RESOLUTION NO. 2012-18

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY APPROVING A WATER PURCHASE AGREEMENT AND A DESIGN-BUILD AGREEMENT FOR PIPELINE IMPROVEMENTS WITH POSEIDON RESOURCES, CHANNELSIDE LP; APPROVING AN INSTALLMENT SALE AND ASSIGNMENT AGREEMENT WITH THE SAN DIEGO COUNTY WATER AUTHORITY FINANCING AGENCY AND OTHER AGREEMENTS NECESSARY TO ACCOMPLISH TAX EXEMPT PROJECT FINANCING THROUGH THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY; APPROVING ADJUSTMENTS TO THE CAPITAL IMPROVEMENT PROGRAM BUDGET; APPROVING SUPPORTING CONTRACTS AND CONTRACT AMENDMENTS; APPROVING THE SECOND ADDENDUM TO THE CITY OF CARLSBAD PRECISE DEVELOPMENT PLAN AND DESALINATION PROJECT ENVIRONMENTAL IMPACT REPORT (STATE CLEARING HOUSE NO. 2004041081); ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM; AUTHORIZING THE FILING OF A NOTICE OF DETERMINATION; AND AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE AGREEMENTS AND TAKE OTHER ACTIONS NECESSARY FOR IMPLEMENTATION OF THE CARLSBAD DESALINATION PROJECT

WHEREAS, in its 2000 Urban Water Management Plan, the Water Authority identified seawater desalination as a potential new local water supply source and identified property in the City of Carlsbad as a likely location for a new seawater desalination facility, in addition to increased reliance on enhanced water conservation and increased water recycling, as an important component of the Water Authority’s diversified water supply portfolio; and

WHEREAS, on November 20, 2003, the Water Authority Board of Directors adopted Resolution No. 2003-34 certifying the Final Program Environmental Impact Report (State Clearinghouse No. 2003021052) for the Water Authority’s Regional Water Facilities Master Plan Project (the “Master Plan EIR”), which evaluated, among other things, potential growth inducing impacts associated with new water supplies to the region including, but not limited to, up to 150 million gallons per day (“MGD”) of new supplies from seawater desalination. This certification included a 50 MGD plant located in the City of Carlsbad, and also approved for planning purposes the list of projects, including desalination, identified in the Master Plan EIR’s “Supply from the West” alternative; and

WHEREAS, on September 8, 2005, the Board adopted Resolution No. 2005-31 certifying a Final Environmental Impact Report for the Twin Oaks Valley Water Treatment Plant Project (State Clearinghouse No. 2004071034) (the “Twin Oaks EIR”), which project was constructed as a 100 MGD submerged membrane water treatment facility, including treated water holding
tanks and distribution pipelines and other facilities, consistent with the conditions and mitigation measures included in the Twin Oaks EIR; and

WHEREAS, in its 2005 Urban Water Management Plan (updated in 2007), the Water Authority again identified seawater desalination as an important new source of water providing diversification and water supply reliability benefits as a new drought-proof, treated water supply, and established a local seawater desalination goal of 56,000 acre feet annually (AF/YR); and

WHEREAS, in its 2010 Urban Water Management Plan, the Water Authority again described desalination as an important element of its water supply portfolio, and further refined its discussion of desalination to recognize the permitted status of the Carlsbad Seawater Desalination Project of Poseidon Resources (Channelside) LP ("Poseidon") as well as the July 2010 approval by the Board of a Term Sheet for the preparation of a water purchase agreement between Poseidon and the Water Authority; and

WHEREAS, the 2010 Urban Water Management Plan includes a thorough discussion of other local water supplies, including increased conservation in response to Senate Bill 7 of the 2009 Seventh Extraordinary Session (SBX7-7), increased water recycling, the potential for indirect potable reuse (including the City of San Diego’s Water Purification Demonstration Project), and potential for receiving water from desalination projects located in the Republic of Mexico; and

WHEREAS, on December 8, 2010, the Board adopted Resolution No. 2010-18 certifying a Final Environmental Impact Report/Environmental Impact Statement for the San Diego County Water Authority Subregional Natural Community Conservation Plan/Habitat Conservation Plan (State Clearinghouse No. 2003121012) (the “Habitat Conservation Plan EIR/EIS”), which Plan was implemented on December 28, 2011; and

