Facility.

The contributors are not “participants” in the Santa Ana Water Board’s proceedings for the proposed Facility

Section 84308 defines “participant” as “any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7.”12 (Gov. Code, § 84308, subd. (a)(2).) A person has a financial interest in the Board’s decision, if it is reasonably foreseeable that the decision will

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12 The Act defines “person” as “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.” (Gov. Code, § 82047.)
have a material financial effect, distinguishable from its effect on the public generally, on the
personal finances of the person or in any business entity, real property, source of income, or
donor of gifts described above. (See Gov. Code, § 87103; Cal. Code Regs., tit. 2, §§ 18700,
subd. (c)(6), 18702.) If a financial interest is not explicitly involved in the decision—as is the
case here—a financial effect is reasonably foreseeable if the effect can be recognized as a
realistic possibility and more than hypothetical or theoretical; the effect does not need to be
likely to be considered reasonably foreseeable. (Cal. Code Regs., tit. 2, § 18701, subd. (b).)
Whether a decision has a material financial effect depends on the nature of the financial interest
at issue. (See Cal. Code Regs., tit. 2, §§ 18702–18702.5.)

“An officer knows or has reason to know that a person has a financial interest in the decision in
a proceeding if . . . [t]he person is a participant and reveals facts in his or her written or oral
support or opposition before the agency which makes the person’s financial interest apparent.”
(Cal. Code Regs., tit. 2, § 18438.7, subd. (a)(2).) Ms. Murray does not know or have reason to
know that any of the contributors have a financial interest in the Santa Ana Water Board’s
decision.

The contributors’ statements do not make it apparent that they have a financial
interest in the Board’s decision

UA Local 250, OC Tax Pac, District Council 16, and BIA of Southern California have not
supported or opposed the proposed Facility on record before the Santa Ana Water Board. UA
Local 709, OC BIA of Southern California (a chapter of BIA of Southern California), and Local
Union 582, on the other hand, have actively supported the approval of the permit for the
proposed Facility through oral statements before the Santa Ana Water Board or written
correspondence directed to the Board. However, none of their statements makes a financial
interest in the Board’s decision apparent.

UA Local 709 asserted that desalination provides thousands of jobs, but that general statement
about desalination providing jobs does not make a financial interest in the Board’s decision
apparent. OC BIA of Southern California did not include anything in their comment letter that
alludes to a financial interest in the Board’s decision regarding the Facility. The same goes for
Local Union 582—their comment focused on increasing water reliability and did not raise any
potential financial interest. Based on the statements of the contributors who have actively
supported the approval of the permit for the proposed Facility before the Board, Ms. Murray
does not know or have reason to know that any of these campaign contributors have a financial
interest in the Board’s decision on the proposed Facility. However, for thoroughness, LA/OC
Trades Council’s statements before the Board and the purported MOU with Poseidon bear
further discussion.

Neither LA/OC Trades Council’s statements nor LA/OC Trades Council’s MOU with
Poseidon make it apparent that any of the contributors have a financial interest in
the Board’s decision

LA/OC Trades Council did not contribute to Ms. Murray’s campaign. However, though it is not in
the Santa Ana Water Board’s record, four of the contributors are purportedly affiliates of and
represented by LA/OC Trades Council: UA Local 709, District Council 16, UA Local 250, and
Local Union 582.13 LA/OC Trades Council indicated that its statements were made on behalf of
its members, but it is not clear whether LA/OC Trades Council’s statements can be attributed to
UA Local 709, District Council 16, UA Local 250, and Local Union 582, as its affiliates

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13 Again, this information was not stated in the record; I saw this information on LA/OC Trades Council’s
Web site while researching the potential conflict. See supra n. 8.
(especially given that LA/OC Trades Council did not identify the specific unions and district councils it represents in its statements to the Board). Moreover, even if the statements were imputed to its affiliates, the general statements of LA/OC Trades Council asserting that the proposed Facility is important to its members, that the proposed Facility would create thousands of jobs for its members, and that they would build the proposed Facility do not make it apparent that the finances, a source of income, real property, or a qualifying interest in a business entity of UA Local 709, District Council 16, UA Local 250, or Local Union 582 would be financially affected by the Board’s decision.

Nor does the 2013 MOU executed by LA/OC Trades Council and Poseidon make it apparent that the Board’s decision would have a financial effect on any such financial interest of these contributors. The findings of the redacted MOU state that LA/OC Trades Council and its affiliated unions are interested in the development and construction of seawater desalination plants, that they wish to provide their members with opportunities to work on the construction of the Facility, and that they want to work with Poseidon to obtain regulatory approvals and permits to move the Facility forward. These findings indicate that LA/OC Trades Council and its affiliated unions are interested in moving the Facility forward to provide jobs for their members through the construction of the Facility, but they do not make it apparent that UA Local 709, District Council 16, UA Local 250, or Local Union 582 have a financial interest in the Board’s decision. Poseidon’s agreement to include a condition in a future contract award that requires the successful bidder to enter into a project labor agreement with LA/OC Trades Council does not make it apparent that UA Local 709, District Council 16, UA Local 250, or Local Union 582 have a financial interest either. Moreover, the existence of the MOU was not disclosed in Santa Ana Water Board proceedings and its existence was not known to Ms. Murray until a draft of this request was provided to her in June 2020—more than 12 months after she received her last contribution.

