Interim Report No. 13

Wastewater Exhibits by footnote

Footnote No. 61

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downtown land uses. It should be emphasized that this study will not determine specific land uses or traffic circulation for downtown. This will be the role of the community planning effort. It should also be noted that the Mayor's Office distributed a memorandum to City Councilmembers proposing a Centre City Task Force to coordinate the ULI study and the Centre City Community Plan update, as well as other special downtown studies.
Aud. Cert. 8700320.

FILE LOCATION: MEET CONTFY87-1

COUNCIL ACTION: (Tape location: B155-160.)
MOTION BY STRUIKSMA TO ADOPT. Second by Jones. Passed by the following vote: Wolfsheimer-yea, Cleator-yea, McColl-yea, Jones-yea, Struiksma-yea, Gotch-yea, McCarty-yea, Martinez-yea, Mayor O'Connor-yea.

ITEM-151: (R-87-762) ADOPTED AS RESOLUTION R-266973

Authorizing the City Manager to submit a letter of intent to both revise the existing application for a waiver from secondary treatment at the Point Loma Wastewater Treatment Plant in accordance with provisions in Section 301(h) of the Clean Water Act and to resubmit the revised application to the United States Environmental Protection Agency (EPA). (District-2.)

CITY MANAGER REPORT: In 1977, the United States Congress amended the Clean Water Act to include Section 301(h) which allowed issuance of National Pollution Discharge Elimination System (NPDES) permits for certain marine or estuarine sewage discharges at less-than Secondary treatment levels. On August 31, 1979, the City submitted to EPA an application for 301(h) variance for the Point Loma Wastewater Treatment Plant. On September 8, 1981, EPA issued a tentative approval of the 301(h) application. In order to reflect changes in existing conditions, the City submitted a revised application to the EPA on November 23, 1983. On September 30, 1986, the EPA issued a tentative decision to deny the City's original and revised applications, and withdrew their initial tentative approval. These actions were predicated and based on the revision in 1983, to the California State Ocean Plan. The City is currently meeting the Ocean Plan requirements; however, the EPA has indicated that the current application does not sufficiently define our ability for continued compliance with the standards and corresponding deadlines as set forth in the 1983 Ocean Plan. Several major concurrent issues with regard to City compliance

with the Ocean Plan are in process. In October, 1986, the Ocean Plan may again be revised by the State. Further, the City's discharge requirements are being reviewed by the Regional Water Quality Control Board. Thus, it seems necessary and prudent that the EPA be updated and informed of the results of these several issues. This can be done by submittal of a revised waiver application, which details all information relevant to future City compliance with the 1983 Ocean Plan. The City must notify the EPA of its intent to reapply for a 301(h) waiver by November 14, 1986.
WU-U-87-051.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: B161-C120.)
MOTION BY GOTCH TO ADOPT. Second by Jones. Passed by the following vote: Wolfsheimer-yea, Cleator-yea, McColl-yea, Jones-yea, Struiksma-yea, Gotch-yea, McCarty-yea, Martinez-yea, Mayor O'Connor-yea.

ITEM-152: (R-87-604) ADOPTED AS RESOLUTION R-266974

Approving City Manager Report CMR-86-450, entitled "Use of Proposition 43 Grant Funds"; directing the City Manager to make an application for grant funding under the Community Parkland Act of 1986 pursuant to the recommendations contained in that report.
(See City Manager Report CMR-86-450 and Committee Consultant Analysis PFR-86-35. Balboa Park Community Area. District-8.)

COMMITTEE ACTION: Reviewed by PFR on 9/24/86. Recommendation to approve the City Manager's report to expend the funds in Balboa Park. Districts 1, 2, 6 and 7 voted yea. District 5 not present.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: C121-130.)
MOTION BY MARTINEZ TO ADOPT. Second by Struiksma. Passed by the following vote: Wolfsheimer-yea, Cleator-yea, McColl-yea, Jones-yea, Struiksma-yea, Gotch-yea, McCarty-yea, Martinez-yea, Mayor O'Connor-yea.

ITEM-153: (R-87-886) ADOPTED AS RESOLUTION R-266975
19861103

Discussion of the request of Kimiko Ann Fukuda, representing the San Diego Unified School District, to waive fees for the use of Plaza Hall CPAC, for a conference

Footnote No. 62

Council minutes
2/17/1987

* ITEM-S400: (R-87-1624) ADOPTED AS RESOLUTION R-267721

Excusing Mayor O'Connor from attending the Council meetings of February 9-10, 1987, due to her attendance of official City business in New York.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A104-113.)

CONSENT MOTION BY GOTCH TO ADOPT. Second by McCarty. Passed by the following vote: Wolfsheimer-yea, Cleator-yea, McColl-yea, Jones-not present, Struiksma-yea, Gotch-yea, McCarty-yea, Ballesteros-yea, Mayor O'Connor-yea.

ITEM-S401: (R-87-1595) CONTINUED TO FEBRUARY 23, 1987

(Continued from the meeting of February 9, 1987, Item S402, at the City Manager's request, for the rest of the resumes from the appointees to the Committees.)
Establishing a "Blue Ribbon Task Force" to assist the City of San Diego in the evaluation of the bond issues for Mission Bay and Balboa Park areas appearing on the November 1987 Ballot.
(See City Manager Report CMR-87-25.)

COMMITTEE ACTION: Reviewed by RULES on 2/4/87. Recommendation to adopt the Manager's recommendation, as well as the Rules Committee directive of 1/14/87 that the Task Force include individuals suggested by each Councilmember. Districts 3,4,6, and the Mayor voted yea. District 2 not present.

FILE LOCATION: --

COUNCIL ACTION: (Tape location: A060-070.)

MOTION BY WOLFSHEIMER TO CONTINUE TO FEBRUARY 23, 1987, AT THE CITY MANAGER'S REQUEST TO OBTAIN ALL RESUMES FROM THE APPOINTEES. Second by Ballesteros. Passed by the following vote: Wolfsheimer-yea, Cleator-not present, McColl-yea, Jones-not present, Struiksma-yea, Gotch-yea, McCarty-yea, Ballesteros-yea, Mayor O'Connor-yea.

ITEM-S402: NOTE AND FILE

(Continued from the meeting of February 10, 1987, Item 337, at Mayor O'Connor's request, to allow her to be present.)
Discussion in the matter of the conversion of the Metropolitan Sewerage System to Secondary Treatment and the filing of a new revised waiver application from Secondary Treatment.
(See City Manager Report CMR-87-70.)

FILE LOCATION: MEET
COUNCIL ACTION: (Tape location: B104-C558.)
Hearing began 10:40 a.m. and halted 11:50 a.m.
Testimony by Don Conner, Larry Hirsch, Mark Nelson, Lee Olsen, Howard Greenebaum, Doug Myers, Nancy Skinner, Alan Sakarias, Terry Thielen, and Thelma Cantrall.
Motion by McCarty to go to secondary treatment or tertiary treatment and set up a task force as outlined in Council Member McCarty's memo dated February 10, 1987, to define the issues, provide the framework for decisions, set goals and objectives, plan and organize the study effort, define tasks, set timeframes, recommend consultant needs, coordinate the work effort, evaluate the results, and make recommendations to the City Council. The task force should include the following: a project manager, a civil engineer in the water treatment field, a legal expert, a representative of the construction industry, a financial expert knowledgeable in bond financing, a political team, led by the Mayor and including members from the State and Congressional delegations, a marketing expert, someone from the academic community with expertise in waste water technology, and a representative of the City, preferably the manager of the Point Loma Plant. Second by Gotch. No vote.
MOTION BY McCARTY TO AMEND THE MOTION TO REJECT THE RECOMMENDATION TO SEEK A WAIVER AND MOVE TO SECONDARY TREATMENT
OR TERTIARY, DIRECT THE CITY MANAGER TO RETURN TO COUNCIL WITH RECOMMENDATIONS FOR MEMBERSHIP ON THE TASK FORCE TO BE APPOINTED
BY THE MAYOR AND COUNCIL, AND ASK THE TASK FORCE TO PROVIDE THE COUNCIL WITH OPTIONS WHICH WOULD INCLUDE TERTIARY TREATMENT.
Second by Struiksma. Passed by the following vote:
Wolfsheimer-yea, Cleator-nay, McColl-yea, Jones-not present, Struiksma-yea, Gotch-yea, McCarty-yea, Ballesteros-yea, Mayor O'Connor-yea.

ITEM-S403: (R-87-1436 Rev.) ADOPTED AS AMENDED AS RESOLUTION R-267727

19870217
(Continued from the meeting of February 9, 1987, Item S403, at the City Manager's request, to allow Mayor O'Connor to be present.)
Establishing a Committee Against Drug Abuse; authorizing the transfer and expenditure of funds not to exceed $64,800 for staffing and supporting said Committee; waiving Council

Footnote No. 63

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ATTORNEYS FOR PLAINTIFFS

FILED
RECEIVED
JUL 21 1988
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and STATE OF CALIFORNIA, Plaintiffs, v. CITY OF SAN DIEGO Defendant.	'881101 B (IEG) Civil Action No. _____ COMPLAINT

The United States of America, at the request and on behalf of the Administrator of the United States Environmental

Protection Agency ("EPA"), and the California Regional Water Quality Board, San Diego Region, represented by the Attorney General, allege that:

1. This is a civil action pursuant to Section 309(b), and (d) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and for assessment of civil penalties against the City of San Diego ("City") for (1) the discharge of pollutants in violation of Section 301 of the Act, 33 U.S.C. § 1311, (2) violation of certain conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342, and (3) violation of pretreatment requirements as set forth in Section 307 of the Act, 33 U.S.C. § 1317, and 40 C.F.R. § 403.

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309 of the Act, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1345, and 1355.

3. Venue is appropriate in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b) and 28 U.S.C. § 1395 because it is the judicial district in which the City of San Diego is located and doing business.

4. The State of California is joined as a plaintiff in this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), which provides that the State shall be joined as a party whenever the United States brings an action against a municipality under Section 309 of the Act, 33 U.S.C. § 1319.

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5. The City of San Diego is an incorporated city of the State of California, formed under the laws of the State, and is a "municipality" and a "person" within the meaning of Section 502(4) and (5) of the Act, 33 U.S.C. § 1362(4) and (5).

6. At all relevant times the City of San Diego has owned and operated a wastewater treatment plant, known as the Point Loma Wastewater Treatment Plant ("Point Loma Plant"), located at 1902 Gatchell Road, San Diego, California, and the collection system which transports sewage and other wastewater to Point Loma for treatment. The Point Loma Plant collects and treats sewage and wastes from residential, commercial and industrial sources from the City of San Diego, seven neighboring municipalities, and seven sanitation districts, and has done so at all relevant times.

7. At all relevant times the City has discharged pollutants, as defined in 33 U.S.C. § 1362(6), into the Pacific Ocean, Mission Bay, Los Penasquitos Lagoon, the San Diego River, Lake Hodges, Rose Creek, Forrester Creek, and Chollas Creek.

8. The waters set forth in paragraph seven above are "navigable waters" of the United States, as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

9. The discharges of pollutants by the City of San Diego have been and continue to be through point sources as defined by 33 U.S.C. § 1362(14).

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of

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the United States except in compliance with the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11. Section 301(b)(1)(B) of the Act, 33 U.S.C. § 1311(b)(1)(B), requires all publicly owned treatment works to achieve effluent limitations based on secondary treatment no later than July 1, 1977. The City of San Diego applied for a modification from the requirements of secondary treatment on August 31, 1979, pursuant to 301(h) of the Act, 33 U.S.C. § 1311(h). That application was tentatively denied by EPA on September 30, 1986. The City withdrew its application on February 17, 1987. The City failed to maintain a current facilities plan for secondary treatment during the pendency of its application, as required by 40 C.F.R. § 35.2112.

12. Section 307 of the Act, 33 U.S.C. § 1317(d), requires any publicly owned treatment works to comply with pretreatment requirements. Specific requirements that the City of San Diego must undertake in order to control wastes contributed to its treatment works by industrial users are also set forth in 40 C.F.R. §§ 403.8 and 403.9.

13. Section 309(a)(3) and (b) of the Act, 33 U.S.C. § 1319(a)(3) and (b), provides, in part, for the commencement of an action for appropriate relief, including temporary or permanent injunctions, when any person is in violation of, among others, Sections 301 or 307 of the Act, or any permit condition

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or limitation implementing such sections in a permit issued under Section 402 of the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides, in part, that any person who violates Section 301 or 307 of the Act, or any permit condition, shall be subject to a civil penalty not to exceed $25,000 per day for each violation occurring on or after February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987.

14. On May 23, 1977, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the State of California through the Regional Water Quality Control Board, San Diego Region, adopted Order No. 77-18, NPDES permit No. CA0107409 for the Point Loma Plant. This permit authorized the discharge of pollutants from the Point Loma Plant into the Pacific Ocean, subject to the terms and conditions of the permit. The permit has been subsequently revised and was most recently reissued by the State of California through the Regional Water Quality Control Board, San Diego Region, in March, 1985, Order No. 85-16.

15. The permit establishes requirements for the discharge of treated wastewater containing pollutants, including: effluent limitations based on secondary treatment; development of a pretreatment program; effluent and receiving water effluent limitations reflecting requirements contained in the State of California Water Resources Control Boards's Water Quality Control Plan, Ocean Waters of California ("Ocean Plan"); requirements for disposal of sewage sludge; a prohibition against overflow or bypass from any collection, conveyance or treatment facility; and

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other applicable standards for the wastewater conveyed to and discharged from the Point Loma Plant pursuant to Section 301(b) of the Act, 33 U.S.C. § 1311(b).

FIRST CLAIM FOR RELIEF

16. Paragraphs 1 through 15 are realleged and incorporated by reference.

17. From at least July 5, 1983 to the present, the City of San Diego has repeatedly discharged wastewater from the Point Loma Plant with concentrations of pollutants in excess of the limitations set forth in its NPDES permit, in violation of its NPDES permit and in violation of Section 301 of the Act, 33 U.S.C. § 1311. The City has exceeded limitations for Biological Oxygen Demand, Suspended Solids, Fecal Coliform, Total Coliform, Oil and Grease, Turbidity, Settleable Solids, Effluent Toxicity and Flow.

all! Also with monthly report

18. Unless restrained by an Order of this Court, the City will continue to violate Section 301 of the Act, 33 U.S.C. § 1311, and the terms of its permit.

19. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, the City is subject to a civil penalty not to exceed $25,000 per day for each violation occurring on or after February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987.

SECOND CLAIM FOR RELIEF

20. Paragraphs 1 through 15 are realleged and incorporated by reference.

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Bob Ferrier
use of settlement document
detail which were enforcement actions.

21. The City of San Diego's NPDES permit prohibits unauthorized bypass or overflow from any collection, conveyance or treatment facility, and permits only the discharge of treated wastewater. The City has violated its permit on at least 1,814 occasions by bypassing and overflowing its facilities, and by discharging untreated wastewater. These discharges have been caused by failures in and overflows from the sewer lines and pump stations that are used to transport sewage.

22. Unless restrained by an Order of this Court, the City will continue to violate Section 301 of the Act, 33 U.S.C. § 1311, and the terms of its NPDES permit.

23. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, the City is subject to a civil penalty not to exceed $25,000 per day for each violation occurring on or after February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987.

THIRD CLAIM FOR RELIEF

24. Paragraphs 1 through 15 are realleged and incorporated by reference.

25. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The City of San Diego has violated the Act on at least 188 occasions by discharging untreated wastewater containing pollutants into the waters of the United

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States without an NPDES permit. These discharges have been caused by failures in and overflows from the sewer lines and pump stations that are used to transport sewage.

26. Unless restrained by an Order of this Court, the City will continue to discharge without a permit in violation of Section 301 of the Act, 33 U.S.C. § 1311.

27. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, the City is subject to a civil penalty not to exceed $25,000 per day for each violation occurring on or after February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987.

FOURTH CLAIM FOR RELIEF

6/2-02 -2/3/8

28. Paragraphs 1 through 15 are realleged and incorporated by reference.

86-07

29. The City of San Diego's NPDES permit prohibits the disposal of sewage sludge except in authorized areas. The City has violated this condition of its NPDES permit on at least 92 occasions from January 3, 1984 until February 3, 1986, in that it disposed of sewage sludge at the abandoned Brown Field treatment plant, an area not authorized for disposal. The City further violated this condition of its NPDES permit on at least four occasions from December 10, 1983 through October 1, 1986, by discharging sewage sludge to Mission Bay. Mission Bay is not an authorized sewage sludge disposal area.

ACL Brown Field

86-108 = 11,000

30. The City of San Diego has failed to adequately plan for continued handling of its sewage sludge, and unless

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restrained by an Order of this Court, will continue to violate Section 301 of the Act, 33 U.S.C. § 1311, and the terms of its NPDES permit.

31. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, the City is subject to a civil penalty not to exceed $25,000 per day for each violation occurring on or after February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987.

FIFTH CLAIM FOR RELIEF

32. Paragraphs 1 through 15 are realleged and incorporated by reference.

33. The City of San Diego's NPDES permit, Section 307 of the Act, 33 U.S.C. § 1317, and regulations promulgated thereunder at 40 C.F.R. §§ 403.8 and 403.9, require that the City comply with provisions regulating the pretreatment of industrial waste received by the Point Loma Plant. The City of San Diego has violated its permit, the Act, and the regulations, by failing to properly implement a pretreatment program.

34. Unless restrained by an Order of this Court, the City will continue to violate Sections 301 and 307 of the Act, 33 U.S.C. §§ 1311 and 1317, 40 C.F.R. §§ 403.8 and 403.9, and the terms of its permit.

35. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, the City is subject to a civil penalty not to exceed $25,000 per day for each violation occurring on or after

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February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

1. The City of San Diego be permanently enjoined from any and all future violations of the Clean Water Act and from any discharges of pollutants except as expressly authorized by an NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342;

2. The City of San Diego be ordered to comply with schedules for planning, design, and construction of secondary treatment facilities which will bring about compliance with the terms of its NPDES permit;

3. The City of San Diego be ordered to comply with a schedule of repairs, alterations, and modifications to existing facilities which will bring about compliance with the terms of its NPDES permit;

4. The City of San Diego be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), a civil penalty not to exceed $25,000 for each day of each violation of the Act and its permit occurring on or after February 4, 1987, and $10,000 per day of such violations occurring prior to February 4, 1987;

5. Plaintiffs be awarded the costs and disbursements of this action; and

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6. This Court grant any such other relief as it deems just and proper.

Respectfully submitted,

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Footnote No. 66

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BY: DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. CITY OF SAN DIEGO, STATE OF CALIFORNIA, Defendants, SIERRA CLUB, EMILY DURBIN and BRUCE HENDERSON, Intervenors.	CASE NO. Civ. 88-1101-B (POR) ORDER GRANTING PLAINTIFF-INTERVENOR SIERRA CLUB'S MOTION FOR ATTORNEY'S FEES

I. INTRODUCTION

Plaintiff-intervenor Sierra Club filed a motion for attorney's fees in this action pursuant to 33 U.S.C. § 1365(d) on June 20, 1997. The United States Environmental Protection Agency (the United States or EPA), the State of California (State), and the City of San Diego (City) opposed the motion. This matter came on for hearing on April 24, 1998. Upon due consideration of the moving and responding papers and the arguments of counsel, the Court hereby GRANTS Sierra Club's motion for attorney's fees.

II. BACKGROUND

During the 1980s, the City of San Diego was a chronic violator of the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. §§ 1251-1387. The City's

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violations ranged from wastewater overflows along City sewer lines to the City's failure to treat raw sewage to secondary treatment standards before discharging it into the Pacific Ocean. In 1988, the United States and the State of California[1] (State) instituted a CWA civil enforcement action against the City. By 1989, the parties were in the process of negotiating a proposed Consent Decree that would have required the City to build a number of new sewage treatment and water reclamation facilities. The new facilities purportedly would have increased the City's wastewater treatment and disposal system to adequate capacity and enabled the City to implement secondary treatment standards. As the negotiations gained momentum, the Sierra Club, which had been monitoring the progress of the case, sought to intervene as a plaintiff and block entry of the proposed Consent Decree. The Sierra Club argued that the agreement being reached between the parties violated the public interest for the following reasons:

(1) Sierra Club believed that secondary treatment standards could be attained at a lower cost and with less environmental impact by using experimental "physical-chemical" treatment methods at the existing Point Loma Wastewater Treatment Facility (the Point Loma plant), the City's main sewage treatment facility, rather than building new treatment facilities as required by the Consent Decree;

(2) The Consent Decree contained no water conservation measures, which Sierra Club believed would obviate the need for new wastewater treatment facilities;

(3) The Consent Decree required seven new water reclamation facilities but did not provide for the distribution and re-use of the reclaimed water; and

(4) The Consent Decree required effluent to be treated with chlorine before being discharged into the ocean.

Sierra Club's motion to intervene was granted on September 20, 1989. After extensive evidentiary hearings, the Court deferred approval of the Consent Decree on June 18, 1991.

On September 11, 1991, Sierra Club filed a motion for interim attorney's fees pursuant to 33 U.S.C. § 1365(d). The Court granted this motion in part on February 6, 1992,

[1] The State of California later re-aligned itself with the City as a defendant in March 1994.

finding that § 1365(d) allowed intervening plaintiffs in CWA actions to receive attorney's fees.

To determine an appropriate fee award, the Court placed Sierra Club's work on the case in three categories. The first category of work, for which the Court awarded fees, involved water reclamation issues. The second category of work, for which the Court held that a fee request was premature, involved the experimental use of physical-chemical treatment methods at the Point Loma plant. The Court found the test results too inconclusive at that time to justify a fee award. Finally, the Court declined to award fees for work on the penalty phase of the litigation because it found that Sierra Club had not made a beneficial contribution to that portion of the case.

The Court awarded Sierra Club an amount equal to 15% of its total reasonable fees and costs accrued as of June 18, 1991. The United States, the State of California, and the City of San Diego were held jointly and severally liable for 67 ⅔ % of the interim fee award, and the City of San Diego was solely liable for 33 ⅓ %. The parties eventually stipulated to a $375,406.24 lodestar, of which Sierra Club received 15%, or $56,310.93. The award was made without prejudice to future fee motions.

The Court certified the interim award of attorney's fees for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The United States and the City of San Diego appealed on the ground that as an intervenor, Sierra Club could not receive fees. Sierra Club cross-appealed the amount of the award. The Ninth Circuit, without reaching the merits of this Court's decision, held that it lacked jurisdiction over the appeals under either 28 U.S.C. §§ 1291 or 1292(b), and the appeals were dismissed without prejudice.

After deferral of the Consent Decree, the Sierra Club devoted extensive efforts to developing alternate resolutions to this matter. It researched water reclamation and re-use possibilities and the effects of water conservation on wastewater volumes at the Point Loma plant. It also monitored the pilot testing of physical-chemical treatment methods at the Point Loma plant. In September 1993, Sierra Club requested that the Court hold a final hearing on the Consent Decree and that the Consent Decree be disapproved. Although the United States

and the State continued to favor approval of the Consent Decree, the City changed positions and opposed the decree. The parties participated in extensive discovery, followed by thirteen days of evidentiary hearings. On March 31, 1994, the Court rejected the Consent Decree.

Subsequently, the Court issued an interim order on August 26, 1994 to address all remedial phase issues in the case pending final judgment. That order provided, among other things, construction dates for a number of projects, including the North City Water Reclamation Plant (North City plant). However, the order did not require completion of a distribution system for reclaimed water by the start-up date of the North City Plant. Without distribution pipelines, Sierra Club asserted, the reclaimed water would be wastefully discharged into the ocean. Sierra Club therefore moved to amend the interim order to provide for "distribution pipelines adequate to market not less than 9,000 acre feet per year." The Court did amend the interim order, but it did not adopt the Sierra Club's proposed amendment. Instead, the Court adopted the City's suggestion that the amended order incorporate a map setting out a backbone distribution pipeline system and specify completion dates for each segment of the pipeline project. It did not require a specific distribution pipeline capacity.

One of the most significant issues remaining in the case after rejection of the Consent Decree was whether the City should be required to treat effluent to secondary treatment standards at the Point Loma plant before discharging it into the ocean. Despite substantial improvements at the Point Loma plant, due in part to the use of physical-chemical treatment methods, secondary treatment standards could not be reached. Before 1994, the EPA was allowed to waive one or more secondary treatment standards under § 301(h) of the CWA if no environmental injury would result. The parties and the Court were convinced that under the circumstances, a § 301(h) waiver would be appropriate.[2] Unfortunately, the City's prior § 301(h) request had been withdrawn years before, and by 1995, the § 301(h) waiver

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[2] During this time, the National Science Foundation was studying the science of the CWA regulations. It issued a report which was quite favorable to the Sierra Club's and the City's position that San Diego's sewage treatment practices, improved through the use of physical-chemical methods, caused no damage to the environment.

provision had expired.[3] Without a waiver, the City would have been forced to build an expensive and unnecessary new sewage treatment plant to comply with the CWA. To avoid this result, the parties drafted, lobbied for, and obtained passage of a bill by Congress, the Ocean Pollution Reduction Act (OPRA), which allowed the City to apply for a § 301(h) waiver. The City applied for the waiver and, with the Sierra Club's help, established in waiver permit hearings before the EPA that the Point Loma plant had achieved an 85% suspended solids removal rate, and that due to this, the City's effluent discharges did not injure the ocean environment. The City obtained a § 301(h) waiver on November 9, 1995.

The resolution of the secondary treatment issue removed a major obstacle to settling the case. The parties negotiated a complex settlement, and the final Stipulated Judgment was entered on June 6, 1997.

Sierra Club now moves for a final award of attorney's fees. It seeks $866,628.83, which represents all work done on the case, less the interim fee award. It also requests a 25% enhancement.

III. DISCUSSION

A. Standard of Law

Under the CWA, a district court may award "costs of litigation . . . to any prevailing or substantially prevailing party whenever the court determines such award is appropriate." 33 U.S.C. § 1365(d).

The threshold determination is whether the moving party is a "prevailing party." Earth Island Inst., Inc. v. Southern Cal. Edison Co., 838 F. Supp. 458, 463 (S.D. Cal. 1993) (citing Hensley v. Eckerhart, 461 U.S. 424, 433-37 (1983)). A prevailing party "must have succeeded on 'any significant issue in the litigation which achieves some of the benefit'" sought. Earth Island, 838 F. Supp. at 464 (quoting Hensley, 461 U.S. at 433).

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[3] The City initially received a temporary § 301(h) waiver in 1981. When the City amended its application to allow larger treatment volumes at the Point Loma plant, the waiver was temporarily denied. In 1987, the City withdrew its § 301(h) waiver application and commenced planning to comply fully with the CWA. Early in the planning process, in 1988, the United States and the State of California filed the instant lawsuit against the City. The City later relied on the proposed Consent Decree as a way of achieving CWA compliance.

(pp. 6-17)

United States; therefore, the Court may properly hold the United States liable for the Sierra Club's attorney's fees. However, the Court recognizes that the war over the Consent Decree was composed of many battles, and the United States did not fight in every skirmish. Thus, the United States' lack of opposition to the Sierra Club regarding some issues in this case is reflected by the fact that the Court has only held the United States liable for a percentage of the Sierra Club's attorney's fee award.

G. Sierra Club Is Not Entitled to Recovery under Equitable Doctrines.

Sierra Club contends that if attorney's fees are not appropriate under the CWA, the Court should award them under the equitable common benefit doctrine. This issue is rendered moot by the Court's decision to award attorney's fees under the CWA. Furthermore, the common benefit doctrine has no application where, as here, the alleged beneficiaries are the general citizenry of a county. See Southeast Legal Defense Group v. Adams, 657 F.2d 1118, 1123 (9th Cir. 1981); Stevens v. Municipal Court, 603 F.2d 111, 113 (9th Cir. 1979).

IV. CONCLUSION

The Sierra Club's motion for attorney's fees is granted. Sierra Club shall receive an award of $781,306. The City shall be solely liable for 75% of this amount. The United States, the State, and the City shall be jointly and severally liable for 25% of this amount, but the United States shall not be required to pay more than 12.5% of the total ($781,306) award.

IT IS SO ORDERED.

DATED: 6-30-98

UNITED STATES DISTRICT JUDGE

cc: All Parties
Magistrate Judge Porter

gscv1101

07/01/98 WED 09:02 [TX/RX NO 6505] 019

See Footnote 66

Footnote No. 67

Footnote No. 68

JUN 18 1991
SOUTHERN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and STATE OF CALIFORNIA, Plaintiffs, vs. CITY OF SAN DIEGO, Defendant.	Civil No. 88-1101-B(IEG) MEMORANDUM DECISION DEFERRING APPROVAL OF PROPOSED PARTIAL CONSENT DECREE
SIERRA CLUB, EMILY DURBIN, and BRUCE HENDERSON, Intervenors.	

In considering plaintiffs' motion for entry of the proposed partial consent decree (Decree), this court has conducted a hearing in which the parties have presented evidence on the issue of whether the Decree is in the public interest. In addition, the court has allowed any interested citizens to provide public comment, in writing or in open court, concerning the Decree and

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its impact on the citizens of San Diego.[1] Upon consideration of the evidence and the public comment discussed above, the court hereby enters the following memorandum decision.

I. Procedural Background

This is an action brought by the United States of America (United States) and the State of California (State) against the City of San Diego (City) to require the City to comply with the Clean Water Act (Act), 33 U.S.C. § 1251 et seq., and with its National Pollutant Discharge Elimination System permit, and to require the City to pay civil penalties for past violations of the Act. The Sierra Club, Emily Durbin, and Bruce Henderson have been granted leave to intervene in this action.

On May 10, 1989, the court bifurcated this case into remedial and penalty phases. On January 30, 1990, the United States, the State, and the City lodged the Decree with the court, thereby settling the remedial phase of this case, subject to approval by the court. By Interim Order dated March 21, 1990, this court found the Decree to be appropriate action to achieve compliance with the Clean Water Act, and plaintiffs were permitted to publish notice of the Decree in the Federal Register, as required by law.

On August 15, 1990, after publication of the Decree and upon review of the public comment received, plaintiffs moved for entry of judgment approving and ordering performance of the Decree. By

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[1] This public comment was received at the request of the court, and supplemented the public comment already received by the government in response to the legally mandated publication of the Decree in the Federal Register.

Order dated December 4, 1990, the court, pursuant to its equitable authority with respect to the Decree, deferred consideration of the Decree so that evidence could be presented as to whether pursuit of a § 301(h) waiver by the City would be in the public interest.[2] By Amended Memorandum Decision dated April 18, 1991, the court ruled that it would not defer consideration of the Decree in order to allow the City to apply for a waiver.[3] Accordingly, the court stated its intention to consider forthwith whether the Decree is in the public interest and should therefore be entered as a final judgment.[4]

II. Scope of Review

The Ninth Circuit has held that "a district court should enter a proposed consent judgment if the court decides that it is fair, reasonable and equitable, and does not violate the law or public policy." Sierra Club v. Electronic Controls Design, 909 F.2d 1350, 1355 (9th Cir. 1990). However, entry of a consent decree "is a judicial act which deserves more than the court's rubber stamp on the agency's action." United States v. Ketchikan Pulp Co., 430 F.Supp. 83, 85 (D. Alaska 1977).

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[2] If obtained, such a waiver would exempt the City from compliance with the secondary treatment requirements of the Clean Water Act at the Point Loma plant, thereby dramatically affecting the terms of the Decree.

[3] Simultaneously, the court resolved the penalty phase of this action by imposing a penalty of $3 million against the City.

[4] The court's ruling on this issue did not foreclose the City's pursuit of a waiver while consideration of the Decree proceeded. See Amended Memorandum Decision, p. 5 n.3.

In reviewing the Decree in this case, the court has heard extensive evidence in order to determine whether the Decree is in the public interest and furthers the objectives of the Clean Water Act. While the court is mindful that it should not "tinker" with the quasi-contractual agreement of the litigants, it is likewise imperative that the parties recognize and consider the substantial and long-term effect the Decree will have on the citizens of San Diego. Although immediate entry of a consensual agreement may be legally and politically expedient, the public interest demands that this court make a searching inquiry into possible alternative solutions where obvious shortcomings exist in the Decree.

III. The Decree and the Public Interest

The Decree reflects an impressive legal and scientific effort by the parties to identify and solve the sewage problems currently confronting the City. In all likelihood, the Decree would take the City through the twenty-first century and serve as a model for other municipalities attempting to comply with the Act. However, the court has identified four areas of concern which indicate that approval of the Decree in its present form should be deferred.

A. Beneficial Reuse of Reclaimed Water

The Decree contemplates the construction of water reclamation plants on an aggressive schedule, but fails to require reuse of the reclaimed water on even a minimally significant basis until well after the plants have been

completed.[5] In the interim, millions of gallons of reclaimed water may be pumped out to sea, and increasingly valuable potable water will be used in its place. While the construction of the reclaimed water plants is laudable, the level of beneficial reuse contemplated by the parties is woefully inadequate, and is not in the public interest.[6]

Based upon the evidence received during the hearing, the court concludes that the following schedule and levels of reuse are logistically feasible, economically preferable, and in the public interest: (1) upon the completion of any tertiary treatment plant, the City shall immediately provide for the beneficial reuse of at least 25% of the reclaimed water from that plant; (2) by December 31, 2003, the City shall provide for the beneficial reuse of at least 50% of all reclaimed water produced at the completed plants; and (3) by December 31, 2010, the City

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[5] All of the tertiary facilities will be completed by 1999. As presently written, the Decree contemplates the following schedule and levels of reuse: (1) by December 31, 2003, the City shall beneficially reuse no less than 30,000 acre feet per year of reclaimed water; and (2) by December 31, 2010, the City shall beneficially reuse no less than 50% of the wastewater receiving tertiary treatment (presently calculated at 49,800 acre feet).

[6] The court recognizes that under the Act the parties did not have to provide for the use of any of the reclaimed water. However, this court's review of the Decree is not limited only to those aspects which are legally mandated. The Supreme Court has observed that "a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial." Local 93, Int'l Ass'n of Firefighters, AFL-CIO, v. City of Cleveland, 478 U.S. 501, 519 (1986). Given this statement of the law, it must follow that the court is required to review all components of the agreement, not merely those that satisfy explicit regulatory imperatives.

shall increase its beneficial reuse level to 75%.[7] If the City pledged to meet these levels, any failure to do so may be excused upon a showing of good cause.

B. Point Loma Treatment Options

The court received evidence during the hearing indicating that physical-chemical treatment solutions may obviate the need for the biological treatment program presently contemplated by the Decree. The City has stated its intention to conduct a plant scale pilot program which will test the ability of the physical-chemical treatment option to meet the regulatory requirements of the Act at the Point Loma plant. If such a program is successful, the City may adapt the Point Loma plant so that the goals of the Act are achieved at maximum savings to the citizens of San Diego.[8] At the very least, the public interest demands that the court not blindly "rubber-stamp" the Decree before the results of the program are evaluated.

C. Sludge

Evidence presented during the hearing indicated that the City is presently reusing 100% of the sludge produced by the Point Loma plant. However, under the present terms of the Decree, the sludge produced by the City at Point Loma and the new plants is likely to double. Despite this precipitous increase in

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[7] The court notes that the City is presently preparing a master plan for beneficial reuse of reclaimed water. By deferring approval of the Decree, the court hopes that the City will be afforded an opportunity, via the master plan, to alleviate the court's concerns with respect to beneficial reuse.

[8] The presently contemplated secondary treatment option is the most expensive component of the Decree, and has been the subject of vigorous attack by Intervenor Henderson, members of the public, and expert witnesses.

sludge generation, the Decree does not provide for a corresponding increase in reuse. Given the inherent difficulties associated with the reuse of sludge the court cannot find the Decree in the public interest without a viable sludge plan which does not depend on the already overburdened landfills of this county.

D. Water Conservation

In assessing penalties against the City for past violations of the Act, the court offered the City a water conservation program option which could potentially create a credit in the City's favor of $2.5 million. In order to avail itself of this option, the City is required to pass certain ordinances which could dramatically increase water conservation, thereby reducing the number of gallons of wastewater treated by the City. The deadline imposed by the court for the passage of these ordinances is January 1, 1992.

The Decree, because it was drafted prior to this court's imposition of penalties, does not contemplate the potential passage of these ordinances, nor the substantial effect they may have on the City's compliance with the Act.[9] The court remains hopeful that the City will act responsibly and progressively in passing the suggested ordinances. Therefore, approval of the Decree should be deferred so that the City has an opportunity to do so.

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[9] Likewise, the Decree predates this court's ruling on the Point Loma outfall extension and therefore also does not incorporate the positive impact that remedial effort is expected to have on the marine environment, particularly in the kelp beds.

IV. Potential Waiver Application

As noted above, the court's earlier refusal to defer consideration of the Decree was without prejudice to the City independently seeking a § 301(h) waiver during the pendency of this action. In light of the above analysis, it should be emphasized that the ability of the City to obtain a waiver may be significantly enhanced by the treatment improvements and water conservation advancements contemplated in this Memorandum Decision.

Specifically, the following events may lend important credibility to any future waiver application: (1) publication of a promising master plan for the beneficial reuse of reclaimed water; (2) creation of treatment innovations arising out of the plant scale pilot program; (3) enactment of water conservation ordinances by the City, thereby reducing the volume of wastewater treated at the Point Loma plant; (4) identification of a sludge management program which maximizes beneficial reuse and minimizes adverse environmental impacts; and (5) completion of the Point Loma outfall extension.

If the City is able to marshal its scientific resources and political will towards these objectives, then the court strongly believes that compelling and meritorious grounds would exist for a waiver application by the City.[10] Moreover, if a consent decree were entered with the above improvements, the court concludes

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[10] However, this conclusion goes only to the merits of the application. The court acknowledges plaintiffs' contention that procedural obstacles may prevent consideration of such an application. This court makes no finding on the merits of that contention.

that the City's program of integrated water use and sewage treatment would represent a model of economic efficiency, water conservation, and environmental protection.

Based upon all of the above, the court concludes that the public interest would best be served by deferring approval of the Decree.[11] In doing so, the court is hopeful that the parties will take advantage of the opportunity to meet the requirements of the Act in a cost-efficient and environmentally comprehensive manner.

V. Conditions of Deferral

During the period of deferred approval, the City shall continue to perform under the Decree to the same extent as if the court had approved the Decree in its totality. All relevant milestones and deadlines shall be met by the City in conformance with the terms of the Decree.[12] Further, the City shall complete its master plan for beneficial reuse of reclaimed water and

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[11] A deferral of approval should not be confused with the court's earlier decision concerning deferral of consideration. Most importantly, the inquiries made by the court in the two situations are dramatically different. In deciding whether to defer consideration, the court explored merely whether the present Point Loma outfall was causing significant harm to the marine environment, in the limited context of a potential waiver application. In contrast, the court's decision to defer approval required an analysis of all aspects of the Decree from a broader perspective. Fundamentally, deferral of approval suggests general satisfaction with the Decree, subject to certain modifications.