WHEREAS, the City of Carlsbad, acting as lead agency for Carlsbad Seawater Desalination Plant and appurtenant facilities proposed by Poseidon (the “Project”) prepared an Environmental Impact Report for the Project in compliance with the California Environmental Quality Act (“CEQA”), which the City of Carlsbad certified on June 13, 2006 (“Carlsbad EIR”); and

WHEREAS, the City of Carlsbad prepared an Addendum to the Carlsbad EIR (“Addendum”) which was adopted on September 15, 2009, and reflects minor and immaterial design modifications to the Project site plan, appurtenant facilities, and water delivery pipeline network; and

WHEREAS, the Project is fully permitted, with the California Coastal Commission issuing the following permits: Coastal Development Permit No. E-06-013, Energy Minimization and Greenhouse Gas Reduction Plan (December 2008), Marine Life Mitigation Plan (December 2008), Erosion Control Plan (November 2009), Landscaping Plan (September 2009), Lighting Plan (August 2009), Construction Plan (September 2009), and Water Pollution Control Plan (September 2009); the California Department of Public Health issuing Conceptual Approval Letter dated October 19, 2006; the California Regional Water Quality Control Board issuing
NPDES Permit No. CA0109223 and Notice of Intent to Discharge for Storm Water Associated with Construction Activities (WDID #9 37C361181); the City of Carlsbad issuing Redevelopment Permit RP 05-12(A), Specific Plan 144 with Amendment 144(J) SP 144(J), Habitat Management Plan Permit Amendment HMP 05-08(A), Precise Development Plan PDP 00-02(B), Mitigation Monitoring and Reporting Program for EIR 03-05(A), Development Agreement DA 05-01(A), Standard Urban Storm Water Mitigation Program (September 2009), and Coastal Development Permit 04-41; the State of California State Lands Commission issuing an Amendment of Lease PRC 8727.1 (August 2008); and

WHEREAS, minor and immaterial design modifications have been made to the pipeline for the Project, including: (1) a pipeline alignment modification and associated pumping well in Macario Canyon near Cannon Road and Faraday Avenue in Carlsbad; and (2) a new chemical injection facility and associated piping at the San Marcos connection point for potential treatment of water; and

WHEREAS, changes to the originally-approved distribution system require minor and immaterial modifications to existing Water Authority Facilities in order to accept the new desalinated water from the Project, including: (1) the relining of a 5.5 mile long segment of the existing Pipeline 3 to allow for desalinated water to flow from the desalination plant to the Twin Oaks Valley Water Treatment Plant; (2) installation of valves, a flow meter, and appurtenant piping on Pipelines 3 and 4 to enable the reversed water flow; (3) a replacement vent along Pipeline 4 in San Marcos to allow for the flow of water between Pipelines 4; and (4) modifications to the Twin Oaks Valley Water Treatment Plant including the construction of a new pipeline segment connecting Pipeline 3 to the existing pipeline inlets of two treated water storage tanks, the installation of a chemical injection and monitoring station, and pump well associated with the pipeline segment, and the installation of a third flow control facility that would be located adjacent to the two existing treated water flow control facilities (collectively, along with the Project pipeline modifications described above, hereinafter referred to as the “Project Modifications); and

WHEREAS, the Project Modifications are desirable to the Water Authority because they will: 1) allow desalinated water to be stored and blended with potable water at the Twin Oaks Valley Water Treatment Plant, thus providing enhanced reliability of water supply at the Plant; and 2) allow for greater operational flexibility and efficiency in receiving and delivering the Product Water; and

WHEREAS, the Habitat Conservation Plan EIR/EIS is relevant to the Project Modifications because it addresses potential impacts of Water Authority activities, on sensitive biological resources not already covered by the permits issued to Poseidon, such as installation, operation, maintenance, and repair of aqueduct and water conveyance, treatment, and storage systems as well as the ongoing operations and maintenance activities associated with the Project Modifications; and

WHEREAS, the Second Addendum to the Carlsbad EIR was prepared on behalf of the Water Authority by firms or persons having expertise in the analysis of environmental effects of projects and in the preparation of environmental documentation, to determine if the preparation
of a subsequent or supplemental EIR was required for the Project Modifications ("Carlsbad Second Addendum"); and

WHEREAS, the Water Authority is acting as a responsible agency under CEQA in connection with the approval of the Carlsbad Second Addendum, the Agreements, and the Project Modifications described above; and