Neither the statements of LA/OC Trades Council nor the MOU change the conclusion above: none of Ms. Murray’s campaign contributors are participants in the proposed Facility’s proceedings. Thus, Ms. Murray is not required to disclose the campaign contributions or recuse herself from the proposed Facility’s upcoming proceedings under the Act.

Even if the Commission finds that LA/OC Trade Council’s statements or the 2013 MOU make it apparent that UA Local 709, District Council 16, UA Local 250, or Local Union 582 have a financial interest in the Board’s decision on the Tentative Order for the proposed Facility, the Board’s decision will not have a reasonably foreseeable financial effect on the assumed financial interest. One of the factors that may be considered to determine whether the Board’s decision will have a reasonably foreseeable financial effect is “[t]he extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.” (Cal. Code Regs., tit. 2, § 18701, subd. (b)(1).)

Here, any potential financial interest of the affiliated unions would be related to the construction the proposed Facility. If the Santa Ana Water Board approves the Tentative Order, Poseidon will still need to obtain a Coastal Development Permit from the California Coastal Commission and a lease amendment from the State Lands Commission before going forward with the construction and operation of the proposed Facility. Additionally, Poseidon has not entered into a water purchase agreement for the Facility’s product water, which could also be a hurdle to the construction of the Facility. (See Statement of S. Maloni, Poseidon Vice President, May 15, 2020 Workshop, video recording at 5:12:42 ["If there isn’t a contractual commitment by a public water agency to buy the plant’s full capacity, then the plant will never be built."] <https://cal-span.org/unipage/?site=cal-span&owner=RWQCB-SA&date=2020-05-15> [as of June 24,
After obtaining the necessary approvals to proceed with construction, Poseidon would then need to bid out and award the construction contract; the successful bidder, in turn, would need to enter into a project labor agreement with the LA/OC Trades Council before any assumed financial interest that UA Local 709, District Council 16, UA Local 250, or Local Union 582 have in the construction of the Facility can be realized under the redacted MOU. Due to these intervening events that are outside of the control of the Santa Ana Water Board, it is not reasonably foreseeable that the Santa Ana Water Board’s decision will have a financial effect on the assumed financial interest of UA Local 709, District Council 16, UA Local 250, or Local Union 582.

If the Commission finds that the Board’s decision would have a reasonably foreseeable financial effect on a financial interest of UA Local 709, District Council 16, UA Local 250, or Local Union 582, the effect would also need to be material to implicate section 84308. The materiality of a reasonably foreseeable financial effect turns on the type of financial interest that will be affected. (See Cal. Code Regs., tit. 2, §§ 18702–18702.5.)

Section 84308 does not require recusal or disclosure because more than 12 months have passed since Ms. Murray received the campaign contributions.

Prior to the agency’s decision on a permit, an officer must disclose contributions from a participant in the permit proceedings that exceed $250 that were received within the preceding 12 months. (Gov. Code, § 84308, subd. (c).) The Tentative Order for the proposed Facility is pending before the Santa Ana Water Board and the Board is currently scheduled to act on it on July 30–31 of this year. Given that Ms. Murray’s most recent campaign contribution from a potential participant was received on March 8, 2019, she has not received a campaign contribution within the preceding 12 months that she would be required to disclose prior to the Board’s decision on the Tentative Order. So, even if the Commission determines that one or more of the contributors is a participant, Ms. Murray would not be required to disclose the contributions. Nor would she be required to recuse herself from the upcoming proceedings for the Facility.

Like the disclosure requirement, the recusal requirement is tied to campaign contributions from participants that an officer receives within the preceding 12 months. (See Gov. Code, § 84308, subd. (c).) In the Zaltsman Advice Letter, the Commission interpreted the 12-month period in section 84308 such that it would allow officials to participate in pending proceedings after 12 months have passed. (See Zaltsman Advice Letter (1990) No. A-90-213, p. 3 [*However, once the 12 months have elapsed, the commissioner may participate in new and pending LAFCO decisions.*].) By the plain language of section 84308 and the Commission’s interpretation in Zaltsman, Ms. Murray would not be required to recuse herself from the Santa Ana Water Board’s upcoming proceedings related to the proposed Facility’s Tentative Order.

