



February 22, 2019

Santa Clara Valley Water District Board  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118

**RE: Agenda Item:** 5.2. Update on the Countywide Water Reuse Master Plan on February 26<sup>th</sup> Board meeting agenda.

Dear Chair LeZotte and Board Members:

Poseidon Water LLC (“Poseidon”), as the coordinator of Pure Water Silicon Valley, one of the shortlisted teams for the Public-Private Partnership (“P3”) approach for the Expedited Purified Water Program (“EPWP”), provides these comments on Item 5.2. Update on the Countywide Water Reuse Master Plan on your February 26<sup>th</sup> Board meeting agenda.

### **Poseidon’s Comments**

District staff and consultants have made significant progress in the technical elements of the Reuse Master Plan. That planning process has developed and analyzed potential projects with different wastewater provider partners (Partner Agencies). Poseidon suggests that a master planning process is probably not the appropriate method to move from planning to action. As noted in the staff update: *“Addressing feedback from Partner Agencies and the iterative planning process on a countywide level have been more complex than originally planned. Unanticipated follow-up meetings with Partner Agencies and interested stakeholders have been required to address the complex technical issues surrounding this multi-agency planning effort.”*

In addition to providing a status report on the Reuse Master Plan, this agenda item also includes District Recycled Water Committee Recommendations including: *Purified Water Program Public-Private Partnership (P3)*

6. *Alternatives for achieving comprehensive agreements*  
*Explore alternatives for achieving one or more comprehensive agreements with potential Partner Agencies including: engage a third party (negotiator or facilitator); involve the Silicon Valley Leadership Group; or accelerate release of a P3 Request for Proposals to allow a P3 entity to assist in developing the agreement(s).*

Specifically in response to this recommendation, Poseidon suggests that based on our experience, a planning process can only move a potential project a limited distance in the project delivery journey if it involves more than one party. For example, the planning approach used between SCVWD and City of San Jose – the Joint Strategic and Master Plan for Water Reuse (2014) did not make a determination on the amount of RWF effluent which would go to potable reuse versus non-potable recycling. That plan did conclude that:

*“Meeting the recycled water targets established in the Strategic Plan will require implementation of potable reuse in addition to NPR. As the recycled water program expands in the South Bay, the decision between NPR and IPR/DPR alternatives is one that needs to be made as part of an appropriate governance discussion. It is likely that expansion of NPR would proceed as a*

*retailer-driven program based on retailer preferences and their ability to recover the costs of implementing an expanded program. It is likely that development of IPR/DPR would proceed as a wholesaler-driven program from a regional focus on potable reuse to achieve the county-wide 2025 and 2035 water supply targets.”*

Learning from that lesson and others, Poseidon believes that what is required at this point is a slightly different approach that we would recommend to the Board in the nature of a few proposed next steps.

### **Poseidon’s Recommended Next Steps**

#### **1. SCVWD Board prioritize project options (portfolios) and direct District CEO to initiate high-level comprehensive negotiations with appropriate wastewater agencies for the highest rated project.**

In order to effectively address what the Joint Water Reuse Plan called “an appropriate governance discussion” the District would be best served by taking the information for the three project alternatives (portfolios), supplemented with preliminary cost estimates, and proceeding to prioritize those options from a wholesaler, regional perspective. Based on that decision, Poseidon believes that the Board should direct the District’s CEO to initiate high-level negotiations with the highest-rated project’s Partner Agencies.

#### **2. Select a P3 Partner with significant Progressive P3 experience and an understanding of the broad mission and experience of the District with regards to water supply, water quality, groundwater management and flood prevention.**

The staff slide presentation (page 21 of 24) raises the question of the Board providing direction on the November 2018 RWC recommendations including: Purified Water Program Public-Private Partnership (P3) – Alternatives for achieving comprehensive agreements with wastewater partner agencies.

In our discussions with other Silicon Valley agencies and interest groups we have found that that, depending on an agency’s responsibilities, different positions on reuse have been developed and presented. Attempting to negotiate a project limited to just the reuse of wastewater would be difficult based on those differences. However, a comprehensive approach, that first identifies the needs and interests of the parties beyond just water reuse, could broaden perspectives and identify multiple options for mutual gains. (A summary of some of those positions and interests is included as ATTACHMENT 1: Poseidon’s Analysis of Positions and Interests of SCVWD and City of San Jose Staff).