WHEREAS, before it takes action on the Project Modifications above, CEQA requires a responsible agency to review the lead agency’s EIR, and, if the Project Modifications result in any significant new environmental effects, make findings for each new significant effect of a project, and adopt a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program if necessary; and

WHEREAS, in connection with the consideration of the Project, the Board held public meetings in compliance with applicable law on the following dates: July 23, 2009 (Water Planning Committee/Formal Board), December 17, 2009 (Water Planning Committee/Formal Board), May 27, 2010 (Water Planning Committee), June 10, 2010 (Joint Meeting – Special Board & Water Planning Committee), June 24, 2010 (Water Planning Committee/Formal Board), July 22, 2010 (Water Planning Committee/Formal Board), September 23, 2010 (Water Planning Committee/Formal Board), October 28, 2010 (Water Planning Committee), December 9, 2010 (Water Planning Committee/Formal Board), June 23, 2011 (Water Planning Committee/Formal Board), August 25, 2011 (Water Planning Committee/Formal Board), October 27, 2011 (Water Planning Committee/Formal Board), December 8, 2011 (Water Planning Committee), January 26, 2012 (Water Planning Committee/Formal Board), February 23, 2012 (Water Planning Committee), March 22, 2012 (Water Planning Committee), April 19, 2012 (Special Water Planning Committee), April 26, 2012 (Water Planning Committee), May 24, 2012 (Water Planning Committee/Engineering & Ops Committee/Formal Board), June 14, 2012 (Special Board Workshop), June 28, 2012 (Water Planning Committee/Engineering & Ops Committee/Formal Board), July 12, 2012 (Special Board Workshop), July 26, 2012 (Water Planning Committee), August 9, 2012 (Special Board Workshop), August 23, 2012 (Water Planning Committee/Administrative & Finance Committee), September 20, 2012 (Special Board Workshop), September 27, 2012 (Water Planning Committee/Administrative & Finance Committee), October 2, 2012 (Special Water Planning Committee – Public Workshop), October 10, 2012 (Special Water Planning Committee – Public Workshop), October 11, 2012 (Special Board – Workshop), October 25, 2012 (Water Planning Committee/Formal Board); and

WHEREAS, on November 8, 2012, the Carlsbad EIR and the Carlsbad Addendum were presented to the Board and the Board reviewed and considered the information found in these environmental documents, including the Findings of Fact, the Statements of Overriding Considerations, and the Mitigation Monitoring and Reporting Programs; and

WHEREAS, the Habitat Conservation Plan EIR/EIS was previously reviewed and certified by the Board, is listed by the clearinghouse number above and is available for review at the Water Authority headquarters, located at 4677 Overland Avenue, San Diego, California; and
WHEREAS, the Carlsbad Second Addendum was presented to the Board and the Board reviewed and considered the information found in the Carlsbad Second Addendum prior to making a decision on the Agreements and the Project Modifications; and

WHEREAS, the Water Authority staff has presented and the Board has considered the following agreements necessary for implementation of the Project:

- the Carlsbad Seawater Desalination Project Water Purchase Agreement between the San Diego County Water Authority and Poseidon Resources (Channelside) LP ("Water Purchase Agreement"), which sets forth the terms under which the Water Authority will purchase Product Water from Poseidon and the criteria for the production, conveyance, exchange, and delivery of Product Water from the Project to the Water Authority;
- the Design-Build Agreement for the Product Water Pipeline Improvements Relating to the Carlsbad Seawater Desalination Project between the San Diego County Water Authority and Poseidon Resources (Channelside) LP ("Pipeline DBA") which sets forth the terms for the design and construction of the Product Water Pipeline;
- the Loan Agreement between the California Pollution Control Financing Authority and the San Diego County Water Authority Financing Agency;
- the Pipeline Installment Sale and Assignment Agreement between the San Diego County Water Authority and the San Diego County Water Authority Financing Agency ("Installment Sale Agreement");
- the Bond Purchase Agreement for the California Pollution Control Financing Authority Water Furnishing Revenue Bonds (Poseidon Resources (Channelside) LP Desalination Project) Series 2012 ("Plant Bonds Purchase Agreement");
- the Bond Purchase Agreement for the California Pollution Control Financing Authority Water Furnishing Revenue Bonds (San Diego County Water Authority Desalination Project Pipeline) Series 2012 ("Pipeline Bonds Purchase Agreement");
- The Collateral Trust Agreement between Poseidon Resources (Channelside) LP, Union Bank, as Collateral Agent, and Union Bank, as trustee for the Plant and Pipeline Indentures;
- the Pipeline Bond Indenture; and
- the Collateral Agent’s Remedies Agreement between the San Diego County Water Authority and Union Bank, as Collateral Agent; and

