



Recycled Water Committee

Santa Clara Valley Water District

5750 Almaden Expressway

San Jose, CA 95118

RE: Amended Agenda Item 4.1 Workshop on Expedited Purified Water Program Dual Track Procurement

Dear Directors Estremera, Kremen and Keegan,

Poseidon Water LLC ("Poseidon"), as the P3 coordinator of one of the short listed teams for the Public - Private Partnership Purified Water Program, provides these comments on Item 4.1 on the Amended Agenda for the Santa Clara Valley Water District's (District) Recycled Water Committee.

Poseidon respectfully requests that the Committee:

1. Not recommend the selection of a procurement method at the September 7th meeting.
2. Direct staff to develop information that provides a meaningful comparison of the alternative procurement methods including the value of the risks that are transferred to each party by each approach and the impacts on groundwater production charges of the two approaches.
3. Review the staff objectives to determine whether they are consistent with Board policies and objectives.
4. At the planned Procurement Workshop to be held with the entire Board, consider a comprehensive comparison of each of the criteria outlined in the attached power point slides. Including an evaluation of risks, the allocation of risks to each party and the value of the risks that are transferred from the public to the private sector. This workshop would be most effective if it is an interactive discussion in which project stakeholders are able to participate, including the panel of experts and the short listed potential proposers.

Procedural History

The Recycled Water Committee has been active this year as the District Board identified the need for more Board involvement in the issues and uncertainties involved in the Expedited Purified Water Program. The Recycled Water Committee has been working closely with staff to evaluate alternative approaches to project procurement for consideration by the entire Board.

At your March 1, 2016 meeting the following items were identified by the Committee: Staff to identify assumptions, risks, options, and critical points and junctures to check in with the Board of Directors; and Staff to provide a list of all alternatives, programs, credit rating, etc., and a comparison of a full program versus an incremental program.

At the May 12th Committee meeting, the staff reported on status and identified a number of policy issues that would be considered by the Board over the next several months, as the supporting information becomes available, including deciding on the dual track procurement approach or selecting one procurement method prior to issuing Requests for Proposals (RFPs). The process for supporting the Board in making this decision would include: 1. Convene selected industry experts for primer on key

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elements, relevant case studies and intensive debate. 2. Board committee/Board work-study sessions to follow and 3. Board consideration: identify one track prior to issuing RFPs.

At the Committee's July 6th meeting, staff presented the following steps for obtaining a Board decision on the project delivery method:

1. Characterization of the Key Issues (July-August): Staff will summarize all relevant information pertaining to the following questions and seek the input of independent procurement experts:
 - a. What are the **unique and particular risks** that would be transferred to a P3 entity over a PDB entity?
 - b. What is the potential **range of value** to the District of transferring those risks?
 - c. What value does private financing provide relative to debt service coverage ratio and rate impacts?
2. Work-Study Session with the Recycled Water Committee (early September): Along with independent experts, Staff will present pros/cons/case studies for both delivery methods and answer the Committee's questions as it formulates a recommendation to the Board on a project delivery method.
3. Special Board Meeting for Similar Work-Study Session (late September): Based on Committee feedback, a work-study session will be tailored for consideration of the entire Board.

At the end of the discussion on this item, Director Estremera suggested holding a 2-3-hour workshop with the Recycled Water Committee to discuss the Expedited Purified Water Program, and then subsequently bring this to the full District Board. As Poseidon's representative at that meeting, I concurred with the recommendation and with the staff's key issues for comparing the alternative delivery methods, the value of transferring risks to a P3, and the value of private financing for water rates. In addition, I suggested looking at the impact of private financing on the District's current and future credit ratings and that the Board should also consider the innovation, performance and commercial incentives provided by the P3 approach.

Poseidon's Comments

The posting of an Amended Agenda and staff report for the Committee's September 7, 2016 meeting late Friday before a three-day weekend has allowed limited opportunity for review and comment. We note that agenda item 4.1 Workshop on Expedited Purified Water Program – Dual Track Procurement had been amended from "consider and approve appropriate action," to "choose the Progressive Design/Build project delivery method for the Expedited Purified Water Program." This amended agenda package was supported by a staff report which included information from a day-long internal workshop staff convened with a group of industry experts, followed by an internal meeting wherein staff formulated the recommendation to proceed with the Progressive Design-Build based on "District objectives" established by staff.