The procedures for dealing with the substantive interests between the District and potential partners could be enhanced in a number of ways including the use of a joint problem-solving approach such as the one used for the Downtown Guadalupe River Flood Control and Riverpark project in the 1990’s. In that case, a mutually selected facilitator (CONCUR INC.) led multiple parties through a single-text joint problem-solving process. Regardless of the procedure used, Poseidon believes that involvement of an appropriate P3 partner would enhance the process for both parties in several ways:

- Potential to leverage P3 team experience and goodwill working with multiple external partners;
- Involvement of the selected P3 partner in negotiations could improve both the outcome of the negotiations and the ultimate risk sharing and lifecycle cost of the project;
- Augmentation of District staff in negotiations and in finalizing the Reuse Master Plan; and
- Greater knowledge transfer between the District and the P3 Partner by earlier sharing of the workload.

Poseidon strongly believes that the selection of a P3 Partner, with significant experience working in a

progressive P3 approach (early involvement in the development process) and with an understanding of the complexities of the water issues in Silicon Valley, at this time, is critically important to capture the collaborative benefits of this type of approach.

### **3. Finalize Reuse Master Plan based on results of negotiations.**

District staff has identified that completing the Reuse Master Plan will require schedule and scope modifications including amendments to multiple consultant contracts. This effort will be complicated and expanded by attempting to include three portfolios rather than one. The District may be able to minimize the necessary additional costs by following the approach recommended in our recommended steps 1 and 2.

#### **Background**

We appreciate this update on the District's progress on the Reuse Master Plan. As you may recall, Poseidon Water has been listed on the shortlist for the P3-Purified Water Program starting in June of 2016 and again in April 2018. As such we have been restricted in our contacts with the District, have avoided conversations and interaction with District staff and Board for almost three years, and have only provided written and oral comments in public meetings. So, for example, at the November Recycled Water Committee Poseidon provided comments reminding the Committee that: *"as Staff noted in recommending a Progressive P3 approach to the Board, one benefit is that the P3 Entity becomes a development partner with the District working together to complete agreement negotiations and environmental/permitting work. We suggested that the timely selection of a P3 partner at this juncture, based on qualifications and an innovative approach, will allow the P3 Entity to support Staff in completing the Master Plan during the project development period."* The RWC requested to receive information on P3 partnerships at its next meeting and agreed to meet monthly from January to December in 2019.

Poseidon took advantage of the delay in the RFP process as an opportunity to meet and confer with elected officials, public agency staffs, and other stakeholders. We found that there were several areas where water-related programs and projects involving the City and the District appeared to be opportunities for greater coordination and integration. In December of 2018, at the joint meeting between the District Board and San Jose City Council, Poseidon proposed the formation of a City of San Jose and Santa Clara Valley Water District – Reliable, Clean, Safe, Water Partnership by modifying the existing Integration Agreement which created the Joint Recycled Water Policy Advisory Committee in order to integrate the District's P3 Potable Water Reuse Program with the City's stormwater and water supply programs. Under this approach, the selection of the District's P3 Partner could assist the Technical Working Group on such an integration effort and resulting projects.

The RWC meeting scheduled for January was cancelled. Poseidon held a follow-up meeting with the City of San Jose staff which identified that the proposed use of a joint policy advisory committee with elected officials was not seen as a level field for discussions between the City and District staff.

In January of this year, Poseidon wrote to Beth Redmond, the staff contact person for the P3 project, asking for an update since both the January and February RWC meetings had been cancelled. We received a letter back from staff dated January 29<sup>th</sup> that explained that the District continues to analyze alternatives and that: in recent Board meetings when the draft FY 2020-2024 Capital Improvement Program and proposed annual water rate increases were discussed: *"Notably, the Board continued its commitment to the Purified Program with a target completion date of 2028"*

Poseidon appreciates the Board's leadership and believes that the process we have recommended in this letter, with Pure Water Silicon Valley as the P3 Partner, would deliver a project that met that Board

commitment.

Unfortunately, while I was prepared to attend the February 12<sup>th</sup> Board meeting, I have a schedule conflict and will not be able to attend the February 26<sup>th</sup> meeting, but have provided this letter for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stan Williams", with a long horizontal flourish extending to the right.