WHEREAS, the Water Authority and the San Diego County Water Authority Financing Agency ("Financing Agency") have requested the California Pollution Control Financing Authority ("Issuer") issue its revenue bonds in an amount not to exceed $270,000,000 to assist in the financing of the Pipeline; and

WHEREAS, the proceeds of such revenue bonds will be loaned to the Financing Agency under the Pipeline Loan Agreement between the Financing Agency and the Issuer; and

WHEREAS, the Financing Agency will provide the loan proceeds to the Water Authority for the purposes of and pursuant to the Installment Sale Agreement; and

5
WHEREAS, loan repayments under the Pipeline Loan Agreement solely from, and the Financing Agency’s obligation to make such loan repayments will be secured solely by, installment sale payments to be made by the Water Authority under the Installment Sale Agreement; and

WHEREAS, under certain circumstances, Poseidon Resources (Channelside) LP ("Poseidon") will be obligated to make contracted shortfall payments as described in the Water Purchase Agreement and the Design Build Agreement, which contracted shortfall payments have been assigned pursuant to the Installment Sale Agreement, the Pipeline Loan Agreement, and the Pipeline Indenture as additional security for the Pipeline Bonds, and the Financing Agency’s and Water Authority’s obligations to make loan or installment payments will be deemed satisfied to the extent Poseidon is obliged to make contracted shortfall payments (whether or not such contracted shortfall payments are made); and

WHEREAS, the Board has also considered the Preliminary Limited Offering Memorandum and the Tax Certificate on file with the Clerk of the Board; and

WHEREAS, having heard and considered the evidence, and being fully advised regarding the environmental consequences of approving the Agreements and the Project Modifications, it is in the interest of the Water Authority and the people it serves to approve the Carlsbad Second Addendum, the Agreements, and the Project Modifications and to make findings regarding the environmental effects of these actions;

NOW THEREFORE, the Board of Directors of the San Diego County Water Authority resolves as follows:

1. The foregoing recitals are adopted as findings and determinations of the Board.

RESPONSIBLE AGENCY CEQA FINDINGS AND DETERMINATIONS

2. Pursuant to CEQA Guidelines Section 15050(b), the Board has reviewed, analyzed, and considered the Carlsbad Second Addendum along with the Carlsbad EIR and Carlsbad Addendum, and finds that the Carlsbad Second Addendum reflects the independent judgment of the Board.

3. The Board, acting as a responsible agency under CEQA, has determined that the Carlsbad EIR and Carlsbad Addendum, are adequate, comply with the mandates of CEQA (Public Resources Code Sections 21000, et seq.) and the CEQA Guidelines (Title 14 California Code of Regulations, Section 15000, et seq.), and fully disclose and analyze the environmental impacts of the Project.

4. The Project Modifications described herein were analyzed in the Carlsbad Second Addendum. The Carlsbad Second Addendum provides comprehensive environmental analysis of all of the Project Modifications and is incorporated by reference. The Carlsbad Second Addendum concludes and the Board concurs that the proposed Project Modifications are minor and are not anticipated to create any new significant environmental impacts or substantially worsen or increase the severity of impacts already identified in the Carlsbad EIR and Carlsbad Addendum.
5. The Board, acting as a responsible agency under CEQA, has determined that the information contained in the Second Addendum adequately discloses the environmental effects that would result from the Project Modifications and approval of the Agreements, that the Carlsbad Second Addendum has been presented to the Board and that the Board has reviewed and considered the information contained therein prior to approving the Agreements and the Project Modifications.