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We would appreciate formal, written advice regarding whether Ms. Murray may participate in the Santa Ana Water Board’s upcoming proceedings related to the proposed Huntington Beach Desalination Facility (currently scheduled for July 30 and 31, 2020, and August 7, 2020 if needed) and whether she is required to disclose any of the campaign contributions discussed above. Ms. Murray is a valuable member of the Santa Ana Water Board, and her participation in the upcoming proceedings regarding this matter would be highly beneficial for everyone in the Santa Ana Region.
If you have any questions, please contact me at teresita.sablan@waterboards.ca.gov or Jennifer Fordyce at jennifer.fordyce@waterboards.ca.gov.

Sincerely,

Teresita J. Sablan

cc:  Kris Murray, Board Member, Santa Ana Water Board
     Hope Smythe, Executive Officer, Santa Ana Water Board
     Jennifer Fordyce, Assistant Chief Counsel, State Water Board
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 officer is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.40.

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. 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

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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).
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
- 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,” 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.”

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.”

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.” 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,” which is generally

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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.”).
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.\(^\text{12}\) 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.\(^\text{13}\)

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.

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

\(^\text{13}\) 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 Conflicts

<table>
<thead>
<tr>
<th>Date</th>
<th>Forum</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>02/2018</td>
<td>Santa Ana Regional Water Quality Board</td>
<td>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.</td>
</tr>
<tr>
<td>10/2017</td>
<td>State Lands Commission</td>
<td>Spoke in support of the Poseidon – Huntington Beach CEQA process and lease.</td>
</tr>
<tr>
<td>2014 - 2015</td>
<td>Campaign Contributions</td>
<td>Received campaign contributions from Poseidon (listed in table below)</td>
</tr>
<tr>
<td>07/2013</td>
<td>Orange County Water District</td>
<td>Supported Orange County Water District’s partnership with Poseidon.</td>
</tr>
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</table>

### Political Contributions Received

<table>
<thead>
<tr>
<th>Date</th>
<th>Donor</th>
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<tbody>
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<td>$2,000.00</td>
<td>743959</td>
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<td>03/01/2019</td>
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<td>02/08/2019</td>
<td>Sprinkler Fitters United Assoc. 709</td>
<td>$2,000.00</td>
<td>901643</td>
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<td>02/08/2019</td>
<td>So. California Pipe Trades District Council 16</td>
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<td>760715</td>
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<tr>
<td>02/08/2019</td>
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<td>741733</td>
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<tr>
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<td>UA Plumbers &amp; Steamfitters Local Union 582</td>
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<td>UA Plumbers &amp; Steamfitters Local Union 584</td>
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<td>UA Plumbers &amp; Steamfitters Local Union 582</td>
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<tr>
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<td>$1,000.00</td>
<td>Unknown</td>
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<tr>
<td>04/14/2014</td>
<td>Lear Pierce *Poseidon Publicist</td>
<td>$250.00</td>
<td>890440</td>
</tr>
</tbody>
</table>

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

Excerpt from Transcript of the Santa Ana Water Board’s Feb. 9, 2018 Meeting

Statement of Roy Afusia

Sprinkler Fitters UA Local 709
aerial photos of the ground collapsing because of the well water being depleted. So, the little guy that grows the stuff doesn't have his well deep enough to be able to hit the groundwater, so the big people that own the big lots of land have water rights that go back 100 years. They don't even grow their crops. What they do is sell their water rights. Desal is absolutely necessary.

So that's kind of, in a nutshell, that we need to look for other resources. California is always at the lead of technology. We need to lead the nation in desal. And so, if you would please consider this option, that we need to be advanced in everything that we do, and water is the life source of any community. So, thank you for your time, and I'll end the play right now.

CHAIR RUH: Our next speaker is Roy Afusia, Sprinkler Fitters Local 709, and I hope I pronounced the name as it's spelled on here.

MR. AFUSIA: I won't hold it against you. Thank you, Board. Let me just get my notes, here.

Good morning, members of the Board. My name is Roy Afusia. I'm here with the Sprinkler Fitters Local 709. I'm glad you're taking a look at the Desalination Amendment for the new Ocean Plan. The Ocean Plan Amendment states that "Desal shall be consistent with water planning documents." We're in two of the largest water agencies in
the county, and it documents that there's a need for projects like this.

The State Lands Commission considered the science, and voted unanimously to approve the project. Desalination not only provides local water, but also provides thousands of jobs and millions of tax money. There will be also a handful of vocal opponents who try to stop anything, and do everything to stop a project like this from being built, but you can't let that stop you.

UNIDENTIFIED SPEAKER: (Indiscernible.)

MR. AFUSIA: All right. Sorry, ma'am.

Well, today we had water leaders from Orange County that are here that want this project or projects like this be approved.

UNIDENTIFIED SPEAKER: Please (indiscernible).

CHAIR RUH: Yes. We can't talk about a specific project, sir. I'm sorry.

MR. AFUSIA: All right.

CHAIR RUH: Please understand that we must follow an agenda. This has been a publicly noticed meeting on a specific agenda item about learning about desalination. If we start talking about a specific project, it could jeopardize a future meeting if a specific project comes forward.