Stan Williams  
*Vice-President*, Project Development  
Poseidon Water  
5780 Fleet Street, Suite 140  
Carlsbad, CA 92008  
[swilliams@poseidonwater.com](mailto:swilliams@poseidonwater.com)  
(760) 655-3995

ATTACHMENT: Poseidon's Analysis of Positions and Interests of SCVWD and City of San Jose Staff

ATTACHMENT 1

**Poseidon’s Analysis of Positions and Interests of SCVWD and City of San Jose Staff**

SCVWD	CSJ
<b>POSITIONS</b>	
<p>SCVWD engaged City staff to negotiate a Memorandum of Understanding (MOU) regarding each agencies role in further evaluating an IPR project. Items of consideration in the MOU include:</p> <ul style="list-style-type: none"> <li>- Reverse osmosis concentrate management;</li> <li>- Quantity, quality and location of treated wastewater; and</li> <li>- Land value and financial considerations.</li> </ul> <p>As a co-owner of the RWF, the City of Santa Clara is also a participant in the MOU discussion.</p>	<p>San Jose not willing to commit wastewater without a guarantee that at least an equivalent volume comes back to the City.</p> <p>Three elements of the MOU:</p> <ul style="list-style-type: none"> <li>- Land: done, designated for this project</li> <li>- Brine: City doesn’t want to take it and suggests the District get a deep-water discharge permit for the Bay – better for the environment, more certainty. District would need to lead on this, State is likely to grant</li> <li>- Supply: Cannot predict quality and can only commit to a small quantity.</li> </ul> <p>District staff’s position has been to tell San Jose what to do and what they need.</p> <p>San Jose does not believe potable reuse is necessary at this point if the District were willing to reallocate water rights from areas of surplus to areas of need (such as San Jose).</p> <p>Mt. View/Palo Alto/Sunnyvale have excess water and can afford to sell wastewater outside of their ‘sewer shed’.</p>
<b>INTERESTS</b>	
<p>The need for an indirect potable reuse water supply is strong, it will:</p> <ul style="list-style-type: none"> <li>- Protect the region’s groundwater supplies</li> <li>- Create a locally-controlled, high-quality water supply</li> <li>- Clean and safe to use</li> <li>- Increase water reliability by providing purified water at all times, even during a drought</li> </ul>	<ul style="list-style-type: none"> <li>- Potential for private operation/expansion of the current South Bay Recycling operation which has become profitable but need for more investment (aging infrastructure).</li> <li>- Finding new supply – San Jose does not have excess water and cannot afford to let water/wastewater leave their service area (creates an intrinsically higher value).</li> <li>- Concern that potable reuse projects may not provide sufficient non-potable water.</li> </ul>

<ul style="list-style-type: none"> <li>- Help reduce dependency on water from the Sacramento-San Joaquin River Delta</li> <li>- Protect the environment by reusing a precious resource</li> <li>- Reduce wastewater discharge to the San Francisco Bay</li> <li>- Preserve natural tidal habitat</li> <li>- Support smart growth development</li> </ul>	<ul style="list-style-type: none"> <li>- Rather have a broader conversation about finding new supplies</li> <li>- The San Jose Regional Wastewater Facility is anticipating the need to pump effluent in the future as a response to sea level rise.</li> <li>- Believe deep bay outfall is the only viable ROC management approach for reuse, including expansion of recycled water.</li> <li>- Concerned about on-site reuse related to District’s model ordinance.</li> </ul>
<p><b>OPTIONS</b></p>	
<p>The District, in collaboration with the County's wastewater plant owners and retailers that use recycled water, is developing a countywide master plan for water reuse. That plan is now due for completion by fall 2019. It will include analysis and specific recommendations on new reuse opportunities using treated wastewater from all four plants in the County.</p> <p>The opportunities under evaluation in the countywide master plan may identify other potential sites/locations to possibly expand the P3 project scope:</p> <ul style="list-style-type: none"> <li>- Identify sources and amounts of water available for reuse</li> <li>- Determine Non-Potable Reuse and Potable Reuse split</li> <li>- Evaluate governance roles &amp; responsibilities, provide recommendations</li> <li>- Evaluate potential regional integration</li> <li>- Conduct stakeholder engagement</li> </ul>	<p>District and City are effectively negotiating on a number of other water projects: levy interconnects, deep well injection, etc.</p> <p>San Jose interested in and open to hearing creative proposals from private sector – they like P3s and would be willing to entertain a stormwater/reuse P3 model.</p> <p>Open to discussions with the District around stormwater implementation and other green infrastructure.</p> <p>Federal South Bay levy construction project is an opportunity to negotiate with SCVWD about outfall and extension to deeper bay location.</p>