6. The Board finds that preparation of the Carlsbad Second Addendum was appropriate and in conformance with CEQA because some changes or additions to the Carlsbad EIR and Carlsbad Addendum were necessary, but none of the conditions described in CEQA Section 21166 or Sections 15162 and 15163 of the CEQA Guidelines calling for preparation of a subsequent or supplemental EIR have occurred, in that:

a. The Project Modifications do not involve substantial changes to the Project which would require major revisions of the Carlsbad EIR or Carlsbad Addendum; there are no new significant environmental effects and no substantial increase in the severity of previously identified significant effects. As detailed in the Carlsbad Second Addendum, the analysis and mitigation contained in the Carlsbad EIR and Carlsbad Addendum remain adequate to address the potential environmental impacts of the Project. Although the Project Modifications were not considered in the Carlsbad EIR or the Carlsbad Addendum, the Carlsbad EIR and Addendum did analyze the impacts of connecting to a distribution system to move the water created by the Project through the region. For the reasons set forth in the Carlsbad Second Addendum, the relining of existing Pipeline 3, the installation of valves, a flow meter, and appurtenant piping on Pipelines 3 and 4, the vent replacement along Pipeline 4, the Macario Canyon Pipeline alignment modification and associated pumping well, the modifications to the second aqueduct connection point in San Marcos, and the modifications to the Twin Oaks Valley Water Treatment Plant do not present any potential new environmental impacts or any increase in severity in environmental impacts not already considered in the Carlsbad EIR or Carlsbad Addendum or addressed as necessary by existing mitigation measures detailed in the HCP EIR/EIS.

b. There have been no substantial changes with respect to the circumstances under which the Project is being undertaken which would require major revisions to the Carlsbad EIR.

c. There is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Carlsbad Addendum was adopted in September 2009.

d. The Project will not have any significant effects not discussed in the Carlsbad EIR or Carlsbad Addendum.

e. There are no new or additional mitigation measures that would avoid or substantially reduce one or more significant effects that the Project would have on the environment.
f. The Board has determined that the Carlsbad Second Addendum is adequate, and fully analyzes the environmental impacts of the Project Modifications and Agreement approvals.

7. The Carlsbad EIR and Carlsbad Addendum found that any potential environmental impacts of the Project in the following environmental categories are less than significant and therefore do not require mitigation measures: (1) Construction-Related Aesthetics Impacts; (2) Operational Air Quality Impacts; (3) Operational and Construction-Related Biological Resources Impacts; (4) Cultural Resources Impacts; (5) Geology and Soils Impacts; (6) Hazards and Hazardous Materials Impacts; (7) Hydrology and Water Quality Impacts; (8) Land Use and Planning Impacts; (9) Operational and Construction-Related Noise and Vibration Impacts; (10) Operational and Construction-Related Transportation and Traffic Impacts; (11) Public Utilities and Service System Impacts; (12) Cumulative Aesthetics Impacts; (13) Cumulative Biological Resources Impacts; (14) Cumulative Cultural Resources Impacts; (15) Cumulative Geology and Soils Impacts; (16) Cumulative Hazards and Hazardous Materials Impacts; (17) Cumulative Hydrology and Water Quality Impacts; (18) Cumulative Land Use and Planning Impacts; (19) Cumulative Noise and Vibration Impacts; (20) Cumulative Transportation and Traffic Impacts; and (21) Cumulative Public Utilities and Service System Impacts. The Carlsbad Second Addendum illustrates that the minor changes that encompass the Project Modifications do not change any of the prior findings of insignificant environmental impacts in these categories, and the Board agrees that there are no significant environmental impacts created by the Project Modifications in these categories.

8. The Carlsbad EIR and Carlsbad Addendum found, pursuant to CEQA Section 21081(a)(1), (2) and CEQA Guidelines Section 15091 (a)(1), (2), that changes or alterations have been required in, or incorporated into, the Project, which would avoid or substantially lessen any potentially significant effects, or, such changes or alterations are within the responsibility and jurisdiction of another Public Agency and have been, or can and should be, adopted by that other agency, in the following environmental categories: (1) Aesthetics; (2) Biological Resources; (3) Cultural Resources; (4) Geology and Soils; (5) Hazards and Hazardous Materials; (6) Hydrology and Water Quality; (7) Land Use and Planning; (8) Transportation and Traffic; and (9) Public Utilities and Service Systems. The Carlsbad EIR and Carlsbad Addendum further found that any potentially significant effects in the environmental categories specified above have been mitigated to a level that is less than significant after implementation of mitigation measures identified in the Carlsbad EIR and incorporated into the Mitigation Monitoring and Reporting Program. The Carlsbad Second Addendum found and the Board agrees that the Project Modifications create no new potentially significant effects in these categories after implementation of mitigation measures identified in the Carlsbad EIR and mitigation measures incorporated into the Mitigation Monitoring and Reporting Program.

