Serving as the primary legal advisor to a company seeking to build the largest seawater desalination plant in the Western Hemisphere requires not only a deep set of project development and finance capabilities but also the shared vision that despite the multitude of challenges ahead, such an ambitious project could be realized. Combining a shared outlook with many years of large-scale project development experience, Dickstein Shapiro has helped Poseidon Resources turn its concept into a real-world desalination plant and pipeline system that will have a significant positive impact on the water supply for San Diego County, California and will serve as a precedent for the development of similar projects in the future.

The Colorado River contributes a significant portion of San Diego County’s overall drinking water portfolio, and recent droughts and growing demand in the Southwest on the river’s limited resources have led to uncertainty about future supplies. These factors, combined with other constraints, led the county to seek out additional reliable sources of fresh water. San Diego has a major potential resource in its backyard—the Pacific Ocean—and desalination is one of the few local, large-scale, and economical water source alternatives available.

Working closely with the county, Poseidon Resources proposed developing a reverse-osmosis seawater desalination plant and associated water delivery pipeline system in Carlsbad, California that would be capable of producing up to 50 million gallons of high-quality, potable water per day. The Poseidon Carlsbad Desalination Project will provide San Diego County with a locally controlled, drought-proof supply sufficient to deliver approximately 7 percent of its water supply—enough for nearly 450,000 county residents.
The Path Forward
With its proven track record, Poseidon Resources is the only company in the United States developing large-scale seawater desalination plants. Dickstein Shapiro has represented the company since it was founded in 1995 and has served as outside counsel and project counsel for all of its projects. To help Poseidon navigate the many legal and financial hurdles that lay in the Carlsbad project’s path, Dickstein Shapiro assembled a multidisciplinary team of attorneys from its industry-leading Energy, Corporate and Finance, and Intellectual Property Practices.

Dickstein Shapiro’s Role
As the project moved through its many phases of initial concept, protection of intellectual property, project contract negotiations, and final permitting and financing, Dickstein Shapiro served as primary outside legal counsel. The firm led the entire debt and equity financing for the $922 million project, which is structured as a true public-private partnership. Core components on which the firm advised include:

- **Bond and Private Equity Financing** – With 60 parties to the transaction, the project’s legal and financing challenges were significant. The project’s financing includes $755 million in investment grade tax-exempt bonds. Dickstein Shapiro led the efforts on the bond financing for the plant and pipeline, and the team of attorneys also played a key role in resolving the legal issues related to the $167 million of private equity investment.

- **Water Purchase Agreement** – In addition to leading the complex, multiparty financing arrangements, the firm handled the negotiations of the 30-year water purchase agreement with the San Diego County Water Authority (SDCWA). The agreement, under which approximately 50 million gallons of drinking water per day from the plant will be supplied to the SDCWA, was a critical factor in ensuring the long-term financial viability of the project.

- **Deal Documentation and Agreements** – Dickstein Shapiro attorneys also handled all of the project documentation for the facility, including agreements for construction, operation and maintenance, equipment supply, site lease, and related arrangements.

- **Coordination with Third Parties** – The team worked closely with key constituents and other advisors throughout the course of the project. The necessary state and federal approvals included 14 key permits that were conditional and had to be secured one at a time, demanding a high level of precision and coordination to ensure their acquisition.

The Result
Following more than 10 years of negotiations and challenges, the final permits were secured in November 2012, and the financing for the transaction closed in December, allowing the groundbreaking to occur immediately thereafter and ensuring that the citizens of San Diego County will have a reliable source of drinking water for years to come. The financing for the project has been recognized as the North American Water Deal of the Year by *Project Finance* magazine and Desalination Deal of the Year by *Global Water Intelligence* magazine.

Water for All
As the demand for reliable sources of fresh water increases—especially in southern coastal regions in the United States—desalination plants likely will play a larger role in the water supply mix. Looking ahead to the emerging need for additional sources of fresh water, Poseidon Resources is developing additional projects in California, Florida, and Texas. Dickstein Shapiro’s attorneys are using the best practices and insights they have gained throughout the course of the Carlsbad project to provide industry-leading legal counsel for these future projects as well.