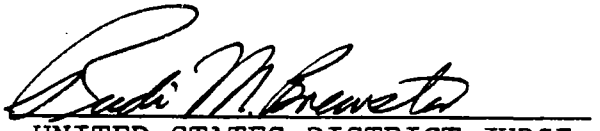
[12] However, if the City enacts the water conservation ordinances described in this court's Amended Memorandum Decision of April 18, 1991, the court will allow the City to defer compliance with the milestone contemplated by § VI.A.1.c of the Decree for design of the South Bay secondary treatment plant. If ordered, this deferral shall remain in place until such time as the court has had an opportunity to evaluate the results of the plant scale pilot program at Point Loma, in approximately January, 1993. Such deferral would not extend to the design milestone for the South Bay tertiary plant.

provide the court with a copy of same. Finally, the City shall commence the plant scale pilot test at the Point Loma plant and provide the court with at least quarterly updates concerning same.

To ensure compliance with these conditions, the court will hold a status conference on November 20, 1991, at 2:00 p.m, or at such earlier date as circumstances may require.

IT IS SO ORDERED.

DATED: 6-18-91



UNITED STATES DISTRICT JUDGE

Footnote No. 69

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR SPECIAL COUNCIL MEETING
OF
MONDAY, APRIL 27, 1992
AT 10:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

To Council Members Wolfsheimer, Roberts, Hartley, Stevens, Behr, Stallings, McCarty, and Filner, members of the City Council of the City of San Diego, California:

Pursuant to San Diego Municipal Code Section 22.0101(f), which provides that a special meeting may be called by a majority of the Council, A SPECIAL MEETING of the City Council will be held at 10:00 a.m. on Monday, April 27, 1992, in the Council Chambers, 12th Floor, 202 C Street, San Diego, California.

Said meeting has been called in the matter of the new Clean Water Program, in accordance with the majority vote of the Council at the meeting of April 21, 1992.

Dated April 23, 1992. CHARLES G. ABDELNOUR, City Clerk

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Deputy Mayor Roberts at 10:11 a.m. The meeting was recessed by Deputy Mayor Roberts at 10:17 a.m. to meet in Closed Session to review a document pertaining to the litigation. The meeting was reconvened by Mayor O'Connor at 10:30 a.m. with Council Member Stevens not present. Mayor O'Connor adjourned the meeting at 12:10 p.m.

ATTENDANCE DURING THE MEETING:

(M) Mayor O'Connor-present

(1) Council Member Wolfsheimer-present

(2) Council Member Roberts-present

(3) Council Member Hartley-present

(4) Council Member Stevens-not present

(5) Council Member Behr-present

(6) Council Member Stallings-present

(7) Council Member McCarty-present

(8) Council Member Filner-present

Clerk-Abdelnour (mc/mp)

FILE LOCATION: MINUTES

ITEM-800: ROLL CALL

Clerk Abdelnour called the roll:

(M) Mayor O'Connor-not present
(1) Council Member Wolfsheimer-present
(2) Council Member Roberts-present
(3) Council Member Hartley-present
(4) Council Member Stevens-not present
(5) Council Member Behr-present
(6) Council Member Stallings-present
(7) Council Member McCarty-not present
(8) Council Member Filner-present

ITEM-801: DISCUSSION HELD; DIRECTIONS GIVEN

In the matter of the new Clean Water Program.

(Docketed per Council directive at the meeting of Tuesday, April 21, 1992.)

FILE LOCATION: WATER - New Clean Water Program

COUNCIL ACTION: (Tape location: A020-C264.)

MOTION BY FILNER TO RENEGOTIATE AND TO APPROVE THE CONCEPT OF A POLICY TO (1) STAY AT ADVANCED PRIMARY AT POINT LOMA; (2) ACCOMPLISH THE NEEDED UPGRADES TO OUR CURRENT SEWER SYSTEM, THE PLANS FOR GROWTH AND THE NEEDED WORK TO COMPLY WITH THE STATE PROGRAM; (3) ESTABLISH A SIGNIFICANT PROGRAM FOR WATER CONSERVATION; AND (4) ESTABLISH A FISCALLY SOUND PHASE-IN OF THE WATER RECLAMATION PROGRAM. DIRECT THE CITY ATTORNEY TO GO BACK TO DISCUSS WITH THE COURT AND WITH WHATEVER ALLIES THEY CAN FIND AT THE STATE/FEDERAL LEVELS WITH RESPECT TO THE RESTRUCTURING OF THIS CURRENT CONSENT DECREE. Second and summarized by Roberts.

Establish a program based on the actual needs and realities

of San Diego by (1) not going to secondary. Remain at advanced primary as a basis for developing other needs; (2) continuing the upgrade and improvements to the existing system; (3) taking advantage of the bid for the outfall extension and moving ahead. Also, program the replacement of the parallel pipe. If evidence is there for a tunnel to be at our best efforts, then consider that. Otherwise, move full speed ahead, first with the extension, then with the paralleling of the existing pipe with respect to the Pt. Loma outfall; (4) making the system capacity driven, which means we will have to add one new plant.

All new plants brought on line should have the capacity for water reclamation initially or as a second phase. If at construction time, water reclamation can be utilized, then it should be part of construction; and (5) continuing with the conservation efforts.

Encourage water conservation and reward financially for conservation efforts.

Amendment by Behr, accepted by Roberts to delete the second sentence on the municipal system.

Amendment by Roberts, second by Filner to include the fact that new development would pay its fair share of the required facilities as part of this policy.

Amendment by Filner, second by Roberts to instruct staff to come back with the financial and technical ramifications, and ultimately with the legal ramifications of this project for discussion at a special Council meeting on May 4, 1992.

Passed by the following vote: Wolfsheimer-yea, Roberts-yea, Hartley-yea, Stevens-not present, Behr-yea, Stallings-yea, McCarty-yea, Filner-yea, Mayor O'Connor-nay.

ADJOURNMENT:

The meeting was adjourned by Mayor O'Connor at 12:10 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: C265).

Footnote No. 70

FILED
MAR 3 1 1994
U.S. DISTRICT COURT
SOUTHERN DISTRICT
OF CALIFORNIA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. CITY OF SAN DIEGO, Defendant. SIERRA CLUB OF SAN DIEGO, SAN DIEGO AREA WASTEWATER MANAGEMENT DISTRICT, AND BRUCE HENDERSON, Intervenors.	Civ. No. 88-1101-B MEMORANDUM DECISION AND ORDER REJECTING PROPOSED PARTIAL CONSENT DECREE LODGED JANUARY 31, 1990, AND SETTING STATUS HEARING FOR APRIL 25, 1994.

I. INTRODUCTION

The initial hearing to enter or reject the above Proposed Partial Consent Decree (hereinafter CD) commenced in June, 1991. Final action was deferred by Order of this Court on June 18, 1991, however, in order to permit the parties to consider certain apparent deficiencies in the CD and to allow the City to conduct a plant scale pilot test program to determine whether the Point

Loma treatment plant could be brought into substantial compliance with secondary treatment standards by implementing certain recent innovative techniques of advanced primary physical-chemical treatment. After two stipulated continuances to accommodate family additions in the attorney ranks, that hearing was reconvened in this Court on February 8, 1994.

Plaintiff United States of America (hereinafter U.S.A.) was represented by Karen Dworkin, Esq., Hugh Barrell, Esq., Michael Goodstein, Esq., James Farrell, Esq., and James Loftin, Esq.. The State of California (hereinafter State), which realigned as a defendant during the hearing, was represented by Randall Christison, Esq., James Patterson, Esq., and Jamee Jordan Patterson, Esq.. Defendant City of San Diego (hereinafter City) was represented by James Dragna, Esq., Ted Bromfield, Esq., Colleen Doyle, Esq., Douglas Painter, Esq., and Jack Opel, Esq.. The newly created San Diego Area Wastewater Management District (hereinafter District) intervened as future successor-in-interest of defendant City, and was represented by Thomas Woodruff, Esq., and Lois F. Jeffrey, Esq.. Intervenor Bruce Henderson (hereinafter Henderson), Esq. represented himself. The County of San Diego (hereinafter County), as an informal Amicus Curiae, was represented by Mark Meade, Esq.. Intervenor Sierra Club (hereinafter Sierra) was represented by Robert Simmons, Esq., and William Benjamin, Esq..

The Court heard fourteen days of further testimony and received dozens of additional documents and exhibits into

evidence. At the conclusion of all the evidence, each party summarized its position and the case was submitted to the Court for decision.

The Court has reviewed all the prior orders in this case and most of the prior testimony and exhibits which were earlier received. Being fully advised in the premises, this Court has concluded that the Proposed Partial Consent Decree submitted on January 31, 1990, is not in the public interest and should be rejected.

II. STATEMENT OF THE CASE

A. Factual History and Posture of the Parties

San Diego's current Metropolitan Sewage System began operations in 1963. At that time, the system discharged primary treated wastewater into the Pacific Ocean through an outfall pipe running 2 miles out from the coast and at an ocean depth of 200 feet. In 1985, chemical advanced primary treatment improved the rate of removal of solids from the sewage, achieving a removal rate of approximately 70-75%. In 1979, the City applied for a waiver from compliance with the secondary treatment requirements of the Federal Clean Water Act (CWA), and was issued a temporary 301(h) waiver based on the stated operation limits in 1981. When the City amended its application to allow larger treatment volumes through the Point Loma Plant, their waiver was temporarily denied. In 1987, for reasons which are in dispute and not regarded by this Court as relevant to this motion, the City withdrew its 301(h) waiver application, and commenced

planning to achieve full compliance with the CWA. Just as that process was commenced, the U.S.A. and the State of California, in 1988, commenced the instant action to force compliance and to seek statutory penalties for past and ongoing violations of the CWA, as well as for past spills of raw sewage.[1]

In settlement of the injunctive portion of the case, and to bring the City into compliance with the CWA, the parties entered into the aforementioned CD in January, 1990.[2] This CD required the City to dramatically upgrade and expand its wastewater treatment system, and it also included unprecedented water reclamation and reuse requirements.[3]

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[1] The complaint alleged continuous violations of secondary treatment effluent limitations for Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD). Furthermore, the complaint alleged violations of effluent limitations mandated by the state, including limitation for oil and grease, settleable solids, toxicity, turbidity, DDT, and flow. Also, the complaint alleged violations of state bacteriological standards. Finally, the complaint alleged numerous spills of raw sewage, violations of pretreatment requirements, and improper sludge disposal. See Findings of Fact and Conclusions of Law, filed June 21, 1991, Civ. 88-1101-B, at 2.

[2] Furthermore, as a civil penalty, this court fined the City $3 million, $2.5 million of which is credited toward a local water conservation ordinance enacted by the City in 1991. See Partial Judgment on Bifurcated Penalty Phase, Civ. No. 88-1101-B, filed on June 21, 1991.

[3] The CD mandated substantial changes. It required substantial design and construction work, a secondary treatment plant at Point Loma at 100-150 million gallons per day (MGD), a South Bay secondary treatment plant at 55 MGD, and six water reclamation satellite plants. North City, Otay and Poway Reclamation Plants (Phase IA) were to be designed by March 1993, and were to be in compliance with tertiary treatment requirements by June 1998. Further, Mission Valley, Santee and South Bay Reclamation Plants and South Bay Secondary Plant (Phase IB) were to be designed by September 1993, and were to be in compliance with tertiary treatment requirements by June 1999. The Point

The City now contends that changed circumstances make the CD unworkable. The City argues the CD is not in the public interest, and claims CWA compliance can be achieved in more effective and less expensive ways than those required by the proposed CD. The City contends that the required expenditures should be driven by sewage needs rather than by water conservation criteria.

The State realigned from plaintiff to defendant pursuant to its motion granted by the Court on March 1, 1994. The State opposes approval of the CD, contending with the City that circumstances have changed, and that the CD is massively excessive and unnecessary. It should be noted that the completion of the extended outfall pipe to 4.5 miles from shore at a depth of 325 feet has eliminated all contribution to any pollution from the outfall along the shore and the kelp beds. The California Ocean Plan standards have been met. Additionally, as a result of its one year pilot test program, the City has

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Loma plant was to be in compliance with secondary treatment requirements by December 31, 2003.

Second, the CD required extensive reclamation and reuse requirements that would require the City to reclaim no less than 41 MGD by June 30, 1998, no less than 83 MGD by June 30, 1999, and no less than 89 MGD by December 31, 2003. Further, the City would be required to beneficially reuse 30,000 acre feet per year (AFY) by December 31, 2003, and increase that to 50% of all reclaimed water produced (estimated at 49,800 AFY) by December 31, 2010. All reclamation plants are required to treat all sewage to tertiary standards, even though most of it will be discharged into the ocean.

Lastly, the CD requires interim effluent limits, sewage spill reduction, new pretreatment standards, staffing procedures, new Point Loma interim operation standards, a capital improvements program, and contained a stipulated penalties section.

"fine-tuned" its advanced primary treatment procedures at Point Loma so that it is now removing 85% of solids (the EPA secondary treatment requirement), 40 mg/liter TSS (the EPA standard is 30 mg/liter), and approximately 70 mg/liter BOD[4] (the EPA standard is 30 mg/liter). The City is undertaking to install a $500,000 computerized automatic chemical feed system which should further improve the performance of the Point Loma Plant as to removal of solids.

The CD is also opposed by all other parties intervenor and amicus in this action.

The first intervenor, Sierra, opposes on the grounds that the CD is wasteful in over-building unnecessary satellite plants, and illegal in requiring all satellite plants to treat all sewage to tertiary standards, even though it appears that most of it will be dumped immediately into the ocean. Sierra favors adding additional treatment plants only when necessary to treat sewage, and supports tertiary treatment of sewage whenever possible, but only to the extent it is beneficially reusable.

Intervenor Henderson opposes everything until the City can be heard by the EPA in its renewed attempt to obtain a 301(h) waiver for the Point Loma Plant. Henderson correctly points out that with the new outfall, the scientific evidence without dispute establishes that the marine environment is not harmed by present sewage treatment, and in fact it appears to be enhanced,

[4] BOD is a measurement of the lack of oxygen in the effluent, which will absorb oxygen from the environment into which the effluent is discharged.

since the new larger outfall discharge diffuser is expected to increase the total bio-mass abundance of organisms in the benthic community in the area of the new discharge. The ratio of suspension feeding organisms is expected to decline slightly in the immediate area of the diffuser, but the resulting Infaunal Trophic Index (ITI),[5] which measures the relative presence of various organisms that live in and on the bottom, is expected to stabilize at more than 70. The EPA has previously held that an ITI of 60 or more is not considered a significant deviation from the normal ITI to be expected of about 90 in that area.

This Court has previously ruled that it does not have jurisdiction to consider any 301(h) waiver for the City, and it will not base its ruling in this motion on that ground. The Court notes with approval that the EPA commissioned the prestigious National Academy of Sciences to advise it on the scientific wisdom of enforcing uniform secondary treatment standards. The issue was whether environmental differences may warrant individual evaluation of discharge requirements which can maximize environmental protection at more efficient costs. Pursuant to that commission, the National Research Council undertook a study of the entire country, and concluded, in a book

[5] The Infaunal Trophic Index (ITI) is a device used by oceanographers to tell what types of creatures live in the ocean area. The ITI is significant for determining how many suspension feeders exist versus how many subsurface feeders exist in a given ocean area. The closer the ITI is to 100, the more abundant are the suspension feeders and scarce are the subsurface feeders. The introduction of sewage into the water causes the ITI to decrease, because the subsurface feeders, anaerobic worms, thrive, while the suspension feeders are less successful.

published in 1993, that on a scientific basis, it would be wise to consider environmental differences in regulating sewage treatment standards under the CWA.[6] Specifically, it commended waiver treatment for deep ocean discharges like those off the coast of San Diego.[7] In addition, all scientists testifying before this Court as well as the National Research Council advise that BOD, which is a critical consideration for river and lake sewage discharges, is irrelevant in deep ocean discharges because of the massive abundance of oxygen in the ocean which is available to digest the solids discharged.[8] Henderson urges the Court that except for the BOD requirement, the City substantially meets the secondary treatment regulations requirement of 85% TSS removal, and a maximum of 30 mg/liter TSS. He is hopeful that these undisputed scientific circumstances will persuade the EPA to grant the waiver to the City. Therefore, Henderson opposes a massive capital program costing billions of dollars to provide secondary and/or tertiary sewage treatment which may not ultimately be required by the EPA.

Intervenor County and future successor in interest District oppose approval of the CD for the same reasons as the City. But in addition, the District argues that the CD is a "political disaster" because of its gross over-building of sewer capacity

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[6] National Research Council, Managing Wastewater In Coastal Urban Areas 9-10 (1993).

[7] Id. at 157.

[8] Id. at 9-10, 56.

and tertiary treatment capacity which the District is convinced will be unacceptable to the numerous outlying communities which must pay its share of the costs it entails. This, argues the District, will jeopardize funding.

The sole proponent of the CD is plaintiff U.S.A.. It contends that the CD was in the public interest when it was lodged with the Court in 1990, and it still is today, although the plaintiff readily concedes it needs to be modified substantially and immediately if it is approved.

Plaintiff correctly points out that the CD contains a procedure and mechanism for modifying it by agreement, or by Court order, as to the provisions regarding design and construction of all treatment facilities. The CD, however, does not contain any stated procedure or mechanism for modifying the requirements to build all but one satellite plant to tertiary standards, even though most of the tertiary treated sewage must be immediately dumped into the ocean. Plaintiff suggests that it would not oppose the Court changing that aspect of the CD in the interest of justice.

Plaintiff insists that even though the resulting bio-mass discharged into the Ocean would only be slightly less than is being discharged now (since 85% removal is now being achieved, at 40 mg/l as opposed to 85% and 30 mg/l required) that difference should be given substantial weight in finding that the CD is in the public interest. Plaintiff concedes it produced no evidence refuting extensive and impressive scientific evidence presented

that the present ocean outfall is of increasing benefit to the marine environment in the area of the outfall.

B. Procedural Background

On January 31, 1990, the parties lodged the CD with this Court. Six months later, in August, 1990, the plaintiffs moved for entry of the CD. However, the Court argued to defer consideration of the CD so that the City could run a pilot test on Point Loma treatment, to see if it could achieve compliance under existing conditions if the Court were satisfied that in the interim no harm was occurring to the marine environment.[9] In April, 1991, after an evidentiary hearing, this Court held that the City's Point Loma discharge was not causing significant harm to the balanced indigenous population surrounding the outfall pipe.[10] This Court also expressed its concern over the cost of compliance with the CD by noting that "regardless of the penalties imposed, the Decree, if accepted, will create significant financial burdens for the City and those burdens will surely be passed on to the citizens."[11] At that time, therefore, this Court further deferred consideration of the CD so that the City could enter into a full plant scale pilot program at Point Loma to see whether it could be brought into substantial

[9] Order Granting Motion to Intervene and Order re Limited Deferral of Consideration of the Proposed Consent Decree dated December 4, 1990, at pp. 2-3.

[10] Amended Memorandum Decision dated April 19, 1991, at 3.

[11] Findings of Fact and Conclusions of Law dated June 21, 1991, at 24-25.

compliance with the CWA using physical-chemical treatment methods. The Court ordered the City, in the interim, to observe the time milestones of the Proposed CD until the Court made a decision on its entry.[12] The Court modified this order on July 10, 1992, and directed the City to proceed immediately to construct only those projects included in a "Consumers' Alternative"[13] pending completion of the Point Loma treatment studies and final review of the CD.

The Point Loma Pilot Test program resulted in a substantial improvement in treatment standards. The City achieved 85% solids removal levels, with concentration of solids (TSS) down to 40-45 mg/liter. BOD remained in the range of 50-70 mg/liter. The final review of the CD is now before this Court.

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[12] Memorandum Decision Deferring Approval of Proposed Partial Consent Decree dated June 18, 1991, at 9.

[13] The Consumers' Alternative (Alternative) was a compromise plan designed to alter strict adherence to the CD by requiring less action with more relaxed deadlines than the CD before the court's final approval or disapproval of the CD. First, the Alternative required the North City Water Reclamation Plant to be completed by June 30, 1998. Construction of this plant commenced last May, two years ahead of schedule and is anticipated to be on line by mid-1997, one year ahead of schedule. Second, the Alternative required the construction of a new Point Loma outfall extension by August 26, 1994. In satisfaction of this, the Point Loma outfall extension began operating in November 1993, nine months ahead of schedule. Third, the Alternative established numerous Capital Improvement Project deadlines for the Municipal Sewer System. Of these, the South Chollas Trunk Sewer project was completed in July, 1993, five months ahead of schedule, and the Morena Boulevard Interceptor is anticipated to be completed ahead of schedule. Lastly, the Alternative established Capital Improvement Project deadlines for the Metropolitan Sewer System.

III. STANDARD OF REVIEW BY DISTRICT COURT

In analyzing a proposed consent decree, a district Court must be satisfied that it is at least fundamentally fair, adequate, and reasonable. U.S. v. Oregon, 913 F.2d 576, 580 (9th Cir. 1990), cert. denied, 111 S.Ct. 2889 (1991). Within those generalized criteria, the consent decree must be consistent with congressional and public policy, in the public interest, and conform to applicable laws. Id.; Williams v. Vukovich, 720 F.2d 909, 920-923 (6th Cir. 1983). The district Court is admonished to approve or reject the decree proposed, and is not authorized to amend it. Officers for Justice v. Civil Service Comm'n, 688 F.2d 615, 630 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).

On the other hand, where the proposed consent decree contains provisions for modifying it over time to recognize changed circumstances, it should not be rejected simply because some circumstances have already changed requiring early modification of the decree if approved.

Since it is the position of all opponents to the approval of the CD that there have been serious and pervasive changes in circumstances which would require, at a minimum, extensive modifications of the CD immediately, the issue seems to be whether the required modifications "re-write" the CD to such an extent that the CD is essentially unrecognizable and of questionable workability as a beginning document.

The burden of proof in this hearing rests with any parties

who oppose implementing the CD. U.S. v. Oregon, 913 F.2d at 581. The plaintiff and defendant City negotiated at arms length and in good faith from 1987 until the CD was lodged in January 1990. The plaintiff is entitled to the presumption that the CD is in the public interest and should be approved. The burden to prove by a preponderance of the evidence that the decree is not in the public interest resides with the defendants and all intervenors, since only the plaintiff wants the CD approved and implemented. In this case, the Court finds that the burden of proof has been sustained by the opponents of approval of the CD.

IV. SUMMARY OF EVIDENCE

There are four main reasons this Court rejects the CD. First, without the CD the oceanic environment will benefit, and it would not be benefitted more if the CD were implemented. Second, by rejecting the CD valuable resources will be saved by not requiring the City to over-treat billions of gallons of wastewater to tertiary levels before dumping it into the ocean. Third, unnecessary sludge production will be avoided. Fourth, design, construction, and operational maintenance costs will be decreased immensely by not mandating the construction of unnecessary new reclamation and treatment facilities.

A. Environmental Benefits

The Court finds the benthic community near the new outfall will change. The new outfall pipe reaches 4.5 miles from the Pacific Coast to a depth of 325 feet, discharging advanced primary treated wastewater into an ocean bottom which is more

barren than the old site. This wastewater will slightly change the demography of the benthic community as measured by the Infaunal Trophic Index (ITI). The control group ITI taken at B-3, a location north of the old and new outfalls, was 90. The ITI at the old outfall was 69. There is a likelihood that the ITI at the new outfall will be more than 70. The EPA has previously found that any ITI over 60 is not a significant change in the environment. Thus, this Court finds that the expected ITI of 70 and higher at the new outfall area is not a significant change in the environment.

Further, this Court concludes from undisputed evidence that the expected slight change in the outfall environment will be beneficial to the benthic community, not harmful. The new discharge will cause a flourishing of organisms in the barren environment surrounding the new outfall because of the presence of additional food for the organisms. The combination of a 20% stronger current and a much larger plume will dissipate the concentration of sediment over a substantially larger area. Accordingly, the suspension feeders should be less adversely impacted, and the rest of the community will become more abundant. Therefore, the Court finds the San Diego ocean outfall discharge environment is improving presently, even without implementation of the CD, and that approval of the CD in the name of protecting the ocean environment is not scientifically correct.

B. Wasteful Over-Treatment

The CD requires expensive over-treatment. The North City Reclamation Plant presently under construction is scheduled to produce 30 million gallons per day (MGD) of tertiary treated wastewater. The initial proposed framework distribution system will be able to deliver only about 12 MGD of this water to reclamation water users. The CD would require the remaining two thirds of the tertiary wastewater to be dumped into the ocean.

Under the Consumers' Alternative Order authorizing this plant, the City has the option of by-passing non-usable tertiary capacity at the end of the secondary treatment stage, and then discharging that secondary treated wastewater into the ocean through the Point Loma Outfall pipe. This program is the efficient way to spend public funds for needed sewage treatment capacity. As more market for tertiary wastewater is reached, more can be produced, and less secondary treated wastewater will be discharged into the ocean. All tertiary wastewater produced will be beneficially reused.

Furthermore, the CD requires the City to produce 89 MGD (99,680 acre feet per year (AFY)) of tertiary reclaimed water by 2003. However, the CD only requires the beneficial reuse of no less than 30,000 AFY of wastewater treated to tertiary level by 2003. Therefore, approximately 69,680 AFY of tertiary treated wastewater will be dumped into the ocean during and after 2003.[14] Moreover, the CD only requires 50% of the tertiary treated

[14] 1 MGD is equal to 1,120 AFY.

wastewater to be reused by the year 2010. Presumably, the remaining 50% will be dumped into the ocean indefinitely.

This dumping of tertiary wastewater into the ocean is not in the public interest. The additional operation and maintenance costs alone to treat wastewater to tertiary standards will amount to millions of dollars in a short time. The Clean Water Act only requires secondary treatment for ocean discharge. The CD requirement that wastewater be treated to tertiary levels only to be dumped into the ocean is wasteful of public funds as well as natural resources.

Additionally, the CD contains no provisions for modification of these tertiary treatment requirements. Specifically, Paragraph VI(c)1-3 requires the City to produce reclaimed water whether or not the water can be beneficially used. These sections do not contain provisions for modification.[15] Unless the CD is amended, the City would have to dump the remaining unused tertiary treated wastewater into the ocean. This wasteful dumping would not be in the public interest.

C. Sludge Production

Sludge disposal is an ever-present problem. If sludge cannot be beneficially reused,[16] the sludge must be dumped into

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[15] In fact, the federal government conceded that Paragraph VI(c)1-3 was not realistic and not in the public interest. The federal government proposed that it could work with the City to amend the CD in this regard. However, this amounts to "tinkering" with the CD. This should be avoided. But even if it were an option, it shows the immense overhaul needed for the CD to be in the public interest. The court disapproves this route.

[16] Sludge is used as fertilizer after it has been treated.

landfills which will rapidly overburden the limited landfills available. The CD will increase sludge production by at least 35%, aggravating the existing disposal dilemma. Independent of the CD, the City is currently constructing a new state-of-the-art sludge treatment facility at NAS Miramar, which will allow it to vacate the Fiesta Island location entirely - clearly in the public interest. But further increases in sludge production would only add to the ultimate disposal problem. To the extent that any increased production is not necessary, it is clearly not in the public interest.[17]

D. Satellite Facilities

The CD contemplates design and construction of at least six satellite reclamation facilities, one South Bay Secondary treatment plant, and the conversion of Point Loma to a secondary treatment plant. The approximate capital cost for this in 1990 dollars was estimated at $3.5 billion, excluding financing. Measured in accelerated costs, it was estimated to approximate $5 billion, excluding financing. The Court is not confident that these estimates could be met.

If secondary treatment were required for Point Loma, three options would be available for the conversion of the plant. First, the plant could be converted to produce from 112 to 150 MGD of secondary sewage if 1,000 linear feet of adjacent Navy

[17] The Court is aware that if and as population grows, sludge production will increase. The evidence shows, however, that the likely increase in growth will be less than the CD contemplates, even if all treatment facilities are converted to secondary or tertiary standards.

land is made available. Second, using 1,500 feet of adjacent Navy land, the plant could be converted to produce 180 MGD of secondary sewage. Third, using a new method,[18] the plant could possibly be converted to produce up to 195 MGD of secondary sewage on the same 1,500 feet of Navy land. The latter two options for conversion would obviously reduce the necessity for as many satellite plants and would substantially decrease the capital outlay necessary to achieve the ultimate goal of 240 MGD.

While the Navy land is not guaranteed, it appears from the totality of the evidence that its availability is likely, but only if the plant is converted to secondary treatment. Obviously, the location, size, and number of satellite plants is intimately tied to the ultimate decision about the Point Loma expansion. It is likely that the ultimate solution will hardly resemble the broad and expensive infrastructure of satellite plants which are mandated by the CD.

If Congress or the EPA were to issue a 301(h) waiver for the Point Loma plant, it could be expanded to its ultimate capacity of 240 MGD of advanced primary treatment without using any adjacent Navy land, which would obviate all but the North City reclamation plant indefinitely. Of course, that would save the City billions of dollars. This Court will not and should not reject the CD on the ground that the City may obtain a 301(h)

[18] Biological Aerated Filtration (BAF) is a recent variation of secondary treatment technology which may offer space efficiency advantages, but which is still somewhat experimental in large plant applications.

waiver from the CWA secondary treatment requirements. But, even if Point Loma were converted to secondary treatment, it could be expanded to provide at least 180 MGD, reducing the need for additional satellite plant capacity to an additional 30 MGD, as opposed to the approximately 128 MGD contemplated by the CD.[19] A far less expensive and smaller more efficient system than contemplated by the CD can and should be built, with or without the requirement of compliance with the CWA.

V. CONCLUSION

All of the groups represented by parties to this suit, other than the plaintiff, oppose the immense, costly, and wasteful program that is contemplated by the CD. The District will be succeeding the City in the operation and management of the sewage system in this case. That District represents 14 communities served by the system, and all oppose the CD on grounds of unnecessary costs, unnecessary capacity, and unnecessary waste of water resources.

With respect to the waste of tertiary water, Sierra urges

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[19] Furthermore, there exists evidence of Indirect Potable Reuse (IPR) treatment possibilities. IPR treatment would take the water to a fourth level of filtration, sanitization, and sterilization, producing drinking water. The City is applying for State approval to send tertiary water to an IPR treatment facility and then to the San Vicente Reservoir. This would amount to 100% beneficial reuse. Notably, the CD does not provide for or prohibit IPR because this opportunity arose after the parties drafted the CD.

However, IPR would not be easily implemented. First, IPR needs public approval. People are understandably apprehensive about drinking what used to be sewage. Second, IPR is expensive. Regional subsidies to San Diego from other areas of California would probably have to be allocated before the City could afford such a plan.

the Court to find the CD violates the California Constitution and Statutes mandating conservation and prudent use of water resources. The Court declines, as unnecessary, to make a finding that the CD violates the California Constitution and Statutes regarding the waste of water resources because if not illegal, the CD is manifestly not in the public interest by requiring the production of billions of gallons of tertiary water only to be discharged into the ocean.

The federal government claims that the CD can serve if it is modified and amended. Unfortunately, the CD does not need some modifications, but a complete overhaul. The overhaul will make the system nothing like the parties originally had in mind. The Court is not confident that its discretion would be broad enough to rectify all the changes needed if the issues are raised in the context of a motion to modify a document previously found to be in the public interest. This is not to say that whatever CD may be approved by the Court will not need to be modified over the years. The Court would expect that any CD might have to be modified as necessary to recognize changing conditions. But this CD would require immediate and extensive hearings for modifications. Also, the issue of amendment where not modifiable looms. It seems the wrong way to start a CD relationship. The CD is recognized by all the parties to be at least in need of drastic overhaul and amendment, if not totally unnecessary, wasteful, unrealistic and unworkable.

Plaintiff is trying to enter a Rolls Royce in the Grand

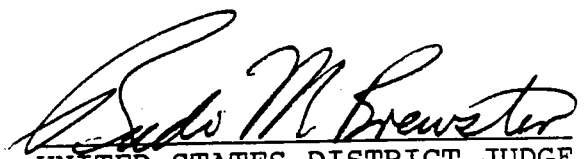
Prix. It is just not going to win. There is no support from the people it will serve, no economic support, and no political support. The CD over-builds, wastes money and wastes water. The CD would sentence the supervising Court to constantly hearing motions attempting to modify the Rolls Royce into a Formula-1. The CD should be rejected and the parties should agree on a Formula-1 of their choice. If the parties cannot agree, they should proceed to trial.

The proposed partial consent decree lodged with this Court in January of 1990 is hereby rejected as not in the public interest.

The parties are ordered to appear at a status conference on Monday, April 25 at 10:30 a.m. for the purpose of setting the pre-trial and trial date to complete the compliance phase of the case. Appearance by telephone is acceptable to the Court, at the parties' expense.

IT IS SO ORDERED.

DATED: 31 March 1994



UNITED STATES DISTRICT JUDGE

cc: All Parties

See footnote 70

Footnote No. 71

Footnote No. 72

FILED
AUG 26 1994
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. THE CITY OF SAN DIEGO and THE STATE OF CALIFORNIA, Defendants.	Civil No. 88-1101-B(LSP) INTERIM ORDER
SIERRA CLUB OF SAN DIEGO, BRUCE HENDERSON, and SAN DIEGO AREA WASTE WATER MANAGEMENT DISTRICT, Intervenors.	

On June 24, 1994, a status hearing was held before the Honorable Rudi M. Brewster. Karen Dworkin, Esq., and Jim Farrell, Esq., appeared for the United States; James Dragna, Esq., and Ted Bromfield, Esq., appeared for the City of San Diego; Jamee Jordan Patterson, Esq., appeared for the State of California; Bill Benjamin, Esq., and Robert Simmons, Esq., appeared for intervenor, the Sierra Club; Thomas Woodruff, Esq., appeared for intervenor, the San Diego Area Waste Water Management District; Bruce Henderson, intervenor, appeared for himself. In addition, Mark Mead, Esq., appeared for the County of San Diego; Bruce Boogaard,

Esq., appeared for the City of Chula Vista; D. Dwight Worden, Esq., appeared as Special Counsel for the City of El Cajon; and Lynn R. McDougal, Esq., appeared for the Cities of El Cajon and Imperial Beach.

Upon consideration of the proposed interim order, written objections by the Sierra Club, the County and the City of Chula Vista, and oral argument thereon, as well as the supplemental briefs submitted by the parties and intervenors, supplemental written submissions by interested cities and the County, and all relevant evidence, the court hereby enters the following interim order on issues as noted.

A. CONSTRUCTION PROJECTS

The Court approves and orders the construction of the following facilities by the specified dates where noted, all as listed in the "Consumers' Alternative" or as otherwise suggested by the City:

Project Name	Completion Date
1. North City Water Reclamation Plant (CIP 42-910.1)	**4/30/97**

Construction of a water reclamation plant near the intersection of I-805 and Miramar Road, and related conveyance and disposal pipelines.[1]

[1] By this order, the court does not intend to alter the rights or obligations of any party to any contract, including, but not limited to, the Sewage Disposal Agreements of 1960, 1972 and 1974 between the City of San Diego and the Participating Agencies and Later Participating Agencies. The court understands that the Sewage Disposal Agreements provide that the City may reclaim water and install reclamation works or facilities, but that the cost of such reclamation is to be the sole expense of the City. However, this contract apparently also provides that the City is required to operate the sewer system "under the terms of this contract in such manner as to comply with all applicable laws, rules and regulations." This order shall not be construed as "applicable laws, rules and regulations" under those agreements.

2. **Sludge Facilities**

a. **Miramar Fiesta Island Replacement Project (NSPF/FIRP - CIP 42-911.4)** — **N/A**

Relocation of sludge facilities from Fiesta Island to a site on the Miramar Naval Air Station. Project includes a sludge dewatering facility, sludge pipeline and sludge pumping station.

b. **North City Treatment Plant Digesters (NSPF/FIRP - CIP 42-911.4)** — **N/A**

Project will provide for processing of sludge produced at the North City Water Reclamation Plant, and provide trucked liquid waste disposal site.

3. **Point Loma Treatment Plant Improvements**

a. **Construction of Additional Digesters (Point Loma Digesters 7 and 8 - CIP 46-170.0)** — **N/A**

At the plant, which digest sludge for further processing.

b. **Construction of Sedimentation Basins No. 11 and 12 (CIP 46-177.0)** — **N/A**

Used to reduce suspended solids in the sewage.

c. **South Effluent Line (SECC CIP - 46-134.0)** — **N/A**

To channel effluent from the plant to the ocean outfall.

d. **FIRP Pump Station (CIP 46-055.0)** — **N/A**

Construction of New Sludge Pump Station.

e. **Chemical Feed System** — **1/31/95**

f. **Replacement of two grit tanks at the Plant** — **N/A**

4. **Capital Improvement Projects for the Municipal Sewer System**

a. **Annual Allocation -- Freeway Relocation** — **N/A**

Funds the relocation of existing sewer utilities which conflict with outside agency activity on an as-needed basis.

b. **Annual Allocation -- Sewer Main Replacements** **N/A**

Funds the ongoing program to replace and upgrade deteriorated concrete sewer mains in various groupings throughout the City.

c. **Annual Allocation -- Pump Station Restorations** **N/A**

Funds the rehabilitation and upgrade of existing pump stations on an as-needed basis.

d. **Annual Allocation -- Utilities Communications** **N/A**

Funds the rehabilitation and upgrade of existing communication facilities on an as-needed basis.

e. **Carmel Valley Trunk Sewer (CIP 46-122.0)** **12/31/96**

Replacement and expansion of portions of the existing trunk sewer and to conform to the relocation of Pump Station No. 65 at its new site.

f. **East Mission Gorge Trunk Sewer Rehabilitation (CIP 40-920.4)** **N/A**

Rehabilitation of manholes and realignment of existing sewer where warranted.

g. **Encanto Trunk Sewer (CIP 46-163.0)** **4/15/95**

Upgrade and expansion of existing trunk sewer.

h. **Highland Park Estates Trunk Sewer -- Phase II (CIP 46-138.0)** **12/31/97**

Upgrade and expansion of portions of existing trunk sewer.

i. **North Mission Valley Interceptor -- Phase II (CIP 46-140.0)** **12/31/98**

Replacement and expansion of portion of the existing interceptor.

j. **Pump Station No. 65 -- Expansion and Force Main (CIP 46-117.0)** **6/30/96**

Replacement and expansion of portion of the existing interceptor and relocation of the existing pump station.

k. **Rose Canyon Trunk Sewer (CIP 46-111.0 and 40-920.0)** **6/30/96**

Installation of new trunk sewer.

l. **Valencia Park Trunk Sewer (CIP 46-166.0)** **12/31/94**

Upgrade and expansion of existing trunk sewer.

5. **Capital Improvement Projects for the Metropolitan Sewer System**

a. **Annual Allocation -- Point Loma Plant (CIP 46-119.0)** **N/A**

Funds the rehabilitation and upgrade of facilities as needed.

b. **North Metro Interceptor -- Phase I (CIP 46-104.0)** **12/31/96**

Installation of new interceptor sewer.

