Office of
The City Attorney
City of San Diego

MEMORANDUM

236-6220

DATE: August 4, 2008

TO: Mayor Jerry Sanders

FROM: Mike Aguirre, City Attorney

SUBJECT: Indirect Potable Reuse Pilot Study

Dear Mayor Sanders:

I am writing to ask that you please explain your office's behavior with regard to implementing the Indirect Potable Reuse ("IPR") Pilot Project. Under City Charter sections 260(b) and 265(b)(2), the Mayor must perform the duties required of him by ordinance or resolution of the City Council. Your office's behavior appears questionable in light of the direction given by City Council.

On October 29, 2007, the City Council directed the Mayor or his designee to develop a plan to implement IPR:

> BE IT FURTHER RESOLVED, that the Mayor or his designee is hereby directed to develop a plan for implementation of the NC-3 strategy, as set forth in the 2006 Water Reuse Study, for future consideration by the City Council which includes, but is not limited to, the following elements:
>
> 1. an independent energy and economic analysis of all water supply augmentation methods in the Long Range Water Resources Plan, and
>
> 2. a current flow and detention study at the San Vicente Reservoir, and
>
> 3. a one year indirect potable reuse demonstration project to begin on July 1, 2008.
>
> BE IT FURTHER RESOLVED, that the Mayor or his designee is directed to lead an effort for community education and outreach regarding the NC-3 strategy and indirect potable reuse to begin in January of 2008, ensuring that communities that

> have not had any prior presentations on this topic be the first to receive the education process.
>
> BE IT FURTHER RESOLVED, that the Mayor or his designee is directed to present an update at a City Council meeting in January of 2008 on the status of the progress on the plan for implementation of the NC-3 strategy and the community education and outreach efforts set forth in this resolution.

City Council Resolution No. R-303095. Your veto of this resolution on November 14, 2007 was overridden by the City Council on December 3, 2007.

The day before your veto, your office appeared to still be searching for a reason to oppose the IPR Pilot Project. An email from your office to the water department (attached) inquired whether state law could prohibit the project:

> Jim, has the City/Water Department satisfied the preconditions outlined in State of California Health & Safety Code section 116551 regarding preconditions for issuance of a permit to distribute potable reclaimed water? Have we received the kind of permit that is discussed in that section? If not, *this may be a strategy for rationalizing how we can't implement the program.* Let me know. Thanks.

Email from Fred Sainz dated November 13, 2007 (emphasis added). Section 116551 applies only to actual implementation of IPR, not to the study of IPR as directed by the City Council.

Instead, you vetoed the City Council's direction allegedly because water produced through IPR costs more than desalinated water and other current supplies. You cited a cost of $1,882 per acre-foot, but according to the City's 2006 Water Reuse Study the estimated cost of IPR at the North City Water Reclamation Plant is only $1,230 per acre-foot. City of San Diego 2006 Water Reuse Study, Table 7-5 at p. 7-24. This is less than the $1,400 per acre-foot you cited for the cost of desalinated water in your November 14, 2007 press release (attached). IPR is also the cheapest alternative to fully utilize the capacity of the North City plant, much less than the $1,960 per acre-foot to produce and distribute water just for irrigation.

I am concerned that your office may be frustrating the City Council's desire to pursue the IPR Pilot Project because of your close ties to Poseidon Resources, Inc. ("Poseidon"). It has been suggested that IPR is viewed as competition by Poseidon. *WANTED: Sound Rationale for Mayor Sanders' Opposition to Water Recycling*, Voice of San Diego, July 22, 2008. Poseidon is proposing to build a 50 million gallons per day desalination plant in Carlsbad. A hearing on this project is scheduled for this Wednesday at the California Coastal Commission. You recently held a press conference in support of the Poseidon project, even though the City of San Diego will not receive any water from it. *Seven County Mayors Endorse Desalination Plant*, San Diego Union-Tribune, August 1, 2008.

In particular, I note the following relationships between your office and Poseidon:

- On March 16, 2006, the following officers of Poseidon contributed $300 each to your campaign: Walter Winrow, President; Andrew Kingman, CEO; Peter MacLaggan, Project Manager.