9. All mitigation measures identified in the Carlsbad EIR, the Carlsbad Addendum and the Carlsbad Second Addendum applicable to the Project Modifications are hereby made conditions of approval of the Project, the Board approves the Project Modification Mitigation Monitoring and Reporting Plan previously provided to the Board and incorporated by reference herein and the General Manager or her designated representative is assigned the task of implementing the Project Modification Mitigation Monitoring and Reporting Program.
10. Some of the Project Modifications that will be made in furtherance of the Project will result in modifications to the Twin Oaks Valley Water Treatment Plant and existing Water Authority conveyance facilities. Because CEQA requires an analysis of the "whole of an action" which has the potential to cause a physical change in the environment, (CEQA Guidelines § 15378(a)), the modifications to the Twin Oaks Valley Water Treatment Plant and existing Water Authority conveyance facilities could be viewed as an indirect effect of the Project, and are analyzed in the Carlsbad Second Addendum to ensure that all potential effects of the Project Modifications are fully addressed. However, as described herein and in the Carlsbad Second Addendum, none of the Project Modifications rises to the level of significance after implementation of mitigation measures identified in the Carlsbad EIR and incorporated into the Project Modification Mitigation Monitoring and Reporting Program.

11. The Carlsbad EIR and Carlsbad Addendum found that significant unavoidable environmental impacts would occur in the following environmental categories: (1) Cumulative Air Quality; and (2) Indirect Growth Inducement. The Water Authority, acting as a responsible agency, finds that since the certification of the Carlsbad EIR and adoption of the Carlsbad Addendum, minor additional cumulative development may have been proposed and/or constructed. However, the analysis contained in the Carlsbad Addendum occurred during a severe economic downturn, which has resulted in a virtual curtailment of development activities within the Project area. The minor amount of land development projects that have been proposed and/or developed in the intervening time since the preparation of the Carlsbad Addendum is not considered to be substantial. Further, pursuant to CEQA Guidelines Section 15096(g), the Board as a responsible agency is responsible for mitigating and avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve.

a. Cumulative Air Quality: The Carlsbad EIR found that because of their long-term nature, emissions from operations of the Project for pollutants for which the San Diego air basin is not in attainment with state and federal standards are considered cumulatively significant. As a Responsible Agency under CEQA, the Board finds that the Project Modifications (minor changes to the distribution system with no proposed changes to the plant itself) will not result in any additional contribution to temporary regional air quality impacts not already considered by the Carlsbad EIR and Carlsbad Addendum. Specifically, because the construction of the Project Modifications will occupy a relatively small area at any given time, it is not anticipated that any significant localized cumulative impacts will result. Further, while the Carlsbad EIR had assumed that seven segments of 1,000 feet of pipeline would be constructed at any given time, under the new construction schedule there would be no more than two segments of 1,000 feet of pipeline constructed simultaneously. As a result, the disclosed construction emissions in the Carlsbad EIR associated with the off-site pipelines are substantially overestimated when the revised construction scenario is considered, and the Carlsbad Second Addendum determined that the construction activities associated with the proposed Project Modifications, in combination with the construction activities associated with pipeline construction, would not exceed the emissions previously disclosed in the Carlsbad EIR for any criteria pollutant. Similar to the findings of the Carlsbad EIR and
Addendum, the construction-related air pollution emissions from the proposed Project Modifications would be temporary and would not be expected to have a permanent significant impact on ambient air quality.

b. Indirect Growth Inducement: The Carlsbad EIR and Addendum analyzed the growth-inducing impacts of the supply of fresh water that would be created by the Project. The proposed Project Modifications consist of minor modifications to the distribution system of the Project, and necessary modifications to existing Water Authority facilities in order to accept, store and distribute the Project water. No additional water supplies will be created by these Project Modifications. The operation of the facility and its potable water-producing capacity will not change from what was evaluated in the Carlsbad EIR for the approved Project. Therefore, no changes relative to the analysis or conclusions related to growth inducement would occur with the proposed Project Modifications. Likewise, no changes relative to the analysis or conclusions related to growth inducement would occur with the approval of the Agreements necessary to implement the Project Modifications. In analyzing Indirect Growth Inducement, the Carlsbad EIR assumed that member agencies would purchase Product Water directly from Poseidon. The Water Purchase Agreement contemplates that the Water Authority will now purchase Product Water from Poseidon before distributing Product Water to the member agencies. The Water Authority previously analyzed growth inducing impacts resulting from implementation of the projects reviewed in the Final Program Environmental Impact Report (State Clearinghouse No. 2003021052) for the Water Authority’s Regional Water Facilities Master Plan Project (the “Master Plan EIR”). The Water Authority relies on its prior certified Master Plan EIR in the approval of this action. However, additionally, the Board agrees with the City of Carlsbad that the affected member agencies’ purchase of water from a different supplier (from the Water Authority rather than directly from Poseidon) is not anticipated to:

i. Have any effect on planned growth within the service area of the Project. The Project contributes to the new supplies identified in the RWFMP and constitutes a portion of the new water supplies that have been considered and analyzed on a regional level, therefore the Project is not anticipated to provide additional supplies over and above what is already contemplated for the San Diego region; or

ii. Result in any changes to existing land use plans, growth projections, or growth management policies of the local land use authorities within the respective service areas of the districts because member agencies purchase and deliver water to retail customers, and do not have direct authority over land use, and cannot approve or disapprove any changes in land use that would directly affect population projections. The agencies with local land use authority within the Project’s service area are the cities of Carlsbad, Oceanside, Vista, Encinitas, Solana Beach, Del Mar, San Diego, and San Marcos. These communities are nearing or close to build out, and the availability of developable land is the primary factor in future growth potential. Desalinated seawater is already considered in regional growth analyses conducted by SANDAG, as contained in its 2004 Regional Comprehensive Plan and in demand projections by the Water Authority as contained in its 2003
RWFPMP. The Project will not supply water in excess of what is already anticipated to meet future projected needs.

Further, the Water Authority finds that its decision to purchase the Product Water will not result in any physical change to the operation of the Project, and instead simply concerns the entity purchasing the desalinated water that will be produced and distributed in the same manner previously analyzed in the Carlsbad EIR and Carlsbad Addendum, with the exception of the Project Modifications addressed in the Carlsbad Second Addendum, which will not cause a new significant environmental impact or an increase in the severity of a previously identified impact.

Accordingly, the Board finds that there are no direct or indirect environmental effects of the Water Purchase Agreement or other ancillary agreements which have not been previously addressed by the Master Plan EIR, Carlsbad EIR, Carlsbad Addendum, and Carlsbad Second Addendum.

12. In the issuance of the permits pursuant to which the Plant and Pipeline will be constructed the City of Carlsbad made the following determinations or imposed the following conditions, compliance with which are obligations of Poseidon in accordance with the Water Purchase Agreement and the Design-Build Agreement: The complete Findings of Fact and Statement of Overriding Considerations, as modified by the Additional Responses to Comments, adopted by the City of Carlsbad in June 2006; The Mitigation Monitoring and Reporting Program adopted by the City of Carlsbad in June 2006; The Carlsbad Addendum adopted by the City of Carlsbad as findings in September 2009; and The Carlsbad Second Addendum adopted by the Water Authority as findings in November 2012.

13. With the exception of those mitigation measures set forth in the adopted Mitigation Monitoring and Reporting Plan which are within the responsibility and jurisdiction of other public agencies and have been, or can and should be, adopted by those other agencies, the Board finds that there are no feasible alternatives or feasible mitigation measures within its power to adopt that would substantially lessen or avoid any significant effect the Project would have on the environment.

WATER PURCHASE AGREEMENT

14. The Water Purchase Agreement in substantially the form of the draft dated November 20, 2012 on file with the Clerk of the Board is approved. The General Manager, with the concurrence of the General Counsel is authorized to finally approve and execute the agreement, with such minor insertions, deletions, or changes therein as approved by the General Manager with the concurrence of the General Counsel, with such final approval to be conclusively evidenced by execution and delivery thereof.

DESIGN-BUILD AGREEMENT

15. The Design-Build Agreement in substantially the form of the draft dated November 20, 2012 on file with the Clerk of the Board is approved. The General Manager, with the concurrence of the General Counsel is authorized to finally approve and execute the agreement, with such minor
insertions, deletions, or changes therein as approved by the General Manager with the concurrence of the General Counsel, with such final approval to be conclusively evidenced by execution and delivery thereof.