B. INTERIM EFFLUENT LIMITS

Until such time as a final order is issued by this Court concerning the City's obligation to meet secondary treatment under the Act, the City shall achieve compliance with the non-secondary treatment based effluent limitations set forth in Cease and Desist Order 87-113, as amended, except as provided below.

1. The City shall achieve compliance with, and thereafter maintain full compliance with, the effluent requirements set forth below:

a. For Total Suspended Solids ("TSS"):

The City shall achieve and maintain a 80% removal efficiency on a thirty (30) day running average basis.

b. For Biochemical Oxygen Demand ("BOD"):

Effective upon the date of entry of this Interim Order, the City shall achieve and maintain a concentration-based limit of 125 mg/1 on a thirty (30) day running average basis.

2. This Interim Order is not and shall not be interpreted to be a permit, or a modification of an existing permit, issued under Section 402 of the Clean Water Act, 33 U.S.C. Section 1342. Any new permit, or modification of an existing permit, must be accomplished in accordance with applicable Federal and State laws and regulations. Provided, however, that insofar as this Interim Order establishes any compliance schedule or effluent standard that is inconsistent with any such NPDES permit, any regulation or order, the United States and the State will take no enforcement action, other than through enforcement of this Interim Order, concerning any violation of such permit, any regulation or order for which this Interim Order establishes a different effluent limit or compliance schedule than that required in such permit, law, regulation or order. This order does not preclude the United States or the State from taking enforcement action on any new violations not directly involved in these construction or effluent limit milestones (i.e., spills).

C. SEWAGE SPILL REDUCTION

1. The City shall use its best efforts to prevent, to the maximum extent reasonably possible, unpermitted discharges of sewage. In order to achieve this end, the City shall expand the capacity of, or reduce flows through, its sewer pump stations as necessary to ensure to the maximum extent practicable that its system will have adequate pumping capacity for the flows reasonably anticipated, and shall operate and maintain its sewage collection and conveyance system so as to reduce unpermitted discharges of sewage to the maximum extent reasonably possible.

2. The City shall implement the following sewer pump capacity monitoring program for the pump stations identified in Attachment A to this Interim Order:

a. For sewer pump stations which either require more than one pumping unit to meet the design rated capacity or have a design rated capacity equal to or greater than one (1) million gallons per day (mgd), a flow meter shall be installed to provide a continuous flow recording and/or totalizer reading, as specified in Attachment A. In addition, pump hour meters (running time), electrical usage data and annual pump dwell time data shall be used with the flow meter data to determine the following pump station flow parameters:

(1) Station operating capacity;

(2) Station average daily flow pumped;

(3) Station peak daily flow pumped;

(4) Individual pump flow rate;

(5) Station peak in-flow rate; and

(6) Station holding time (wet well and mains).

b. Sewer pump stations that have a design rated capacity of less than one (1) million gallons per day (mgd) and that require only one pumping unit to meet the design rated capacity, shall be equipped with pump hour meters. Data from pump hour meters (running time), electrical usage and pump dwell time shall be used to determine the following pump station flow parameters:

(1) Station operating capacity;

(2) Station average daily flow pumped;

(3) Station peak daily flow pumped;

(4) Individual pump flow rate;

(5) Station peak in-flow rate; and

(6) Station holding time (wet well and mains).

c. The City shall submit the results of its capacity monitoring program to EPA and the State annually. The first report shall be due on December 31, 1994, and shall cover the period of July 1, 1993, to June 30, 1994, and yearly thereafter.

d. For each pump station identified in Attachment A to this Interim Order, the City shall advise EPA and the State when its monitoring program identifies any pump station that has on any day reached its Capacity Notification Level ("CNL") as set forth in Attachment B. Notifications under this Paragraph shall be in writing and received by EPA and the Regional Board within fifteen (15) days of the event, and shall specify the flow rate, including projected future capacity increases, and what steps, in any, the City will take to reduce flow or expand capacity. Ongoing notification is not required once the CNL has been reached. In the event that the City undertakes action to reduce flow or increase capacity, the City shall advise the Court and the parties quarterly of the implementation of such actions.

e. EPA or the State may request supplementation within forty-five (45) days from receipt thereof. Failure to request supplementation by EPA or the State as specified herein will be deemed to be a waiver of said right by that party. The City shall respond to such requests for supplementation within thirty (30) days of receipt thereof.

f. Within forty-five (45) days receipt of the City's notification that a pump station has reached its CNL or within

forty-five (45) days of receipt of supplemental information pursuant to Paragraph C.2.e., above, EPA or the State may request the City to modify its response actions or to take additional response actions other than those specified in the notification. The request shall specify in detail the reasons for requested modifications. The City shall respond to the request within forty-five (45) days from its receipt thereof. If there is a dispute between the City and the State or EPA on such modifications, the parties shall use their best efforts to resolve the dispute informally. If the parties are unable to resolve their disputes within forty-five (45) days of EPA's and the State's receipt of the City's response (unless that date is extended by agreement of the parties), EPA or the State may move the Court to resolve the dispute.

g. EPA and the State shall use their best efforts to coordinate their responses pursuant to this Section C.

h. Unless otherwise agreed to by EPA and the State, the City shall prevent any pump station identified in Attachment A to this Interim Order from pumping more than its applicable Maximum Rated Capacity ("MRC") as set forth in Attachment B.

3. a. The City shall operate and maintain its collection and miscellaneous sewer system and pump stations ("Collection System") so as to reduce unpermitted discharges of sewage to the maximum extent reasonably possible.

b. The City shall track spills from its Collection System resulting from grease, roots, rocks, debris, power outages, vandalism, physical collapse or failure, construction damage, hydrologic conditions and from miscellaneous causes. These data shall be collected and reported quarterly to EPA and the State,

with the first report due on December 31, 1994, for the period of April to July 1994. The report shall show the date, location, cause and volume of each spill, and the action taken or proposed by the City to prevent reoccurrence, in the form of Attachment C hereto.

c. The City shall provide to the parties a copy of its Fiscal 1995 Operations and Maintenance Budget. Nothing in this Interim Order shall waive any rights otherwise possessed by any party to request the Court to order the City to undertake any additional operation and maintenance measures not otherwise contained in the 1995 Budget or to oppose such request.

D. SLUDGE PLANNING

The City of San Diego shall continue developing and implementing its Biosolids Beneficial Use Plan. As part of the status reports required pursuant to this order, the City shall report on the status of its sludge facilities construction and the implementation of its Biosolids Beneficial Use Plan. The City shall implement its Biosolids Beneficial Use Plan to maximize the cost-effective reuse of sewage sludge with the goal of complete beneficial reuse of sewage sludge.

E. CASE MANAGEMENT

1. Discovery shall commence immediately on all outstanding injunctive relief issues excluding secondary treatment, which shall commence on February 1, 1995. Discovery shall be concluded by July 31, 1995.

2. The parties shall designate expert witnesses by August 14, 1995. Each party may supplement its expert list once and must do so by August 21, 1995. All expert witness discovery must be concluded by September 31, 1995.

3. The pretrial conference shall be held on November 13, 1995.

4. A trial to resolve the remaining issues in this litigation will commence on November 28, 1995.

5. The parties shall appear before the Court at 2:00 p.m. on January 19, 1995, to discuss the status of this case. At that time, the City shall present to the Court a contingency plan that describes what preliminary efforts the City proposes to undertake to enable it to select a treatment option that will bring the City into compliance with the secondary treatment standards under the Act.

E. OBLIGATIONS OF THE SAN DIEGO AREA WASTEWATER MANAGEMENT DISTRICT

In the event that the District takes over ownership or operation of any portion of the City's wastewater collection or treatment system, the District shall comply with all applicable requirements of this Order.

IT IS SO ORDERED.

DATED: AUG 26 1994

UNITED STATES DISTRICT JUDGE

cc: Attached service list

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SEWER PUMP STATIONS IN COMMUNITIES WHICH WILL EXPERIENCE A 30% GROWTH OVER THE NEXT 30 YEAR PERIOD

STATIONS RECOMMENDED FOR INCLUSION IN MONITORING PROGRAM

SEWER PUMP STATION	PUMP SIZES (GALLONS PER MINUTE/GPM)	METHOD OF FLOW MEASUREMENT
1. SPS #9	4 pumps @ 1,825 gpm	Meter
2. SPS #23T	2 pumps @ 2,000 gpm	Meter
3. SPS #31T	2 pumps @ 1,125 gpm	Data Pod
4. SPS #48	2 pumps @ 1,140 gpm	Data Pod
5. SPS #62	2 pumps @ 1,128 gpm	Meter
6. SPS #64	2 sets @ 9,000 gpm 2 sets @ 8,700 gpm 2 sets @ 8,600 gpm 2 sets @ 3,400 gpm	Meter
7. SPS #65	3 pumps @ 3,300 gpm	Meter/Data Pod
8. SPS #77	4 sets @ 3,100 gpm	Meter
9. SPS #77B	3 sets @ 2,420 gpm	Meter
10. SPS #79	3 sets @ 464 gpm	Meter
11. SPS #81	2 pumps @ 350 gpm	Data Pod
12. SPS #82	2 pumps @ 370 gpm	Data Pod
13. SPS #85	2 pumps @ 156 gpm	Data Pod

TOTAL STATIONS TO BE MONITORED - 13

Attachment B

NOTE: The values for station #65 revised from the report to the EPA dated 6/30/93. Values shown will be reported in the EPA reports due 6/30/94.

Table 1

PARTIAL CONSENT DECREE, PART VII REPORT INFORMATION

Sewer Pump Station "Maximum Rated Capacity" and Capacity Notification Levels" Compared to Actual Tested Pump Station Pumping Capacity and Peak Sewage Inflow Rates Respectfully

Station	MRC (MGD)	Actual Capacity (MGD)	CNL (MGD)	Peak Inflow (MGD)
9A	6.15	6.15	6.05	3.45
23T	2.57	2.79	2.14	0.35
31T	1.24	N/A	1.00	N/A (1)
48T	1.26	1.71	0.98	0.14
62	1.24	0.97 (2)	1.06	0.73
64	73.0	73.0	71.44	42.8
65	11.1	14.4	10.5	10.18 (3)
77 & 77B	13.3	13.3	12.74	5.54
79	1.03	1.07	1.02	0.821
81	0.38	0.26 (4)	0.38	0.21
82	0.41	0.46	0.34	0.10
83T	0.22	0.25	0.17	0.053
85	0.17	0.25	0.17	0.013

(1) Station 31T is not in service yet.

(2) SPS 62 does not meet the required MRC. The City is continuing upgrading this station so that the pumps will meet the required MRC of 860 gpm.

(3) The CNL at SPS 65 has been reached. Since the station has not reached the MRC there is no pumping deficiency at the station at this time. Design has been completed for the new station 65. Bids for construction of the station have been opened and are being evaluated.

(4) SPS 81 does not meet the required MRC. New pumps are scheduled to be installed at the station during Summer, 1993.

Footnote No. 73

COPY

RECEIVED
DEC 13 1996
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THE CITY OF SAN DIEGO and THE STATE OF CALIFORNIA, Defendants.	Case No. 88-1101-B
SIERRA CLUB OF SAN DIEGO, BRUCE HENDERSON and THE SAN DIEGO AREA WASTEWATER MANAGEMENT DISTRICT, Intervenors.	STIPULATED FINAL ORDER FOR INJUNCTIVE RELIEF

BACKGROUND

This matter has been before the Court since July 27, 1988 when a complaint for civil action was brought by the plaintiff United States of America ("United States") against the defendant City of San Diego ("City") alleging *inter alia* violations of the Clean Water Act (33 U.S.C. § 1251 et seq.). The City has denied the violations and the Court has held numerous hearings over the course of the litigation regarding the alleged activities, most notably entering partial judgment on the bifurcated penalty phase of this action on June 21, 1991;

rejecting a proposed partial consent decree on March 31, 1994; and issuing an Interim Order on August 26, 1994 requiring specified action of the parties.

The parties now desire to enter into the following stipulation to resolve all remaining claims of the United States against the City for violations of the Clean Water Act arising out of the First Amended Complaint.

1. JURISDICTION

This Court has jurisdiction over the subject matter and over the parties stipulating hereto for the purpose of enforcing this Order.

2. APPLICABILITY

The provisions of this Order shall apply to and be binding upon the parties hereto, their agents, successors, and assigns. Any action taken by any contractor or consultant retained by the City to implement the City's duties under this Order shall be considered an action of the City for purposes of determining compliance with this Order. The City shall give notice and a true copy of this Order to any of its successors in interest prior to any transfer of ownership or operation of the publicly owned treatment works ("POTW"), including the collection system or any part thereof, and shall simultaneously notify the representative identified pursuant to Paragraph 14 of such succession in interest and that such notice and copy has been given by the City.

3. COMPLIANCE WITH OTHER LAWS

A. This Order constitutes a full and complete settlement of all outstanding claims for relief presented by the United States against the City under the Clean Water Act in the First Amended Complaint filed in this case and for violations that have occurred up to and including the date of lodging of this Order.

B. This Order is not and shall not be interpreted to be a permit, or a modification of an existing permit, issued under Section 402 of the Clean Water Act, 33 U.S.C. § 1342. Any new permit, or modification of an existing permit, must be accomplished in accordance with applicable federal and state laws and regulations.

/////

4. CONCRETE SEWER MAIN REPLACEMENT PROGRAM

A. The City shall continue its level of effort on the planning, design, and construction of concrete main replacement that is presently listed in the Capital Improvement Program ("CIP") for fiscal years 1997, 1998, 1999, and 2000. (Fiscal years are July 1 through June 30 respectively.) Construction shall mean replaced or rehabilitated in place. The City shall award contracts for replacement or rehabilitation in place of at least 60 miles of concrete main by June 30, 2000, which shall be in service conveying sewage no later than June 30, 2003.

B. The City shall complete a comprehensive evaluation and criticality ranking of all concrete sewer mains remaining in service by December 31, 1997. Copies of the report shall be supplied to the United States Environmental Protection Agency ("EPA").

C. By no later than March 30, 1998, the City shall submit to EPA a plan and schedule for the replacement or rehabilitation in place of the remaining concrete mains. The plan shall contain sufficient information to evaluate the recommendations contained therein. The City shall implement the plan as submitted to EPA or as modified by the Court pursuant to Paragraph 17.C. or upon agreement of the parties.

D. The City shall continue its investigation of the use of crown spraying to retard degradation of concrete sewers. The City will also institute a 12-month test program to treat approximately 10,000 linear feet of various sizes of concrete sewers. The testing and evaluation would be completed by September 30, 1997. Based on this test and evaluation, the City may in its discretion institute a longer term crown spraying program.

5. SEWER PUMP STATIONS AND FORCE MAIN AUDIT

The City shall conduct a comprehensive audit of all pump stations and force mains by June 30, 1997, to augment existing records and provide a basis for future planning efforts. The audit report will be considered as part of the City's normal CIP planning process.

6. GREASE CONTROL

A. The City shall expand its residential education program on grease control to include multi-family dwellings no later than December 31, 1997. This may include the use of local

media and coordinated assistance with agencies involved in the maintenance and management of multi-family dwelling units.

B. The City shall maintain its current program of inspecting and issuing a wastewater discharge permit to each commercial food facility in the City, approximately every two years. Also, when a grease related blockage and/or overflow occurs, the City shall continue its practice of assessing the cause of the blockage and, if deemed appropriate, inspect those facilities that may have contributed to the blockage regardless of permit expiration date.

In addition, no later than December 31, 1996, the City shall submit to EPA a supplemental inspection program for more frequent and more in-depth inspections, targeting specific facilities, or facilities within areas of the City that have a history of grease problems and/or high potential for future grease problems. If deemed appropriate by the City, such facilities will be required to maintain grease hauling records. The supplemental inspection program may include, as appropriate, flow/dye tests to determine whether appropriate fixtures are connected to grease removal equipment, and a review of such establishments' grease hauling records.

7. <u>INFORMATION MANAGEMENT</u>

A. The Sewer/Water Infrastructure Management System ("SWIM") will be fully implemented by December 31, 1997, including the operation of all applications and the full conversion of non-archived data.

B. The City shall upgrade its Supervisory Control and Data Acquisition ("SCADA") system for pump station telemetry. All sewer lift stations, interceptor valve sites, tide sensors, and flow sensors shall be tied into the upgraded system.

1. The SCADA system upgrade shall be implemented pursuant to the following schedule:

> Pump Stations 9, 15, 77, and 79 and MBSIS fully tied into the SCADA system: no later than June 30, 1998
>
> SCADA system upgrade: Critical Pump Stations 19, 23T, 48T, 62, 77B, 81, 82, and 85 shall be included no later than June 30, 2000. Stations may be added or deleted upon the mutual agreement of the parties.

2. No later than 30 days after the deadlines set forth in subparagraphs A. and B.1, the City shall submit a report to EPA documenting completion.

3. The parties recognize that the City may not pursue the SCADA system in favor of the COMNET (Clean Water Operations Management Network) currently in development. The City shall have the option of adopting either of these systems so long as the deadlines set forth in subparagraph B.1 are observed.

C. The City will monitor all critical and semi-critical trunk sewers on an annual basis. Non-critical sewers will be monitored at least once every three years. From 1998 through 2003, no later than March 1st of each year, the City shall submit a report to EPA documenting completion of these programs.

1. The following criteria have been developed and will be used to classify trunk sewer criticality:

Critical: When the volume has been verified to have reached a maximum instantaneous peak flow of 50% of the pipeline cross-sectional area in lines less than 18 inches in diameter, and 75% in lines 18 inches or greater.

Semi-critical: When the volume has been verified to have reached a maximum instantaneous peak flow of 40% to 49% of the pipeline cross-sectional area in lines less than 18 inches in diameter, and 50% to 74% in lines 18 inches or greater.

Non-critical: When the volume has been verified to have reached a maximum instantaneous peak flow of less than 40% of the pipeline cross-sectional area in lines less than 18 inches in diameter, and less than 50% in lines 18 inches or greater.

D. Within 90 days of the entry of this Order, the City shall submit a proposed schedule to EPA for approval of static model development through December 31, 2003. The schedule shall be based on the criticality of the City's trunk sewers, as defined in Paragraph C. This proposed schedule shall include the necessary resource commitment for full model development as well as its management and use by engineering staff to assess trunk sewer system upgrades. Full development shall include, at a minimum, completion of system definition, configuration, calibration, and verification/validation. All trunk gravity sewers 15 inches in diameter or greater

shall be included in the modeling and pump stations shall be included as outputs. The parties recognize that additional data gathering after this date may result in further refinement of this model.

E. The City shall submit annual reports to EPA for approval in January of each year through January 2004 verifying that it is in compliance with the approved schedule for static model development.

8. ROOTS

A. In fiscal years beginning 1997 and 1998, the City shall increase its allocation for the contractual application of root inhibitor from $100,000 per year to no less than $300,000 per year.

B. During fiscal year 1998, the City shall submit a report to EPA detailing the effects of the increase and a determination of future program levels. In the report the City shall also advise EPA to what extent, if any, the City shall increase the use of its own resources in response to a decreased level of contractor activity.

9. INTERIM ORDER

The parties agree that this Order shall require implementation of the Capital Improvement Program Projects originally listed in the Court's Interim Order of August 26, 1994 as clarified on May 10, 1995 and listed on Attachments A-C to this Order.

10. STIPULATED PENALTIES

The following penalties shall apply to any failure by the City to comply with the specified obligations set forth in this Order:

A. For failure to timely submit a report or schedule required by this Order, the City shall pay a stipulated penalty of $500 per day per submittal.

B. For failure to award bids for the replacement of the sixty (60) miles of concrete sewer main required in subparagraph 4.A., and/or failure to complete implementation of the plan required by subparagraph 4.C. by the date contained therein, the City shall pay a stipulated penalty as follows:

Days 1 through 60	$ 500 per mile per day
Days 61 through 180	$1,000 per mile per day
Days 181 on	$2,000 per mile per day

C. For failure to comply with the following requirements, the City shall pay a stipulated penalty of $1,000 per day:

1. Completion of the evaluation of the crown spraying program required by subparagraph 4.D.;

2. Submission of the supplemental grease inspection program required by subparagraph 6.B.; and

3. Implementation of the SCADA upgrade schedule as required by subparagraph 7.B.1.

D. Payment of the stipulated penalties shall be made on demand by the United States and shall be made in the manner specified in subparagraph 10.E.

E. The City shall make such payment by certified check made payable to the "Treasurer of the United States" referencing case number 88-1101-B (LSP), and such payment shall be tendered to the U.S. Department of Justice by hand delivery at the following address:

Chief, Civil Division
Office of the United States Attorney
880 Front Street
San Diego, CA. 92101

The City shall give notice of delivery to EPA pursuant to Paragraph 14.

F. Pursuant to 31 U.S.C. § 3717, the United States is entitled to assess interest and penalties on debts owed to it and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required, as provided for by law. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). In addition, a penalty charge of twelve per cent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

11. RESERVATION OF RIGHTS

Stipulated penalties paid pursuant to Paragraph 10 shall be in addition to, and shall not preclude the use of, any other remedies or sanctions that may be available to the United States to enforce this Order and the Clean Water Act. Nor shall the payment of such stipulated penalties be construed so as to relieve the City from specific compliance with this Order or federal or state law, or limit the authority of the United States to require compliance with such laws.

12. FORCE MAJEURE

A. If any event occurs that may cause a failure to timely carry out any requirement of this Order, the City shall notify EPA in writing within twenty-one (21) calendar days of the time the City becomes aware of the effect the event may have on compliance. The notice shall describe in detail the precise cause of the failure and measures taken to prevent or minimize the failure. The City shall implement reasonable measures to avoid or minimize any such failure. Failure of the City to timely notify shall render the provisions of Paragraph 12 void and of no effect as to the particular incident involved unless notice is impossible due to catastrophic circumstances.

B. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of the City and which could not be overcome or prevented by due diligence, and which delays or prevents performance by a date required by this Order. If a failure of the City to timely carry out any requirement of this Order has been caused by a force majeure, there shall be no obligation to pay the stipulated penalty for that particular failure.

C. If EPA agrees that the delay was caused by circumstances beyond the control of the City, the parties shall request the Court, and the Court shall modify this Order to provide additional time for performance of the requirement and as applicable, any subsequent requirement. Provided, however, the fact that the parties have previously stipulated or the Court has found that any delay in meeting any other schedule or date in this Order was caused by circumstances beyond the control of the City shall not, in and of itself, be determinative of whether circumstances beyond the control of the City exist or existed for failure to comply with any subsequent compliance date.

D. If the parties are unable to agree that a delay has been caused by circumstances arising from causes beyond the control of the City or if the parties are unable to agree on a modification of this Order to provide additional time for performance, the parties shall jointly move the Court to resolve the dispute. In such a proceeding, the City shall bear the burden of proving that: 1) the delay is or was caused by circumstances arising from causes beyond the City's control, and, 2) the amount of additional time requested is reasonable to compensate for the event.

13. CERTIFICATION

Any report, plan, or other submission required by this Order shall be signed by an authorized agent of the responsible party and shall include the following certification:

> I certify under penalty of law that the document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

14. COORDINATION

EPA and the City agree that they will each designate a single agent who shall be responsible for directing all documents required by this Order to the proper party. Such agent shall be named within sixty (60) days of the entry of this Order.

15. RIGHT OF ENTRY

Any designated representative or contractor of EPA may, upon presentation of credentials, enter upon any premises of POTWs operated by the City and all facilities operated by the City upstream of these POTWs, including the collection system, by providing reasonable prior notice to the City and without interference of City operations, for purposes of monitoring compliance with the provisions of this Order. This right of entry shall be in addition to EPA's right of entry under applicable law. All inspections and monitoring by representatives or

contractors of EPA shall be at reasonable times, and shall be conducted in a manner that will not interfere with the safety or operations of the facilities.

16. SUBMISSION OF DOCUMENTS

The City agrees to submit upon request such further information as may be reasonably required by EPA pursuant to its applicable statutory authority in order to ensure compliance with the terms of this Order.

17. REVIEW OF SUBMITTALS

A. The City agrees that the reports submitted to EPA pursuant to this Order shall conform with generally accepted sound engineering practice.

B. Within 60 days of receipt of the reports required to be submitted to EPA pursuant to Paragraphs 4.B., 4.C., and 5, EPA may request in writing that the City supplement the report. If EPA does not submit its response within such 60 day period, EPA shall have waived its right to comment on the report.

C. Nothing in this paragraph shall authorize EPA to require the City to perform any work that is not specifically required to be performed pursuant to this Order. Provided, however, EPA reserves its right to move the Court, consistent with the provisions of Paragraph 19, to compel the City to comply with the requirements of this Order and the Clean Water Act, including, but not limited to, moving the Court for a determination as to whether the City's submittals under Paragraphs 4.B. and 5 are appropriate to satisfy the City's obligations pursuant to this Order and the Clean Water Act and whether the plan and schedule submitted pursuant to Paragraph 4.C. represent a reasonable level of effort in light of such obligations.

18. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this matter and all disputes arising thereunder as may be necessary or appropriate for the construction or execution of this Order.

19. DISPUTE RESOLUTION

In the event a dispute arises between the parties to this Order regarding compliance with or interpretation of any provision in this Order, the resolution of which is not governed

hereunder, such dispute shall in the first instance be the subject of informal negotiations between the City and the United States. The party to this Order wishing to pursue the dispute shall send a written notice to the other party to this Order outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when notice was sent, unless the parties agree otherwise. In the event the parties are unable to reach an informal settlement of a dispute arising out of this Order, either party may petition the Court to resolve the dispute.

20. TERMINATION

This Order shall terminate upon satisfaction of the requirements of the Interim Order incorporated by reference in Paragraph 9, completion of the program for replacement of concrete sewer mains required by Paragraph 4, and payment of any stipulated penalties due. Upon EPA's determination that the City has satisfied these requirements, the parties shall file a motion for termination of this Order.

21. SATISFACTION OF DUTIES

The parties agree, and the Court hereby finds, that entry of this Order, and performance by the City of the obligations required hereunder, shall constitute diligent enforcement by the plaintiff of the City's obligations under the Clean Water Act pursuant to Section 505 of the Act, 33 U.S.C. § 1365.

22. PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this stipulation is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and opportunity for public comment. The United States consents to entry of this Order, subject to publication of notice thereof in the Federal Register pursuant to 28 C.F.R. § 50.7 and an opportunity to consider comments thereon.

23. EXECUTION

The parties listed below through their respective counsel stipulate to the provisions listed above.

FOR PLAINTIFF UNITED STATES

Dated: 11/27/96

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division

Dated: 12/3/96

JAMES D.P. FARRELL
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

ALAN D. BERSIN
United States Attorney
Southern District of California

Dated: 12/13/96

THOMAS C. STAHL
Assistant U.S. Attorney
Southern District of California
880 Front Street
San Diego, CA 94101-8893

Dated: _____

FELICIA MARCUS
Regional Administrator
U.S. Environmental Protection Agency Region IX
San Francisco, CA 94105

Dated: _____

STEVEN A. HERMAN
Assistant Administrator for Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

OF COUNSEL:

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Assistant Regional Counsel
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San Francisco, CA 94105

JOE THEIS
Attorney Advisor
Office of Enforcement and Compliance Assurance
401 "M" Street S.W.
Washington, D.C. 20460

FOR PLAINTIFF UNITED STATES

Dated: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural Resources Division

Dated: _____

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ALAN D. BERSIN
United States Attorney
Southern District of California

Dated: _____

THOMAS C. STAHL
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880 Front Street
San Diego, CA. 92101-8893

Dated: 12/8/16

FELICIA MARCUS
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U.S. Environmental Protection Agency Region IX
San Francisco, CA. 94105

Dated: 12/8

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Assistant Administrator for Enforcement and Compliance Assurance
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San Francisco, CA. 94105

JOSEPH THEIS
Attorney Advisor
Office of Enforcement and Compliance Assurance
401 "M" Street S.W.
Washington, D.C. 20460

FOR THE CITY OF SAN DIEGO

Dated: 9-17-96

JACK McGRORY
City Manager

Dated: 9/17/96

TED BROMFIELD
Head Deputy City Attorney
202 "C" Street
San Diego, CA. 92101-3863

Dated: 9-25-96

JAMES T. DRAGNA
Special Counsel
McCutchen, Doyle, Brown & Enersen
355 South Grand Avenue, Suite 4400
Los Angeles, CA. 90071-1560

IT IS SO ORDERED.

Dated: _____

RUDI M. BREWSTER
United States District Judge

Attachments A-C:
Interim Order - Section A
Map - Optimized Reclaimed Water Distribution System
Interim Order - Section D

A. CONSTRUCTION PROJECTS

The Court approves and orders the construction of the following facilities by the specified dates where noted, all as listed in the "Consumers' Alternative" or as otherwise suggested by the City:

Project Name	Completion Date
1. **North City Water Reclamation Plant (CIP 42-910.1)** Construction of a water reclamation plant near the intersection of I-805 and Miramar Road, and related conveyance and disposal pipelines.[1]	**4/30/97**

2. **Sludge Facilities**

a. **Miramar Fiesta Island Replacement Project (NSPF/FIRP - CIP 42-911.4)** — **N/A**

Relocation of sludge facilities from Fiesta Island to a site on the Miramar Naval Air Station. Project includes a sludge dewatering facility, sludge pipeline and sludge pumping station.

b. **North City Treatment Plant Digesters (NSPF/FIRP - CIP 42-911.4)** — **N/A**

Project will provide for processing of sludge produced at the North City Water Reclamation Plant, and provide trucked liquid waste disposal site.

3. **Point Loma Treatment Plant Improvements**

a. **Construction of Additional Digesters (Point Loma Digesters 7 and 8 - CIP 46-170.0)** — **N/A**

At the plant, which digest sludge for further processing.

b. **Construction of Sedimentation Basins No. 11 and 12 (CIP 46-177.0)** — **N/A**

Used to reduce suspended solids in the sewage.

c. **South Effluent Line (SECC CIP - 46-134.0)** — **N/A**

To channel effluent from the plant to the ocean outfall.

d. **FIRP Pump Station (CIP 46-055.0)** — **N/A**

Construction of New Sludge Pump Station.

e. **Chemical Feed System** — **1/31/95**

f. **Replacement of two grit tanks at the Plant** — **N/A**

4. **Capital Improvement Projects for the Municipal Sewer System**

a. **Annual Allocation -- Freeway Relocation** — **N/A**

Funds the relocation of existing sewer utilities which conflict with outside agency activity on an as-needed basis.

b. **Annual Allocation -- Sewer Main Replacements** N/A

Funds the ongoing program to replace and upgrade deteriorated concrete sewer mains in various groupings throughout the City.

c. **Annual Allocation -- Pump Station Restorations** N/A

Funds the rehabilitation and upgrade of existing pump stations on an as-needed basis.

d. **Annual Allocation -- Utilities Communications** N/A

Funds the rehabilitation and upgrade of existing communication facilities on an as-needed basis.

e. **Carmel Valley Trunk Sewer (CIP 46-122.0)** 12/31/96

Replacement and expansion of portions of the existing trunk sewer and to conform to the relocation of Pump Station No. 65 at its new site.

f. **East Mission Gorge Trunk Sewer Rehabilitation (CIP 40-920.4)** N/A

Rehabilitation of manholes and realignment of existing sewer where warranted.

g. **Encanto Trunk Sewer (CIP 46-163.0)** 4/15/95

Upgrade and expansion of existing trunk sewer.

h. **Highland Park Estates Trunk Sewer -- Phase II (CIP 46-138.0)** 12/31/97

Upgrade and expansion of portions of existing trunk sewer.

i. **North Mission Valley Interceptor -- Phase II (CIP 46-140.0)** 12/31/98

Replacement and expansion of portion of the existing interceptor.

j. **Pump Station No. 65 -- Expansion and Force Main (CIP 46-117.0)** 6/30/96

Replacement and expansion of portion of the existing interceptor and relocation of the existing pump station.

k. **Rose Canyon Trunk Sewer (CIP 46-111.0 and 40-920.0)** **6/30/96**

Installation of new trunk sewer.

l. **Valencia Park Trunk Sewer (CIP 46-166.0)** **12/31/94**

Upgrade and expansion of existing trunk sewer.

5. **Capital Improvement Projects for the Metropolitan Sewer System**

a. **Annual Allocation -- Point Loma Plant (CIP 46-119.0)** **N/A**

Funds the rehabilitation and upgrade of facilities as needed.

b. **North Metro Interceptor -- Phase I (CIP 46-104.0)** **12/31/96**

Installation of new interceptor sewer.

Upon consideration of the points and authorities of the parties, the statements of counsel, and oral evidence of the City, the Court desires to clarify its previous Order. For the North City Water Reclamation Project listed in Section A.1, footnote 2 is added as follows:

2. The term "related conveyance and disposal pipelines" shall be defined by reference to Attachment A of this Order. The completion date for segments 1, 2, 3, 5A, 5B, 6, and 12 shall be August 1, 1997. The completion date for segment 16 shall be August 1, 1998. The Court understands that the completion date of April 30, 1997, for the North City plant is construction completion and that the plant will undergo operational testing and permitting by regulatory agencies prior to full start-up.

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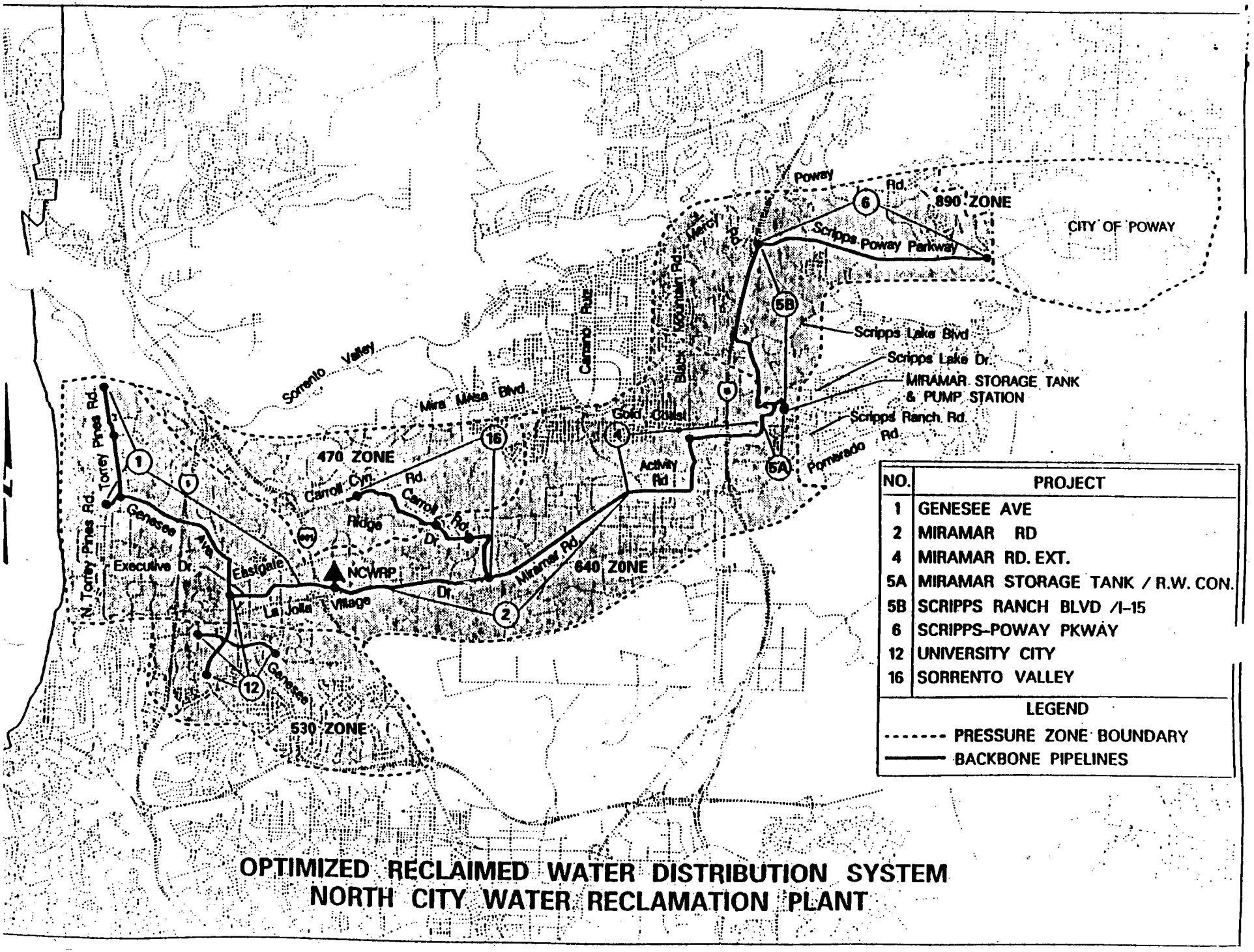
jpt



NO.	PROJECT
1	GENESEE AVE
2	MIRAMAR RD
4	MIRAMAR RD. EXT.
5A	MIRAMAR STORAGE TANK / R.W. CON.
5B	SCRIPPS RANCH BLVD /I-15
6	SCRIPPS-POWAY PKWAY
12	UNIVERSITY CITY
16	SORRENTO VALLEY

LEGEND

------- PRESSURE ZONE BOUNDARY

——— BACKBONE PIPELINES

OPTIMIZED RECLAIMED WATER DISTRIBUTION SYSTEM
NORTH CITY WATER RECLAMATION PLANT

ATTACHMENT B

D. SLUDGE PLANNING

The City of San Diego shall continue developing and implementing its Biosolids Beneficial Use Plan. As part of the status reports required pursuant to this order, the City shall report on the status of its sludge facilities construction and the implementation of its Biosolids Beneficial Use Plan. The City shall implement its Biosolids Beneficial Use Plan to maximize the cost-effective reuse of sewage sludge with the goal of complete beneficial reuse of sewage sludge.

SECTION D OF THE INTERIM ORDER OF AUGUST 26, 1994

ATTACHMENT C

Footnote No. 74

33 U.S.C.A. § 1311 Effluent limitations

(j) Modification procedures

. . . .

(5) Extension of application deadline
(A) In general

In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) Application

An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will--
(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and
(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) Additional conditions

The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

(D) Preliminary decision deadline

The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

See footnote 66

Footnote No. 75

Footnote No. 81

C

Briefs and Other Related Documents
City of San Diego v. WhitmanC.A.9 (Cal.),2001.
United States Court of Appeals,Ninth Circuit.
CITY OF SAN DIEGO, a California municipal corporation, Plaintiff-Appellee,
v.
Christine Todd WHITMAN,[FN*] an individual in her capacity as Administrator of the United States Environmental Protection Agency; United States Environmental Protection Agency, Defendants-Appellants.

FN* Pursuant to Fed.R.App.P. 43(c), Christine Todd Whitman is automatically substituted as a party defendant-appellant for Carol Browner.