- Tom Shepard, your Campaign Manager, is President of Public Policy Strategies, a lobbying firm that lists Poseidon as a client.

- City staff's email regarding the IPR Pilot Project and state law was forwarded to Tom Shepard by your office on November 15, 2007.

- Scott Maloni, your Campaign Media Aide, was a Vice-President of Public Policy Strategies and was announced as a new Vice-President of Poseidon on June 11, 2008.

As Mayor, your duty is to follow the direction of the City Council and proceed with the IPR Pilot Project. You cannot take on the appearances of lobbying for private firms, such as Poseidon, nor attempt to "rationalize" an objection to IPR to satisfy them. Our water shortage is severe enough that desalination and IPR are not competitors. Desalination should be pursued in conjunction with IPR and conservation to enhance our dwindling water supply.

Sincerely,

Mike Aguirre, City Attorney

Dileva, Christina

From: Sainz, Fred
Sent: Thursday, November 15, 2007 12:35 PM
To: tshepard@tomshepard.com
Cc: Harris, Bill
Subject: FW: Fwd: Question regarding Toilet to Tap

Attachments: TEXT.htm

TEXT.htm (2 KB)

-----Original Message-----
From: Barrett, Jim
Sent: Wednesday, November 14, 2007 3:46 PM
To: Sainz, Fred
Subject: Re: Fwd: Question regarding Toilet to Tap

Fred - sorry I didn't get back to you sooner... out at CWA all morning (except for the press conference) and just now catching up. jim

>>> Marsi Steirer 11/13/2007 5:01 PM >>>
i am familiar with this section - it was inserted into the code by former assemblymember howard wayne who was an ardent T2T'er. To answer Fred's question, the objective of the pilot or demo project is to gain DPH approval for a permit so what the council voted to do on 10/29 is consistent with the
intent of this code section. marsi

Marsi A. Steirer
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City of San Diego Water Department
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msteirer@sandiego.gov

>>> Jim Barrett 11/13/2007 1:37:14 PM >>>

Marsi/Jennifer - can you answer Fred's question? jim

>>> Sainz, Fred 11/13/2007 10:01 AM >>>
Jim, has the City/Water Department satisfied the preconditions outlined in State of California Health & Safety Code section 116551 regarding preconditions for issuance of a permit to distribute potable reclaimed water?
Have we received the kind of permit that is discussed in that section? If not, this may be a strategy for rationalizing how we can't implement the program.
Let me know. Thanks.

FOR IMMEDIATE RELEASE
November 14, 2007

MAYOR JERRY SANDERS
FACT SHEET

Mayor Vetoes Council's "Toilet to Tap" Plan

Mayor Jerry Sanders has vetoed the City Council's action to direct the City of San Diego Water Department to design a pilot project for Indirect Potable Reuse (IPR) or "toilet to tap" as it is commonly termed. The Mayor chose to veto the Council's action for many reasons including:

- The public's repeated rejections of attempts to implement IPR over the past 15 years
- Lack of funding for design and implementation of any IPR pilot project
- The need to saddle ratepayers with the third water rate increase in less than 12 months should Council demand the pilot project
- The high costs and small amount of water created by IPR
- The need to focus on water supply options that can be more quickly developed and implemented

"TOILET TO TAP" COSTS MORE THAN OTHER WATER SOURCES

Indirect potable reuse is not a silver bullet to fix all of the region's water needs. Even a costly pilot project would take years to develop and would produce water far more expensive than other supplies.

Cost Comparison of Water (cost per Acre Foot)	
	Cost to City
Indirect Potable Reuse[1]	$1,882*
Desalinated Water[2]	$1,400*
Raw Water [3]	$515
Potable Water [3]	$679

1 Source: Water Reuse Study, March 2006 – Indirect Potable Reuse costs are the combination of Advanced Treated Water and Tertiary Treatment (planning level numbers)
2 Cost estimates were extrapolated from SDCWA 2003 estimates
3 Source: San Diego County Water Authority budget document, Effective January 1, 2008
* Does not include eligible incentives or credits