MR. AFUSIA: Okay. Thank you.
MS. OKUN: And there's no real legal problem. The agenda item was noticed to talk about desal, but to talk about the specific Huntington Beach project is premature at this point. There will be a series of hearings on that project.

Everybody had notice of what today was about, but you're just really speaking in a vacuum if you want to address that project at this point, because the Board doesn't have the whole record. It doesn't have a draft permit. It will consider Bolsa Chica or any other proposed remediation, and any other details of the project, in the future.

At this time, if you want to talk generally about water supply portfolios, or desal, or the need for jobs, that's fine --

MR. AFUSIA: All right. Thank you.

MS. OKUN: -- but we're not here to make a decision on a specific project.

MR. AFUSIA: All right. Thank you. I'm just here to support a project. Thank you for your time.

CHAIR RUH: Thank you, sir.

Our next speaker is Anthony Novello with the Plumber and Pipefitters Local 382, and, again, please be generic. We are not on any specific project.

MR. NOVELLO: Thank you, Board. I'm going to go
ATTACHMENT C

Letter from Steven LaMotte (Jan. 15, 2020)
Orange County Chapter of the Building Industry Association of Southern California
January 15, 2020

The Hon. William Ruh  
Chair, Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

Re: Huntington Beach Seawater Desalination Facility – APPROVE National Pollutant Discharge Elimination System (NPDES) Permit Order No. R8-2020-0005, (NPDES CA8000403)

Dear Chair Ruh:

The Building Industry Association of Orange County (BIA-OC) has a mission to champion housing as the foundation of vibrant and sustainable communities and the Poseidon Water Huntington Beach Seawater Desalination plant is a model of that sustainability. The project will be 100% carbon neutral and by using ocean water as its source supply, it is climate resilient.

Your board first approved this project’s NPDES permit in 2006, then unanimously approved the amended permit in 2012. As your staff notes, this project is fully compliant with the State Water Board’s Ocean Plan and has put countless hours into the Tentative Order that will be before you in April 2020 for your consideration.

The Carlsbad Desalination Plant received its approval in May 2019 by the San Diego Regional Water Board under the State Water Board’s new Ocean Plan regulations.

In the homebuilding world, we understand the need for regulatory oversight, but we simply ask for consistency and clarity in the permitting process. I would hope that the Santa Ana Regional Water Quality Control Board would follow the lead of the San Diego Regional Water Board and approve the NPDES permit that is supported by both the science and your staff.

Thank you for your thoughtful consideration.

Respectfully,

Steven C. LaMotte  
Chapter Executive Officer
ATTACHMENT D

Excerpt from Transcript of the Santa Ana Water Board’s Feb. 8, 2019 Meeting

Statement of Ernesto Medrano

LA/OC Building and Construction Trades Council
the project is located.

Poseidon Water has proposed, as you know, that their mitigation go to the support of the Bolsa Chica Wetlands. And the environmentalists that sit on the Board and staff of the Conservancy support his wholeheartedly.

Thank you of the consideration of our viewpoints and we look forward to the approval of this permit.

Good evening.

CHAIR RUH: Thank you.

Our last speaker or the last speaker card on this item is Mr. Ernesto Medrano, the Los Angeles and Orange County Building Trades.

Welcome, Mr. Medrano.

MR. MEDRANO: Good afternoon, Mr. Chairman, Members of the Board, executive staff. My name is Ernesto Medrano and I’m the Council representatives for the Los Angeles and Orange County Building and Construction Trades Council. We represent 140,000 hardworking men and women in the construction industry. We have 49 local unions and district council representing all 14 trades. We’re the second largest council in the country. And I’m here to speak for the voice of the working families of Orange County.

The Construction Trades believe that -- we believe in an all -- above all, encompassing, comprehensive
portfolio when it comes to the strategy of achieving water resiliency in Orange County. We support the Huntington Beach Desalination Project because it will provide, as we heard before, 50 million gallons of fresh drinking water each day, a new locally developed and managed supply of water that will ensure our county’s needs are met and enhance the reliability for decades to come.

And I think what we have to keep in mind when you think about mega-projects that we did for water, such as the dam or the water project, you have to think of not just today and 10 years from now or 20 years, you’ve got to think half-a-century ahead, because that’s what these projects mean to us. What’s going to happen 50 years from now for our children, our families, given climate change, given droughts, given growth? We have to keep that in mind. And I think this is why this project is extremely important.

The project is obviously good for job creation and economic development. We estimate that the desalination project will create more than 2,000 high-wage, high-skilled jobs during the construction phase and it will generate hundreds of millions of dollars of local economic activity and tax revenue benefits.

When we look at the development here in Orange County, we heard Councilman O’Neil mention it earlier,
right now, every time you pick up the newspaper, what are we hearing and looking at? Housing growth, whether it’s permanent sustainable housing for the homeless, whether it’s affordable housing, or the market rate housing, that’s the direction and that’s the need that we have in this county. And it’s going to be growing and there’s going to be a demand for water, whether it’s building, developing and/or the utilization of water for all of that growth that’s going to happen.