No. 00-56561.

Argued and Submitted Feb. 8, 2001
Filed March 13, 2001

City brought action to enjoin Environmental Protection Agency (EPA) from applying Ocean Pollution Reduction Act (OPRA) to city's unfiled application for renewal of modified National Pollutant Discharge Elimination System (NPDES) permit. The United States District Court for the Southern District of California, Rudi M. Brewster, J., granted city's motion for preliminary injunction, and EPA appealed. The Court of Appeals, David R. Thompson, Circuit Judge, held that EPA's letter in response to city's inquiry was not subject to judicial review.

Vacated and remanded.
West Headnotes
[1] Federal Courts 170B ⚷776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews de novo question of subject matter jurisdiction.

[2] Environmental Law 149E ⚷661

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek661 k. Finality. Most Cited Cases
(Formerly 199k25.15(3.2) Health and Environment)
Letter from Environmental Protection Agency (EPA) in response to city's inquiry as to whether Ocean Pollution Reduction Act (OPRA) would apply to city's unfiled application for renewal of modified National Pollutant Discharge Elimination System (NPDES) permit was not "final agency action," and thus was not subject to judicial review; EPA's decision-making process would not begin until city filed its application, and letter stated that it was not final action, but that final action would not occur until administrative appeal process was completed. 5 U.S.C.A. § 704; Federal Water Pollution Control Act Amendments of 1972, § 301(j), 33 U.S.C.A. § 1311(j).

[3] Administrative Law and Procedure 15A⚷704

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(B) Decisions and Acts Reviewable
15Ak704 k. Finality; Ripeness. Most Cited Cases
Until administrative appeal process is completed, judicial review is premature.

[4] Administrative Law and Procedure 15A⚷704

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15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(B) Decisions and Acts Reviewable
15Ak704 k. Finality; Ripeness. Most Cited Cases
Although agency's own characterization of its action as non-final is not necessarily determinative, it provides indication of nature of action. 5 U.S.C.A. § 704.

[5] Administrative Law and Procedure 15A⚷704

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(B) Decisions and Acts Reviewable
15Ak704 k. Finality; Ripeness. Most Cited Cases
Agency action is not final unless it imposes obligation, denies right, or fixes some legal relationship. 5 U.S.C.A. § 704.

***1098** Martin F. McDermott,United States Department of Justice, Washington, D.C., for the defendants-appellants.
John R. Reese, McCutchen, Doyle, Brown & Enersen, Los Angeles, California, for the plaintiff-appellee.

Appeal from the United States District Court for the Southern District of California; Rudi M. Brewster, Senior District Judge, Presiding. D.C. No. CV-00-00436-RMB.

Before: PREGERSON, CANBY, and THOMPSON , Circuit Judges.
DAVID R. THOMPSON, Circuit Judge:
The United States Environmental Protection Agency ("EPA") appeals the district court's entry of a preliminary injunction in an action brought by the City of San Diego seeking judicial review, under the Administrative Procedure Act ("APA"), 5 U.S.C. § 704, of a letter written by the EPA. The EPA's letter stated that it would apply the provisions of the Ocean Pollution Reduction Act of 1994 ("OPRA"), 33 U.S.C. § 1311(j), to the City's as-yet-unfiled application for renewal of a modified National Pollutant Discharge Elimination System (" NPDES") permit. The City characterizes this letter as "final agency action" and contends that it violates the intention of Congress that OPRA govern only the City's original application for a modified NPDES permit, not subsequent applications for renewal of that permit. The City argues that the application process is lengthy, complicated and costly, and that it needs a judicial determination, before it files its application for renewal of its modified NPDES permit, whether it will have to comply with the provisions of OPRA on an ongoing basis.

The district court concluded that the EPA's letter was subject to judicial review under the APA as " final agency action." The district court issued a preliminary injunction enjoining the EPA from enforcing a July 15, 2000 deadline for submission of the City's application for renewal of its modified NPDES permit until after the court conducted a bench trial and a decision in the case had become final following any appeal.

We have jurisdiction over the EPA's appeal of the district court's preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1). We conclude that the district court lacked subject matter jurisdiction because the EPA's letter did not constitute final agency action. We decline to consider the other issues raised in this appeal. We vacate the preliminary injunction, and remand the case to the district court with instructions to dismiss the City's underlying action.

BACKGROUND

The City of San Diego operates the Point Loma Wastewater Treatment Plant, a publicly-owned wastewater treatment facility that discharges pollutants into the Pacific Ocean. The Clean Water Act ("CWA") prohibits such discharge except as authorized by a NPDES permit. *See* 33 U.S.C. § 1311(a); *Defenders of Wildlife v. Browner,* 191 F.3d 1159, 1163 (9th Cir.1999). To receive a permit, the CWA requires that a publicly-owned

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wastewater treatment facility meet secondary treatment requirements. *See* 33 U.S.C. § 1311(b)(1)(B). In 1977, Congress amended the CWA to permit the EPA to modify the secondary treatment requirements for publicly-owned wastewater treatment facilities that discharge pollutants into ocean waters. *See* 33 U.S.C. § 1311(h) ("section 301(h)").

The City wanted to obtain the benefits of modified secondary treatment requirements for its Point Loma Wastewater Treatment Plant, but failed to submit an application for a section 301(h) modified permit by the deadline specified in 33 U.S.C. § 1311(j)(1)(A). In order to relieve ***1099** the City of the consequences of failing to comply with that deadline, Congress enacted special legislation authorizing the City to apply for a section 301(h) modified permit during a 180-day period beginning October 31, 1994. *See* OPRA, Pub.L. No. 103-431, 108 Stat. 4396, *codified at* 33 U.S.C. § 1311(j)(5). In order to take advantage of the revised deadline for submitting its application, OPRA required the City to: (1) commit to implement a wastewater reclamation program that would achieve a system capacity of 45 million gallons of reclaimed wastewater per day by January 1, 2010, (2) commit to implement a wastewater reclamation program that would result in a reduction in the quantity of suspended solids discharged by the City into the marine environment during the period of the modification, (3) show that modification would result in removal of not less than 80% of total suspended solids (on a monthly average) in the discharge of the wastewater plant, and (4) show that modification would result in removal of not less than 58% of the biological oxygen demand (on an annual average) in the discharge of the wastewater plant. *See* 33 U.S.C. § 1311(j)(5)(B) and (C).

Within the deadline imposed by OPRA, the City submitted an application for a section 301(h) modified permit. Pursuant to that application, on December 12, 1995, the EPA and the State of California issued a section 301(h) modified permit for the Point Loma facility, which incorporated the substantive requirements of OPRA.[FN1] This permit was due to expire December 15, 2000. An application for renewal of the modified permit was to be filed six months before the permit expired (June 15, 2000).[FN2] *See* 40 C.F.R. § 122.46; 40 C.F.R. § 125.59.

FN1. The State of California is authorized to issue NPDES permits for point source dischargers within its jurisdiction. The EPA, however, issues permit modifications under OPRA and 33 U.S.C. § 1311(h) and (j). Accordingly, the City's NPDES permit, which included modifications under OPRA, was jointly issued by the State of California and the EPA.

FN2. The EPA granted an extension of the application deadline to July 15, 2000.

On December 13, 1999, the Mayor of the City of San Diego wrote to EPA Administrator Carol Browner "request[ing] your assistance regarding an issue impacting the City of San Diego's application for renewal of its National Pollutant Discharge Elimination System ('NPDES') permit for its Point Loma Wastewater Treatment Plant under the Clean Water Act." The Mayor stated:

By law, the City of San Diego must submit a renewal application for its NPDES permit for Point Loma by June of 2000 (40 C.F.R. 122.46, 125.59)....

As detailed below, the City's position is that OPRA was intended to govern the reopening of the waiver application window only. Once a permit is granted, the renewals are to be governed not by OPRA, but by the waiver regulations applicable to all dischargers. Given the obvious significance of this issue, and its impact on the nature and consideration of the application, it must be resolved before the City can file its renewal application....

The City is presently developing the information necessary to submit its renewal application for Point Loma. EPA's interpretation of OPRA is of obvious and primary importance to the effort, as it will dictate how the City must proceed towards renewal of its permit. In the absence of this determination, the City will be faced with the prospect of submitting dual and inconsistent renewal

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applications, which will not only be wasteful, but will also wreak havoc on the City's wastewater programmatic and financial planning efforts.

On February 17, 2000, the EPA Regional Administrator for Region IX responded to the Mayor's request for assistance in a letter stating that, "[a]fter thorough review of this question with the Offices of Regional Counsel and General Counsel, EPA interprets the OPRA conditions to continue in effect upon application for renewal of the City's 301(h) modified permit."***1100** The Regional Administrator further stated:

I encourage the City to submit its application for renewal of its 301(h) modified permit promptly and in accordance with OPRA. I assure you that EPA Region IX will give fair and timely consideration to the City's renewal application. In addition, like all other EPA actions on 301(h) modified permit applications, Region IX's action on the City's application will be subject to review by the Environmental Appeals Board ("EAB") once Region IX makes its decision on the City's application for renewal of the 301(h) modified permit. If the City bases its application on its own interpretation of the applicability of OPRA conditions, the City could raise the OPRA issue in an appeal to the EAB. This letter, however, cannot constitute "final agency action" for purposes of obtaining judicial review. Final agency action occurs upon completion of the permit appeal process described above.

Instead of filing an application for renewal of its modified permit, the City filed the present action in district court. The City sought judicial review under the Administrative Procedure Act, 5 U.S.C. § 704, of the EPA's letter stating that OPRA was intended to apply not only to the City's original application for a section 301(h) modified permit, which Congress permitted to be filed late, but also to all subsequent applications for renewal of the modified permit.[FN3] The City alleged that the EPA's letter constituted "final agency action." The City also alleged that the letter constituted rule-making undertaken without notice and public comment.[FN4]

FN3. The City's complaints with the application of OPRA to its application for renewal are detailed in a declaration of the Deputy Director of the Metropolitan Operations and Maintenance Division of the Metropolitan Wastewater Department. The Deputy Director states that: (1) the City currently spends $1,000,000 per year to comply with OPRA's requirement of removing 58% of biological oxygen demand on an annual average; (2) the City cannot continue to comply with OPRA's conditions due to estimated population growth; (3) the City will be forced to retrofit its facilities in order to attain secondary treatment standards and the advanced primary facilities at the Point Loma plant will be rendered obsolete; and (4) the OPRA conditions do not benefit the environment and constitute wasteful overtreatment.

FN4. The City also sought declaratory relief and a writ of mandamus compelling the EPA to apply the requirements under 33 U.S.C. § 1311(h)(1)-(9) to its application for renewal of its section 301(h) modified permit. The parties do not dispute that jurisdiction over these claims turns on whether the EPA's letter constituted final agency action under the Administrative Procedure Act.

The EPA moved to dismiss the City's complaint for lack of subject matter jurisdiction. The EPA argued that its letter was not "final agency action;" that the dispute was not ripe for review; that the City had not exhausted its administrative remedies; and that 33 U.S.C. § 1369(b)(1) vested exclusive jurisdiction over EPA decisions related to NPDES permits in the United States Courts of Appeals.

The district court denied the EPA's motion to dismiss for lack of subject matter jurisdiction. It determined that the EPA's letter "constitute[d] a

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final action reviewable in this court because it constitute[d] Defendants' definitive position on the applicability of 33 U.S.C. § 1311(j)(5), and create[d] immediate and direct adverse effects on Plaintiff." The court also determined that the letter was ripe for review because judicial intervention would not interfere with administrative action, the issue was a question of law, and delay would cause substantial hardship to the City. Finally, the court concluded that the doctrine of exhaustion of administrative remedies did not bar the City's suit, nor was jurisdiction to review the EPA's action vested solely in the Court of Appeals, because the EPA's letter did "not constitute either the approval of an 'effluent limitation or other limitation' or the issuance or denial of a permit" under 33 U.S.C. § 1369(b)(1).[FN5]

FN5. The district court also ruled that the EPA's letter did not amount to rule-making subject to notice and comment.

***1101** The district court denied the City's motion for summary judgment on the ground that "there are material issues in dispute as to the correct interpretation of 33 U.S.C. § 1311(j)(5)," and set the case for trial. The court granted the City's motion for a preliminary injunction, enjoining the EPA from "enforcing the July 15, 2000 deadline for submission of an application for renewal of [the City's] NPDES permit and the section 301(h) waiver therein and otherwise from taking any action on such submission until 90 days after final judgment on all claims in [the City's] complaint, including all appeals thereof."

The EPA appeals the district court's preliminary injunction. Its principal argument on appeal is that its letter did not constitute "final agency action" and thus the district court lacked subject matter jurisdiction.

DISCUSSION

A. Standard of Review

[1] We review de novo the question of subject matter jurisdiction. *See Ecology Ctr., Inc. v. United States Forest Serv.,* 192 F.3d 922, 924 (9th Cir.1999).

B. Final Agency Action

The APA provides for judicial review of "final agency action." 5 U.S.C. § 704. In *Bennett v. Spear,* 520 U.S. 154, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997), the United States Supreme Court stated that two criteria must be satisfied for agency action to be final:

As a general matter, two conditions must be satisfied for agency action to be "final": First, the action must mark the "consummation" of the agency's decision-making process-it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which "rights or obligations have been determined," or from which " legal consequences will flow."

Id. at 177-78, 117 S.Ct. 1154 (internal citations omitted).

[2] The EPA's letter does not satisfy the first of the *Bennett v. Spear* requirements for final agency action-that the action mark the " 'consummation' of the agency's decisionmaking process." *Id.* The EPA's decision-making process on the City's application for renewal of its section 301(h) modified permit will not even begin until the City files its application. If and when the City is aggrieved by the EPA's decision regarding its application, the City's recourse is to appeal to the Environmental Appeals Board ("EAB"), as a prerequisite to review by this court. *See* 33 U.S.C. § 1369(b)(1); 40 C.F.R. § 124.19(e) ("A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. § 704, a prerequisite to the seeking of judicial review of the final agency action.").

[3][4] It is the EAB's decision that will constitute the "consummation of the agency's decision-making process." This point is made in the EPA's letter itself: "This letter, however, cannot constitute '

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final agency action' for purposes of obtaining judicial review. Final agency action occurs upon completion of the permit appeal process described above."[FN6] The letter described the appeal process and made it clear that the decision of the EAB would represent the consummation of the decision-making process on the issue of whether the City's application for renewal of its section 301(h) modified permit should be governed by OPRA or by the regulations applicable to all dischargers. Until the administrative appeal process is completed, judicial review is premature. *See Sierra Club v. United States Nuclear Regulatory Comm'n,* 825 F.2d 1356, 1362 (9th Cir.1987) ("We will not entertain a petition where pending administrative proceedings or further agency action might render the case moot and judicial review completely ***1102** unnecessary."). *Cf. Queen in Right of Ontario v. EPA,* 912 F.2d 1525, 1532 (D.C.Cir.1990) (agency action was final because it was "unambiguous and devoid of any suggestion that it might be subject to subsequent revision"); *Ciba-Geigy Corp. v. EPA,* 801 F.2d 430, 436-37 (D.C.Cir.1986) (agency action was final because " [n]ot only did the statement of position admit of no ambiguity, but it gave no indication that it was subject to further agency consideration or possible modification.") (internal citation omitted).[FN7]

FN6. Although an agency's own characterization of its action as non-final is not necessarily determinative, it provides an indication of the nature of the action. *See Blincoe v. FAA,* 37 F.3d 462, 464 (9th Cir.1994) (per curiam).

FN7. The EPA also argues that the letter represents only the "regional administrator's opinion." This argument is unpersuasive. The letter clearly states that "After a thorough review of this question with the Offices of Regional Counsel and General counsel, *EPA interprets* the OPRA conditions to continue in effect upon application for renewal of the City's section 301(h) modified permit." (Emphasis added.)

[5] The EPA's letter also fails to satisfy the second requirement of the *Bennett v. Spear* finality test-that the agency action impose an obligation, deny a right or fix some legal relationship. *See Bennett,* 520 U.S. at 178, 117 S.Ct. 1154; *Association of Am. Med. Colleges v. United States,* 217 F.3d 770, 780-81 (9th Cir.2000). The EPA's letter simply responds to the City's request for "assistance" on the issue of whether it can expect the EPA to apply OPRA's conditions to its application for renewal of its section 301(h) modified permit. The letter only "encourage[s]" the City to submit its application in accordance with the EPA's interpretation of OPRA and informs the City that it can raise the OPRA issue on appeal to the EAB if it chooses to complete the application in accordance with its own interpretation of OPRA.

C. Conclusion

Because the letter fails the finality test of *Bennett v. Spear,* it does not constitute "final agency action" required for judicial review under the Administrative Procedure Act, 5 U.S.C. § 704. The district court lacked subject matter jurisdiction. We need not consider the EPA's other challenges to subject matter jurisdiction. The preliminary injunction is vacated and this case is remanded to the district court with instructions to dismiss the City's underlying action.

Issuance of this court's mandate is stayed for thirty days from the filing of this opinion, and in the event any petition for rehearing is filed, issuance of the mandate is further stayed until a decision on all petitions for rehearing becomes final.

VACATED and REMANDED.

C.A.9 (Cal.),2001.
City of San Diego v. Whitman
242 F.3d 1097, 52 ERC 1007, 31 Envtl. L. Rep. 20,529, 01 Cal. Daily Op. Serv. 2062, 2001 Daily Journal D.A.R. 2614

Briefs and Other Related Documents (Back to top)

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• 2000 WL 34012331 (Appellate Brief) Reply Brief for the Defendants-Appellants (Nov. 30, 2000) Original Image of this Document (PDF)
• 2000 WL 34012332 (Appellate Brief) Reply Brief for the Defendants-Appellants (Nov. 30, 2000) Original Image of this Document (PDF)
• 2000 WL 34012330 (Appellate Brief) Brief for the Defendants-Appellants (Oct. 16, 2000) Original Image of this Document (PDF)
• 00-56561 (Docket) (Sep. 22, 2000)

END OF DOCUMENT

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Footnote No. 82

State Water Resources Control Board

Winston H. Hickox
Secretary for Environmental Protection

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Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

AUG 2 1 2002

CERTIFIED MAIL

James J. Dragna, Esq.
McCutchen, Doyle, Brown & Enersen
355 South Grand Avenue, Suite 4400
Los Angeles, CA 90071-3106

Dear Mr. Dragna:

PETITION OF CITY OF SAN DIEGO (WASTE DISCHARGE REQUIREMENTS ORDER NO. R9-2002-0025 [NPDES NO. CA0107409] FOR E.W. BLOM POINT LOMA WASTEWATER TREATMENT PLANT), SAN DIEGO REGION: ADOPTED ORDER **SWRCB/OCC FILE A-1477**

Enclosed is a copy of WQO 2002 – 0013. This Order was adopted by the State Water Resources Control Board at its regular business meeting on August 15, 2002.

Sincerely,

Craig M. Wilson

Craig M. Wilson
Chief Counsel

Enclosure

cc: Mr. John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Boulevard, Suite A
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Interested Persons Mailing List

Petition of
City of San Diego

SWRCB/OCC File A-1477

SWRCB
Office of Chief Counsel
INTERESTED PERSONS
MAILING LIST

Revised 07-18-02

San Diego
Regional Water Quality Control Board
Waste Discharge Reuirements Order
No. R9-2002-0025
[NPDES No. CA0107409]

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County Supervisor Dianne Jacob
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Attention: Mike Kulis

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U.S. House of Representatives
2265 Rayburn House Office Building
Washington, DC 20515-0235

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2002 - 0013

In the Matter of the Petition of

City Of San Diego
(Waste Discharge Requirements Order No. R9-2002-0025 [NPDES No. CA0107409]
for E.W. Blom Point Loma Wastewater Treatment Plant

Issued by the
California Regional Water Quality Control Board,
San Diego Region

SWRCB/OCC FILE A-1477

BY THE BOARD:

The California Regional Water Quality Control Board, San Diego Region (Regional Board), adopted waste discharge requirements for the E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant (Plant), owned and operated by the City of San Diego (City). Those requirements were adopted in conjunction with the renewal of the NPDES permit issued by the United States Environmental Protection Agency (EPA) for discharge to the Pacific Ocean pursuant to a process set forth in the Clean Water Act, title 33 of the United States Code Annotated Section 1311(h), and generally referred to as Section 301(h). Pursuant to Section 301(h), EPA may issue a permit for discharge to marine waters from a publicly owned treatment works (POTW) that is given less than full secondary treatment.[1] The federal permit may only be issued with the concurrence of the state in which the discharge takes place. In

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[1] In 1972, Congress passed the Federal Water Pollution Control Act Amendments, which required publicly owned treatment works to achieve secondary treatment capability by 1977. After passage, some municipalities with POTWs that discharged into marine waters, argued that this requirement might be unnecessary on the grounds that marine POTWs usually discharge into deeper waters with large tides and substantial currents, which allow for greater dilution and dispersion than their freshwater counterparts. As a result, Congress added Section 301(h) to the Clean Water Act in 1977, allowing for a case-by-case review of treatment requirements for marine dischargers that applied by September 13, 1979. Although it was filed after the deadline, the City's application was accepted.

California, that concurrence takes the form of state-issued waste discharge requirements, a separate permit that ensures compliance with state water quality standards.

I. BACKGROUND

The City has operated the Plant for nearly forty years. A waiver pursuant to Section 301(h) was issued in December 1995. An application to renew the waiver was submitted to EPA by the City in April 2001. On March 13, 2002, the Regional Board conducted a joint hearing with a representative of EPA to take testimony concerning the Section 301(h) waiver and the waste discharge requirements. On April 10, 2002, the Regional Board reconvened to discuss the evidence and testimony and to vote on the adoption of the waste discharge requirements. No further public testimony was permitted. After a lengthy discussion, the Regional Board adopted the waste discharge requirements as proposed but made three changes to the order, only one of which is the subject of the City's petition.

The City filed a timely petition objecting to the procedure used by the Regional Board in adopting the order and to the reduction in the mass emission limits for total suspended solids (TSS) in the final order. Those limits were set at 15,000 metric tons per year in the 1995 permit but were reduced to just under 14,000 tons in the final order.

II. CONTENTION AND FINDING[2]

Contention: The decision of the Regional Board to reduce the mass emission limits for TSS from 15,000 to 13,995 metric tons per year for the first four years of the permit is not supported by evidence in the record.

Finding: While there is no evidence in the record that the City will, under any reasonable set of circumstances, exceed the limits set by the Regional Board, the record does not contain evidence that the reduction from 15,000 metric tons per year to 13,995 is based on actual water quality considerations.

The City has been operating the Plant since the early 1960s and has been subject to regulation by the Regional Board for essentially that entire time. When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a

[2] The City raises numerous procedural issues in its petition. Because of the disposition of this matter, it is unnecessary to address any of those issues. *People v. Barry* (1987) 194 Cal.App.3d 158 (239 Cal.Rptr. 349.)

little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years. Nevertheless, the City, in its application to renew the Section 301(h) waiver, told both EPA and the Regional Board that its discharge of TSS from the Plant would be 14,100 metric tons in 2001 going up steadily to 14,600 tons in 2005. The waste discharge requirements provide, and the City has not challenged the provision, that the discharge must be no more than 13,599 tons in 2006. No explanation has been provided for why the City's discharge from the Plant would increase 59 percent between 2000 and 2001 nor is there any explanation of what the City will do between 2005 and 2006 to reduce its discharge by 7 percent.

The record indicates that the Plant removes more than 85 percent of the TSS in its effluent stream.[3] No testimony or evidence was offered to show that this removal rate could not be assumed for the duration of this permit. At that rate of removal, even if the Plant were to operate at its full design capacity of 240 million gallons per day (MGD), the Regional Board has calculated that the mass emissions discharge would be less than 13,900 metric tons. As the City has projected the actual flow for the Plant in the year 2006 to be only 195 MGD, continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year.[4]

Nevertheless, the Regional Board's decision to reduce the limit for TSS mass emissions by 6.7 percent must be supported by evidence in the record. EPA approved the permit with the 15,000 ton limit.[5] Regional Board staff proposed adoption of the permit with the 15,000 ton limit. No evidence was offered to the Regional Board that a significant water quality impact

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[3] In its submittal to EPA in support of its Section 301(h) waiver application, the City assumes a mass emission removal rate of "at least 80 percent." Removal of less than 80 percent would be a violation of the permit. The City has not challenged that requirement.

[4] The discharge resulting from an 80 percent removal rate would be about 6 percent higher. If the Plant operated at an 80 percent removal rate, the figure for 2006 based on the City's projected discharge would be slightly less than 12,000 tons.

[5] EPA indicated in its February 11, 2002 response to comments that "the proposed discharge would meet the nine 301(h) requirements and is in full compliance with the CWA [Clean Water Act]." EPA also stated that the discharge of mass emissions at the proposed 15,000 metric ton level was "entirely consistent with the language and purpose of the OPRA [Ocean Pollution Reduction Act of 1994]."

would occur with a discharge of 15,000 tons per year that would not occur if the discharge were limited to 13,995 tons.

California law requires that an administrative agency "build a bridge" between the decisions it makes and the record that supports the decision. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. It is difficult to find such a bridge in this case. The absence of a real-world controversy makes the entire issue seem academic at best. As we pointed out in our discussion above, unless the City fails to comply with its obligation to remove 80 percent or more of the TSS from its effluent, neither the 15,000 ton limit nor the 13,995 ton limit is actually at issue. If it continues to remove TSS at the current 85 percent rate, the Plant will not even approach those limits until it is operating at near design capacity, many years from now. Any concern about the short-term performance of the City in this regard would seem not to be addressed by the reduction and any long-term concerns ought to be resolved by the requirement that the discharge be no greater than 13,599 metric tons per year beginning in 2006. Clearly, the discharge from the Plant in 2006 is more relevant to its performance ten or fifteen years from now than its discharge in 2001.

The Regional Board discussed the reduction at its April 10 meeting. No clear reason was given for reducing the limit from 15,000 to 14,000 metric tons, although most of the Board members indicated on the record that they believed the 15,000 ton figure was not based on any legitimate environmental standards and that the reduction was an important statement of policy for the Regional Board to make. When asked by the Regional Board's counsel to articulate the findings in support of the reduction, the Chair responded:

> "I think the record supports a ratcheting down of the limit, and that this is our effort to ensure that the public health, welfare, and safety is protected beyond that which is proposed by the permit. I also offer the observation that the 15,000 limit was simply selected based on the old permit so that we are entitled to adopt a permit that is more protective of the public health than is proposed."

At no time does either the Chair or any other member of the Board point to evidence in the record that leaving the mass emission limit at 15,000 tons will cause a water quality or public health consequence that reducing it to 13,995 tons will avoid[6]

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[6] There is little or no evidence in the record that the Regional Board considered reducing the mass emission limit for technology-based reasons, anti-degradation principles, the need to prevent nuisance conditions, or other statutory or regulatory bases.

In its response to the petition, the Regional Board submitted a justification for the decision that is slightly more specific:

> There are many facts in the administrative record considered by the Regional Board in reaching its decision. These include, but are not limited to, the disparity between Petitioner's actual TSS emission rates and those proposed in their application, the ability of the PLMWTP [the Plant] to achieve much lower mass emissions than those proposed, the need to encourage water reclamation, the uncertainly of long-term impacts of the discharge, the lack of deep ocean monitoring, and the lack of monitoring for many human pathogens including viruses. [Response, page 9.]

Most of those issues have already been discussed above. The issues involving reclamation and the lack of monitoring are certainly very legitimate concerns. However, the question must be repeated with regard to those issues: how does a reduction from 15,000 tons to 14,000 tons in the order, when the actual discharge cannot exceed 12,000 tons during the life of the permit, improve reclamation prospects or lessen the need for more monitoring?

III. CONCLUSION

For the reasons stated above, the State Board concludes that the Regional Board failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements. The order should be amended.

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///

IV. ORDER

It is hereby ordered that waste discharge requirements No. R9-2002-0025 be amended as follows: in paragraph B.1.a.(1), Limits on Total Suspended Solids, the narrative is amended to read:

> "The discharge shall achieve a mass emission of TSS of no greater than ~~13,995~~ 15,000 mt/yr; this requirement shall be effective through December 31, 2005. Effective January 1, 2006, the discharger shall achieve a mass emission of TSS of no greater than 13,599 mt/yr." [The remainder of the paragraph is unchanged.]

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 15, 2002.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché
Clerk to the Board

Footnote No. 84

(R-2004-106)

RESOLUTION NUMBER R-298435

ADOPTED ON SEPTEMBER 29,2003

A RESOLUTION AUTHORIZING AWARD OF THE POINT LOMA OUTFALL PROJECT CONSULTANT AGREEMENT; AND TAKING RELATED ACTIONS.

BE IT RESOLVED, by the Council of The City of San Diego as follows:

1. That the City Manager is hereby authorized and empowered to execute, for and on behalf of the City, the Point Loma Outfall Project Consultant Agreement with the Regents of the University of California, San Diego [the Agreement] for a period of seven months, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR-298435 contingent upon City Council approval of the originating department's operating budget for fiscal year 2004 and provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.

2. That the expenditure of an amount not to exceed $232,250.00 from Sewer Revenue Fund 41508 with $107,250.00 from fiscal year 2003 appropriations and $125,000.00 from fiscal year 2004 appropriations is hereby authorized for the purpose of funding the Agreement contingent upon City Council approval of the originating department's operating budget for fiscal year 2004 and provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.

3. That the City Auditor and Comptroller is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

APPROVED: CASEY GWINN, City Attorney

By _____
James W. Lancaster,
Deputy City Attorney

JWL:kat:Civ
07/14/03
Aud.Cert: AC2301311
Or.Dept:MWWD
R-2004-106

Footnote No. 86

CLERK'S FILE COPY

1504
MEET

I, Elizabeth S. Maland, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said city.
ELIZABETH S. MALAND, City Clerk
By _____, Deputy
Dated 12/7/05

(R-2004-440)

RESOLUTION NUMBER R- 298781

ADOPTED ON JAN 13 2004

RESOLUTION OF THE CITY COUNCIL REGARDING THE STUDY OF INCREASED ASPECTS OF WATER REUSE

WHEREAS, the Council of the City of San Diego adopted Resolution No. R-291210 on January 19, 1999, directing the City Manager not to spend any monies on water repurification until options for such reuse of water are evaluated and further direction is given by the Council; and

WHEREAS, the State of California in June 2003 issued a report entitled "Water Recycling 2030: Recommendations of California's Recycled Water Task Force," which called for a community-based process to evaluate a wide range of potential uses of recycled water; and

WHEREAS, on October 10, 2003, the City Manager issued City Manager's Report No. 03-203 entitled "Status Report on City of San Diego Long-Range Water Resources Plan (2002-2030)," which identified reclaimed water as an important source of a locally produced water supply and identified the City's two water reclamation plants: the North City Water Reclamation Plant and the South Bay Water Reclamation Plant, as important sources of reclaimed water to reduce the City's imported potable water demand; and

WHEREAS, the City's Natural Resources and Culture Committee on November 19, 2003 heard a full presentation on Alternative Water Sources, including testimony on the recently issued "Water Recycling 2030: Recommendations of California's Recycled Water Task Force" and unanimously recommended that the City Manager conduct a study of all aspects of increased water reuse; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is directed to conduct a study of one year duration evaluating all aspects of a viable increased water reuse program, including but not limited to groundwater storage, expansion of the distribution system, reservoirs for reclaimed water, livestream discharge, wetlands development, and reservoir augmentation. The study and report of same shall include a general assessment of costs and benefits of such projects including, but not limited to, consideration of public health, public acceptance, water costs, water supply reliability issues, compilation of research/studies concerning reservoir augmentation, and information concerning potential impacts of pharmaceuticals, endocrine disruptors, personal care products, and additional constituents of the wastewater stream on water quality and health. The study and report, when completed, shall be calendared before the Natural Resources and Culture Committee for such action as it deems appropriate.

APPROVED: CASEY GWINN, City Attorney

By Ted Bromfield

Ted Bromfield
Senior Deputy City Attorney

TB:mb
11/20/03
Or.Dept:NRC
R-2004-440

Footnote No. 87

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In The Matter Of:	)	NPDES Appeal Nos. 02-07 & 02-08
City of San Diego	)	RESPONDENT'S NOTICE CONCERNING
	)	STAY OF PERMIT TERMS
NPDES Permit No. CA0107409	)	
	)	

Respondent, the United States Environmental Protection Agency, Region IX, files this notice pursuant to 40 CFR 124.16(a)(2)(ii) which provides, in relevant part:

> The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a petition for review, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2) of this section.

1. On October 16, 2002, the City of San Diego (the "City") filed a petition for review with the EAB regarding the National Pollutant Discharge Elimination System ("NPDES") permit for its E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant ("Point Loma Plant"). The specific provisions for which review was requested concern the applicability of the Ocean Pollution Reduction Act of 1994 ("OPRA"), 33 U.S.C. 1311(j)(5) to the City's request for a waiver from secondary treatment standards pursuant to Section 301(h) of the Clean Water Act, 33 U.S.C. 1311(h).

2. On October 16, 2002, San Diego Baykeeper, Surfrider Foundation, and Sierra Club also filed a petition for review with the EAB regarding the NPDES permit for the Point Loma Plant. The specific provisions for which review was requested concern the mass emission rate ("MER") limits for total suspended solids established pursuant to Section 301(h) and OPRA. These petitioners requested that the MER for total suspended solids limits be remanded to EPA to establish limits in compliance with all federal and state laws and regulations.

3. Neither of the petitions for review cited the specific permit provisions that are being disputed. However, the only provisions in dispute are those dealing with the Section 301(h) waiver and the

applicability of OPRA. They appear in Findings16 - 27, as modified on October 10, 2002, Part B.1.a(1) of the Permit, and the Final Decision of the Regional Administrator Pursuant to 40 CFR Part 125, Subpart G.

4. Pursuant to 40 CFR 124.16(a)(2)(ii) and 124.60(b), EPA is notififying the EAB, the Petitioners, and all interested parties that all permit conditions except those identified in paragraph 3 above constitute uncontested and severable conditions of the final permit that become fully effective enforceable obligations of the permit thirty days after the date of this notice.

Alexis Strauss

Date: 16 May 2003

for Wayne H. Nastri
Regional Administrator
Region IX
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I hereby certify that a copy of RESPONDENT'S NOTICE CONCERNING STAY OF PERMIT TERMS, dated May 16, 2003, was faxed to the Environmental Appeals Board, fax number (202) 501-7580, and the original and copies were mailed via First Class Mail, postage prepaid, as follows:

Original to U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Copies to Ted Bromfield
Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100

James J. Dragna
Bingham & McCutcheon
355 South Grand Avenue, Suite 4400
Los Angeles, CA 90071-1560

Marco A. Gonzales
San Diego Baykeeper
Environmental Law and Policy Clinic
2924 Emerson Street, Suite 220
San Diego, CA 92106

Robert Simmons
San Diego Sierra Club
P.O. Box 19932
San Diego, CA 92159

MAY 19, 2003
Date

Joseph V. Rery
Office of Regional Counsel
Environmental Protection Agency
Region IX

Footnote No. 88

RATE ANALYSIS PROGRAM
MEMORANDUM

DATE : March 2, 1994

TO : Distribution

FROM : City Rate Analyst

SUBJECT: WATER/SEWER SERVICE AND CAPACITY CHARGE HISTORY

Attached for your information and reference is an updated history of water and sewer service and capacity charges. Should you have any questions, please contact me at x34115.

D. H. KAHLIE

histtran

Distribution:

Executive Committee
Finance Team
Water Utilities Department: Director, Assistant Director, all Deputy Directors
Metropolitan Wastewater Department: Director, all Deputy Directors
City Attorney: Mssrs. Fitzpatrick, Bromfield; Ms. Salt

SAN DIEGO WATER UTILITIES DEPARTMENT
WATER AND SEWER RATE HISTORY

Revised 3/2/94

A. WATER SERVICE CHARGES

2/27/58	Rates increased 15%. Domestic had 5 blocks. Commercial/Industrial had 6 blocks. Rates ranged from $0.352 to $0.23 per HCF. Bills subject to minimum charge based on meter size.
3/31/59	Three additional blocks added to tail of Commercial/Industrial schedule in order to settle dispute with Navy. Reduced Navy's rate increase based on 2/27/58 rates from 28% to 18%.
2/06/62	Interruptible Agricultural Service rate established. Set at $50 per acre foot.
1/01/67	After 15% increase, minimum charge set at $2.25 with 9 block quantity rates ranging from $0.412 down to $0.212 per HCF.
7/01/69	Interruptible Agricultural Service per acre foot rate changed to SDCWA charge plus $10.
3/01/73	Rate form changed to customer plus commodity form. Customer charge range $1.00 - $22.00; Commodity 4 block range $0.344 to $0.287 per HCF.
1/01/74	Commodity rate increased by $0.09 purchased water cost offset.
5/01/74	Rates increased 15%. Customer charge range $2.10 - $900.00; commodity reduced to 1 block at $0.292 per HCF. Combined Irrigation and Domestic service rate discontinued.
3/22/75	Rates increased 9.6%. Customer charge range $2.30 - $984.40; commodity increased to $0.338 per HCF ($0.32 regular rate plus $0.018 buy-in offset).
1/01/76	Commodity increased to $0.343 to include $0.005 purchased water cost offset.
1/01/77	Commodity increased to $0.357 to include $0.014 purchased water cost offset.
6/24/77	Commodity rate, customer charge and fire service rate increased by 6.0%. Customer charge range $2.44 - $1,045.58; commodity rate $0.379 (including $0.018 buy-in offset).

1/01/78	Commodity rate increased to $0.388 to include $0.012 purchased water cost offset and reduction in buy-in offset from $0.018 to $0.015.
1/01/79	Commodity increased to $0.418/HCF to include $0.03 for purchased water cost offset.
1/01/80	Commodity increased by $0.005 to $0.423/HCF for purchased water cost offset.
1/01/81	Commodity increased by $0.034 to $0.457/HCF for purchased water cost offset.
1/01/82	Commodity increased by $0.014 to $0.471/HCF for purchased water cost offset.
1/01/83	Commodity increased by $0.044 to $0.515/HCF for purchased water cost offset.
3/01/83	Lifeline commodity rates for Single Family Domestic (SFD) class adopted. 0-10 HCF/Mo. @ $0.471/HCF; 11+ HCF/Mo. @ $0.578/HCF. All other classes, $0.515/HCF.
1/01/84	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.667/HCF; 11+ HCF/Mo. @ $0.774/HCF. All other classes, $0.711/HCF.
1/01/85	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.668/HCF; 11+ HCF/Mo. @ $0.775/HCF. All other classes, $0.712/HCF.
7/01/86	General rates increased 13.1%. Based Fee range $2.76 - $1,182.55; Fire Service range $6.29 - $83.92; Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.756/HCF; 11+ HCF/Mo. @ $0.877/HCF. All other classes, $0.805/HCF. $0.015/HCF buy-in offset allocation eliminated.
1/01/87	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.768/HCF; 11+ HCF/Mo. @ $0.889/HCF. All other classes, $0.817/HCF.
7/01/87	General rates increased 13.2%. Base Fee range $3.12 - $1,388.65; Fire Service range $7.12 - $95.00; Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.869/HCF; 11+ HCF/Mo. @ $1.006/HCF. All other classes, $0.925/HCF.
1/01/88	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.881/HCF; 11+ HCF/Mo. @ $1.018/HCF. All other classes, $0.937/HCF.
1/01/89	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $0.903/HCF; 11+ HCF/Mo. @ $1.041/HCF. All other classes, $0.96/HCF.
1/01/90	Lifeline commodity rates for SFD, 0-10 HCF/Mo.@ $0.938/HCF; 11+ HCF/Mo. @ $1.075/HCF. All other classes, $0.994/HCF.