Poseidon supported the staff's efforts in August to develop information for the Committee to use in order to determine which topics are most appropriate for consideration by the entire Board. Unfortunately, the process outlined in July was not followed in arriving at the recommendation that is now before the Committee for consideration. Included below is a list of information previously requested by the Committee that has yet to be provided. Since this information is essential to evaluating and comparing the alternative procurement approaches, it would seem to be premature for the Committee to adopt the staff's recommendation at the September 7th meeting.

While we were disappointed that the workshop with the industry experts did not take place at a Committee or Board public session, we would like to direct the committee's attention to the

recommendations of one of the experts that met with staff, Jill Jamieson (JLL Inc.), that is included in slides on Pages 8-16.

The slides also include on Page 22 of 38, a list of key risks and anticipated allocation. We cannot find in the staff information any analysis of the potential range of value to the District of transferring risks which was one of key issues identified at the July 6th Committee meeting. As one of the independent experts that met with staff has written about P3 options analysis and decision making: "*Key Question: Is the value of risks transferred via a P3 greater than the additional financing costs for the P3 procurement?*" (Michael Bennon, Presentation-P3 Options Analysis and Decision Making, 28 October 2015). The staff report identifies a list of key risks, but does not quantify those risks. The cost analyses on pages 23 to 26 do not include the value of the risk transfer and therefore do not reflect the potential benefit of the P3 approach.

Poseidon recommends that the presentations from all of the experts be provided to the entire Board prior to decision making on the selection of an approach.

Without a thorough analysis of the value of transferred risks, a judgement of the best approach is premature. Page 16 of the Staff Report summarized key information from the workshop with the industry experts:

1. **Staff Take-away from staff workshop:** *There is no one right way.*

Poseidon Comment: This statement highlights the importance of the Board, as decision-maker, having all of its questions addressed and receiving all of the information that has been brought together to advise the District prior to formulating a decision on the procurement method.

2. **Staff Take-away from staff workshop:** *What does the Board want to achieve?*

Poseidon Comment: The Board has adopted policies that provide useful guidance on this point: GP-1. The purpose of the Board, on behalf of the people of Santa Clara County, is to see to it that the District provides Silicon Valley safe, clean water for a healthy life, environment, and economy (Governance Policies of the Board). GP-2.3. The Board will further inform itself, individually and collectively, through extensive outreach to determine community wishes and through continuing education on issues relevant to the District. GP-3.1. The Board established link between the District and the public, which includes directions to the leadership of the staff, the Board Appointed Officers, as to the intended results, organizational products, impacts, benefits, outcomes, recipients, and their relative worth. E-2.1.4 Recycled Water Policy. Protect, maintain, and develop recycled water, which includes goals to: provide at least 10% of annual recycled water production as a percentage of total County water demands by 2025; developing partnerships to develop the potential for Indirect Potable Reuse (IPR) and Direct Potable Reuse (DPR); and managing, operating and maintaining recycled water assets to maximize reliability, to minimize life cycle costs and to minimize impacts to the environment.

3. **Staff Take-away from staff workshop:** *Align your choice with District's objectives.*

Poseidon Comment: As identified above, maximizing reliability, minimizing life cycle costs and minimizing impacts to the environment have been identified as District objectives. The key objectives that staff has identified in the staff report of speed, quality, control, cost, and success should be reviewed by the Committee to see if they align with Board policies and objectives.

4. **Staff Take-away from staff workshop:** *Remain a "doer" or become a "regulator".*

Poseidon Comment: It would be interesting to know if this distinction came from comments from one of the experts or if it was developed by staff. The District has always used private sector resources to accomplish capital projects. The P3 procurement method offers an alternative approach to accomplishing the District's objectives that should be evaluated on its merits rather than dismissed on the basis of an overly simplistic us versus them argument.