And after -- we’ve heard 18 years of processes, of going through permits, reapplying for permits, leases, environmental impact reports. They’ve met -- Poseidon has met every single one of those challenges ahead of them. And three years of the exhaustive review here, I want to urge Staff to complete its administrative work and bring this project permit renewal application forward for Board consideration. The time is now. And here in Orange County, with more than 3 million residents, it’s businesses, its hospitality, tourism industries, manufacturing, tech sectors, and housing, the educational institutions and others are all counting on the reliability of the water for the future.

So I want to thank you and we urge you to continue to approve this project because we think it’s extremely important. Thank you.
State Ocean Plan.

And lastly, your Board first approved this project permit back in '06.

Thank you very much.

CHAIR RUH: Thank you. That was John O’Neil.

Ernesto Medrano, Ashley Patterson, Robert Ruiz, and Jesse Segura.

Are you Mr. Medrano?

MR. MEDRANO: Yes, I am. Thank you.

CHAIR RUH: Thank you, sir.

MR. MEDRANO: Good afternoon, Members of the Board.

My name is Ernesto Medrano and I represent the Los Angeles and Orange County Building and Construction Trades Council, representing over 140,000 hardworking men and women in both counties, of which a big number of them are within Orange County. I’m also an Anaheim resident.

In the interest and respect of your time, we have chosen not to bring 50 to 70 speakers. We have curtailed that back and it will be one voice.

CHAIR RUH: So you’re speaking on behalf of about --

MR. MEDRANO: -- but on behalf of all of them.

CHAIR RUH: -- 50 to 70 members?

MR. MEDRANO: Yes.

CHAIR RUH: Thank you.

MR. MEDRANO: Anyway, this project is very important
to our skilled and trained members. It will also create 3,000 jobs over the three-year construction period.

It will also provide career opportunities for many local men and women through our Apprenticeship Training Program. Not all young men and women are going to college. We provide an option to that choice to come and get a career in the construction industry.

But more implementation, once this is built, it will create billions of gallons of drinking water for Orange County. This will be a new water source, a water supply that is not reliant on the rainfall or snow melt. It will be our own source. It won’t be imported.

The project is 100 percent climate resilient. And we will build this with the most technologically advanced, energy efficiency and environmental sound desalination plant in the world.

The proposed permit your staff has prepared ensures that this project will be fully compliant with the new Desalination Policy and the Ocean Plan.

While I understand today’s meeting is simply a workshop, I would ask that, when the item comes before you on a vote in March, you’ll abort the delay and you approve this project as it will provide water and jobs to the residents of Orange County.

Thank you.
ATTACHMENT F

Letter from Ron Miller (Jan. 13, 2020)
LA/OC Building and Construction Trades Council
The Hon. William Ruh, Chair  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

Re: Huntington Beach Seawater Desalination Facility — APPROVE National Pollutant Discharge Elimination System (NPDES) Permit Order No. R8-2011-0046 (NPDES CA8000403)

Dear Chair Ruh:

The Huntington Beach Seawater Desalination Plant is the right project in the right place at the right time. As you heard from such authoritative water district managers as the Orange County Water District and the Metropolitan Water District of Southern California, this project is needed to help Orange County reduce its reliance on imported water and become more water independent. This project is without question the single largest source of new, drought-proof water supply available to Orange County.

In addition to the billions of gallons of new drinking water and millions of dollars in new tax revenue, this project will also result in thousands of new jobs for the hard-working skilled and trained men and women in the building trades. Electricians, Laborers, Pipefitters, Cement Masons and countless other tradesmen and women will bring this project to fruition on time and on budget. This will also create a pathway for entry into apprenticeship programs in the building and constructions trades for community members that live around the project and result in life long careers in construction.

The applicant holds an existing permit; they are simply asking for an amendment and a renewal to that permit. The San Diego Regional Water Quality Control Board granted a similar request to the applicant for its Carlsbad Seawater Desalination Plant, which uses the same technology that is proposed for this plant.

I ask you to simply follow the science and follow the law and approve the permit as your staff has indicated would be the appropriate action for you to take.

Sincerely,

Ron Miller  
Executive Secretary  
Los Angeles-Orange County Building and Construction Trades  
RM:ag-opeiu##537/afl-cio

cc:  
Board Member Tom Rivera  
Board Member Lana Ong Peterson  
Board Member William von Blasingame  
Board Member Kris Murray  
Board Member Daniel Selmi  
Ms. Hope Smythe, Executive Officer
ATTACHMENT G

Memorandum of Understanding Between LA/OC Building and Construction Trades Council and Poseidon (Oct. 31, 2013) (redacted by Poseidon)
Poseidon Resources and Los Angeles/Orange Counties Building and Construction Trades Council

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between Poseidon Resources (Surfside) LLC ("Poseidon") and the Los Angeles/Orange Counties Building and Construction Trades Council and its affiliated Unions and those other Unions representing employees working on the construction of the Huntington Beach Desalination Project (collectively referred to as "Trades Council").