11/8/91	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $1.076/HCF; 11+HCF/Mo. @ $1.213/HCF. All other classes, $1.132/HCF.
7/01/92	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $1.169/HCF; 11+HCF/Mo. @ $1.306/HCF. All other classes, $1.225/HCF.
7/01/93	Lifeline commodity rates for SFD, 0-10 HCF/Mo. @ $1.285/HCF; 11+HCF/Mo. @ $1.422/HCF. All other classes, $1.341/HCF.

B. WATER CAPACITY CHARGES

5/18/74	Capacity charge adopted at $300 plus 6% interest per single family dwelling unit or equivalent (EDU).
3/22/75	Capacity charge reduced to $200 per EDU without interest and $3000.00 maximum charge per connection. 1.8¢ per HCF buy-in offset added to regular water rate to cover resulting decrease in water capacity revenue.
1/01/78	Capacity charge increased to $290 per EDU, maximum charge increased to $5000.00, and buy-in offset reduced to 1.5¢ per HCF.
7/01/86	Capacity charge increase to $393 plus 6% interest per EDU, $5000.00 maximum charge limitation and 1.5¢/HCF buy-in offset eliminated.
7/01/87	Capacity charge increased to $565 plus 6% per EDU.
7/17/89	Capacity charge increased to $1,651 plus 6% per EDU.
10/10/90	Capacity charge increased to $1,960 plus 6% per EDU.
7/01/91	Capacity charge increased to $2,327 plus 6% per EDU.
7/01/92	Capacity charge increased to $2,763 plus 6% per EDU.
7/01/93	Capacity charge increased to $3,281 plus 6% per EDU.
1/14/94	Capacity charge increased to flat fee of $3,380 per EDU; interest escalator eliminated.
7/01/94	Capacity charge increases to $4,012 per EDU pursuant to Council Resolution No. 282998, adopted November 15, 1993.

C. SEWER SERVICE CHARGES

8/02/56	Sewer Revenue Fund established. Domestic charge set at $0.12 per HCF of average monthly consumption. Commercial/Industrial charge set at 30% of water bill.
7/01/58	Single family rate set at $1.10/month. Multiple dwelling unit rate set at 30% of water bill. Commercial/Industrial rate kept at 30%.
4/01/60	Approximate 35% increase put single family rate at $1.50 and 40% of water bill for other classes.
1/01/67	Approximate 43% increased single family rate to $2.15 and to 50% of water bill for other classes.
3/01/73	Retained $2.15 single family charge, but changed charge for other classes to $0.153 per HCF of water use.
6/24/77	Single family charges increased 16% to $2.50; charge for other classes increased by 16% to $0.177 per HCF of water use.
7/01/78	Single family charges increased 20% to $3.00. Charge for other classes increased to $0.213/HCF of water use.
11/1/79	Sewer service charge increased 50%. Single family charge $4.50. Charge for other classes $0.32/HCF of water use.
7/01/82	Sewer service charge increased 22.2%. Single family charge $5.50. Charge for other classes $0.391/HCF of water use.
7/01/83	Sewer service charge increased 15%. Single family charge $6.33. Charge for other classes $0.45/HCF of water use.
1/01/84	Sewer service charge increased 2.5%. Single family charge $6.49/mo. Charge for other classes $0.461/HCF of water use.
2/21/84	Sewer service charge User Classes A through K based on suspended solids concentration adopted for customers other than Single Family Domestic. Rates range from $0.412/HCF (0-100 parts/million) to $0.589/HCF (901-1000 parts/million). Bulk of customers in User Class C and D (201-400 parts/million) charged $0.461/HCF of water use.
7/01/84	Sewer service charges increased 7.86%. Single Family charge $7.00/mo. Other classes charged based on User Class from $0.444/HCF to $0.635/HCF. Bulk of customers in User Class C and D charged $0.497/HCF of water use.
7/01/85	Sewer service charges increased 14.3%. Single family charge, $8.00/mo. other classes $0.507 - $0.726/HCF. Bulk pay $0.568.

7/06/87	Sewer service charges increased 30.0%. Single family charge, $10.40/mo.; other classes $0.659 - $0.943/HCF. Bulk pay $0.738.
7/01/88	Sewer service charges increased 30.0%. Single family charge, $13.52/mo.; other classes $0.856 - $1.226/HCF. Bulk pay $0.959.
7/17/89	Sewer service charges increased 26.6%. Single family charge, $17.12/mo.; other classes $1.084 - $1.551/HCF. Bulk pay $1.214.
7/01/90	Sewer service charges increased 6%. Single family charge, $18.15/mo.; other classes $1.044 - $2.126/HCF. Bulk pay $1.35.
7/01/91	Sewer service charges increased 6%; Single Family converted to winter months billing concept. Single Family customers pay $1.75 per HCF of average winter months water use. Other Classes, $1.11-$2.35/HCF. Bulk pay $1.43/HCF.
11/08/91	Single Family charge reverts to a flat rate of $19.24 per month; no change in other class rates.
7/01/92	Sewer service charges increased 6%; Single Family charge, $20.39/mo.; Other Classes, $1.173-$2.39/HCF. Bulk pay $1.50/HCF.
7/01/93	Sewer service charges increase by an average of 6%; Single Family converted to winter months billing concept using cap. Single Family customers pay $6.36 base fee plus $2.15 per HCF of average winter months water use monthly; those not having history pay $21.61/mo. Other Classes, $1.243-$2.53/HCF. Bulk pay $1.60/HCF.
7/01/94	Sewer service charges to increase by 6% pursuant to Council Resolution No. 275941, adopted June 19, 1990. Single Family customers pay $6.74 base fee plus $2.28 per HCF of average winter months water use monthly; those not having history pay $22.91/mo. Other Classes, $1.318-$2.684/HCF. Bulk pay $1.70/HCF.

D. SEWER CAPACITY CHARGE

3/01/73	Capacity charge adopted at $200 per single family dwelling unit or equivalent (EDU), plus 6% interest.
7/01/81	Capacity charge increased to $400 per EDU plus 6% interest.
7/01/83	Capacity charge increased to $636 per EDU plus 6% interest.
7/01/84	Capacity charge increased to $774 per EDU plus 6% interest.
7/01/85	Capacity charge increased to $921 per EDU plus 6% interest.
7/01/86	Capacity charge increased to $1,076 per EDU plus 6% interest.
7/06/87	Capacity charge increased to $1,483 per EDU plus 6% interest.
7/17/89	Capacity charge increased to $3,235 per EDU plus 6% interest.
7/01/90	Capacity charge increased to flat fee of $3,865; interest escalation eliminated.
7/01/91	Capacity charge increased to $4,484 per EDU.
7/01/92	Capacity charge increased to $5,201 per EDU.
7/01/93	Capacity charge increased to $6,033 per EDU.
7/01/94	Capacity charge increases to $6,998 per EDU pursuant to Council Resolution No. 275941, adopted June 19, 1990.

DHK:history

RESOLUTION NUMBER R-256294

Adopted on April 26, 1982

WHEREAS, Section 64.32 of the San Diego Municipal Code provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days' notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice has been given by posting the intention to increase said charges by the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That pursuant to Section 64.32 of the San Diego Municipal Code the following sewer service charges are established:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be five dollars and fifty cents ($5.50) per month.

(2) The monthly sewer service charge for all premises, other than single family dwellings serviced by separate water meters shall be at the rate of thirty-nine and one-tenth cents ($.391) per hundred cubic feet of water usage by such premise, but in no case less than a minimum charge of five dollars and fifty cents ($5.50) per month.

BE IT FURTHER RESOLVED, that this resolution shall be effective and in force on the first day of July, 1982.

APPROVED: John W. Witt, City Attorney

By C. M. Fitzpatrick Senior Chief Deputy City Attorney

CMF:vl:455

2/10/82

Or.Dept:W.Util.

Form=r.none

R-82-1341

RESOLUTION NUMBER R-258791

Adopted on June 27, 1983

WHEREAS, Section 64.32 of the San Diego Municipal Code provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days' notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice has been given by posting the intention to increase said charges by the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follow:

That pursuant to Section 64.32 of the San Diego Municipal Code the following sewer service charges are established:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be six dollars and thirty-three cents ($6.33) per month.

(2) The monthly sewer service charge for all premises, other than single family dwellings serviced by separate water meters shall be at the rate of forty-five cents ($.45) per hundred cubic feet of water usage by such premise, but in no case less than a minimum charge of six dollars and thirty-three cents ($6.33) per month.

BE IT FURTHER RESOLVED, that this resolution shall be effective and in force on the first day of July, 1983.

APPROVED: John W. Witt, City Attorney

By Stuart H. Swett Chief Deputy City Attorney

SHS:rc:455

4/4/83 REVISED 6/15/83

Or.Dept:W.Util.

Form=r.none

RESOLUTION NUMBER R-260134

Adopted on February 21,1984

WHEREAS, Section 64.0406 of the Municipal Code provides that the City Manager shall have the power to prescribe reasonable sewer service charges other than established in the Municipal Code and to establish rules and regulations for the granting of variances from established sewer service charges for property connected with the sewer service, such rules, regulations and sewer service charges to be effective when approved by the City Council, and the City Manager shall have the power to grant variances from the established sewer service charges upon his own initiative or when the owner or occupant of any premises applies therefor where the wastewater from any parcel or premise, except single-family residences shall be substantially different in type from the average wastewater entering the sewer system of the City, and for these purposes "average wastewater" shall be 300 milligrams per liter (mg/1) of suspended solids, and procedures are set forth for the owner or occupant of any premises subject to the sewer service charge to apply for a reclassification of such premises; and

WHEREAS, the City Manager from time to time submits to the State of California Water Resources Control Board a revenue plan for operation of the Metropolitan Sewerage System in fulfillment of grant funding qualifying requirements, the most recent submission of April 26, 1982 concluding that the municipal sewer system cost to treat suspended solids in the untreated sewage is 4.459 cents per dry pound; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. The domestic sewer service charge for each single- family dwelling unit serviced by a separate water meter shall be six dollars and forty-nine cents ($6.49) per month.

2. That pursuant to Section 64.0406 of the Municipal Code the following Classifications of nonsingle-family residence User Groups are established for the corresponding Average Suspended Solids Concentrations and with corresponding rates per hundred cubic feet (HCF) of monthly water usage (assuming a normal 50% -70% ratio of sewer flow to water use):

Average Suspended	Percent of Monthly

User Class	Solids Concentration (Parts per Million)	Rate Per HCF	Sewer Service Charges
A	0 -100	41.2 cents	89.3
B	101 -200	43.1	93.6
C	201 -300	46.1	100.0
D	301 -400	46.1	100.0
E	401 -500	49.1	106.4
F	501 -600	51.0	110.7
G	601 -700	53.0	114.9
H	701 -800	55.0	119.2
I	801 -900	56.9	123.5
J	901 -1,000	58.9	127.8
K	1,000 +	*	*

*Class K includes all dischargers of wastewater containing average suspended solids concentration of more than 1,000 parts per million. The percent of the monthly sewer charge will be computed individually for each discharger in Class K with 127.8% to be increased by 4.27 for each 100 ppm suspended solids above 1,000.

But in no case less than a minimum charge of six dollars and forty-nine cents ($6.49) per month.

3. Each customer other than single-family residences shall be assigned to one of the User Group Classifications based on the type of their wastewater entering the sewer system of the City according to generally accepted industry standards and in accordance with types of discharges found in this, and other communities. All multiple dwellings and apartments will be assigned in User Class C. The owner or occupant of any premises subject to the sewer service charge may apply for a reclassification as detailed in Municipal Code Section 64.0406(b).

4. The Water Utilities Department shall establish a three (3)

person Sewer Variance Board of Review to assign customers other than single-family residences to one of the User Group Classifications, and to make decisions in behalf of the City Manager in the cases of requests for reclassification. The Board of Review shall be named by the City Manager.

5. The Water Utilities Department shall institute and maintain a Departmental Instruction for calculation of sewer charge variances incorporating variances based on average amount of suspended solids returned to the sewer system and the ratio of sewer flow to water use.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force on March 1, 1984.

APPROVED: John W. Witt, City Attorney

By Stuart H. Swett Chief Deputy City Attorney

SHS:rc:455

1/26/84

Or.Dept:W.Utils

R-84-939

Form=r.none

RESOLUTION NUMBER R-260807

Adopted on May 29, 1984

WHEREAS, Section 64.0404 of the San Diego Municipal Code provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days' notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice has been given by posting the intention to increase said charges by the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That pursuant to Section 64.0404 of the San Diego Municipal Code, the following sewer service charges are established:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be seven dollars ($7.00) per month.

(2) The monthly sewer service charge for all premises, other than single family dwellings serviced by separate water meters shall be in accordance with the following Classifications of nonsingle-family residence User Groups established for the corresponding Average Suspended Solids Concentrations and with corresponding rates per hundred cubic feet (HCF) of monthly water usage (assuming a normal 50%-70% ratio of sewer flow to water use):

User Class	Average Suspended Solids Concentration (Parts per Million)	Rate Per HCF	Percent of Monthly Sewer Service Charges
A	0 -100	44.4 cents	89.3
B	101 -200	46.5	93.6
C	201 -300	49.7	100.0

D	301 -400	49.7	100.0
E	401 -500	52.9	106.4
F	501 -600	55.0	110.7
G	601 -700	57.1	114.9
H	701 -800	59.3	119.2
I	801 -900	61.4	123.5
J	901 -1,000	63.5	127.8
K	1,000 +	*	*

*Class K includes all dischargers of wastewater containing average suspended solids concentration of more than 1,000 parts per million. The percent of the monthly sewer charge will be computed individually for each discharger in Class K with 127.8% to be increased by 4.27 for each 100 ppm suspended solids above 1,000.

In no case will the minimum sewer service charge be less than seven dollars ($7.00) per month.

BE IT FURTHER RESOLVED, that this resolution shall be effective and in force on the first day of July, 1984.

APPROVED: John W. Witt, City Attorney

By Stuart H. Swett Chief Deputy City Attorney

SHS:rc:455

5/1/84 REV.5/17/84

Or.Dept:W.Utils

R-84-1869

Form=r.none

(R-85-2329)

RESOLUTION NUMBER R-263423

ADOPTED ON JUNE 17, 1985

WHEREAS, Section 64.0404 of the San Diego Municipal Code provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days' notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice has been given by posting the intention to increase said charges by the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That pursuant to Section 64.0404 of the San Diego Municipal Code, the following sewer service charges are established:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be eight dollars ($8.00) per month.

(2) The monthly sewer service charge for all premises, other than single family dwellings serviced by separate water meters shall be in accordance with the following Classifications

of nonsingle-family residence User Groups established for the corresponding Average Suspended Solids Concentrations and with corresponding rates per hundred cubic feet (HCF) of monthly water usage (assuming a normal 50%-70% ratio of sewer flow to water use):

User Class	Average Suspended Solids Concentration (Parts per Million)	Rate Per HCF	Percent of Monthly Sewer Service Charges
A	0 - 100	50.7 cents	89.3
B	101 - 200	53.2	93.6
C	201 - 300	56.8	100.0
D	301 - 400	56.8	100.0
E	401 - 500	60.4	106.4
F	501 - 600	62.9	110.7
G	601 - 700	65.3	114.9
H	701 - 800	67.7	119.2
I	801 - 900	70.1	123.5
J	901 - 1,000	72.6	127.8
K	1,000 +	*	*

*Class K includes all dischargers of waste-water containing average suspended solids concentration of more than 1,000 parts per million. The percent of the monthly sewer

charge will be computed individually for each discharger in Class K with 127.8% to be increased by 4.27 for each 100 ppm suspended solids above 1,000.

In no case will the minimum sewer service charge be less than eight dollars ($8.00) per month.

BE IT FURTHER RESOLVED, that this resolution shall be effective and in force on the first day of July, 1985.

APPROVED: JOHN W. WITT, City Attorney

By

Stuart H. Swett

Chief Deputy City Attorney

SHS:js:427.1

6/4/85

Or.Dept:W.Util.

R-85-2329

Form=r.none

(R-87-2414)
RESOLUTION NUMBER R-268775
ADOPTED ON JULY 6, 1987

WHEREAS, Section 64.0404 of the San Diego Municipal Code provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish, amend or increase said charges; and

WHEREAS, Section 64.0410 of the San Diego Municipal Code provides that minimum sewer capacity charges may be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice of intention has been given by posting in the office of the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That pursuant to Section 64.0404 of the San Diego Municipal Code, the following monthly sewer service charges are established:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be a twelve dollars and eighty cents ($12.80) per month.

(2) The monthly sewer service charge for all premises other than single family dwellings serviced by separate water meters shall be twelve dollars and eighty cents ($12.80) per month, or a charge per hundred cubic feet of water delivered, computed in accordance with the following table:

User Class	Average Suspended Solids Concentration (Parts per Million)	Rate Per HCF	Percent of Average Rate Per HCF
A	0 - 100	$ .658	89.3%
B	101 - 200	.690	93.6
C	201 - 300	.737	100.0
D	301 - 400	.737	100.0
E	401 - 500	.784	106.4
F	501 - 600	.816	110.7
G	601 - 700	.847	114.9
H	701 - 800	.879	119.2

I	801 - 900	.910	123.5
J	901 - 1,000	.942	127.8
K	1,001+	*	*

* Class K shall include all dischargers of wastewater whose discharge exceeds 1,000 parts per million (PPM) of suspended solids. The rate per HCF will be individually computed for dischargers in Class K by first increasing 127.8% by 4.27 percentage points for each 100 PPM by which the discharge exceeds 1,000 PPM, then multiplying the result by the average rate per HCF ($.909).

That pursuant to Section 64.0410 of the San Diego Municipal Code, the following minimum sewer capacity charge is established:

A minimum capacity charge of one thousand, three hundred and sixty-nine dollars ($1,369) per single family dwelling or its equivalent shall be paid. This charge shall be subject to simple interest of six percent (6%) from July 1, 1987, to and including that date upon which the charge is paid.

In those areas of the City where a capacity charge in the form of area charges as established by Council resolution, or taxation of special assessment districts (excluding 1911 and 1913 Act assessment districts) results in a payment to the City totaling more than the aforementioned charges per single family dwelling or its equivalent, no new capacity charge shall be imposed by this resolution. However, charges imposed due to reimbursable agreements entered into by the City shall be collected where applicable in every case.

BE IT FURTHER RESOLVED, that this resolution shall be effective and in force on the first day of July, 1987.

APPROVED: JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney
TB:js:427.1
05/18/87
Or.Dept:W.Util.
R-87-2414b
Form=r.none

(R-90-2004 REV. 1)
RESOLUTION NUMBER R-275941
ADOPTED ON JUNE 19, 1990

WHEREAS, adoption of a cash management policy which provides for both cash and debt financing of the sewer Capital Improve-ments Program will mitigate the need for large rate increases in the future; and

WHEREAS, it is desirable that the current flat-rate sewer service charge applicable to single-family domestic customers be replaced by a rate based on winter months water use to enhance equity and foster water conservation; and

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish, amend or increase said charges; and

WHEREAS, San Diego Municipal Code section 64.0410 provides that minimum sewer capacity charges may be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice of intention has been given by posting in the office of the City Clerk; and

WHEREAS, pursuant to San Diego Municipal Code section 68.05, the City Manager has recommended that certain monthly fees now charged for the maintenance and replacement of backflow prevention devices be increased; and

WHEREAS, many of the City of San Diego's single-family domestic sewer customers are living on low and/or fixed incomes, making it difficult for them to cope with rising utility rates; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That pursuant to the Council's desire to mitigate against large increases in sewer rates in the future, a cash management policy for the water and sewer Capital Improvements Program which provides for the use of both cash and debt financing to fund major construction projects and to levelize cash flow requirements is hereby established.

2. That pursuant to San Diego Municipal Code section 64.0404, the following monthly sewer service charges are

established:

(A) Effective July 1, 1990:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be eighteen dollars and fifteen cents ($18.15) per month.

(2) The monthly sewer service charge for all premises other than single family dwellings serviced by separate water meters shall be thirty-two cents ($0.32) per month, plus a charge per 100 cubic feet of water delivered, computed in accordance with the following table:

Re-Class User	Average Suspended Solids Concentration (Parts Per Million)	Rate Per HCF at 70-75% turn to Sewer *
A/L	0 - 100	$ 1.044
B/M	101 - 200	1.171
C/N	201 - 300	1.288
D/O	301 - 400	1.404
E/P	401 - 500	1.531
F/Q	501 - 600	1.648
G/R	601 - 700	1.768
H/S	701 - 800	1.886
I/T	801 - 900	2.010
J/U	901 -1,000	2.126
K/V	1,001 +	**

* Charge for customers whose return to sewer deviates from 70-75% to be determined based on the following formula: Rate per HCF = Rate at 70-75% return/class midpoint (72.5% return) x midpoint of appropriate return class. Example: Rate for class A, 90% return = $1.044/72.5 x 92.0 = $1.332/HCF

** Class K/V shall include all dischargers of wastewater whose discharge exceeds 1,000 parts per million of suspended solids. Rate per HCF will be individually computed for dischargers in Class K/V on the basis of $1.278 per HCF of flow, and $0.1653 per 100 parts per million of suspended solids, at 100% return.

(B) Effective July 1, 1991:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be nineteen dollars and twenty-four cents ($19.24) per month.

(2) The monthly sewer service charge for all premises other than single family dwellings serviced by separate water meters shall be thirty-four cents ($0.34) per month, plus

a charge per 100 cubic feet of water delivered, computed in accordance with the following table:

Re-Class	User	Average Suspended Solids Concentration (Parts Per Million)	Rate Per HCF at 70-75% turn to Sewer *
	A/L	0 - 100	$ 1.107
	B/M	101 - 200	1.241
	C/N	201 - 300	1.365
	D/O	301 - 400	1.488
	E/P	401 - 500	1.623
	F/Q	501 - 600	1.747
	G/R	601 - 700	1.874
	H/S	701 - 800	1.999
	I/T	801 - 900	2.131
	J/U	901 -1,000	2.254
	K/V	1,001 +	**

* Charge for customers whose return to sewer deviates from 70-75% to be determined based on the following formula: Rate per HCF = Rate at 70-75% return/class midpoint (72.5% return) x midpoint of appropriate return class. Example: Rate for class A, 90% return = $1.107/72.5 x 92.0 = $1.412/HCF

** Class K/V shall include all dischargers of wastewater whose discharge exceeds 1,000 parts per million of suspended solids. Rate per HCF will be individually computed for dischargers in Class K/V on the basis of $1.355 per HCF of flow, and $0.175 per 100 parts per million of suspended solids, at 100% return.

(C) Effective July 1, 1992:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be twenty dollars and thirty-nine cents ($20.39) per month.

(2) The monthly sewer service charge for all premises other than single family dwellings serviced by separate water meters shall be thirty-six cents ($0.36) per month, plus a charge per 100 cubic feet of water delivered, computed in accordance with the following table:

Re-Class	User	Average Suspended Solids Concentration (Parts Per Million)	Rate Per HCF at 70-75% turn to Sewer *
	A/L	0 - 100	$ 1.173
	B/M	101 - 200	1.315
	C/N	201 - 300	1.447
	D/O	301 - 400	1.557
	E/P	401 - 500	1.720

F/Q	501 - 600	1.852
G/R	601 - 700	1.986
H/S	701 - 800	2.119
I/T	801 - 900	2.259
J/U	901 -1,000	2.389
K/V	1,001 +	**

* Charge for customers whose return to sewer deviates from 70-75% to be determined based on the following formula: Rate per HCF = Rate at 70-75% return/class midpoint (72.5% return) x midpoint of appropriate return class. Example: Rate for class A, 90% return = $1.173/72.5 x 92.0 = $1.497/HCF

** Class K/V shall include all dischargers of wastewater whose discharge exceeds 1,000 parts per million of suspended solids. Rate per HCF will be individually computed for dischargers in Class K/V on the basis of $1.436 per HCF of flow, and $0.186 per 100 parts per million of suspended solids, at 100% return.

(D) Effective July 1, 1993:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be twenty-one dollars and sixty-one cents ($21.61) per month.

(2) The monthly sewer service charge for all premises other than single family dwellings serviced by separate water meters shall be thirty-eight cents ($0.38) per month, plus a charge per 100 cubic feet of water delivered, computed in accordance with the following table:

Re-Class User	Average Suspended Solids Concentration (Parts Per Million)	Rate Per HCF at 70-75% turn to Sewer *
A/L	0 - 100	$ 1.243
B/M	101 - 200	1.394
C/N	201 - 300	1.534
D/O	301 - 400	1.672
E/P	401 - 500	1.823
F/Q	501 - 600	1.963
G/R	601 - 700	2.105
H/S	701 - 800	2.246
I/T	801 - 900	2.395
J/U	901 -1,000	2.532
K/V	1,001 +	**

* Charge for customers whose return to sewer deviates from 70-75% to be determined based on the following formula: Rate per HCF = Rate at 70-75% return/class midpoint

(72.5% return) x midpoint of appropriate return class.
Example: Rate for class A, 90% return = $1.243/72.5 x 92.0 = $1.586/HCF

** Class K/V shall include all dischargers of wastewater whose discharge exceeds 1,000 parts per million of suspended solids. Rate per HCF will be individually computed for dischargers in Class K/V on the basis of $1.522 per HCF of flow, and $0.197 per 100 parts per million of suspended solids, at 100% return.

(E) Effective July 1, 1994:

(1) The domestic sewer service charge for each single family dwelling unit serviced by a separate water meter shall be twenty-two dollars and ninety-one cents ($22.91) per month.

(2) The monthly sewer service charge for all premises other than single family dwellings serviced by separate water meters shall be forty cents ($0.40) per month, plus a charge per 100 cubic feet of water delivered, computed in accordance with the following table:

Re-Class User	Average Suspended Solids Concentration (Parts Per Million)	Rate Per HCF at 70-75% turn to Sewer *
A/L	0 - 100	$ 1.318
B/M	101 - 200	1.478
C/N	201 - 300	1.626
D/O	301 - 400	1.772
E/P	401 - 500	1.932
F/Q	501 - 600	2.081
G/R	601 - 700	2.231
H/S	701 - 800	2.381
I/T	801 - 900	2.539
J/U	901 -1,000	2.684
K/V	1,001 +	**

* Charge for customers whose return to sewer deviates from 70-75% to be determined based on the following formula: Rate per HCF = Rate at 70-75% return/class midpoint (72.5% return) x midpoint of appropriate return class.
Example: Rate for class A, 90% return = $1.318/72.5 x 92.0 = $1.682/HCF

** Class K/V shall include all dischargers of wastewater whose discharge exceeds 1,000 parts per million of suspended solids. Rate per HCF will be individually computed for dischargers in Class K/V on the basis of $1.613 per HCF of flow, and $0.209 per 100 parts per million of suspended solids, at 100% return.

3. That the flat rate sewer service charges established

for and applicable to the single family domestic customer class pursuant to San Diego Municipal Code section 64.0404 above shall be replaced by a rate based on winter months water use as soon as possible, so as to enhance equity and foster water conservation; said rate shall be designated by the City Manager in such a manner as to be revenue neutral with respect to the flat rate which it replaces and shall be revised annually as necessary to maintain that neutrality.

4. That pursuant to San Diego Municipal Code section 64.0410, the following sewer capacity charges are established:

(A) Effective July 1, 1990, or 60 days subsequent to passage of this resolution, whichever occurs later:

A capacity charge of three thousand eight hundred and sixty-five dollars ($3,865.00) per single family dwelling or its equivalent shall be paid.

(B) Effective July 1, 1991:

A capacity charge of four thousand four hundred and eighty-four dollars ($4,484.00) per single family dwelling or its equivalent shall be paid.

(C) Effective July 1, 1992:

A capacity charge of five thousand two hundred and one dollars ($5,201.00) per single family dwelling or its equivalent shall be paid.

(D) Effective July 1, 1993:

A capacity charge of six thousand and thirty-three dollars ($6,033.00) per single family dwelling or its equivalent shall be paid.

(E) Effective July 1, 1994:

A capacity charge of six thousand nine hundred and ninety-eight dollars ($6,998.00) per single family dwelling or its equivalent shall be paid.

In those areas of the City where a capacity charge in the form of area charges as established by Council resolution or taxation or special assessment districts (excluding 1911 and 1913 Act assessment districts) results in a payment to the City totaling more than the aforementioned charge per single family dwelling or its equivalent, no new capacity charge shall be imposed by this resolution. However, charges imposed due to reimbursement agreements entered into by The City of San Diego shall be collected where applicable in every case.

5. That a Low Income Discount Program for economically disadvantaged single-family domestic water/sewer customers shall be implemented as soon as possible; said program shall provide a twenty-five percent (25%) discount on the combined monthly water/sewer billing of single-family domestic customers whose

annual income does not exceed one hundred fifty percent (150%) of the current Federal Poverty Guideline for family size; certification of eligibility for such program shall be in a form acceptable to the City Manager and shall be subject to periodic review thereby; and the cost of the subsidy represented hereby shall be recovered equitably from all other utility customers.

6. That this resolution shall be effective and in force on the day of its passage.

APPROVED: JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney
TB:mb
05/31/90
06/27/90 Rev.1
Or.Dept:W.Util.
R-90-2004
Form=r.none

(R-92-625)

RESOLUTION NUMBER R-278769
ADOPTED ON OCTOBER 7, 1991

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days' notice of intention to establish, amend or increase said charges; and

WHEREAS, said notice of intention has been given by post-ing in the office of the City Clerk; and

WHEREAS, it is desirable that the variable rate sewer ser-vice charge presently applicable to the single-family domestic customer class pursuant to Section 3 of Resolution No. R-275941 adopted on June 19, 1990, be replaced with a flat rate for the purpose of enhancement of equity; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That Section 3 of Resolution No. R-275941 shall be rescinded.

2. That the domestic sewer service charge for each single family dwelling serviced by a separate water meter shall be the amount of nineteen dollars and twenty-four cents ($19.24) per month.

3. That the remaining provisions of Resolution No. R-275941 shall remain in full force and effect until further action of this Council.

4. That future sewer rate increases shall be prepared by the Water Utilities Department and reviewed by the Citizens' Committee to Review the Implementation of the City of San Diego Drought Rates.

5. That this resolution shall be effective and in force on the day of its passage.

APPROVED: JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney

TB:mb
10/16/91
Or.Dept:W.Util.
R-92-625
Form=r-t

(R-93-629 Rev.)

RESOLUTION NUMBER R-280815
ADOPTED ON OCTOBER 6, 1992

WHEREAS, Section 67.55 of the San Diego Municipal Code provides that water service charges shall be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish, amend or increase said charges; and

WHEREAS, Section 64.0404 of the San Diego Municipal Code provides that sewer service charges shall be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish, amend or increase said charges; and

WHEREAS, the required notices of intention were given by posting in the office of the City Clerk on June 30, 1992; and

WHEREAS, it is desirable that a policy requiring installa-tion of separate irrigation meters for single-family dwellings incorporating lots of one-half (.5) acre or more as a means of more accurately determining sewage flow be developed for City Council review; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That pursuant to Section 67.55 of the San Diego Municipal Code, a two-tier "lifeline" water rate structure applicable to the single-family domestic customer class shall be retained.

2. That pursuant to Section 64.0404 of the San Diego Municipal Code, the currently effective fixed flat-rate sewer service charge applicable to the single-family domestic customer class shall be replaced, effective July 1, 1993, with a variable flat rate, capped sewer billing structure based on winter months' water use (nominally, that water consumption which occurs during the months of December through March of each year); said structure shall:

A. Incorporate a base fee (minimum charge) component of six dollars ($6.00) per month plus any approved rate increases, and a unit charge component of two dollars and one cent ($2.01) per hundred cubic feet of average monthly winter water use, plus any approved rate increases;

B. Incorporate a maximum bill limitation (cap) of base fee plus ten hundred cubic feet (10 HCF) of average winter water use times the unit charge component per month;

C. Be revenue neutral with respect to the fixed flat rate which it replaces;

D. Be subsequently revised by the City Manager as necessary to maintain that neutrality by adjusting both the base fee and unit charge by an equal percentage; and

E. Be subject to adjustment in case of concealed water leaks pursuant to Section 64.0407 of the Municipal Code.

BE IT FURTHER RESOLVED, that the City Manager is hereby directed to develop for the Council's review a policy which would require the installation of separate irrigation meters for single-family dwellings incorporating lots of one-half (.5) acre or more as a means of more accurately determining sewage flow.

APPROVED: JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney
TB:mb
10/12/92
10/26/92 Rev.
Or.Dept:W.Util.
R-93-629
Form=r-t

(R-96-332)

RESOLUTION NUMBER R-286427
ADOPTED ON OCTOBER 10, 1995

BE IT RESOLVED, by the Council of The City of San Diego, that the Council hereby approves a revenue plan that includes a 0% sewer service charge increase in FY 1996 and annually consider rate adjustments as required to support the proposed bond issuance and meet the capital and operating requirements of the Municipal Sewer System and the Metropolitan Wastewater Plan.

APPROVED: JOHN W. WITT, City Attorney
By
Kelly J. Salt
Deputy City Attorney
KJS:pev
09/26/95
Or.Dept:Fin.Mgmt.
R-96-332
Form=r-t

0

(R-97-319)

RESOLUTION NUMBER R-287892

ADOPTED ON OCTOBER 1, 1996

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service charges may be established by resolution of the City Council upon the giving of ten (10) days notice of intention to establish said charges; and

WHEREAS, such notice of intention has been given by posting in the office of the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that pursuant to San Diego Municipal Code section 64.0404, the City Manager be and he is hereby directed to increase sewer service charges by six percent (6%) immediately (FY 1997) and by six percent (6%) on July 1, 1997 (FY 1998), consistent with the Sewer Revenue Fund Financing Plan previously adopted by City Council on October 19, 1995.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby directed to continue to pursue measures to improve the financial position of the City's Sewer Revenue Fund (resolution of disputed Metropolitan Participating Agency billings, passage of federal legislation to allow permanent secondary treatment equivalency, implementation of further productivity gains via competition, etc.), and to return to Council with results, including any impacts to sewer service charges.

 CORRECTED COPY 9/20/96

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby directed to begin preparations for the next issuance of Sewer Revenue Bonds to fund the Metropolitan Wastewater Plan.

APPROVED: JOHN W. WITT, City Attorney

By
Kelly J. Salt
Deputy City Attorney

KJS:pev:mb
09/18/96
09/20/96 Corr.
Or.Dept:Fin.Mgt
R-97-319
Form=r-t.res

(R-99-708 Rev.)

RESOLUTION NUMBER R-291210

ADOPTED ON JANUARY 19, 1999

BE IT RESOLVED, by the Council of The City of San Diego, that, consistent with the Sewer Revenue and Financing Plan previously adopted by City Council on October 10, 1995, the City Manager be and he is hereby directed to increase sewer service charges by 5 percent for three years, as noted in Alternative 1, City Manager Report No. 99-11, in order to meet public health and safety needs, as well as mandated construction schedules. The increase for 1999 shall be effective sixty days from January 19, 1999, which is the date of this action, and the remaining two increases shall be effective March 1, 2000 and March 1, 2001, respectively.

BE IT FURTHER RESOLVED, that the City Manager is directed not to spend any monies on water repurification. In addition, the City Manager is not to spend any monies from the Beneficial Reuse Project, 5A of Attachment A and B of City Manager Report No. 99-11, on water reuse/reclamation until such options are evaluated and City Council direction is given. Pending such direction, sewer revenue funds now in the Beneficial Reuse Project may be used as needed for rate stabilization, for debt service coverage, or for infrastructure improvement.

BE IT FURTHER RESOLVED, that the City Manager is directed to review and evaluate the creation, expansion, or modification of a public advisory group to advise the Mayor and City Council on wastewater rates and infrastructure improvements.

APPROVED: CASEY GWINN, City Attorney

By

Ted Bromfield
Deputy City Attorney

JM:TB:pev:mb
12/15/98
1/7/99
1/22/99 Revised
Aud.Cert:N/A
R-99-708
Form=r-t.frm

(R-2002-481 Revised)

RESOLUTION NUMBER R-295587

ADOPTED ON OCTOBER 16, 2001

RESOLUTION OF THE CITY OF SAN DIEGO TO INCREASE SEWER SERVICE CHARGES BY 7.5% IN FISCAL YEARS 2002, 2003, 2004, AND 2005; REQUIRING SEMI-ANNUAL CIP REPORTS FROM THE METROPOLITAN WASTEWATER DEPARTMENT; DEDICATING 2.5% OF SEWER SERVICE CHARGES TO PIPE REPLACEMENT AND REHABILITATION; CREATING A SEWER SERVICE PUBLIC OVERSIGHT COMMISSION; ENCOURAGING SMALL-CONTRACTOR PARTICIPATION AND OUTREACH IN PUBLIC WORKS CONTRACTS; ENCOURAGING SMALLER PUBLIC WORKS CONTRACTS; AND PROVIDING FOR ANALYSIS OF RATE INCREASES.

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service charges may be established by resolution of the City Council upon the giving of ten days notice of intention to establish such charges; and

WHEREAS, such notice of intention has been given by posting in the office of the City Clerk; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that pursuant to San Diego Municipal Code section 64.0404 and consistent with the Sewer Revenue Fund Financing Plan adopted by the Council on October 19, 1995, and as set forth in detail in City Manager Report No. 01-209, the City Manager is hereby directed to increase the sewer services charges in Fiscal Years 2002, 2003, 2004, and 2005, as follows:

1. By 7.5% in Fiscal Year 2002, effective March 1, 2002;

2. By 7.5% in Fiscal Year 2003, effective March 1, 2003;

3. By 7.5% in Fiscal Year 2004, effective March 1, 2004; and

4. By 7.5% in Fiscal Year 2005, effective March 1, 2005;

BE IT FURTHER RESOLVED, that the Metropolitan Wastewater Department is hereby directed as follows:

1. To provide semi-annual reports to the Natural Resources & Culture Committee and the Clean Water Task Force on the status of the municipal capital improvement program, beginning in April 2002;

2. To encourage the increased use of small-contractor participation on MWWD projects by 10% above current rates; and

3. To pursue a strategy for small-contractor outreach on MWWD projects.

BE IT FURTHER RESOLVED, that the issue of sewer rates is referred to the Rules Committee for review of the following matters:

1. Dedication of a minimum 2.5% of the annual sewer rate increase, above 5% for inflation and energy costs, toward sewer and pipe replacement and rehabilitation; and

2. Creation of a Sewer Service Public Oversight Commission to assure citizens that the rate increases are well spent. The Rules Committee will report to the Natural Resources & Culture Committee on its proposal for a such Commission, which shall include citizen participation and report at least semi-annually to the Natural Resources & Culture Committee and the Clean Water Task Force.