FINANCE DOCUMENTS

16. The Chair of the Board, the General Manager, and the Director of Finance/Treasurer (each, and "Authorized Officer") are each acting individually, authorized and directed, on behalf of the Water Authority, to execute and deliver each or any of the financing documents listed in the following paragraph, substantially in the approved form, with such changes as the Authorized Officer executing such document may, with the concurrence of the General Counsel, require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

17. The following agreements on file with the Clerk of the Board are approved and may be executed on behalf of the Water Authority as provided in paragraph 16 of this resolution:

- Pipeline Installment Sale and Assignment Agreement between the San Diego County Water Authority and the San Diego County Water Authority Financing Agency ("Installment Sale Agreement");
- Bond Purchase Agreement for the California Pollution Control Financing Authority Water Furnishing Revenue Bonds (Poseidon Resources (Channelside) LP Desalination Project) Series 2012 ("Plant Bonds Purchase Agreement");
- Bond Purchase Agreement for the California Pollution Control Financing Authority Water Furnishing Revenue Bonds (San Diego County Water Authority Desalination Project Pipeline) Series 2012 ("Pipeline Bonds Purchase Agreement");
- Collateral Agent's Remedies Agreement between the San Diego County Water Authority and Union Bank, as collateral agent.

18. The form of the Limited Offering Memorandum is hereby approved. The Authorized Officers are each, acting individually, hereby authorized and directed, on behalf of the Water Authority, and with the concurrence of the General Counsel of the Water Authority, to approve the distribution of a Preliminary Limited Offering Memorandum in substantially such form and to certify that such Preliminary Limited Offering Memorandum is, as of its date, "deemed final" by the Water Authority for purposes of Rule 15c2-12 of the Securities and Exchange Commission. The Authorized Officers are hereby authorized and directed, on behalf of the Water Authority, to cause to be prepared and to execute and deliver to the purchasers of the Bonds a Limited Offering Memorandum in substantially the form of the Preliminary Limited Offering Memorandum, with such changes as such officers may, with the concurrence of the General Counsel of the Water Authority, require or approve, such approval to be conclusively evidenced by the execution and delivery thereof, to authorize the distribution of said Limited Offering Memorandum and to certify that said Limited Offering Memorandum is, as of its date, "final and complete" for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

19. The Tax Certificate substantially in the form on file with the Clerk of the Board is approved.
CAPITAL IMPROVEMENT PROGRAM BUDGET ADJUSTMENT

20. The CIP lifetime budget is increased by $80 million from $3.53 billion to $3.61 billion for the capital costs associated with the Carlsbad Desalination Project. Existing savings in the Fiscal Years 2012 and 2013 Capital Improvement Program Budget are reallocated and reappropriated as determined by the General Manager for the approximately $4.0 million in estimated project costs for the remainder of FY 2013. Expenditures in future years are dependent upon appropriations by the Board approval of future biennial budgets.

SUPPORTING CONTRACTS AND CONTRACT AMENDMENTS

21. The General Manager, with the concurrence of the General Counsel, is authorized to execute the supporting contracts and contract amendments referenced in the Board memorandum dated November 21, 2012 relating to the Carlsbad Desalination Project.

NOTICE OF DETERMINATION

22. The General Manager is directed to file a Notice of Determination as provided in Sections 15094 and 15096(i) of the State CEQA Guidelines.

ADDITIONAL DELEGATION

23. The Authorized Officers are hereby authorized and directed, jointly and severally, with the concurrence of the General Counsel, to do any and all things and to execute and deliver any and all contracts and documents which they may deem necessary or advisable in order to consummate transactions contemplated or authorized by this resolution. The authority of the Authorized Officers and the General Counsel under this resolution may be delegated as provided in the Water Authority’s Administrative Code.

PASSED, APPROVED AND ADOPTED THIS 29th DAY OF November 2012.

AYES: Unless noted below, all Directors present voted aye.

NOES: Barnum, Brady, Croucher, Dion, and Watton.

ABSTAIN: None.

ABSENT: Sanford.

Thomas V. Wornham, Chair
ATTEST:

Michael T. Hogan, Secretary

I, Doria F. Lore, Clerk of the Board of Directors of the San Diego County Water Authority, certify that the vote shown above is correct and this Resolution No. 2012-18 was duly adopted at the meeting of the Board of Directors on the date stated above.

Doria F. Lore
Clerk of the Board