WHEREAS, Poseidon and the Trades Council are interested in furthering the development and construction of seawater desalination plants and providing for continuing economic development of the cities and communities in Los Angeles and Orange County and the surrounding region; and

WHEREAS, the Trades Council wishes to provide their members who live in these communities and the region with opportunities to work on the construction of the Huntington Beach Desalination Project (the "Project"); and

WHEREAS, the Trades Council has developed a strong knowledge of the communities in which its members reside; and

WHEREAS, Poseidon and the Trades Council are desirous of working together to advance the Project and to obtain all necessary regulatory approvals and permits to move the Project forward;

WHEREFORE, the parties agree as follows:

1. Poseidon agrees that, as a condition of contract award, the successful bidder for the construction of the Project shall be required to enter into a Project Labor Agreement with the Trades Council.
Agreed to this 31st day of October, 2013.

LOS ANGELES/ORANGE COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL ON BEHALF OF ITS AFFILIATED UNIONS AND OTHERS

By: [Signature]
Title: Executive Secretary

POSEIDON RESOURCES (Surfside) LLC

By: [Signature]
Title: Vice President
Teresita J. Sablan
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, Floor 22
Sacramento, CA  95814
Teresita.Sablan@Waterboards.ca.gov

Re: Your Request for Advice
Our File No. A-20-083

Dear Ms. Sablan:

This letter responds to your request for advice on behalf of Regional Water Quality Control Board, Santa Ana Region (the “Santa Ana Water Board,” or “Board”) member Kris Murray regarding the conflict of interest and “pay-to-play” provisions of the Political Reform Act (the “Act”). Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (In re Oglesby (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice. Lastly, the Commission does not provide advice with respect to past conduct and this advice letter applies only to prospective actions. (Regulation 18329(b)(6)(A).)

QUESTIONS

1. Does Ms. Murray have a conflict of interest under Section 87100 in the Santa Ana Water Board’s decision concerning a waste discharge permit renewal application by Poseidon Resources LLC for a proposed desalination facility due to campaign contributions Ms. Murray received from Poseidon Resources LLC and other groups that support construction of the facility?

2. Under the Act’s “pay-to-play” restrictions in Section 84308, must Ms. Murray disclose the contributions she received from supporters of the proposed desalination facility and

---

1 The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.
recuse herself from the Santa Ana Water Board’s decisions concerning the proposed desalination facility?

CONCLUSIONS

1. No. Section 87100 governs only financial conflicts of interest, such as gifts and income. The Act specifically exempts campaign contributions from the definitions of “gift” and “income.”

2. No. Because more than 12 months have passed since Ms. Murray received the contributions in question from any party or participant in the upcoming decision, Section 84308 is not implicated.

FACTS AS PRESENTED BY REQUESTER

You are an attorney with the Office of Chief Counsel of the State Water Resources Control Board (“State Water Board”). In this capacity, you represent the Santa Ana Water Board, one of nine Regional Water Quality Control Boards (Regional Boards) across the state, and its members. All members of the Santa Ana Water Board are appointed. Kristine (“Kris”) Murray was appointed to the Santa Ana Water Board in November of 2018. At the time of Ms. Murray’s appointment to the Santa Ana Water Board, she was also a candidate in a special election for a vacant seat on the Orange County (OC) Board of Supervisors. Ms. Murray lost the election, and her candidacy ended on March 11, 2019. Prior to her appointment on the Santa Ana Water Board, Ms. Murray served on the Anaheim City Council from December 2010 to December 2018.

The Santa Ana Water Board is responsible for issuing waste discharge permits under the federal Clean Water Act’s National Pollutant Discharge Elimination System (NPDES), which limits the amount of pollutants that may be discharged into U.S. waters. In addition, the Santa Ana Water Board reviews proposed desalination facilities to determine whether they use the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life in compliance with California water law. Poseidon Resources LLC (“Poseidon”) has proposed to construct and operate a new and expanded desalination facility in Huntington Beach (the “Facility”) that would require renewal of its NPDES permit and a determination by the Santa Ana Water Board that the Facility complies with other relevant state water laws (together, the “Tentative Order”). Poseidon applied for the current permit renewal pending before the Santa Ana Water Board on June 30, 2016.