BE IT FURTHER RESOLVED, that the City Manager is hereby directed to provide the following information to the Council for review prior to the March 2002 sewer rate increase:

1. An analysis of capacity charges in the Cost of Service Study as they relate to cost recovery for new connections;
2. An analysis of baseline allowance rates in the Cost of Service Study as they affect affordable low-income housing; and
3. An analysis of Metropolitan Sewer System charges to the Participating Agencies as they affect the City's own rates.

APPROVED: CASEY GWINN, City Attorney

By _____
Ted Bromfield
Senior Deputy City Attorney

TB:mb
10/02/01
10/29/01 Revised
Or.Dept:MWWD
MWD-2026
R-2002-481
Form=r-t.frm

(R-2004-1293 REV.)

RESOLUTION NUMBER R-299322

ADOPTED ON JUNE 8, 2004

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO IMPLEMENT A NEW RATE STRUCTURE FOR SEWER SERVICE FEES AND INCREASE SEWER SERVICE FEES AS APPROPRIATE IN ACCORDANCE WITH THE NEW RATE STRUCTURE

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service fees [Fees] may be established by resolution of the City Council upon the giving of ten days notice of intention to establish such charges; and

WHEREAS, article XIII D, section 6 of the California Constitution provides that prior to imposing increases in property-related fees, a public agency shall provide written notice by mail of the proposed fee increase to the record owner of each parcel upon which it is proposed for imposition; and

WHEREAS, such notice shall be provided to the affected property owners not less than forty-five days prior to the public hearing on the proposed revisions to property-related fees; and

WHEREAS, the City proposes to change the rate structure [New Rate Structure] for its Fees; and

WHEREAS, the New Rate Structure will result in increases in the Fees for certain sewer customers; and

WHEREAS, the City posted a notice of its intention to adopt the New Rate Structure and to increase its Fees for certain sewer customers in compliance with San Diego Municipal Code section 64.0404; and

WHEREAS, during the week of April 19, 2004, in accordance with the provisions of article XIII D, section 6 of the California Constitution, the City provided written notice by mail of the New Rate Structure to affected property owners; and

WHEREAS, on October 16, 2001, the City Council adopted Resolution Number R-295587, authorizing the City Manager to increase the Fees by 7.5% for five fiscal years, effective March 1, 2002, March 1, 2003, March 1, 2004, and March 1, 2005 [Prior Rate Increases]; and

WHEREAS, the Prior Rate Increases will be applicable to the New Rate Structure; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego that the City Council finds and determines that the foregoing Recitals are true and correct.

BE IT FURTHER RESOLVED, that the City Manager is authorized and directed to implement, effective October 1, 2004, the New Rate Structure as set forth in Exhibit A, attached hereto, and by this reference incorporated herein, and increase Fees as appropriate in accordance with the New Rate Structure.

BE IT FURTHER RESOLVED, that the City Manager is directed to investigate and evaluate programs to improve the efficiency of the sewage system by funding incentives to

significant sewage dischargers of Chemical Oxygen Demand [COD] to reduce the COD load on the system and to report back to the City Council no later than September 30, 2004.

APPROVED: CASEY GWINN, City Attorney

By _____
Kelly J. Salt
Deputy City Attorney

KJS:pev
05/25/04
06/14/04 Rev.
Or.Dept: Wtr. & MWWD
R-2004-1293

THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: June 2, 2004 **REPORT NO.** 04-112

ATTENTION: Honorable Mayor and City Council, Docket of June 8, 2004

SUBJECT: Wastewater Fees and Charges

REFERENCES: Summary of Revised Sewer Rates (Attachment A)

SUMMARY

Issue: Should the City Council adopt a resolution which would revise presently existing wastewater fees and charges to bring the City into full compliance with the ratesetting requirements of the State Water Resources Control Board?

Manager's Recommendation: Adopt the resolution.

Other Recommendations – Public Utilities Advisory Commission Resolution Number PUAC-2004-04, adopted April 19, 2004 (Attachment B)

Fiscal Impact – There would be no fiscal impact from the revisions to the wastewater fees and charges since they are designed to be revenue neutral in the aggregate.

BACKGROUND

Wastewater-Related Proposition 218 Issues

In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C and XIII D to the California Constitution. Article XIII D of the state Constitution specifies various restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership. This initiative changed the way the public is notified of proposed fee increases. Specifically, it requires that notices be mailed to all property owners of record at least 45 days in advance of the date on which a proposed property related fee increase may be adopted. Consistent with current Proposition 218 case law, approximately 345,400 notices of today's

hearing were mailed to every affected property owner of record during the week of April 19, 2004.

The Wastewater System's user charge system may also have implications with respect to other issues under Article XIII B and Article XIII D of the Constitution of the State of California. Whether the Wastewater System's sewer service charges are property-related fees and charges for purposes of Article XIII D of the California Constitution has been the subject of considerable uncertainty. To the extent that the Wastewater System's sewer service charges are property-related fees and charges they must meet the requirements of Article XIII D of the California Constitution, including a proportionality requirement. The City's current rate structure allocates costs on the basis of total suspended solids and flow. Employing this methodology, the City believes its current sewer service charges meet that requirement.

SWRCB Grant And Loan Compliance Issues

The City has been an ongoing participant in the Federal Clean Water Grant program since the early 1970's, and in the State of California State Revolving Fund low-interest loan program ("SRF") since its inception, receiving 17 separate federal and state Clean Water Grants and a total of eight SRF loans. The value of these grants and loans currently aggregates to approximately $266 million. As a condition to receipt of these Clean Water Grants and as a covenant in the SRF loan agreements, the City must implement and maintain an approved wastewater user charge system that meets certain requirements. Currently, the Wastewater System's retail user charge system has not been approved by the State and has been found not to be in compliance with these requirements. The City has received two letters, one dated November 26, 2003 and another dated March 17, 2004, from the State Water Resources Control Board (the "SWRCB"), which, collectively, require the City to provide the SWRCB with evidence of City Council approval of a SWRCB-approved retail user charge system by July 1, 2004, and to implement such a system for Fiscal Year 2004-2005. If the City does not bring the Wastewater System's user charge system into compliance, the City could be forced to repay the aggregate amount of the Clean Water Grants and repay the outstanding principal amount of the SRF loans.

The possibility that the City may fail to adopt a SWRCB-approved sewer rate structure by July 1, 2004 and may, as a result, be forced to return $266 million in grant and loan funds which have already been spent, represents a major risk to the investment community. This risk, which was disclosed as a part of the City's annual financial market disclosures in March of 2004, adversely affects the credit quality of the Sewer Enterprise Fund, which is the source for repayment of bond debt used for wastewater system capital construction.

DISCUSSION

Revisions To Sewer Fees And Charges Pursuant To Requirements of the SWRCB

As a condition of eligibility to receive and retain both federal and state Clean Water Grants and State of California SRF loans, the City must implement and maintain an approved user charge system that conforms to the requirements of Clean Water Grant regulations for the useful life of the grant funded facilities and until such time as all SRF loans are discharged. These regulations generally require that, to receive approval, user charge systems must recover all costs of

operation and maintenance from system users on a basis proportionate to use. That is, users must pay for their use of the Wastewater System based on their relative contributions to overall system handling and processing requirements, measured in terms of factors such as flow volumes and solids and organics loadings. The SWRCB administers these regulations and must approve the Wastewater System's user charge system. Failure to implement and maintain an approved user charge system may result in a demand that Clean Water Grant monies received be repaid, accelerated repayment of SRF loans including the imposition of market-rate interest, and ineligibility for further participation in the program.

Currently, the City's municipal user charge system does not include any specific cost recovery component for organics. Pursuant to the general regulations and permits under which the Wastewater System operates, the Wastewater System must ensure that the wastewater discharged into the Pacific Ocean does not contain organic materials in excess of a certain level, which requires the Wastewater System to incur certain costs to comply with that limit. Since certain commercial and industrial customers of the Wastewater System discharge wastewater with relatively high concentrations of organic matter, it is the view of the SWRCB that, absent an organics component in the billing structure, residential customers and other commercial and industrial customers of the Wastewater System discharging lower levels of organics and other materials pay a disproportionately higher percentage of the overall costs of the Wastewater System than is appropriate.

Pursuant to the requirements of the SWRCB as outlined in its letter of March 17, 2004 (See Attachment C), the City must adopt a compliant, proportionate-to-use user charge system by July 1, 2004. In prior recognition of that obligation, the City initiated a cost-of-service study to develop a wastewater user charge system that would be acceptable to the SWRCB. In October 2003, the consulting engineering firm of Black & Veatch completed an update of a cost-of-service study (the "Study") initially prepared in 2001. Such studies are the vehicle by which system-wide costs are identified, allocated and apportioned to user classes and individual system users consistent with SWRCB approval guidelines. The Study, which detailed the proposed compliant wastewater user charge system, was transmitted by the Mayor and City Council to the City's Public Utilities Advisory Committee (the "PUAC") for review, public input and recommendations on October 20, 2003.

The Study contained several suggestions, including: 1.) that the City employ the SWRCB-approved functional-design cost allocation methodology, including the chemical oxygen demand (COD) organics parameter, to allocate costs to all City of San Diego user classes; 2.) that the City establish a uniform fixed monthly fee for all user classes; and 3.) that the City increase the single family residential billing cap from 10 to 14 HCF of winter months water use since this class generates higher flow volumes than previously assumed. It was determined that incorporating the COD parameter would result in a cost shift among some user classes. Specifically, costs would shift from the single family residential user class to commercial/industrial user classes which discharge larger amounts of organic material to the wastewater system.

Listed in Table 2 below, are the current and revised fees and charges:

TABLE 2: SEWER FEES AND CHARGES

	CURRENT	REVISED
Single-Family Residential		
Base Fee	$10.90	$10.53
Rate per HCF *	$3.625	$2.563
Multi-Family Residential		
Base Fee	$0.63	$10.53
Rate per HCF	$3.366	$3.461
Commercial/Industrial**		
Base Fee	$0.63	$10.53
Unit Rates		
Flow ($/HCF)	$2.61	$2.5613
TSS ($/lb)	$.54	$0.3994
COD ($/lb)	n/a	$0.1436

** 1 HCF (Hundred Cubic Feet) = 748 gallons. These rates may change due to the Winter Months Water Usage Adjustment effective July 1, 2004.*
*** Commercial/Industrial customers with average flow < 25,000 gallons per day would be billed via a rate matrix based upon the unit rates shown.*

The actual implementation of the revised fees and charges would occur in October 2004.

Future Cost Of Service Studies – Frequency and Rationale

Wastewater Cost of Service studies should be conducted periodically or when there are physical changes in the system or its operation that materially impact the allocation of operation, maintenance and replacement costs between each utility's applicable cost centers. For example, the City is currently conducting a pilot test of a new secondary treatment technology (biological aerated filtration) at the Point Loma Wastewater Treatment Facility which should be completed in approximately one year. If the results of this test are positive, leading to a change in the treatment process at Point Loma, the Wastewater Cost of Service study should be updated to reflect the changes in costs and their allocation to the flow, total suspended solids and chemical oxygen demand parameters that would result.

CONCLUSION

Adoption of the revisions to the existing sewer fees and charges will bring the City into full compliance with the ratesetting requirements of the SWRCB. This action would also eliminate the significant financial risk of possibly having to repay $266 million in grants and low interest loans, which will improve the credit quality of the Sewer Enterprise Fund.

ALTERNATIVE

Do not approve the requested actions. This is not recommended due to the possibility that the City could be forced to repay the aggregate amount of the Clean Water Grants and the outstanding principal amount of the SRF loans. Moreover, failure to implement a system of wastewater fees and charges that is acceptable to the SWRCB will result in the City having to continue to disclose to the bond market that $266 million in grants and loans are at risk until the matter is resolved.

Respectfully submitted,

RICHARD MENDES
Deputy City Manager

KAHLIE/CR

Attachments: A. Summary of Revised Sewer Rates
B. Public Utilities Advisory Commission Resolution Number PUAC-2004-04
C. State Water Resources Control Board letter dated March 17, 2004

Footnote No. 89

THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: June 2, 2004 **REPORT NO.** 04-112

ATTENTION: Honorable Mayor and City Council, Docket of June 8, 2004

SUBJECT: Wastewater Fees and Charges

REFERENCES: Summary of Revised Sewer Rates (Attachment A)

SUMMARY

Issue: Should the City Council adopt a resolution which would revise presently existing wastewater fees and charges to bring the City into full compliance with the ratesetting requirements of the State Water Resources Control Board?

Manager's Recommendation: Adopt the resolution.

Other Recommendations – Public Utilities Advisory Commission Resolution Number PUAC-2004-04, adopted April 19, 2004 (Attachment B)

Fiscal Impact – There would be no fiscal impact from the revisions to the wastewater fees and charges since they are designed to be revenue neutral in the aggregate.

BACKGROUND

Wastewater-Related Proposition 218 Issues

In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C and XIII D to the California Constitution. Article XIII D of the state Constitution specifies various restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership. This initiative changed the way the public is notified of proposed fee increases. Specifically, it requires that notices be mailed to all property owners of record at least 45 days in advance of the date on which a proposed property related fee increase may be adopted. Consistent with current Proposition 218 case law, approximately 345,400 notices of today's

hearing were mailed to every affected property owner of record during the week of April 19, 2004.

The Wastewater System's user charge system may also have implications with respect to other issues under Article XIII B and Article XIII D of the Constitution of the State of California. Whether the Wastewater System's sewer service charges are property-related fees and charges for purposes of Article XIII D of the California Constitution has been the subject of considerable uncertainty. To the extent that the Wastewater System's sewer service charges are property-related fees and charges they must meet the requirements of Article XIII D of the California Constitution, including a proportionality requirement. The City's current rate structure allocates costs on the basis of total suspended solids and flow. Employing this methodology, the City believes its current sewer service charges meet that requirement.

SWRCB Grant And Loan Compliance Issues

The City has been an ongoing participant in the Federal Clean Water Grant program since the early 1970's, and in the State of California State Revolving Fund low-interest loan program ("SRF") since its inception, receiving 17 separate federal and state Clean Water Grants and a total of eight SRF loans. The value of these grants and loans currently aggregates to approximately $266 million. As a condition to receipt of these Clean Water Grants and as a covenant in the SRF loan agreements, the City must implement and maintain an approved wastewater user charge system that meets certain requirements. Currently, the Wastewater System's retail user charge system has not been approved by the State and has been found not to be in compliance with these requirements. The City has received two letters, one dated November 26, 2003 and another dated March 17, 2004, from the State Water Resources Control Board (the "SWRCB"), which, collectively, require the City to provide the SWRCB with evidence of City Council approval of a SWRCB-approved retail user charge system by July 1, 2004, and to implement such a system for Fiscal Year 2004-2005. If the City does not bring the Wastewater System's user charge system into compliance, the City could be forced to repay the aggregate amount of the Clean Water Grants and repay the outstanding principal amount of the SRF loans.

The possibility that the City may fail to adopt a SWRCB-approved sewer rate structure by July 1, 2004 and may, as a result, be forced to return $266 million in grant and loan funds which have already been spent, represents a major risk to the investment community. This risk, which was disclosed as a part of the City's annual financial market disclosures in March of 2004, adversely affects the credit quality of the Sewer Enterprise Fund, which is the source for repayment of bond debt used for wastewater system capital construction.

DISCUSSION

Revisions To Sewer Fees And Charges Pursuant To Requirements of the SWRCB

As a condition of eligibility to receive and retain both federal and state Clean Water Grants and State of California SRF loans, the City must implement and maintain an approved user charge system that conforms to the requirements of Clean Water Grant regulations for the useful life of the grant funded facilities and until such time as all SRF loans are discharged. These regulations generally require that, to receive approval, user charge systems must recover all costs of

operation and maintenance from system users on a basis proportionate to use. That is, users must pay for their use of the Wastewater System based on their relative contributions to overall system handling and processing requirements, measured in terms of factors such as flow volumes and solids and organics loadings. The SWRCB administers these regulations and must approve the Wastewater System's user charge system. Failure to implement and maintain an approved user charge system may result in a demand that Clean Water Grant monies received be repaid, accelerated repayment of SRF loans including the imposition of market-rate interest, and ineligibility for further participation in the program.

Currently, the City's municipal user charge system does not include any specific cost recovery component for organics. Pursuant to the general regulations and permits under which the Wastewater System operates, the Wastewater System must ensure that the wastewater discharged into the Pacific Ocean does not contain organic materials in excess of a certain level, which requires the Wastewater System to incur certain costs to comply with that limit. Since certain commercial and industrial customers of the Wastewater System discharge wastewater with relatively high concentrations of organic matter, it is the view of the SWRCB that, absent an organics component in the billing structure, residential customers and other commercial and industrial customers of the Wastewater System discharging lower levels of organics and other materials pay a disproportionately higher percentage of the overall costs of the Wastewater System than is appropriate.

Pursuant to the requirements of the SWRCB as outlined in its letter of March 17, 2004 (See Attachment C), the City must adopt a compliant, proportionate-to-use user charge system by July 1, 2004. In prior recognition of that obligation, the City initiated a cost-of-service study to develop a wastewater user charge system that would be acceptable to the SWRCB. In October 2003, the consulting engineering firm of Black & Veatch completed an update of a cost-of-service study (the "Study") initially prepared in 2001. Such studies are the vehicle by which system-wide costs are identified, allocated and apportioned to user classes and individual system users consistent with SWRCB approval guidelines. The Study, which detailed the proposed compliant wastewater user charge system, was transmitted by the Mayor and City Council to the City's Public Utilities Advisory Committee (the "PUAC") for review, public input and recommendations on October 20, 2003.

The Study contained several suggestions, including: 1.) that the City employ the SWRCB-approved functional-design cost allocation methodology, including the chemical oxygen demand (COD) organics parameter, to allocate costs to all City of San Diego user classes; 2.) that the City establish a uniform fixed monthly fee for all user classes; and 3.) that the City increase the single family residential billing cap from 10 to 14 HCF of winter months water use since this class generates higher flow volumes than previously assumed. It was determined that incorporating the COD parameter would result in a cost shift among some user classes. Specifically, costs would shift from the single family residential user class to commercial/industrial user classes which discharge larger amounts of organic material to the wastewater system.

Listed in Table 2 below, are the current and revised fees and charges:

TABLE 2: SEWER FEES AND CHARGES

	CURRENT	REVISED
Single-Family Residential		
Base Fee	$10.90	$10.53
Rate per HCF *	$3.625	$2.563
Multi-Family Residential		
Base Fee	$0.63	$10.53
Rate per HCF	$3.366	$3.461
Commercial/Industrial**		
Base Fee	$0.63	$10.53
Unit Rates		
Flow ($/HCF)	$2.61	$2.5613
TSS ($/lb)	$.54	$0.3994
COD ($/lb)	n/a	$0.1436

** 1 HCF (Hundred Cubic Feet) = 748 gallons. These rates may change due to the Winter Months Water Usage Adjustment effective July 1, 2004.*
*** Commercial/Industrial customers with average flow < 25,000 gallons per day would be billed via a rate matrix based upon the unit rates shown.*

The actual implementation of the revised fees and charges would occur in October 2004.

Future Cost Of Service Studies – Frequency and Rationale

Wastewater Cost of Service studies should be conducted periodically or when there are physical changes in the system or its operation that materially impact the allocation of operation, maintenance and replacement costs between each utility's applicable cost centers. For example, the City is currently conducting a pilot test of a new secondary treatment technology (biological aerated filtration) at the Point Loma Wastewater Treatment Facility which should be completed in approximately one year. If the results of this test are positive, leading to a change in the treatment process at Point Loma, the Wastewater Cost of Service study should be updated to reflect the changes in costs and their allocation to the flow, total suspended solids and chemical oxygen demand parameters that would result.

CONCLUSION

Adoption of the revisions to the existing sewer fees and charges will bring the City into full compliance with the ratesetting requirements of the SWRCB. This action would also eliminate the significant financial risk of possibly having to repay $266 million in grants and low interest loans, which will improve the credit quality of the Sewer Enterprise Fund.

ALTERNATIVE

Do not approve the requested actions. This is not recommended due to the possibility that the City could be forced to repay the aggregate amount of the Clean Water Grants and the outstanding principal amount of the SRF loans. Moreover, failure to implement a system of wastewater fees and charges that is acceptable to the SWRCB will result in the City having to continue to disclose to the bond market that $266 million in grants and loans are at risk until the matter is resolved.

Respectfully submitted,

RICHARD MENDES
Deputy City Manager

KAHLIE/CR

Attachments: A. Summary of Revised Sewer Rates
B. Public Utilities Advisory Commission Resolution Number PUAC-2004-04
C. State Water Resources Control Board letter dated March 17, 2004

(R-2004-1293 REV.)

RESOLUTION NUMBER R-299322

ADOPTED ON JUNE 8, 2004

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO IMPLEMENT A NEW RATE STRUCTURE FOR SEWER SERVICE FEES AND INCREASE SEWER SERVICE FEES AS APPROPRIATE IN ACCORDANCE WITH THE NEW RATE STRUCTURE

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service fees [Fees] may be established by resolution of the City Council upon the giving of ten days notice of intention to establish such charges; and

WHEREAS, article XIII D, section 6 of the California Constitution provides that prior to imposing increases in property-related fees, a public agency shall provide written notice by mail of the proposed fee increase to the record owner of each parcel upon which it is proposed for imposition; and

WHEREAS, such notice shall be provided to the affected property owners not less than forty-five days prior to the public hearing on the proposed revisions to property-related fees; and

WHEREAS, the City proposes to change the rate structure [New Rate Structure] for its Fees; and

WHEREAS, the New Rate Structure will result in increases in the Fees for certain sewer customers; and

WHEREAS, the City posted a notice of its intention to adopt the New Rate Structure and to increase its Fees for certain sewer customers in compliance with San Diego Municipal Code section 64.0404; and

WHEREAS, during the week of April 19, 2004, in accordance with the provisions of article XIII D, section 6 of the California Constitution, the City provided written notice by mail of the New Rate Structure to affected property owners; and

WHEREAS, on October 16, 2001, the City Council adopted Resolution Number R-295587, authorizing the City Manager to increase the Fees by 7.5% for five fiscal years, effective March 1, 2002, March 1, 2003, March 1, 2004, and March 1, 2005 [Prior Rate Increases]; and

WHEREAS, the Prior Rate Increases will be applicable to the New Rate Structure; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego that the City Council finds and determines that the foregoing Recitals are true and correct.

BE IT FURTHER RESOLVED, that the City Manager is authorized and directed to implement, effective October 1, 2004, the New Rate Structure as set forth in Exhibit A, attached hereto, and by this reference incorporated herein, and increase Fees as appropriate in accordance with the New Rate Structure.

BE IT FURTHER RESOLVED, that the City Manager is directed to investigate and evaluate programs to improve the efficiency of the sewage system by funding incentives to

significant sewage dischargers of Chemical Oxygen Demand [COD] to reduce the COD load on the system and to report back to the City Council no later than September 30, 2004.

APPROVED: CASEY GWINN, City Attorney

By _____
Kelly J. Salt
Deputy City Attorney

KJS:pev
05/25/04
06/14/04 Rev.
Or.Dept: Wtr. & MWWD
R-2004-1293

Footnote No. 90

State Water Resources Control Board

Division of Administrative Services

1001 I Street • Sacramento, California 95814 • (916) 341-5082 • FAX (916) 341-5060
Mailing Address: P.O. Box 100 • Sacramento, California 95812-0100
Internet Address: http://www.swrcb.ca.gov

Winston H. Hickox
Secretary for Environmental Protection

MWWDPROG
2003002770

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at http://www.swrcb.ca.gov.

FEB 26 2003

MAR 12 2003

Ernie Anderson

GENERAL SERVICES DEPARTMENT
MAR 06 2003
RECEIVED

City of San Diego
Attn: George I. Loveland
City Manager
9192 Topaz Way
San Diego, CA 92123

RECEIVED
MAR 10 2003

RE: AGREEMENT NO. **01-809-550-0**

Enclosed for your records is a fully executed copy of the above referenced agreement. Please take a few minutes to thoroughly read through it to be sure you understand all the terms and conditions.

Request for payment of services completed outside the term of this contract WILL NOT BE PAID. It is imperative that you notify your State Water Resources Control Board Contract Manager immediately, in writing, of any changes or delays that may impact the scope of work or term of this agreement.

If you have any questions about this agreement, please contact the State Water Resources Control Board Manager responsible for this agreement.

Contracts Section
Division of Administrative Services

Enclosure(s)

SWRCB (Rev. 1/99)

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD. 213 (Rev 09/01)

AGREEMENT NUMBER 01-809-550-0
LOAN NUMBER: C-06-4703-110

1. This Agreement is entered into between the State Agency and the Contractor named below:
STATE AGENCY'S NAME
State Water Resources Control Board
CONTRACTOR'S NAME
City of San Diego

2. The term of this Agreement is: **June 14, 2001 through June 13, 2021**

3. The maximum amount of this Agreement is: **$ 12,111,202.00 - Twelve million one hundred eleven thousand two hundred two dollars.**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope Of Work	8 page(s)
Exhibit B – Budget Detail And Payment Provisions	5 page(s)
Exhibit C – General Terms And Conditions	4 page(s)
Exhibit D – Local Match Installment Sale Agreement Special Conditions	1 page(s)
Exhibit E – Approval To Award Letter	4 page(s)
Exhibit F – Approved Plans And Specifications	1 page(s)
Exhibit G – Plans And Specifications Approval Letter	7 page(s)
Exhibit H – Facilities Plan Approval Letter	6 page(s)
Exhibit I – SRF Loan Preliminary Installment Payment Schedule	2 page(s)
Exhibit J – Schedule Of System Obligations	14 page(s)
Exhibit K – Tax Covenants	5 page(s)
Exhibit L – N/A	0 page(s)
Exhibit M – SWRCB Special Terms And Condtions	5 page(s)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)
City of San Diego
BY (Authorized Signature)
DATE SIGNED (Do not type) 2.3.03
PRINTED NAME AND TITLE OF PERSON SIGNING
George I. Loveland, Senior Deputy City Manager
ADDRESS
9192 Topaz Way
San Diego, CA 92123

STATE OF CALIFORNIA

AGENCY NAME
State Water Resources Control Board
BY (Authorized Signature)
DATE SIGNED (Do not type) 2/14/03
PRINTED NAME AND TITLE OF PERSON SIGNING
Bill Brown, Chief, Division of Administrative Services
ADDRESS
1001 I Street, Sacramento, CA 95814

California Department of General Services Use Only

APPROVED
FEB 26 2003
DEPT OF GENERAL SERVICES

☐ Exempt per:

EXHIBIT A – SCOPE OF WORK

SECTION 1. PROJECT DESCRIPTION.

The Project, commonly known as the **San Diego Environmental Lab Project** generally consists of **the construction of a two-story, approximately 37,000 square foot building on a seven-acre site and a pier/boat dock within the adjacent boat channel**, as more particularly described in the Local Match financing application of the Agency and the approved plans and specifications (see Exhibits F and G) for the Project.

SECTION 2. OFFICIAL REPRESENTATIVES

(1) The SWRCB Local Match Assistance Coordinator shall be the Division Chief of the Division of Clean Water Programs.

(2) The SWRCB Local Match Assistance Coordinator shall be the SWRCB's representative for administration of the Agreement and shall have authority to make determinations and findings with respect to any controversy arising under or in connection with interpretation of the Agreement.

(3) The Agency's Authorized Representative shall be **Mr. George I. Loveland, Senior Deputy City Manager** or his/her designee, who shall administer the Agreement and who shall have full authority to act on behalf of the Agency, including authority to execute disbursement requests. All communications given to the Agency representative shall be as binding as if given to the Agency.

(4) Either party may change its Official Representative upon written notice to the other party.

SECTION 3. GENERAL AGENCY COMMITMENTS.

The Agency accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Agency in its application, accompanying documents, and communications filed in support of its request for financing assistance.

SECTION 4. STATE MATCH ACCOUNT.

The Agency will establish a local state match account. The Agency will deposit sufficient funds in the account to make payments to its contractor(s) in an amount equal to the percentage of federal contributions required by the Federal Clean Water Act to be matched with state funds (currently 16.667%) and will include the required state match amount in all payments made to the contractor(s).

SECTION 5. COMPLETION OF PROJECT.

The Agency agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Project plans and specifications approved by the SWRCB.

SECTION 6. PROJECT CERTIFICATION.

One year after initiation of operations, the Agency shall certify to the SWRCB whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Agency cannot certify that the Project meets such specifications and limitations at that time, the Agency will, at its own expense and in a timely manner, expeditiously make all needed corrections and perform all additional work necessary to allow affirmative certification for the Project.

EXHIBIT A – SCOPE OF WORK

Failure to submit an affirmative certification within 15 months, or a corrective action report that meets the above requirements and is satisfactory to the Division within 15 months, of the Project Completion date will result in an interest penalty of the lesser of 12% per annum or the highest rate permitted under law being assessed on the outstanding balance due.

SECTION 7. FEDERAL OR STATE ASSISTANCE.

If federal or state funding for Project Costs is made available to the Agency from sources other than the CWSRF, the Agency may retain such funding up to an amount which equals the Agency's local share of Project Costs. To the extent allowed by requirements of other funding sources, any funding received in excess of the Agency's local share, not to exceed the total amount of the CWSRF financing assistance, shall be remitted to the SWRCB to be applied to Installment Payments due hereunder.

SECTION 8. REVENUE PROGRAM.

The Agency agrees to prepare and provide an acceptable final Revenue Program to the Division at the time of 90 percent disbursement of Project Costs. Further disbursements may be withheld until an acceptable final Revenue Program is submitted. The Agency further agrees to periodically review and modify the Revenue Program as necessary to assure reasonable adequacy of the Revenue Program. The final Revenue Program and all modifications thereof shall be consistent with applicable guidelines and shall be to the reasonable satisfaction of the Division. The Division may review the Agency's records to assure compliance with the approved Revenue Program at any time during the useful life of the Project.

SECTION 9. USER CHARGE SYSTEM.

The Agency shall adopt and maintain in effect a user charge system which at all times complies with the requirements of Section 204(b)(1) of the federal Clean Water Act and applicable federal and state rules, regulations and guidelines.

SECTION 10. OPERATION AND MAINTENANCE; INSURANCE.

The Agency agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable state and federal laws, rules and regulations.

The Agency will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Agency of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Agency shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable

the Agency to pay all remaining unpaid principal portions of the Installment Payments, the Agency shall provide additional funds to restore or replace the damaged portions of the System.

SECTION 11. USEFUL LIFE OF PROJECT.

For purposes of this Agreement, the parties agree that the useful life of the Project is at least 20 years from and after Project Completion.

SECTION 12. AWARD OF CONSTRUCTION CONTRACTS; NOTIFICATION OF AWARD AND INITIATION OF CONSTRUCTION.

(A) The Agency agrees to award the prime construction contract within 180 days (six months) after issuance of the Agreement. An extension may be granted by the Division.

(B) The Agency agrees to promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Agency has established November 7, 2003 as the estimated Completion of Construction date. The Agency agrees to make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by this date. Such date shall be binding upon the Agency unless modified in writing by the Division upon a showing of good cause by the Agency. Extension of the Completion of Construction date by the Division shall not be unreasonably withheld.

SECTION 13. CONSTRUCTION ACTIVITIES; NOTIFICATIONS; PROTECTION OF ARCHEOLOGICAL AND HISTORICAL RESOURCES.

(A) The Agency agrees to promptly notify the Division in writing of:

(1) Any substantial change in scope of the Project. The Agency agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;

(2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of 30 days or more;

(3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of 90 days or more beyond the estimated date of Completion of Construction previously provided to the Division;

(4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Agency agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Agency agrees to implement appropriate actions as directed by the Division; and

(5) Completion of Construction of the Project, and actual Project Completion.

EXHIBIT A – SCOPE OF WORK

SECTION 14. PROJECT ACCESS.

The Agency agrees to insure that the SWRCB, or any authorized representative thereof, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation.

SECTION 15. PROJECT COMPLETION; INITIATION OF OPERATIONS.

Upon Completion of Construction of the Project, the Agency agrees to expeditiously initiate Project operations. The Agency has established November 7, 2003 as the estimated Project Completion date. The Agency agrees to make all reasonable efforts to meet the date so established. Such date shall be binding upon the Agency unless modified in writing by the Division upon a showing of good cause by the Agency. Extension of the Project Completion date by the Division shall not be unreasonably withheld.

SECTION 16. WASTEWATER CAPITAL RESERVE FUND.

The Agency agrees to establish and maintain a Wastewater Capital Reserve Fund (WCRF) for expansion, major repair, or replacement of the wastewater facilities and to maintain the WCRF for the term of the Agreement. The WCRF shall be maintained in compliance with the "Policy For Implementing The State Revolving Fund For Construction Of Wastewater Treatment Facilities" in effect at the time the Agreement is signed by the Authorized Representative of the Agency. The Agency agrees to submit a report on WCRF activities and status five (5) years after the date of the final revenue program approval by the Division. Updated WCRF reports will be submitted every five (5) years thereafter until all Installment Payments and Additional Payments hereunder has been fully discharged. Thereafter, the WCRF will no longer be subject to the requirements of this Agreement or the above referenced policy. Certification by legal counsel of unused bonding capability for the wastewater enterprise may be used to offset required cash deposits to the WCRF.

SECTION 17. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT.

The Agency agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all or any portion of all remaining Local Match funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.

SECTION 18. REPORTS.

The Agency agrees to expeditiously provide, during construction of the Project and thereafter during the useful life of the Project, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the CWSRF Program or to fulfill any reporting requirements of the federal government.

SECTION 19. RECORDS.

(A) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Agency agrees to:

(1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;

(2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;

(3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;

(4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;

(5) Establish a Local State Match account prior to issuance of the Local Match Project Funds, from which the state match portion of the project shall be paid. The Agency must deposit sufficient funds in the account as necessary to make payments to the contractor.

(6) Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and

(7) If Force Account is used by the Agency for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs may be paid with prior written approval by the Division of the Agency's indirect cost proposal.

(B) Notwithstanding Section 4 of Exhibit C, the Agency agrees to require Project contractors and subcontractors to maintain books, records, and other material relative to the Project in accordance with generally accepted accounting principles, and to require such contractors and subcontractors to retain such books, records, and other material for a minimum of thirty-six years from the date of Project Completion.

The Agency further agrees to require that such books, records, and other material shall be subject at all reasonable times to inspection, copying, and audit by the SWRCB and by the U.S. Environmental Protection Agency, or any authorized representatives thereof.

(C) Notwithstanding Section 4 of Exhibit C, the Agency agrees to retain its Project records for a minimum of thirty-six years from the date of Project Completion, and for such longer period as may be required for the state to fulfill federal reporting requirements under federal tax statutes and regulations. All Agency records relative to the Project shall be subject at all reasonable times to inspection, copying and audit by the SWRCB and the U.S. Environmental Protection Agency, or any authorized representatives thereof.

(D) The Agency agrees to furnish the SWRCB with copies of cancelled checks paid to its contractors at least each quarter documenting payment of the State match amount.

SECTION 20. <u>FINAL PROJECT REPORTS; AUDIT</u>.

(A) Within 120 days after Project Completion, the Agency agrees to provide to the Division a final cost summary report on the Project. The summary shall include at a minimum, a statement of:

EXHIBIT A – SCOPE OF WORK

(1) Total Project Costs;

(2) Total Project Costs which are eligible for Local Match assistance under this Agreement;

(3) The total amount of assistance funds received;

(4) The amount of interest earned, if any, on Local Match funds before disbursement on account of incurred Project costs. If no interest has been earned, this fact shall be expressly stated.

(5) The report shall be accompanied by such other financial information as may be reasonably required by the Division to verify Agency entitlement to Local Match assistance, to assure program integrity of the CWSRF Program, and to comply with any federal requirements. The report shall be certified as correct by a duly Authorized Representative of the Agency.

(B) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a Certified Public Accountant independent of the Agency and at the cost of the Agency. The audit shall be in the form required by the Division.

SECTION 21. NO OBLIGATION OF THE STATE.

Any obligation of the SWRCB herein contained shall not be an obligation, debt or liability of the State and any such obligation shall be payable solely out of the moneys in the CWSRF made available pursuant to this Agreement.

SECTION 22. DEFINITIONS.

"Additional Payments" means the Additional Payments described in **Exhibit B** Section **2.3(C)** of this Agreement.

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the Mayor of a City, the Chairperson of the County Board of Supervisors, the Chairperson of the Board of Directors of the Agency, or another duly appointed representative. For all authorized representatives, a certified original copy of the authorizing resolution that designates the authorized representative, by title, must accompany any contract, the first payment request, and any other documents or requests required or allowed under this Agreement.

"Bank" means the California Infrastructure and Economic Development Bank, an entity within the California Technology, Trade and Commerce Agency, a State agency organized and existing under the laws of the State of California.

"Bonds" mean any series of bonds issued by the Bank all or a portion of the proceeds of which may be applied to fund the Project in whole or in part or that are secured in whole or in part by Installment Payments paid hereunder.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

EXHIBIT A – SCOPE OF WORK

"Completion of Construction" means the date, as determined by the Division after consultation with the Agency, that the work of building and erection of the Project is substantially complete.

"CWSRF" means Clean Water State Revolving Fund.

"Division" means the Division of Clean Water Programs of the SWRCB, or any other segment of the SWRCB authorized to administer the CWSRF.

"Fiscal Year" means the period of twelve months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the Agency as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Agency's own employees or equipment for construction of the Project.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Installment Payments" means Installment Payments due and payable by the Agency to the Board under this Agreement to repay the Project Costs, the amounts of which are set forth as **Exhibit I** hereto.

"Net Revenues" means, for any Fiscal Year, so long as there may be outstanding System Obligations, as such term is defined under the authorizing instruments for such System Obligations, and thereafter all Revenues received by the Agency less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation owed by the Agency to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, to be used to fund the Project as specified in the Project Description attached hereto as **Exhibits F and G.**

"Operations and Maintenance Costs" means, so long as outstanding System Obligations are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Agency for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Agency that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

"Pledged Revenues" mean and include special assessments, general taxes, general obligation bonds, revenue bonds, user charges, or other sources of income which are consistent with federal requirements.