5. **Staff Take-away from staff workshop:** *Potential implications of privatization in a predominantly public agency region?*

Poseidon Comment: It would seem that in Silicon Valley there would be an appreciation of public agencies being able to form partnerships with the private sector to leverage investments in needed large-scale capital projects. The partnerships identified in Board policies and executive interpretation include private as well as public entities. *Board Policy GP-1.3. Collaboration with government, academic, private, non-governmental, and non-profit organizations is integral to accomplishing the District mission.*

6. **Staff Take-away from staff workshop:** *The Board must be the District's political champion.*

Poseidon Comment: Board policies specify the role of the Board as the link between the District and the public. In this governance role the Board is politically accountable for appropriate organizational performance.

In closing, Poseidon respectfully requests that the Committee:

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Poseidon will have a representative at the September 7th meeting and will have more detailed comments for the Committee at that time.

Sincerely,



Stan Williams

Vice-President, Project Development

Poseidon Water

P3 vs. Progressive Design-Build (“PDB”)

Benefit	P3	PDB
Control of Process during Design and Construction Phase/ Design/Quality	<ul style="list-style-type: none"> • Project defined in collaboration with the District based on conceptual level of engineering • P3 Entity responsible for solution based on scope book parameters (quality of materials, engineering standards, performance metrics) • District to have revision rights • Minimum chance of change orders 	<ul style="list-style-type: none"> • District has total control of project definition • Public entity to pay for Design as the Project progresses • Open to change orders during construction because District directed design
Project Cost	<ul style="list-style-type: none"> • Open book approach on getting to final Water Price • Water Purchase Agreement (“WPA”) reflects water price and risk allocation 	<ul style="list-style-type: none"> • Open book approach on getting to construction cost • District to manage contract • Project Design-Build contract reflects project construction costs
Cost Responsibility during Development and Construction	<ul style="list-style-type: none"> • P3 Entity pays for process of arriving at water price 	<ul style="list-style-type: none"> • District pays for process to arrive at project construction cost
Cost of Funding	<ul style="list-style-type: none"> • Funding provided by P3 entity • Higher cost of funding but potential for lower lifecycle cost based on value-for-money analysis (risk, cost of delay, etc.) • Low cost tax-exempt debt also available to P3 entity 	<ul style="list-style-type: none"> • Publicly funded • Lower cost of funding, but higher risk of increased water costs due to delays, construction and operation performance
Water Price Certainty	<ul style="list-style-type: none"> • WPA provides water price certainty 	<ul style="list-style-type: none"> • Ultimate water price is undetermined

P3 vs. Progressive Design-Build (“PDB”)

Benefit	P3	PDB
Borrowing Capacity	<ul style="list-style-type: none"> Maintains borrowing capacity as Project payments are considered an operating cost 	<ul style="list-style-type: none"> Use of balance sheet impacts credit rating, debt metrics and reserve requirements Takes resources away that could be used for other capital improvements/ maintenance projects
Performance Payments	<ul style="list-style-type: none"> P3 Entity paid only if the Project performs 	<ul style="list-style-type: none"> District to make fixed and debt payments even if Project does not perform
Water Supply	<ul style="list-style-type: none"> District controls water supply sources and amounts Pays for water under minimum commitment only if Project is performing even if water is not taken 	<ul style="list-style-type: none"> District controls water supply sources and amounts Pays for debt service and fixed O&M costs even if water is not taken regardless of Project performance
Project Risk	<ul style="list-style-type: none"> Majority of risk is transferred to P3 entity 	<ul style="list-style-type: none"> Majority of risk stays with the District
Efficiency and innovation	<ul style="list-style-type: none"> WPA includes efficiency/ innovation incentives for P3 entity to lower cost 	<ul style="list-style-type: none"> Structure creates little incentive to improve efficiency and lower cost
O&M	<ul style="list-style-type: none"> P3 entity penalized/incentivized based on operating guarantees in the WPA District to have O&M oversight/ step-in rights P3 entity has risk of operations cost overruns 	<ul style="list-style-type: none"> District controls operations District has risk of operating cost overruns.
Project Ownership	<ul style="list-style-type: none"> District can maintain ownership of assets by structuring WPA as Service Agreement Project transferred to District at end of WPA term 	<ul style="list-style-type: none"> District maintains ownership of the assets