The Santa Ana Water Board has heard several informational items at public meetings regarding Poseidon’s proposed Facility, as well as two workshops regarding Poseidon’s proposed Facility’s Tentative Order—one on December 6, 2019, and another on May 15, 2020—at which the Board received oral public comment. The Tentative Order is now pending before the Santa Ana Water Board, with the Board scheduled to approve, disapprove, or continue consideration on the proposed Facility’s Tentative Order on July 30-31, 2020, with a third hearing day scheduled for August 7, 2020, if needed.
In December of 2019, the Santa Ana Water Board received a letter from the California Coastkeeper’s Alliance (CCKA), asking Ms. Murray to recuse herself from the Board’s proceedings regarding the proposed Facility because CCKA believes she has a disqualifying conflict of interest. Specifically, CCKA asserts that campaign contributions Ms. Murray received during her campaigns for the Anaheim City Council and the Orange County Board of Supervisors in 2018 and 2019 constitute either sources of income or gifts to Ms. Murray. CCKA takes issue with 12 contributions, ranging from $250 to $2,000, received between April 2014 and March 2019 as follows:

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<thead>
<tr>
<th>Date</th>
<th>Contributor</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>03/08/2019</td>
<td>UA Journeymen &amp; Apprentices Local 250</td>
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</tr>
<tr>
<td>04/014/2014</td>
<td>Lear Pierce</td>
<td>$250</td>
</tr>
</tbody>
</table>

Six of these contributions, including the two from Poseidon, were received more than 12 months before Ms. Murray was appointed to the Santa Ana Water Board and six of them were received while she has been serving on the Santa Ana Water board. All 12 contributions were received more than 12 months before the Santa Ana Water Board’s scheduled July 30-31, 2020 decision on the Tentative Order. Nevertheless, Ms. Murray disclosed the contributions she received from Poseidon on the record at a previous Santa Ana Water Board meeting at which the proposed Facility was discussed.

Of the six contributions received after Ms. Murray was appointed to the Santa Ana Water Board—five of which are from labor and trade organizations—none of the contributors are a named applicant for the Facility, though two have expressed support for the Santa Ana Water Board’s approval of the Tentative Order for the proposed Facility on the record before the Board: Sprinkler Fitters UA Local 709 (“UA Local 709) and UA Plumbers & Steamfitters Local Union 582 (“Local Union 582”). On February 9, 2018, speaking on on behalf of UA Local 709 during an informational item at a Santa Ana Water Board meeting, Roy Afusia publicly commented “there’s a need for a project like this,” and “desalination not only provides local water, but also provides thousands of jobs and millions of tax money.” At the Board’s March 15, 2020 workshop, speaking on behalf of Local Union 582, Luis Andres Perez publicly commented “as we’re getting more dense and more populated, we need to look towards other aspects of importing our water or, rather, in this case through the desalination project with Poseidon. And I think more than anything, if we’re investing in our water infrastructure at the moment, we are able to mitigate those costs and long-term effect.” Both contributions to Ms. Murray from UA Local 709 and Local Union 582 were made over 12
months from the time these entities’ representatives provided public comment before the Santa Ana Water Board.

CCKA asserts that “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.” In addition, CCKA asserts that OC Tax PAC, who contributed $2,000 to Ms. Murray’s Board of Supervisors campaign on March 1, 2019, is “a well-known supporter for the Poseidon—Huntington Beach ocean desalination project.”

You note that the Orange County Chapter of the Building Industry Association of Southern California has expressed support for the approval of the Tentative Order for the proposed Facility. However, the Building Industry Association of Southern California, the umbrella organization to which the Orange County Chapter belongs, has not expressed support for the Facility. The Building Industry Association of Southern California contributed to Ms. Murray’s Board of Supervisors campaign over 12 months ago, while the Orange County Chapter did not contribute to Ms. Murray. Similarly, the Los Angeles/Orange Counties Building and Construction Trades Council—with which several of Ms. Murray’s contributors are affiliated—has expressed support for the approval of the permit for the proposed Facility at several Santa Ana Water Board meetings, but has not made campaign contributions to any of Ms. Murray’s campaigns and the entities it represents that you have noted made contributions to Ms. Murray made those contributions over 12 months before the Los Angeles/Orange Counties Building and Construction Trades Council expressed support according to the facts you provided. Ms. Murray’s other contributors you have mentioned: UA Local 250, OC Tax PAC, and Southern California Pipe Trades District 16, have not publicly supported or opposed the proposed Facility in person or in writing in proceedings before the Santa Ana Water Board and again their contributions to Ms. Murray were made over 12 months prior to the upcoming decision.

On behalf of Ms. Murray, you now seek guidance on whether Sections 87100 and 84308 of the Act, respectively, prohibit Ms. Murray from participating in the Santa Ana Water Board’s decisions concerning the proposed Facility.

ANALYSIS

Section 87100: Conflicts of Interest

You have asked whether campaign contributions received by Ms. Murray give rise to a conflict of interest under Section 87100 of the Act. Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Section 87103 provides that an official has a “financial interest” in a decision if it is reasonably foreseeable that the decision will have material financial effect on one or more of the official’s interests identified in that section. In addition, Section 87103 identifies five types of interests that may give rise to a disqualifying conflict of interest:

1. An interest in a business entity in which the official has a direct or indirect investment of $2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner,
trustee, employee, or holds any position of management (Section 87103(d)).