"Policy" means the Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," adopted on **June 18, 1998**, as amended.

"Project Completion" means the date, as determined by the Division after consultation with the Agency, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Agency which are eligible for financial assistance from the CWSRF under the Statute, which are allowable costs as defined under the Policy and which are

reasonable, necessary and allocable by the Agency to the Project under generally accepted accounting principles plus capitalized interest.

"Project Funds" mean the proceeds provided to the Agency by the SWRCB from the CWSRF for the purposes set forth in this Agreement.

"Revenue Program" means a system of charges, fees, or other means of income production adopted by the Agency which provides for recovery of appropriate capital costs of the Project, generates adequate income to reasonably assure repayment of the Local Match Obligation under this Agreement, generates adequate income to provide for reasonable operation and maintenance of the Project, and provides adequate income for reasonable future expansion and improvement of the Project.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Agency from the ownership or operation of the System, determined in accordance with generally accepted accounting principles, including all rates, fees and charges (including connection fees and charges) as received by the Agency for the services of the System, and all other income and revenue howsoever derived by the Agency from the ownership or operation of the System or arising from the System, and also including all income from the deposit or investment of any money in the Enterprise Fund established and maintained by the SWRCB or any rate stabilization fund, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"System" means all wastewater collection, transport, treatment, storage and disposal facilities, including land and easements thereof, owned by the Agency, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Agency and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

"System Obligations" means all senior, parity and subordinate obligations of the Agency payable from Revenues as identified as of the date of this Agreement in **Exhibit J** and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations

Footnote No. 91

REVENUE PROGRAM GUIDELINES

(Appendix G)

March 1998 EDITION

from the

POLICY FOR IMPLEMENTING THE STATE REVOLVING FUND FOR CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS

REVENUE PROGRAM GUIDELINES
(March 1998 Revision)

INTRODUCTION

The Revenue Program Guidelines (Guidelines) are intended to provide assistance to all cities, counties, special districts and public agencies in developing, implementing, and maintaining revenue programs and implementing ordinances to comply with Section 204(b)(1) of the Clean Water Act, Federal and State Regulations, and Policies of the State Water Resources Control Board (SWRCB). In these Guidelines all cities, counties, special districts, and public agencies are referred to by the term "municipalities". These Guidelines apply to all recipients of State Revolving Fund (SRF) loans. Some municipalities may desire to deviate from specific provisions. Deviations should be discussed with the revenue program specialist. His phone number is (916) 227-4489.

The revenue program specialist of the Division of Clean Water Programs (Division) is available to answer inquiries relating to the preparation of revenue programs, these Guidelines, and implementing ordinances.

SECTION 1 - GENERAL

Section 1-1 - General Requirements

A. **Revenue program**

The revenue program is a formally documented determination of a user charge system developed by the municipality. It is designed to provide a source of revenue for operation, maintenance, and replacement (O. M. & R.) costs of the wastewater system that satisfies Federal and State requirements. In addition, debt service and revenue for establishing a capital reserve fund and an operating reserve fund may be collected by the system of charges based on actual use, or, if approved, by ad valorem taxes.

B. **System of service charges**

A system of service charges is developed first by estimating the municipality's annual revenue requirements for the total wastewater system O. M. & R., including those portions which were not grant or loan funded. Rates are then set based on the identification of the users and their respective contribution to the wastewater loading of the treatment works. This process is described in detail in these Guidelines.

C. **Revenue program submittals**

Revenue programs must be submitted to the Division by the municipality. Programs submitted by a consultant will not be reviewed unless accompanied by a cover letter from the municipality. All correspondence must include the following information and be signed by the authorized representative:

1. Municipality's name, address and phone number;
2. Loan number(s); and
3. Purpose of revenue program (draft, final or update).

D. **Facilities plan submittals**

A draft (proposed) revenue program and a draft of an ordinance or resolution dedicating a source of funds for repayment of the SRF loan (see Section 4 on Page G-11 of these Guidelines) must be submitted to the Division as part of the facilities plan during the planning process. The draft revenue program will be reviewed by the Division and the municipality will be informed of any deficiency in the proposed user charge system. The draft revenue program must be approved by the Division prior to Division approval of the facilities plan. The final ordinance or resolution dedicating a source of funds for repayment of the SRF loan must be adopted by the municipality before issuance of a loan contract.

E. **Final submittal requirements**

A final revenue program and adopted sewer use ordinance (see Section 3 on Page G - 11 of these Guidelines), must be submitted to, and approved by, the Division prior to pay out of funds beyond 90 percent of the loan amount. The sewer use ordinance must be enforced upon completion of construction.

F. **Rate ordinance or resolution**

A draft of the proposed rate ordinance or resolution must be submitted with the final revenue program. An enacted rate ordinance or resolution must be submitted prior to completion of construction. The rates in the ordinance or resolution must agree with those shown in an approved revenue program. A new revenue program will be required when O. M. & R. costs change substantially. The enacted rate ordinance or resolution must be enforced upon completion of construction.

G. **Draft and final revenue program format**

The draft revenue program may be either separately bound and labeled or included with the facilities plan. If the revenue program is included with the facilities plan, it is the municipality's responsibility to insure that the Division's revenue program specialist receives a copy. The final revenue program must be separately bound and labeled. Only one copy needs to be submitted to the Division for approval.

H. **Revenue program forms**

The revenue program forms contained in these Guidelines, beginning on Page G - 29, if utilized, will facilitate Division review and approval. In most cases, the forms indicate all the information that is necessary for a revenue program.

I. **Pre-existing agreements**

The user charge system shall take precedence over any terms or conditions of agreements or contracts that the municipality may be party to that are inconsistent with the requirements of these Guidelines. (See also Section 1-4 B.4. on Page G - 6) If there are any pre-existing agreements or contracts that are inconsistent with the requirements of these Guidelines the municipality must notify the Division's revenue program specialist at the time a revenue program is submitted for review.

J. **Letter of intent**

A letter of intent executed by any industrial user which will contribute more than ten (10) percent of the treatment works design flow or design loading must be submitted with the draft revenue program. A sample letter of intent is provided on Page G - 18. Letters documenting commitments by industrial

users intending to increase flows or loadings or to locate in the municipality's service area in the future must also be submitted with the draft revenue program.

K. **Public notice requirement**

The charges developed in the revenue program and capital costs which are collected via a medium other than the user charge must be published in a newspaper of general circulation within the municipality's service area. The notice must substantially follow the format shown on Page G - 15.

Section 1-2 - Annual Revenue Requirements

A. **Operation and maintenance, including replacement (O. M. & R.)**

1. Municipalities need funds to pay the annual costs of O. M. & R. of the treatment works. These costs include the costs of labor, power, chemicals, supplies, laboratory control and monitoring, general administration, billing, and incidental items incurred during normal operation. Also included are those expenditures termed ordinary repairs necessary to keep the treatment works in proper operating condition, replacement (as defined below) and other administrative costs, such as overhead and accounting which are directly related to the O. M. & R. of the treatment works.

2. An estimate of O. M. & R. costs should be made by adjusting the municipality's latest operating cost data to reflect operational changes, wage escalation, and staffing changes. In the case of newly constructed facilities, estimated O. M. & R. costs must be listed in the facilities plan by the engineer.

B. **Replacement costs**

1. A separate line item for replacement must be shown in the calculation of the annual revenue requirements. Replacement costs include all expenditures required for a facility to operate for its design life. Replacement costs do not include the following capital costs:

   a. Major rehabilitations which may be needed as individual unit processes near the end of their useful life;
   b. Structural rehabilitations; or
   c. Facility expansions or upgrades to meet future user demands or upgrade treatment.

2. Replacement costs include such items as: pumps, motors, telemetry and electrical controls, air scrubbing equipment, chlorination and dechlorination equipment, vehicles, radios, etc.

3. Replacement costs should be based, at a minimum, on a five (5) year planning cycle. For example, assume that a municipality estimates it will have to replace $85,000 worth of equipment over the next five (5) years and it has $10,000 in the replacement account. The annual replacement cost to be included in the user charge would be:

$$\frac{\$85{,}000 - \$10{,}000}{5 \text{ years}} = \$15{,}000 \text{ per year}$$

   This cost must be recalculated each year.

4. The municipality may, in lieu of the five (5) year replacement plan, deposit an amount in the replacement fund equal to the sum of the straight line depreciation (based on current costs) of the assets (excluding structural facilities such as buildings, ponds, pipes, etc).

C. **Debt service**

1. Debt service is the annual sum of the principal and interest payments on proposed or outstanding obligations secured by bonds or loan contracts. A SRF loan received from the SWRCB must be repaid via a dedicated source of revenue (see Section 4 on Page G - 11 of these Guidelines). A separate account must be maintained within either the debt service fund or the enterprise fund for repayment of the SRF loan.

D. **Wastewater capital reserve fund**

1. Municipalities participating in the SRF program are required to establish a wastewater capital reserve fund (WCRF), prior to receiving a loan contract. The WCRF is required to help pay for future expansion, improvements, and rehabilitation. Payments to the WCRF usually appear as a separate line item within the annual budget. The Municipality must also give assurances that the WCRF will be maintained in accordance with the requirements of the SRF program Guidelines until the loan is fully discharged. Sample ordinance/resolution language is provided on Page G-15.

E. **Operating reserve fund (optional)**

1. Municipalities are encouraged to establish an operating reserve fund to insure the proper operation of the treatment works. This fund is intended to satisfy costs associated with unanticipated price increases, additional chemical usage, etc. It does not include costs for replacement of equipment. Wastewater agencies in California normally operate with reserves of between 10 and 50 percent of annual revenue requirements.

Section 1-3 - Identification Of Users

A. After the annual revenue requirements are determined, the users of the treatment works and their associated wastewater flows and loadings (BOD_5, SS, or other appropriate constituents) must be identified. Flows and loadings must be documented for the user groups listed below, in order that proportional costs can be calculated. All users of the treatment works must be included in the revenue program.

1. **Residential users** Individual cost allocations need not be made for various types of residential users. However, municipalities may wish to divide residential users into single family, multiple family, or mobile home subgroups to allow for more refined cost allocations.

2. **Commercial users** Because of great variability in wastewater flow rates, the commercial group should be divided into appropriate subgroups defined in the **Commercial User Strength Characteristics** table on Page G - 21 of these Guidelines. The strengths given on Page G - 21 need not be used if the municipality has supportable data relating to other specific loadings. Large commercial users discharging more than 25,000 gallons per day must have their costs allocated individually.

3. **Institutional users** Costs must be allocated to individual users or to user groups, such as public or private hospitals, convalescent homes, schools, colleges, correctional facilities, etc.

4. **Industrial users** Because of great variability in wastewater flow rates, the industrial group may need to be divided into appropriate subgroups. Industrial users contributing more than 25,000 gallons per day or using five (5) percent, or more, of plant design capacity must have costs allocated individually.

5. **Outside municipalities** Any outside municipality discharging to the treatment works must be listed as a separate user group.

6. **Septage** If septage is received by the treatment works, this category must be listed as a user group with the corresponding flows and loadings. The charges established for septage must be based on its contributing loadings. Generally, a 1,000 gallon dumping contains 45 lbs (5,400 mg/l) of BOD_5 and 100 lbs (12,000 mg/l) of SS. These loadings should be used for septage from residential septic tanks only. Other types of septage from commercial or industrial sources must be sampled at the discharger's expense to allow a proper charge and prevent unacceptable discharges.

Section 1-4 - Allocation Of Annual Revenue Requirements And Rate Determination

A. Rate determination

1. Allocation of annual costs is done in two steps. First, the cost is allocated among the treatment parameters (flow, BOD_5, SS, and other appropriate constituents) in proportion to the percentage of costs that these parameters represent. Second, these amounts are divided by either total annual plant loadings or total design loadings to produce unit costs for each parameter. When these unit costs are multiplied by the loadings or design quantities of each user, an annual rate in proportion to the user's demand on the system is established.

B. Policies affecting rate determination

1. **Users pay costs of O. M. & R.**

   The portion of the annual revenue requirements which constitute the cost of O. M. & R. of the treatment works must be recovered from users of the system by means of a user charge system based either on actual use or through a pre-approved ad valorem tax system. User charges must recover the cost of O. M. & R. from users based on their proportionate contribution to the total wastewater loading from all users. The total O. M. & R. budget may, however, be offset by income derived from the operation of the treatment works; such as sale of used equipment, sludge, sludge gas, residues, reclaimed wastewater, farm crops, power created by the effluent or other by-products. Investment income from assets of the wastewater enterprise is also considered operating income if the assets were originally funded with income generated from user charges.

2. **Low income discount allowed**

   Municipalities may (at their option) adopt reduced (less than proportionate share) rates for low income residential users. Low income users are defined as any user whose income is below the poverty rate established within the municipality's service area. These reduced service charges, if used, must be based on an economic consideration only. The discount may not be applied only to a subgroup under the poverty level (i.e., only to senior citizens).

3. **Rules for low income discount**

   If the municipality decides to adopt a low income discount rate the following rules apply:

   a. The discount rate selected will apply to all users who qualify for the discount;
   b. Eligibility for the discount must be verified at least annually; and
   c. All revenues which are lost because of the discount must be recovered from other users of the system through increased service charges. The provisions of Section 1-1 K. (Public Notice) of these Guidelines apply to the granting of discounted rates.

4. **Pre-existing agreements**

Any pre-existing agreements which levy O. M. & R. charges for more or less than the rates calculated through the revenue program based on actual (or estimated) use will not be allowed to continue, and the charges must be revised to reflect the approved rates. (refer to Section 1-1 I. on Page G - 2)

5. **Recovering non O. M. & R. costs**

a. The Division recommends that funds for the cost of debt service, capital improvements, etc. be collected with the O. M. & R. service charge in proportion to the cost of the service rendered. However, the municipality may charge for these other revenue requirements through service charges, ad valorem taxes, or standby charges or assessments. If they are collected through service charges, and the municipality does not wish to recover these other costs in proportion to system use, public notice describing the impacts of the proposed rate structure is required. An opportunity for public comment within a reasonable period of time prior to final adoption of the rate ordinance by the municipality must be given. Notice shall be given by direct mailing to all organizations and individuals who have previously requested such notice and to all users of the system who will be adversely affected by the change in rates.

b. The notice must substantially follow the format of the Public Notice Format on Page G - 26 of these Guidelines. The municipality may wish to include in the notice, a discussion of the facts which prompted the proposed rate ordinance, and the pros and cons of the enactment.

C. **Allocation of costs based on flow only**

1. Allocation of O. M. & R. costs based on flow only may be made if either one of the following conditions are met:

a. The municipality's service area (or the service area of a municipality participating in a regional system) contains less than 10,000 current population, no industrial users, and does not receive septage flows; or

b. The residential design flow exceeds 95 percent of total design flow of the treatment works and there are no industrial or septage flows.

D. **Allocation of costs based on ad valorem (A/V) taxes**

1. A municipality's user charge system based on ad valorem (A/V) taxes may be approved if:

a. On December 27, 1977, the municipality had in existence a system of dedicated A/V taxes which collected revenues to pay the cost of O. M. & R. of wastewater treatment works within its service area, and it has continued to use that system;

b. The A/V user charge system distributes the O. M. & R. costs for all treatment works within the municipality's service area to the residential and small non-residential user class (including, at the municipality's option, nonresidential, commercial and industrial users that are not required to have their costs allocated individually per Section 1-3 A.2 and A.4. of these Guidelines);

c. Each industrial and commercial user which discharges more than 25,000 gallons per day (or more than five (5) percent of the design flow) must pay its share of O. M. & R. costs of the treatment works based on charges for actual use; and

d. A system of surcharges and rebates is instituted to insure that all users (or user groups) pay their proportionate share of the O. M. & R. costs.

2. The user charge for tax exemption organizations may not be adjusted to recoup lost taxes (160 Cal Rptr 925; 100 CA 3d547).

E. **Allocation of costs of infiltration and inflow (I / I)**

1. The user charge system shall provide that costs of O. M. & R. for all infiltration and inflow (I / I) flows not directly attributable to users be distributed among all users based upon either of the following:

a. In the same manner that it distributes the costs for their actual use; or

b. Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;
(ii) Land area of the users;
(iii) Number of hookups or discharges of the users;
(iv) Property valuation of the users (if A/V taxes are used).

F. **Administrative costs**

1. Administrative costs may be included in the O. M. & R. cost allocation, or they may be separated and allocated on another equitable basis, such as number of accounts.

Section 1-5 - Implementation And Maintenance

A. **Implementing ordinances**

1. A municipality's user charge system, as described in the final revenue program, must be incorporated in one or more municipal legislative ordinances or other legally binding requirements.

2. If the treatment works accepts wastewater from other municipalities, the other municipalities receiving waste treatment services must also adopt user charge systems in accordance with these Guidelines.

B. **Accounting systems**

1. All special districts including county water, community service and public utility districts must use the uniform system of accounts prescribed for wastewater disposal districts under Title 2, Division 2, Chapter 2, Sections 1101.1 through 1103.4 of the California Administrative Code. Those municipalities not subject to the uniform system of accounts must establish accounting systems for wastewater treatment conveyance, treatment, and disposal which will provide essentially the same level of detail as the uniform system.

a. Wastewater activities will be accounted for in an enterprise fund. An enterprise fund is a fund established to account for operations; (a) that are financed and operated in a manner similar to private business enterprises - where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the

governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

2. The enterprise fund will consist of at least two revenue and three expense accounts as follows:

   a. **Revenue accounts**

      (i) **Service charge revenue** Only service charges, dedicated A/V taxes and income generated from the operation of the wastewater facility (see Section 1-4 B. 1. of these Guidelines) will be deposited to this account. Funds from this account may be used for any wastewater related activity.

      (ii) **Capital revenue** All other sources of revenue (i.e., connection fees, augmentation funds, standby charges, non-dedicated A/V, etc.) will be deposited in this account. Funds from this account may only be used for facility expansion, facility upgrade and major rehabilitation projects. O. M. & R. costs may **not** be funded from this account (see Section 1-2 B. of these Guidelines for discussion of replacement costs).

   b. **Expense accounts**

      (i) **Operation and maintenance** Designated for the specific purpose of defraying the operation and maintenance costs of wastewater conveyance, treatment, and disposal. These costs must be funded from the service charge revenue account.

      (ii) **Replacement** Designated for the specific purpose of ensuring that replacement funds are available to maintain the capacity and performance of the treatment works over its useful life. This fund does not include money set aside for unexpected price increases which should be accumulated in an operating reserve fund. Replacement costs must be funded from the service charge revenue account.

      (iii) **Capital expenditures** Designated for any other wastewater related activity not properly included in either the Operations and Maintenance Account or Replacement Account. Either of the above mentioned Revenue Accounts (see 2.a.(i) and 2.a.(ii) above) may be used to fund expenditures charged to this account.

C. **Temporary loaning of funds**

1. The aforementioned requirements do not preclude the loaning of funds from the wastewater enterprise accounts (including capital reserves) for other authorized uses provided the following conditions are met:

   a. It has been established that these funds will not be needed for wastewater activities for the period of the loan;

   b. The loan is recorded in the appropriate wastewater fund account with the loan period specifically shown;

   c. The fund borrowing the money repays the loan with at least as much interest as the money would have earned if the money had not been loaned; and

   d. There are no other regulations, bond covenants, etc. limiting the loaning of the funds.

D. **Requirements for review and approval**

1. Implementation and maintenance of an approved revenue program is required as a condition of every loan contract. Each municipality must maintain all records which are necessary to document compliance with appropriate State and Federal requirements.

2. The financial documents, audits, budgets, user charge system, etc. of the municipality's wastewater enterprise are subject to review by the staff of the SWRCB to insure compliance with these Guidelines during the life of the SRF loan.

3. The municipality shall review and revise its system of service charges and rate ordinances or resolutions as necessary to reflect actual funding needs of the treatment works.

4. Any time that rates are changed, a copy of the review work papers and rate ordinance or resolution modification, if any, shall be forwarded to the Division's revenue program specialist for review and approval.

SECTION 2 - SPECIAL CONSIDERATIONS

Section 2-1 - Regional Treatment Systems

A. When treatment works serving more than one municipality are consolidated into a regional system, the following requirements for institutional and financial arrangements apply:

1. **Institutional arrangement**

   Any number of institutional arrangements between agencies participating in a regional system are acceptable. Special districts or joint powers authorities may be formed or service agreements entered into which designate a municipality as "lead agency" to apply for and receive a loan. Regardless of which institutional arrangement is chosen, the user charge system outlined in the revenue program must cover all wastewater treatment services provided and each participating municipality must adopt its own user charge system and rate ordinance or resolution.

2. **Submission of a revenue program for a regional system**

   a. If the regional municipality is authorized to bill all of the individual users of the system, only one revenue program and rate ordinance or resolution is required.

   b. If the regional municipality bills a subscribing municipality, which in turn bills the individual users, separate revenue programs and rate ordinances or resolutions are required for the regional municipality and each subscribing municipality. The regional municipality's charges to a subscribing municipality must be based on actual use and include the fixed cost of reserved capacity if capacity is reserved for specific subscribing municipalities.

3. **Interagency agreements**

   All interagency agreements for wastewater services and/or charges must be submitted to the Division for review. These agreements should address the issue of how the costs of future plant expansions will be allocated.

Section 2-2 - Individual Systems

A. The user charge system requirements apply to SRF loan funded alternative wastewater treatment systems (including dual waterless/gray water systems), even if privately owned, which are neither connected to nor are part of any conventional treatment system.

Section 2-3 - Connection Fees

A. Normally, a portion of the capital costs of a project are recovered from future users through connection fees. If connection fees are not collected because anticipated growth does not occur, the capital costs of the plant must be recovered from the existing users. Because anticipated growth does not always occur, existing users should be informed of these potential costs before commitments are made to fund the project. Accordingly, for treatment works with more than 25 percent of the total treatment plant capacity reserved for future users, an analysis is required of the charges which would be assessed to existing users if anticipated growth does not occur. This analysis must be included in the proposed revenue program.

B. Connection fees may be used to recover debt service costs which would have been recovered on an annual basis, if the user had been connected when the treatment works began operation. This fee may not be used to recover excessive cost from future users of treatment works in order to reduce charges to current users. Connection fees may not be used to fund replacement costs.

Section 2-4 - Standby Charges

A. Standby charges may be used to recover debt service from potential users prior to connection, if service is available and the standby charge is proportionate to the available service. Standby charges shall not be charged to properties for which no capacity or insufficient capacity is available.

Section 2-5 - Minimum Charges

A. If a municipality charges flat rate for some users and a variable rate (such as water consumption), for others, a minimum charge may be established for the variable rate users to collect the fixed costs of providing service. This charge must not be more than the minimum charged to any user group which is charged a flat rate. For example, if apartments are charged a flat rate which is less than the single family rate, the minimum charge to customers paying on water consumption would be the rate charged to apartments, not single family residences. The same minimum charge must be applied to all user groups which have a minimum charge, unless it can be shown that fixed costs vary significantly.

SECTION 3 - SEWER USE ORDINANCE

A. A sewer use ordinance or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent of water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal. Refer to Pages G - 16 and G - 17 of these Guidelines.

SECTION 4 - DEDICATED SOURCE OF REVENUE

A. Section 603(d)(1)(C) of the Federal Clean Water Act Amendments require each loan recipient to establish one or more dedicated sources of revenue for repayment of the loan. A dedicated source can be a special assessment, general taxes, general obligation bonds, revenue bonds, user charges, or other sources.

B. Revenue will be considered dedicated when the municipality passes an ordinance or resolution committing a source of funds for repayment. The ordinance or resolution dedicating a source of funding for repayment of the loan must be adopted before issuance of the loan contract.

C. Ordinance or resolution language equivalent to the following would be acceptable:

1. The _(municipality)_ hereby dedicates the following source of revenue_(user charge, proceeds of revenue bonds, etc.)_ to repayment of any and all State Revolving Fund loans on Project No. C-06-_____ - __. This dedicated source of revenue shall remain in effect until such loan or loans are fully discharged unless modification or change of such dedication is approved in writing by the State Water Resources Control Board.

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DEFINITIONS

As used in these Guidelines, the following words and terms shall have the meaning as set forth below:

Ad Valorem Tax (A/V): A tax based upon the value of real property.

Applicant: A municipality that has (or will) applied for a SRF loan.

CAC: California Administrative Code.

Capital Costs: Costs of facility expansion, facility upgrades, major rehabilitation or construction or replacement to extend the useful life of the facility.

Combined Sewer: Sewage - storm or industrial - storm drain combination.

Commercial User: All retail stores, restaurants, office buildings, laundries, and other private business and service establishments, including churches and lodges.

Connection Fee: A fee paid by a new system user for the capital costs of capacity made available for its use.

Construction: The planning, designing, and construction of any treatment works.

Division: The Division of Clean Water Programs of the State Water Resources Control Board.

Financial Plan: A description of the proposed institutional arrangements that will be used to manage the project, and of the amount and sources of funds necessary to finance the municipality's share of the project cost and to provide for cash flow during the design and construction periods.

Future Capacity: Available treatment works capacity which is not needed to serve existing users.

Industrial User: Any nongovernmental nonresidential user of publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

a. Division A - Agricultural, Forestry, and Fishing;
b. Division B - Mining;
c. Division D - Manufacturing;
d. Division E - Transportation, Communications, Electric, Gas, and Sanitary; and
e. Division I - Services.

A user in the divisions listed may be excluded if it is determined that the user will introduce primarily segregated domestic waste or wastes from sanitary conveniences.

Infiltration: Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Inflow: Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

Municipality: Any political subdivision of the state such as a county, city, special district or public agency formed under the laws of the state.

O. M. & R.: Operation, maintenance and replacement.

Project: The scope of work for which assistance is awarded by a loan contract.

Rehabilitation: Extraordinary expenditures for obtaining and installing equipment, accessories, or appurtenances which extend the useful life and/or improve the capacity or efficiency of the treatment works as originally designed. Rehabilitation costs are considered capital outlays.

Replacement: Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

Revenue Program: A formal documentation of charges designed to provide revenues for O. M. & R., and local debt service for treatment works, and which demonstrates compliance with SRF policies on user charges.

Service Charge: A charge levied on a user of the treatment works which includes a user charge to recover the costs of O. M. & R. and which may include a charge for capital reserve and debt service.

Treatment Works: Any devices and systems used in collection, transport, storage, treatment, disposal, recycling, and reclamation of municipal sewage or industrial wastes of liquid nature, or necessary to recycle or reuse water at the most economical cost over the useful life of such works.

User: A recipient of wastewater collection and/or treatment services as described in the definition of "Treatment Works".

User Charge: A charge levied on users of a treatment works for the cost of O. M. & R.

RESOLUTION NO. _____

RESOLUTION OF THE _____ OF THE _____ ESTABLISHING A WASTEWATER CAPITAL RESERVE FUND IN ACCORDANCE WITH THE STATE WATER RESOURCES CONTROL BOARD'S REQUIREMENTS OF THE STATE REVOLVING FUND LOAN PROGRAM

WHEREAS, the _____ ***of the*** _____ authorized the _____ manager to apply for a State Revolving Fund (SRF) loan to fund all or a portion of the cost of expansion and improvement of the wastewater treatment facilities; and

WHEREAS, the State Water Resources Control Board requires, as a condition of approval of the loan, the establishment of a Wastewater Capital Reserve Fund for future expansion, major repair or replacement costs:

NOW THEREFORE BE IT RESOLVED by the _____ of the _____ that:

1. A dedicated Wastewater Capital Reserve Fund shall be created, and,
2. Said Wastewater Capital Reserve Fund shall be administered, by the _____, as required by the "Policy For Implementing The State Revolving Fund For Construction Of Wastewater Treatment Facilities" adopted by the State Water Resources Control Board on June 18, 1998.

The foregoing resolution was adopted by the _____ of the _____ at its meeting held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST;

_____
Name
Title

APPROVED AS TO FORM:

_____
Name
Title

SATISFACTORY EVIDENCE OF COMPLIANCE
SEWER USE ORDINANCE

I,____(Name)____ certify, as duly authorized representative of __(municipality)__, that the (municipality)__ will have, in each jurisdiction served by the treatment works, an enacted sewer use ordinance or other legally binding requirement which will:

1. Prohibit any new connections from inflow sources to the sanitary sewer portions of the sewer system;

2. Require new sewers and connections to the sewer system to be properly designed and constructed; and

3. Prohibit the introduction into the treatment works of any toxics or other pollutants in amounts or concentrations that endanger public safely and physical integrity of the treatment works; or cause violation of effluent or water quality limitation; or preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

This ordinance will be enacted prior to ninety percent (90%) of construction and enforced upon completion of construction.

Date____(typed)_____ Name__(signature)_____

Telephone_____ Title_____

SAMPLE PARAGRAPHS TO SATISFY THE SEWER USE ORDINANCE REQUIREMENTS

1. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system.

   Example: Prohibited Waste Discharges

   > No person shall discharge or cause to be discharged any rainwater, storm water, groundwater, street drainage, subsurface drainage, yard drainage, including evaporative type air cooler discharge water, to any public or private sewer which directly or indirectly connects to the wastewater treatment works of the (municipality).

2. The ordinance shall insure that new sewers and connections to the sewer system are properly designed and constructed.

   Example: Construction Standards

   > Plans for sewer construction shall meet all design requirements of the public corporation having area jurisdiction and shall also meet the design requirements as established from time to time by the Engineer;
   >
   > and
   >
   > Inspection of all sewer construction shall be made by personnel of the (municipality) in the manner described in the following sections:

3. The ordinance shall prohibit the introduction of toxics and certain pollutants.

   Example: Prohibited Discharges

   > No person shall discharge or cause to be discharged to any public or private sewer which directly or indirectly connects to the (municipality's) wastewater treatment works any toxic or other waste, if in the opinion of the (manager) such wastes may have an adverse or harmful effect on sewers, maintenance personnel, wastewater treatment plant personnel or equipment, treatment plant effluent quality, public or private property, or may otherwise endanger the public, the local environment or create a public nuisance. The (manager) in determining the acceptability of specific wastes, shall consider the nature of the waste and the adequacy and nature of the collection, treatment and disposal system available to accept the waste.

GOURMET SOUP COMPANY

Administration Building, Suite 9
Franklin, CA 98765-4321

Mr. Craig Hagen
Board of Directors
Greater Franklin Sanitary District
Franklin, CA 98765

Dear Mr. Hagen:

LETTER OF INTENT, ALLOCATED COSTS OF WASTEWATER TREATMENT

It is the intent of the Gourmet Soup Company (Company) to utilize the wastewater treatment facilities of the Greater Franklin Sanitary District (District) to treat approximately 100,000 gallons per day of process wastewater from our facility. This wastewater is expected to have an average strength of 1,200 mg/l of BOD_5 and 3,000 mg/l of SS.

It is understood by the Company that the wastewater treatment facilities were funded, at least in part, by a loan from the State of California. It is further understood that as a condition of this loan, the Company must pay to the District the full cost of operation, maintenance and replacement costs attributable to treating the Company's wastewater.

It is the Company's understanding that if there is a substantial change in the strength, volume, or delivery flow rate characteristics of the waste introduced into the treatment works by the Company, the charges will be adjusted accordingly, and that if there is an expansion or upgrading of the treatment works, charges to the Company will be adjusted accordingly.

Although this letter represents a good faith estimate of period of use and capacity needed by the Company, it is not to be construed as binding the Company to continue discharging any quantity or quality of wastewater to the District's treatment works, to pay for capacity of treatment that it does not use, or to use the facilities for any definite length of time. The information given is provided only to assist the District in sizing the treatment works and to evidence awareness by the Company that it will be required to participate in payment of certain costs, including those described above.

Sincerely,

Mr. Charles Ellison,
Chairman of the Board

LIST OF USEFUL LIVES AND ALLOCATION PARAMETERS

To reasonably allocate costs among the various users of wastewater treatment works, a "useful life" must be determined for each major component. Also, the cost of each component must be attributed to its major function. Following is a list of acceptable useful lives and loading parameters. These are satisfactory for general applications. If other parameters or useful lives are used they must be substantiated by documentation or reference and approved by the Division.

TREATMENT UNITS COMPONENT	LOADING PARAMETER	USEFUL LIFE/YRS
Activated Sludge:		
Structure	25% BOD_5, 75% Flow	40
Equipment	BOD_5	25
Chlorination Facilities:		
Structure	Flow	30
Equipment	Flow	12
Digester:		
Structure	50% BOD_5, 50% SS	30
Equipment	50% BOD_5, 50% SS	12
Grit Chamber:		
Structure	Flow	40
Equipment	SS	15
Influent Pump Station:		
Structure	Flow	40
Equipment	Flow	15
Miscellaneous:		
Buildings	Flow	40
Carbon Adsorption	BOD_5	25
Interceptor	Flow	50
Outfall	Flow	75
Ponds:		
Embankment	Flow	50
Equipment	BOD_5	20
Primary Clarifier:		
Structure	Flow	40
Equipment	35% BOD_5, 65% SS	25
Pumping Stations:		
Structure	Flow	40
Equipment	Flow	20
Screen or Comminutor:		
Structure	Flow	40
Equipment	SS	15
Secondary Clarifier:		
Structure	Flow	40
Equipment	BOD_5	25
Sludge Thickening:		
Structure	50% BOD_5, 50% SS	40
Equipment	50% BOD_5, 50% SS	15
Trickling Filter:		
Structure	25% BOD_5, 75% Flow	40
Equipment	BOD_5	20

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COMMERCIAL USER STRENGTH CHARACTERISTICS

STANDARD CLASSIFICATIONS	BOD_5(ppm)	SS(ppm)
Residential (average varies depending on average water usage per capita)	175 to 250	175 to 250
Auto Steam Cleaning	1,150	1,250
Bakery, wholesale	1,000	600
Bars without dining facilities	200	200
Car Wash	20	150
Department and Retail Store	150	150
Hospital and Convalescent	250	100
Hotel with dining facilities	500	600
Hotel/Motel without dining	310	120
Industrial Laundry	670	680
Laundromat	150	110
Laundry, commercial	450	240
Market with garbage grinders	800	800
Mortuary	800	800
Professional Office	130	80
Repair Shop and Service Station	180	280
Restaurant	1,000	600
School and College	130	100
Septage	5,400	12,000
Soft Water Service	3	55

NOTES ON COMMERCIAL USER STRENGTH CHARACTERISTICS

The list of commercial strengths listed on Page G - 21 was derived from data made available to the State Water Resources Control Board (SWRCB) staff by **East Bay Municipal Utility District, City of San Jose, Los Angeles County Sanitation Districts,** and the **Sacramento Regional County Sanitation District**. The results generally represent the mean of the values used by the agencies which collected the data with extreme values eliminated in some cases.

The SWRCB staff feels that the data on strength is representative of most cities in California. The data is provided for your information. The values in the table will be accepted by SWRCB staff. If you feel that the data provided in the table is not representative of your service area, please feel free to utilize more representative data. If strength values for commercial users other than those provided on this list are utilized, supporting data should be submitted to verify values used.

TABLE G-1
Estimated water consumption at different types of establishments.

TYPE OF ESTABLISHMENT	FLOW in GPD per PERSON or UNIT
Dwelling units, residential:	
Private dwellings on individual wells or metered supply	50-75
Private dwellings on public water supply, unmetered	100-200
Subdivision dwelling on individual well, or metered supply, per bedroom	150
Subdivision dwelling on public water supply, unmetered, per bedroom	200
Dwelling units, multiple:	
Apartment houses on individual wells	75-100
Apartment houses on public water supply, unmetered	100-200
Hotels:	50-100
Boarding houses:	50
Lodging houses and tourist homes:	40
Motels, without kitchens, per unit:	100-150
Camps:	
Pioneer type	25
Children's, central toilet and bath	40-50
Day camp, no meals	15
Luxury, private bath	75-100
Labor	35-50
Trailer with private toilet and bath, per unit	125-150*
Restaurants (including toilet):	
Average	7-10
Kitchen wastes only	2.5-3
Short order	4
Short order, paper service	1-2
Bars and cocktail lounges:	2
Average type, per seat	35
Average type, 24 hour, per seat	50
Tavern, per seat	20
Service area, per counter seat (highway)	350
Service area, per table seat (highway)	150
Institutions:	
Average type	75-125
Hospitals	150-250
Schools:	
Day	5-10
Day, with cafeteria or lunch room	10-15
Day, with cafeteria and showers	15-20
Boarding	75
Theaters:	
Indoor, per seat, two showings per day	3
Outdoor, including food stand, per car	3-5
Automobile service station:	
Per vehicle served	10
Per set of pumps	500
Stores:	
First 25 feet of frontage	450
Each additional 25 feet of frontage	400
Country clubs:	
Resident type	100
Transient type, serving meals	17-25
Offices:	10-15
Factories, sanitary wastes, per shift:	15-35
Self service laundry:	250-500
Bowling alleys, per alley:	200
Swimming pools and beaches, toilet and shower:	10-15
Picnic parks, with flush toilets:	5-10
Fairgrounds (based on daily attendance):	1
Assembly halls, per seat:	2
Airport, per passenger:	2½

* Add 125 gal. per space for lawn sprinkling, car washing, leakage, etc. NOTE: Water under pressure, flush toilets, and wash basins are assumed unless otherwise noted. Figures are flows per capita per day unless otherwise stated.

TABLE G-2

Design unit sewage flows for recreational facilities

(Yellowstone National Park)

Establishment	Unit	Flow in gpd
Cafeteria	Table seat	150
Campground (developed)	Person	25
Cocktail lounge	Seat	20
Coffee shop	Counter seat	250
Dining room	Table seat	150
Dormitory, bunkhouse	Person	50
Fish cleaning station	Station	7,500
Gas station	Station	2,000-5,000
Hospital	Bed	200
Hotel	Person	75
Laundromat	Washing machine	500
Lodge or cabins	Person	50
Mess hall	Person	15
Offices and stores	Employee	25
Residence homes, apartments	Person	75
Trailer village	Person	35
Visitor centers	Visitor	5

TABLE G-3

Sewage flows from commercial districts

Establishment	Unit	Flow in gpd
Airport	Passenger	5
Hotel	Person	100
Motel	Person	50
Restaurant	Meal	7
Shopping Center	Employee	60
Small business	Employee	20
Theater	Seat	5

TABLE G-4

Average sewerage flows from institutional facilities

Establishment	Unit	Flow in gpd
Elementary schools	Student & Staff	10
High schools	Student & Staff	20
Medical Hospital	Patient & Staff	175
Mental hospital	Patient & Staff	125
Prisons	Inmate & Staff	175

TABLE G-5

Miscellaneous water usage estimates

Item	Unit	Avg. gal. used
Air conditioner, home type, water cooled	gpd	2,880
Automatic home laundry machine	Load	30-50
" " " "	Person	6½-9
Bathtub	Per Use	30
Dishwashing machine, home type	Load	4-8
" " " "	Person	6
Dishwashing machine, commercial type, stationary rack	gpm	6-9
" " " " , Conveyor type	gpm	4-6
Drinking fountain, continuous flowing	gph	75
Garbage disposal, home type	Person	1-4
Shower head	Per Use	25-30
Wash basin	Per Use	1½
Water closet, tank	Per Use	4-5
Water closet, flush valve	gpm	30

TABLE G-6

Typical composition of domestic waste

Constituent	Strong	Medium	Weak
Alkalinity (as CaCO3)*	200	100	50
Biochemical Oxygen Demand, 5-day, 20°C (BOD_5)	300	200	100
Chemical Oxygen Demand (COD)	1000	500	250
Chlorides*	100	50	30
Grease	150	100	50
Nitrogen, (total as N)	85	40	20
Organic	35	15	8
Free ammonia50	50	25	12
Nitrites	0	0	0
Nitrates	0	0	0
Phosphorus, (total as P)	20	10	6
Organic	5	3	2
Inorganic	15	7	4
Settleable solids, (ml/liter)	20	10	5
Solids, total	1200	700	350
Dissolved, total	850	500	250
Fixed	525	300	145
Volatile	325	200	105
Suspended, total	350	200	100
Fixed	75	50	30
Volatile	275	150	70
Total organic carbon (TOC)	300	200	100

NOTE: All values except settleable solids are expressed in mg/liter. * Values should be increased by amount in carriage water.