2. An interest in real property in which the official has a direct or indirect interest of $2,000 or more. (Section 87103(b).)

3. An interest in a source of income to the official, including promised income, which aggregates to $500 or more within 12 months prior to the decision. (Section 87103(c)).

4. An interest in a source of gifts to the official if the gifts aggregate to $500 or more within 12 months prior to the decision. (Section 87103(e).)

5. An interest in the official’s personal finances, including those of the official’s immediate family, also known as the “personal financial effects” rule. (Section 87103.)

None of the above interests is implicated in Ms. Murray’s situation. Moreover, the Act expressly exempts campaign contributions from the definitions of “income” and “gift.” (Sections 82030(b)(1) and 82028(b)(4).) Therefore, campaign contributions received by Ms. Murray do not give rise to a conflict of interest under Section 87100.

Section 84308: Members of Appointed Boards and Commissions, “Pay to Play”

You have also asked whether Ms. Murray has a conflict of interest under the “pay-to-play” restrictions of Section 84308 of the Act. Section 84308 imposes contribution limitation, disclosure, and disqualification requirements on members of appointed boards and commissions who make decisions involving licenses, permits or other entitlements for use.

While a matter is pending before an agency, Section 84308(b) provides:

No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars ($250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7.

Prior to the date a decision is to be rendered by an agency Section 84308(c) provides:

Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars ($250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or
other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars ($250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

For purposes of Section 84308, an “officer” is defined as an elected or appointed member of a boards or and commission or an agency head. (Regulation 18438.1(d).) An officer who receives a contribution exceeding $250 from a party or participant within the 12 months prior to rendering a decision in a proceeding involving a license, permit, or other entitlement for use must disclose that fact on the record of the proceeding. (Section 84308(d)). In addition, an officer may not make, participate in making, or in any way attempt to use his or her official position to influence a decision concerning a permit or other entitlement for use if the officer has willfully or knowingly received a contribution during this 12 month period from a party or his or her agent; or a participant or his or her agent, if the officer knows or has reason to know that the participant has a “financial interest” in the decision. (Id.)

In this case, the Santa Ana Water Board is an appointed board member and thus subject to Section 84308. (Section 84308(a)(3).) Likewise, Ms. Murray meets the definition of an appointed “officer” under Section 84308(a)(4), and the decision at issue clearly concerns a “license, permit, or other entitlement for use” under Section 84308 (a)(5), the NPDES permit requested by Poseidon. Thus, as a member of the Santa Ana Water Board Ms. Murray is subject to the “pay-to-play” restrictions of Section 84308.

Section 84308(a)(1) defines a “party” to a decision as a person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. Poseidon is a “party” since Poseidon has “filed an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.”

A “participant” for purposes of Section 84308 is any person who is not a party, but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as defined in Section 87100, et seq. (Section 84308(a)(2).) A person “actively supports” a decision if they lobby an agency’s officials or employees in person, testify in person before an agency, “or otherwise act to influence officers of the agency.”

Both UA Local 709 and Local Union 582 have had representatives testify before the Santa Ana Water Board in support of the Facility. On February 9, 2018 and May 15, 2020, respectively. However, both of these entities made contributions to Ms. Murry over 12 months before their participation in this matter. As noted above Section 84308(b) prohibits the acceptance of a contribution of more than $250 while a proceeding involving a license or permit is pending before the agency and Section 84308(c) prohibits an officer of an agency from making, participating in making, or in any way attempting to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the
An officer has willfully or knowingly received a contribution in an amount of more than $250 within the preceding 12 months from a party or participant (or their agents) if the officer knows or has reason to know that the participant has a financial interest in the decision.

With respect to the upcoming decision, because no contributors have contributed to Ms. Murray within 12 months prior to the decision Ms. Murray is not required to disclose the contributions at issue, nor must she recuse herself from the Santa Ana Water Board’s decisions concerning the Tentative Order to be heard on July 30-31 or August 7, 2020 for the proposed Facility, including renewal of its NPDES permit.

We do note that the facts indicate the permit application renewal was submitted by Poseidon on June 30, 2016, and the matter has been pending since at least that date. There have already been meetings held by the Santa Ana Water Board where Poseidon’s permit renewal was discussed since Ms. Murray was appointed to the Board. Additionally, Ms. Murray has accepted a number of campaign contributions over 12 months ago. However, we only advise on whether Ms. Murray is permitted to participate in the upcoming decision and do not advise on past conduct. (Regulation 18329(b)(6)(a).) Therefore, we cannot advise on whether it was permissible for Ms. Murray to accept contributions from the parties and participants you have noted since her appointment to the Santa Ana Water Board or whether it was permissible for her to participate in previous meetings on this pending matter.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: Toren Lewis
Counsel, Legal Division

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