PUBLIC NOTICE FORMAT

NOTICE OF PROPOSED CHANGE IN WASTEWATER RATES

The City Council of the City of Hagenville is considering a rate ordinance for wastewater treatment which provides that capital costs will not be recovered in proportion to system use. The effect of the ordinance is to reduce costs to industrial and commercial users with a corresponding increase in the rates to residential users.

The following table shows the rates proposed to be charged typical users in the industrial, commercial, and residential categories using the proposed rate structure. The table compares these rates with what they would be if they were calculated in proportion to system use.

PROPOSED MONTHLY CHARGES

Type of User	Proposed Rates	Proportion to Use	Difference
Industrial User	$1,500	$2,000	-$500
Typical Industrial User	$750	$1,000	-$250
Typical Commercial User	$300	$400	-$100
Typical Residential User	$9	$7	$2

The City Council invites you to attend and participate in a public discussion of this proposed ordinance. It will be held:

Date:

Time:

Place:

Any comments which are received by the City Council prior to the date of the meeting will also be considered.

(A discussion of the facts which prompted the proposed rate ordinance and the pros and cons of its enactment may be inserted at the end of the notice or included on a separate sheet of paper.)

REVENUE PROGRAM FORMS

AND

INSTRUCTIONS

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FORM 1 Summary of Users and Wastewater Characteristics
(INSTRUCTIONS ON BACK OF PAGE.)

Municipality _____ Date _____

(A) Number of Accounts	(B) Users (User Group)	WASTEWATER CHARACTERISTICS (C) ADWF MGD	(D) BOD PPM	(E) SS PPM	DESIGN CAPACITY (F) DESIGN FLOW MGD	(G) BOD (D)x(F)x8.34 Lbs/Day	(H) SS (E)x(F)x8.34 Lbs/Day	TOTAL ANNUAL CAPACITY (I) VOLUME (C)x365 MG	(J) BOD (D)x(I)x8.34 Lbs/Year	(K) SS (E)x(I)x8.34 Lbs/Year
	SubTotals									
	Infiltration/inflow									
	Future Capacity									
	TOTALS									

FORM 1 - SUMMARY OF USERS AND WASTEWATER CHARACTERISTICS (STRENGTH)

1. PURPOSE:

   a. To identify groups of residential, commercial and industrial users.

   b. To show wastewater characteristics, design capacity provided, and estimated annual volumes and quantities of pollutants for these groups, and for any special classifications.

2. TO COMPLETE THE FORM:

   a. Column (A): Enter the number of users (connections) in each group.

   b. Column (B): Enter names of users (user groups). See **Commercial User Strength Characteristics** on Page G - 21 of the Revenue Program Guidelines (Guidelines) for a list of typical user groups.

   c. Columns (C)-(E): Show wastewater characteristics for each parameter for each user (user group): Average dry weather flow (ADWF) in million gallons per day (MGD), biological oxygen demand (BOD_5) in parts per million (ppm) and suspended solids (SS) in parts per million (ppm). See Page G - 21 of these Guidelines for average strengths for typical users.

   d. Columns (F)-(H): Show facility design capacity for each user (user group). Design capacity is in MGD, BOD_5 and SS are in lbs/day.

   e. Columns (I)-(K): Enter annual contributions for each user for each parameter. VOLUME (I) is ADWF (C) times the number of days in a year (365). Some users (schools, canneries, etc.) may only operate for a portion of a year. Therefore, the number of days of operation may be less than 365. Total annual BOD_5 (J) is BOD_5 in ppm (D) times total annual volume (I) times 8.34. Total annual SS (K) is SS in ppm (E) times total annual volume (I) times 8.34.

3. NOTES:

   a. Other relevant parameters besides BOD_5 and SS may be used if they are consistent with the design basis of the treatment facility.

   b. Infiltration/inflow must be separately identified. The difference between ADWF (C) and design flow (F) is that design flow is the peak flow for seasonal users.

   c. DAILY AND ANNUAL TOTALS OF FLOW AND POUNDS OF BOD AND SS SHOULD CORRESPOND CLOSELY TO ACTUAL FLOW AND LOADINGS MONITORED AT THE WASTEWATER TREATMENT PLANT.

FORM 2 Annual O. M. & R. and Nonoperating Costs
(INSTRUCTIONS ON BACK OF PAGE.)

Municipality_____ Date_____

COST CATEGORY	CURRENT YEAR COSTS	FIRST YEAR OF FULL OPERATION
1. TREATMENT FACILITIES:		
(a) Fixed O. & M. Costs		
(b) Variable O. & M. Costs		
(c) Replacement Cost		
(d) Subtotal Treatment [(a)+(b)+(c)]		
2. COLLECTION SYSTEM:		
(e) Fixed O. & M. Costs		
(f) Variable O. & M. Costs		
(g) Replacement Cost		
(h) Subtotal Collection [(e)+(f)+(g)]		
3. MISCELLANEOUS:		
(j) Overhead/Indirect		
(k) Operating Reserve		
(m) Other		
(n) Subtotal miscellaneous [(j)+(k)+(m)]		
4. TOTAL VARIABLE COST [(b)+(f)]		
5. TOTAL FIXED COST [(a)+(c)+(e)+(g)+(n)]		
6. TOTAL O. M. & R. COST [(4)+(5)]		
7. CAPITAL REPLACEMENT FUND		
8. DEBT SERVICE (Principal & Interest)		
9. WASTEWATER CAPITAL RECOVERY FUND		

FORM 2: ANNUAL O. M. & R. AND NONOPERATING COSTS

1. PURPOSE:

   a. To show current year O.M.& R. costs and estimated "first year" O.M.& R. costs in accordance with Section 1-2 A. (Page G - 3) of these Guidelines.

   b. To show current year administration costs and estimated administration costs in accordance with Section 1-4 F. (Page G - 7) of these Guidelines. See also notes for Form 5.

   c. To establish an operating reserve fund as discussed in Section 1-2 E. (Page G - 4) of these Guidelines. Operating reserves are strongly recommended, but not required, by these Guidelines.

   d. To establish a wastewater capital reserve fund (WCRF) as required by Section 1-2, D (Page G - 4) of these Guidelines.

2. TO COMPLETE THE FORM:

   a. Each municipality should enter cost data as required. For regional facilities, the lead agency and each subscribing municipality should enter on this form only the cost incurred on its own facilities. For example, the lead municipality may operate and maintain the treatment plant and interceptor and each subscribing municipality may operate and maintain its own collection system.

   b. Fixed costs* are those costs which do not vary directly with flow (i.e. labor, testing, debt service, etc.). Replacement costs, which are normally fixed costs, must be separately identified.

   c. Variable costs* are costs which vary directly with flow (i.e. chemicals, utility costs, etc.).

   d. Methods for estimating the amount of reserves to be established in the operating reserve fund are set forth in Section 1-2 E. (Page G-4) of these Guidelines.

   e. Show current and "first year" debt service (principal and interest) on line 8.

3. NOTES:

   a. Replacement costs will be calculated in accordance with Section 1-2 B. (Page G - 3) of these Guidelines. Records showing computations will be retained by the municipality and are subject to review.

   b. Minimum annual payment to the WCRF will be calculated in accordance with SRF Loan Policy.

* Separating costs into fixed/variable components is optional. All costs, except replacement may be combined if desired.

FORM 3 Capital Cost Allocation
(INSTRUCTIONS ON BACK OF PAGE.)

Municipality_____ Date_____

(A) ITEM	(B) TOTAL COST	FLOW		BOD		SS	
		(C) %	(D) FLOW COST [(B) X (C)]	(E) %	(F) BOD COST [(B) X (E)]	(G) %	(H) SS COST [(B) X (G)]
1. Collection System							
2. Interceptors							
3. Treatment Plant							
4. Outfall/Disposal							
5. Other Facilities							
6. Subtotal Construction							
7. Const. Administration							
8. Planning/Design Cost							
9. _____							
10. _____							
11. _____							
12. _____							
13. _____							
14. Total All Costs							
15. Outside Funding							
16. Local Funding [(14)-(15)]							

FORM 3: CAPITAL COST ALLOCATION

1. PURPOSE:

   a. This form is used only if the municipality does not have a history of the annual cost of operation and maintenance (including replacement) of their wastewater facilities.

   b. To show computation of capital cost percentages, to be allocated among users, for flow, BOD_5 and SS. Other parameters must be shown if applicable.

   c. To compute local cost if construction costs are reimbursed by grants from others.

2. TO COMPLETE THE FORM:

   a. Enter total costs of collection system, treatment facilities, and disposal facility, etc., in Column (B).

   b. Allocate cost for flow, BOD_5, and SS for treatment facilities according to parameters developed for each component based on actual experience and records or use percentages shown in the **List Of Useful Lives And Allocation Parameters** on Page G - 19 of these Guidelines. Enter totals only, but retain work papers for subsequent review. Collection system and disposal facility costs will be allocated 100 percent to flow.

   c. Enter any outside funding on Line 15. Outside funding for treatment facilities must be allocated on the same basis as the costs on Line 3.

3. NOTES:

   a. Administration costs may be allocated among flow, BOD_5, and SS based on any reasonable formula supported by the municipality's experience. [see also Note 3.a. on Form 4 Instructions]

   b. Form 3 is optional. It may be used if the municipality has no other means to determine the division of the O. M. & R. expenses between flow, BOD_5 removal costs and SS removal costs.

FORM 4 Unit Cost Determination
(Instructions on back of page)

Municipality_____ Date_____

(A) COST CATEGORY	(B) Parameter Allocation Percentage	(C) Annual Cost Allocated to Parameter	(D) Total Annual Quantities	(E) Unit Cost For Each Parameter
1. Variable portion O. M. & R.:				
(a) Flow				
(b) BOD				
(c) SS				
(d) I/I				
(e) Other				
2. Fixed portion O. M. & R.:				
(f) Flow				
(g) BOD				
(h) SS				
(i) I/I				
(j) Other				
3. Capital Replacement:				
(k) Flow				
(l) BOD				
(m) SS				
(n) I/I				
(o) Other				
4. Debt Service:				
(p) Flow				
(q) BOD				
(r) SS				
(s) I/I				
(t) Other				
5. WCRF:				
(u) Flow				
(v) BOD				
(w) SS				
(x) I/I				
(y) Other				

FORM 4: UNIT COST DETERMINATION

1. PURPOSE:

   a. To calculate the unit cost for each parameter.

2. TO COMPLETE THE FORM:

   a. In Column (B) list the parameter allocation percentages determined from Form 3 or from prior municipality experience. For infiltration/inflow (I / I), the allocation will be based on percentage of flow parameter only. This is calculated from Form 1 by dividing annual I / I volume in Column (I) by total annual volume in Column (I).

   b. In Column (C) allocate annual costs to each parameter. Annual fixed and variable O. M. & R., operating reserve fund, and debt service costs are obtained from Form 2. Capital replacement fund and wastewater capital recovery fund costs must be determined by the requirements of these Guidelines.

   c. Total quantities for Column (D) are obtained from Form 1. Modify total flow for I / I. (See Note 3.d. below)

   d. Unit costs in Column (E) are obtained by dividing total cost for each parameter in Column (C) by the corresponding total quantity in Column (D).

3. NOTES:

   a. O. M. & R. costs are normally allocated to the cost of: [1] the collection, transport, treatment and disposal of the wastewater flow, [2] the cost of removal of BOD_5 or COD from the wastewater, and [3] the cost of removal of SS from the wastewater. Additional parameters may be used if the municipality has specific processes or costs attributable to the additional parameter (such as nitrogen removal). The basis for the O. M. & R. cost allocation is the accounting of the actual costs of the municipality's wastewater system and the allocation of the actual costs based on the input from the wastewater plant operators. If a municipality does not have the data to determine the actual percentage of O. M. & R. costs to allocate to each parameter the municipality may use the capital cost allocations from Form 3 or any other allocation formula which can be justified by the municipality (see Section 1-4 A.1. of these Guidelines).

   b. A participating or subscribing municipality should have separate unit cost determinations which show those costs incurred prior to discharging wastewater into facilities controlled and operated by the regional municipality.

   c. Operating reserves can be shown in O. M. & R., Item 4, Column (C). However, if separate, show on separate Form 4.

   d. Total design quantities may be used for debt service and capital replacement. Total annual quantities will be used for variable and fixed O. M. & R.

FORM 5v Summary of Variable Portion of O. M. & R. Costs
(Instructions on back of page)

Municipality _____ Date _____

(A) Number of Accounts	(B) Users (User Group)	FLOW Unit cost=$ /MG (C) MG	FLOW (D) $	BOD Unit cost=$ /Klb (E) Klb	BOD (F) $	SS Unit cost=$ /Klb (G) Klb	SS (H) $	(I) ANNUAL COST OF VARIABLE O. M. & R. [(D)+(F)+(H)]
	SubTotals							
	Infiltration/inflow							
	TOTALS							

FORM 5v: SUMMARY OF VARIABLE PORTION OF O. M. & R. COSTS

1. PURPOSE:

   a. To calculate the total costs for each user (user group) based on the variable portion of the O. M. & R. costs. A separate Form 5 will be used for each fund utilized.

2. TO COMPLETE THE FORM:

   a. Columns (A) & (B) are the same as Form 1 Columns (A) & (B).

   b. For Columns (C), (E) & (G) fill in the corresponding parameters from the respective Column (I), (J) or (K) on Form 1 for each user (user group) listed. Annual capacity and quantities must be used for variable portion of the O. M. & R. costs.

   c. For Columns (D), (F) & (H) (Unit Cost) place the unit cost developed on Form 4, Column (E), at the top of each column. The appropriate dollar amount on each line is calculated by multiplying the amount in Column (C), (E) or (G) by the appropriate unit cost at the top of the column.

   d. Column (I) is a summation of costs from Columns (D), (F) and (H) for each user (user group).

3. NOTES:

   a. If the operating reserve fund is not included in either the variable or the fixed portions of the O. M. & R. costs a separate Form 5 will be required for the operating reserve fund. The applicable unit parameters for the operating reserve fund may be the same as for either the variable or the fixed portions of the O. M. & R. costs.

   b. Administration costs can be either included with the variable or the fixed portions of the O. M. & R. costs or calculated separately as a separate fund. One method of allocation is to divide the total administrative cost by the total number of users (connections) and then multiply this unit cost by the number of users in each user group for the cost in Column (I).

FORM 5f Summary of Fixed Portion of O. M. & R. Costs
(Instructions on back of page)

Municipality _____ Date _____

(A) Number of Accounts	(B) Users (User Group)	FLOW Unit cost=$ /MG (C) MG	(D) $	BOD Unit cost=$ /Klb (E) Klb	(F) $	SS Unit cost=$ /Klb (G) Klb	(H) $	(I) ANNUAL COST OF FIXED O. M. & R. [(D)+(F)+(H)]
	SubTotals							
	Infiltration/inflow							
	TOTALS							

FORM 5f: SUMMARY OF FIXED PORTION OF O. M. & R. COSTS

1. PURPOSE:

   a. To calculate the total costs for each user (user group) based on the fixed portion of the O. M. & R. costs. A separate Form 5 will be used for each fund utilized.

2. TO COMPLETE THE FORM:

   a. Columns (A) & (B) are the same as Form 1 Columns (A) & (B).

   b. For Columns (C), (E) & (G) fill in the corresponding parameters from the respective Column (I), (J) or (K) on Form 1 for each user listed. Annual capacity and quantities must be used for the fixed portion of the O. M. & R. costs.

   c. For Columns (D), (F) & (H) (Unit Cost) place the unit cost developed on Form 4, Column (E), at the top of each column. The appropriate dollar amount on each line is calculated by multiplying the amount in Column (C), (E) or (G) by the appropriate unit cost at the top of the column.

   d. Column (I) is a summation of costs from Columns (D), (F) and (H) for each user (user group).

3. NOTES:

   a. If the operating reserve fund is not included in either the variable or the fixed portions of the O. M. & R. costs a separate Form 5 will be required for the operating reserve fund. The applicable unit parameters for the operating reserve fund may be the same as for either the variable or the fixed portions of the O. M. & R. costs.

   b. Administration costs can be either included with the variable or the fixed portions of the O. M. & R. costs or calculated separately as a separate fund. One method of allocation is to divide the total administrative cost by the total number of users (connections) and then multiply this unit cost by the number of users in each user group for the cost in Column (I).

FORM 5c Summary of Capital Replacement Fund Costs
(Instructions on back of page)

Municipality _____ Date _____

(A) Number of Accounts	(B) Users (User Group)	FLOW Unit cost=$ /MG (C) MG	FLOW (D) $	BOD Unit cost=$ /Klb (E) Klb	BOD (F) $	SS Unit cost=$ /Klb (G) Klb	SS (H) $	(I) ANNUAL COST OF CAPITAL RE-PLACEMENT FUND [(D)+(F)+(H)]
	SubTotals							
	Infiltration/inflow							
	Future Capacity							
	TOTALS							

FORM 5c: SUMMARY OF CAPITAL REPLACEMENT FUND COSTS

1. PURPOSE:

   a. To calculate the total costs for each user (user group) based on the capital replacement fund costs.

2. TO COMPLETE THE FORM:

   a. Columns (A) & (B) are the same as Form 1 Columns (A) & (B).

   b. For Columns (C), (E) & (G) fill in the corresponding parameters from the respective Column (I), (J) or (K) on Form 1 for each user listed. The municipality should decide if annual or design capacity and quantities will be used for the capital replacement fund. [See Note 3.a. below]

   c. For Columns (D), (F) & (H) (Unit Cost) place the unit cost developed on Form 4, Column (E), at the top of each column. The appropriate dollar amount on each line is calculated by multiplying the amount in Column (C), (E) or (G) by the appropriate unit cost at the top of the column.

   d. Column (I) is a summation of costs from Columns (D), (F) and (H) for each user (user group).

3. NOTES:

   a. If the municipality uses design capacity and quantities in the capital replacement fund calculations the revenue from user fees alone will not generate sufficient revenue for full funding of this expense. Other revenue from standby charges, connection fees, etc. must be used to fully fund this cost.

FORM 5d Summary of Debt Service Fund Costs
(Instructions on back of page)

Municipality _____ Date _____

(A) Number of Accounts	(B) Users (User Group)	FLOW Unit cost=$ /MG (C) MG	(D) $	BOD Unit cost=$ /Klb (E) Klb	(F) $	SS Unit cost=$ /Klb (G) Klb	(H) $	(I) ANNUAL COST OF DEBT SERVICE FUND [(D)+(F)+(H)]
	SubTotals							
	Infiltration/inflow							
	Future Capacity							
	TOTALS							

FORM 5d: SUMMARY OF DEBT SERVICE FUND COSTS

1. PURPOSE:

   a. To calculate the total costs for each user (user group) based on the debt service fund costs.

2. TO COMPLETE THE FORM:

   a. Columns (A) & (B) are the same as Form 1 Columns (A) & (B).

   b. For Columns (C), (E) & (G) fill in the corresponding parameters from the respective Column (I), (J) or (K) on Form 1 for each user listed. The municipality should decide if annual or design capacity and quantities will be used for the debt service fund. [See Note 3.a. below]

   c. For Columns (D), (F) & (H) (Unit Cost) place the unit cost developed on Form 4, Column (E), at the top of each column. The appropriate dollar amount on each line is calculated by multiplying the amount in Column (C), (E) or (G) by the appropriate unit cost at the top of the column.

   d. Column (I) is a summation of costs from Columns (D), (F) and (H) for each user (user group).

3. NOTES:

   a. If the municipality uses design capacity and quantities in the debt service fund calculations the revenue from user fees alone will not generate sufficient revenue for full funding of the required debt service needed. Other revenue from standby charges, connection fees, etc. must be used to fully fund this cost.

FORM 5w Summary of Wastewater Capital Reserve Fund Costs
(Instructions on back of page)

Municipality _____ Date _____

(A) Number of Accounts	(B) Users (User Group)	FLOW Unit cost=$ /MG (C) MG	(D) $	BOD Unit cost=$ /Klb (E) Klb	(F) $	SS Unit cost=$ /Klb (G) Klb	(H) $	(I) ANNUAL COST OF WASTEWATER CAP. RES. FUND [(D)+(F)+(H)]
	SubTotals							
	Infiltration/inflow							
	Future Capacity							
	TOTALS							

FORM 5w: SUMMARY OF WASTEWATER CAPITAL RESERVE FUND COSTS

1. PURPOSE:

   a. To calculate the total costs for each user (user group) based on the wastewater capital reserve fund costs.

2. TO COMPLETE THE FORM:

   a. Columns (A) & (B) are the same as Form 1 Columns (A) & (B).

   b. For Columns (C), (E) & (G) fill in the corresponding parameters from the respective Column (I), (J) or (K) on Form 1 for each user listed. The municipality should decide if annual or design capacity and quantities will be used for the wastewater capital reserve fund. [See Note 3.a. below]

   c. For Columns (D), (F) & (H) (Unit Cost) place the unit cost developed on Form 4, Column (E), at the top of each column. The appropriate dollar amount on each line is calculated by multiplying the amount in Column (C), (E) or (G) by the appropriate unit cost at the top of the column.

   d. Column (I) is a summation of costs from Columns (D), (F) and (H) for each user (user group).

3. NOTES:

   a. If the municipality uses design capacity and quantities in the wastewater capital reserve fund calculations the revenue from user fees alone will not generate sufficient revenue for full funding of the fund. Other revenue from standby charges, connection fees, etc. must be used to fully fund this expense.

FORM 6 Summary of Total Annual Revenue Required
(Instructions on back of page)

Municipality_____ Date_____

(A) Number of Accounts	(B) Users (User Group)	(C) Variable O. M. & R. Costs (Form 5v)	(D) Fixed O. M. & R. Costs (Form 5f)	(E) Capital Replacement Fund Costs (Form 5c)	(F) Debt Service Fund Costs (Form 5d)	(G) Wastewater Capital Reserve Fund Costs (Form 5w)	(H) Total Annual Revenue Required Sum (C) thru (G)	(I) Average Annual Revenue (H) / (A)	(J) Average Monthly Revenue (I) / 12
	SubTotals								
	Infiltration/inflow								
	Future Capacity								
	TOTALS								

FORM 6: SUMMARY OF TOTAL ANNUAL REVENUE REQUIRED

1. PURPOSE:

   a. To sum up individual fund costs from Forms 5v through 5w.

2. TO COMPLETE THIS FORM:

   a. Columns (A) & (B) are the same as Form 1, Columns (A) & (B).

   b. Columns (C) through (G) - transfer appropriate fund costs from the appropriate Form 5, Column (I).

   c. Column (H) is a summation of Columns (C) through (G).

   d. Column (I) is the amount in Column (H) divided by the number of users in Column (A).

   e. Column (J) is the average payment required in each user group and is determined by dividing average annual revenue required in Column (I) by the number of billing periods in a year.

3. NOTES:

   a. Use only those columns (C) through (G) applicable to your revenue program and the appropriate Form 5(s) used.

FORM 7 Rate Determination and Revenue Program Summary
(Instructions on back of page)

Municipality _____ Date _____

FORM 7 RATE DETERMINATION AND REVENUE PROGRAM SUMMARY

1. PURPOSE:

   a. To show the proposed method for collecting the total annual revenue shown on Form 6, Column (I). The municipality must develop a user charge system that results in a distribution of costs which are reasonably proportional to each user's (user group) contribution to the costs of the wastewater treatment works.

   b. To show a summary of total revenues and total disbursements.

2. TO COMPLETE THE FORM:

   a. Charge systems may include a combination of one or more of the following:

      1. Flat rates.

      2. Rates based on water consumption.

      3. Rates based on monitoring.

      4. Connection fees.

      5. Standby charges.

      6. Ad valorem taxes. [see 40 CFR 35.2140(b) for limitations]

   b. The summary of total revenues and disbursements should include a complete breakdown of revenue sources and disbursements into the various fund structures.

3. NOTES:

   a. SWRCB staff will review the wastewater user charge system to determine if the municipality will collect sufficient revenue to support adequate O. M. & R. of the wastewater treatment works and if the users of the wastewater treatment works are charged in proportion to their actual use as required by 40 CFR 35.2140.

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See footnote 91

Footnote No. 92

Footnote No. 94

(R-2004-1293 REV.)

RESOLUTION NUMBER R-299322

ADOPTED ON JUNE 8, 2004

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO IMPLEMENT A NEW RATE STRUCTURE FOR SEWER SERVICE FEES AND INCREASE SEWER SERVICE FEES AS APPROPRIATE IN ACCORDANCE WITH THE NEW RATE STRUCTURE

WHEREAS, San Diego Municipal Code section 64.0404 provides that sewer service fees [Fees] may be established by resolution of the City Council upon the giving of ten days notice of intention to establish such charges; and

WHEREAS, article XIII D, section 6 of the California Constitution provides that prior to imposing increases in property-related fees, a public agency shall provide written notice by mail of the proposed fee increase to the record owner of each parcel upon which it is proposed for imposition; and

WHEREAS, such notice shall be provided to the affected property owners not less than forty-five days prior to the public hearing on the proposed revisions to property-related fees; and

WHEREAS, the City proposes to change the rate structure [New Rate Structure] for its Fees; and

WHEREAS, the New Rate Structure will result in increases in the Fees for certain sewer customers; and

WHEREAS, the City posted a notice of its intention to adopt the New Rate Structure and to increase its Fees for certain sewer customers in compliance with San Diego Municipal Code section 64.0404; and

WHEREAS, during the week of April 19, 2004, in accordance with the provisions of article XIII D, section 6 of the California Constitution, the City provided written notice by mail of the New Rate Structure to affected property owners; and

WHEREAS, on October 16, 2001, the City Council adopted Resolution Number R-295587, authorizing the City Manager to increase the Fees by 7.5% for five fiscal years, effective March 1, 2002, March 1, 2003, March 1, 2004, and March 1, 2005 [Prior Rate Increases]; and

WHEREAS, the Prior Rate Increases will be applicable to the New Rate Structure; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego that the City Council finds and determines that the foregoing Recitals are true and correct.

BE IT FURTHER RESOLVED, that the City Manager is authorized and directed to implement, effective October 1, 2004, the New Rate Structure as set forth in Exhibit A, attached hereto, and by this reference incorporated herein, and increase Fees as appropriate in accordance with the New Rate Structure.

BE IT FURTHER RESOLVED, that the City Manager is directed to investigate and evaluate programs to improve the efficiency of the sewage system by funding incentives to

significant sewage dischargers of Chemical Oxygen Demand [COD] to reduce the COD load on the system and to report back to the City Council no later than September 30, 2004.

APPROVED: CASEY GWINN, City Attorney

By _____
Kelly J. Salt
Deputy City Attorney

KJS:pev
05/25/04
06/14/04 Rev.
Or.Dept: Wtr. & MWWD
R-2004-1293

Footnote No. 100

Project Title: **MBC Centrate Collection Upgrades**
CIP #: 45-982.0
Council District: 7
Budget: $2,929,489 (Project Total)

Description: The project on the initial phase replaces the Foul Air Duct from FRP to Ductile Iron to handle the centrate during the final construction phase to upsize the centrate collection piping system.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report - there is insufficient capacity of the centrate collection system.

Schedule Milestones:
Planning- Complete
Design- From 07/11 to 12/12
Construction- From 09/13 to 07/15

Project Title:	**Annual Allocation – Accelerated Projects**
CIP #:	46-206.0
Council District:	Citywide
Budget:	$2,224,973 (FY2008-2011) Rate Case $2,224,973 (FY2008-2017)
Description:	This annual allocation provides for emergency and accelerated construction on the Municipal Sewer System.
Justification:	This annual allocation is necessary for emergency failures of the Municipal Sewer System and for replacement of sewer mains that are in imminent danger of failing.

Schedule Milestones: Upon approval of the Sewer rate case in January 2007. The funding will be available for emergency and accelerated projects

	Start Date	Finish Date
Planning	FY 2007	FY 2008
Design	FY 2007	FY 2008
Construction	FY 2007	FY 2009

Project Title:	**Annual Allocation – Sewer Main Replacements**
CIP #:	44-001.0
Council District:	Citywide
Budget:	$140,851,400 (FY 2008-2011) Rate Case $393,255,259 (FY 2008-2017)
Description:	This annual allocation provides for replacing sewer mains at various locations within the City.
Justification:	Sewer main replacement due to deteriorated condition or insufficient capacity.
Schedule Milestones:	Upon approval of the Sewer rate case in January 2007. Sewer mains will be replaced in accordance with the Environmental Protection Act and the consent decree requirements. The goal is to replace 10 miles in FY 2009, 20 miles annually FY 2010-2012, and 10 miles in FY 2013-2017.

	Start Date	Finish Date
Planning	FY 2005	FY 2017
Design	FY 2005	FY 2017
Construction	FY 2008	FY 2017

Project Title:	**Annual Allocation – Sewer Pump Station Restorations**
CIP #:	46-106.0
Council District:	Citywide
Budget:	$7,997,374 (FY 2008-2011) Rate Case $7,997,374 (FY 2008-2017)
Description:	This annual allocation provides for replacing deteriorated pumping equipment and /or appurtenances. Project currently includes Pump Stations 18 Phase II, 41, and 63.
Justification:	Upgrades to these pump stations are Consent Decree requirement.
Schedule Milestones:	Upon approval of the Sewer rate case in January 2007. We will complete the remaining pump stations in the City.

	Start Date	Finish Date
Planning	FY 2005	FY 2008
Design	FY 2005	FY 2008
Construction	FY 2007	FY 2009

Project Title:	**Annual Allocation – Trunk Sewer Rehabilitations**
CIP #:	46-194.0
Council District:	Citywide
Budget:	$72,697,326 (FY 2008-2011) Rate Case $188,561,801 (FY 2008-2017)
Description:	This annual allocation provides for replacing trunk sewer portions at various locations within the City. Project currently includes Penasquitos Views, Crown Point, Palm City, and Sunset Cliffs Trunk Sewers.
Justification:	Trunk Sewers requiring action are constructed based upon priority following assessment.
Schedule Milestones:	Upon approval of the Sewer rate case in January 2007. Numerous Trunk Sewers will be replaced in accordance with the Environmental Protection Agency and the consent decree dates.

	Start Date	Finish Date
Planning	FY 2005	FY 2017
Design	FY 2005	FY 2017
Construction	FY 2007	FY 2017

Project Title:	**East Point Loma Trunk Sewer**
CIP #:	46-195.6
Council District:	2
Budget:	$ 21,028,998 (Project Total)
Description:	Replacement of existing 27" and 30" VC Trunk Sewer with 36", 39", 8", 10", and 15" Pipe, in Cushing Road, between Barnett and Nimitz, (Former NTC property, now McMillan Development, "Liberty Station").
Justification:	Replacement is capacity related and a Consent Decree requirement.

Schedule Milestones:	Start Date	Finish Date
Planning	02/00	10/03
Design	04/03	07/08
Construction	07/08	04/10

Project Title:	**Harbor Drive Trunk Sewer**
CIP #:	46-205.0
Council District:	8
Budget:	$23,138,826 (Project Total)
Description:	Upgrade of portions of the Trunk Sewer with 15, 18, 48 & 54 inch diameter pipe. Rehabilitation of approximately 4,600 ft and replacing in place of approximately 5,200 ft using open trench and tunneling. Construction of two siphons, Manholes and curb ramps. The scope also includes: Resurfacing, dewatering, traffic control, storm water pollution program, and disposal of contaminated soil.
Justification:	Segments of the pipeline are "Techite" a material that has a history of premature deterioration and failure and is a Consent Decree requirement.

Schedule Milestones:	Start Date	Finish Date
Planning:	08/00	12/02
Design:	02/02	01/12
Construction:	02/12	11/13

Project Title:	**South Mission Valley Trunk Sewer**
CIP #:	40-931.0
Council District:	2, 3, 6, 7
Budget:	$14,776,240 (Project Total)
Description:	South Mission Valley Trunk Sewer Phase I includes installation of approximately 3,895 lf of new trunk sewer and sewer mains in Taylor Street, Hotel Circle Place and two crossings under freeway I-8, ranging in size from 8-42 inches. The project also includes abandonment of approximately 2100 lf of trunk sewer and sewer mains in the San Diego River Valley, under freeway I-8 and along Hotel Circle Place.
Justification:	Replacement is capacity related and a Consent Decree requirement.

Schedule Milestones:
Planning 3/00 - 3/02
Design 3/02 - 6/05, 2/08 - 11/08
Construction 11/08 - 5/10

Project Title: **Annual Allocation – Developer Projects**
CIP #: 45-975.0
Council District: Citywide
Budget: $2,296,487 (FY 2008-2011) Rate Case
$6,492,903 (FY 2008-2017)

Description: This project consists of coordinated pipeline replacements and upgrades in conjunction with private developers where required upgrades have already been identified.

Justification: To reduce impacts to newly constructed facilities Participation Agreements are entered into with developers where the city pays its fair share of an identified and required upgrade. This is done as the most expedient and cost effective method to accomplish the work.

Schedule Milestones:
Planning: Ongoing
Design: Ongoing
Construction: Ongoing

Project Title: **Annual Allocation - Muni Facilities Control System Upgrade**
CIP #: New
Council District: 1, 5
Budget: $749,858 (FY 2008-2011) Rate Case
$1,529,709 (FY 2008-2017)

Description: In 1994, Metropolitan Wastewater Department (MWWD) contracted with Emerson Process Management Power and Water Solutions, Inc. ("Emerson Process Management, Inc." or "Emerson") to provide a Distributed Control System (DCS) that automates wastewater treatment plant processes throughout Metropolitan Wastewater facilities. The DCS system is a microprocessor and computer based industrial control system with controlling units spread throughout the facilities. These control units are linked with electronic data highways for communication with the control room and with the central operations and management center (COMC). The COMC is located at the Metropolitan Operations Center II (MOCII). The total cost of this complete system for all Metropolitan Wastewater facilities was $120 Millions. In the later phase of this project, Metro facilities such as Southbay, Pump Station 1, Pump Station 2 were installed with the latest and more capacity oriented DCS system or the latest version from Emerson. However the Muni facilities such as Penesquitos pump station (PPS), Pump station 64 (PS64) had the original WDPF DCS system installed from Emerson. This project accommodates the installation of the latest version of the DCS system from Emerson at these later facilities.

Justification: The DCS system installed at Muni Facilities (PS64, PPS) is a Westinghouse Distributed Processing Family II (WDPFII) system with a ten to twelve year life cycle. The system and the network at these facilities are at almost full capacity. There are some existing localized control systems that are old and in need of replacement. These are planned to be brought into the plant DCS system. The existing system cannot handle these additions. This upgrade will extend the life of the system for another ten to twelve years, and will be able to accommodate all of the existing loads and the new loads as discussed above

Schedule Milestones:
Planning: Start 07/2010
Design: Start 10/2010
Construction: Start 12/2010 Completion: 06/2012

Project Title: **Annual Allocation - MWWD Trunk Sewers**
CIP #: 40-933.0
Council District: Citywide
Budget: $12,473,294 (FY 2008-2011) Rate Case
$36,669,320 (FY 2008-2017)

Description: This project consists of the ongoing replacement or relocation of various pipelines many identified as accelerated projects:

1) **7th & BROOKS**
CIP #: 40-934.2
Council District: 3

Description: This project will replace approximately 400 linear feet of 6-inch and 8-inch sewer located in an ephemeral stream bed in a canyon.

Justification: Due to sewer overflows at this project location, this work is necessary to prevent future sewer overflows.

Schedule Milestones:
Planning: Completed
Design: Completed
Construction: Start 5/2007

2) **Dakota Canyon Emergency Project**
CIP #: 46-611.0
Council District: 2

Description: This project consists of replacement and rehabilitation of approximately 1,100 feet of 8-inch vitrified clay sewer pipe damaged by erosion at the bottom of Dakota canyon.

Justification: Due to sewer overflows at this project location, this work is necessary to prevent future sewer overflows.

Schedule Milestones:
Planning: Completed
Design: Completed
Construction: Start 8/2007

3) **Middletown Emergency Sewer Project**
CIP #: 46-611.4
Council District: 2

Description: This project will replace 450 feet of sewer main at the airport.

Justification: This work is necessary because the sewer is not accessible for maintenance.

Schedule Milestones:
Planning: Completed
Design: Completed
Construction: Start 9/2007

4) **Sumac Drive & Juniper Street**
CIP #: 40-934.0
Council District: 3

Description: This project will replace approximately 2,200 ft at Sumac Drive and Juniper Street.

Justification: This is a perpetual high frequency maintenance site with high potential for overflow.

Schedule Milestones:
Planning: Completed
Design: Completed
Construction: Start 8/2007

Project Title: **Annual Allocation – Pipeline Rehabilitation**
CIP #: 46-050.0
Council District: Citywide
Budget: $105,184,822 (FY2008-2011) Rate Case
$226,548,788 (FY2008-2017)

Description: This project consists of the trenchless rehabilitation of deteriorating sewer pipelines and manholes; 20 miles in FY07, 30 miles in FY08, 35 miles in FY09, 25 miles annually FY10-13. This is an on-going program.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning: Ongoing
Design: Ongoing
Construction: Ongoing

PROJECT TITLE: **Annual Allocation – Pump Station 64, 65, Penasquitos and East Mission Gorge**

CIP #: 41-927.0
Council District: Citywide
Budget: $1,826,170 (FY 2008-2011) Rate Case
$4,344,020 (FY 2008-2017)

Description: The Annual Allocation provides for comprehensive upgrades, design modifications and major/minor renovation or replacement of facilities due to increases in wastewater flow, regulatory changes, or asset depletion. The following is a list of known projects:

1) **MUNI PS SECURITY / CAMERA / LIGHTING / FENCING**
CIP # 41-935.8
Council District: Citywide

Description: This project will upgrade the existing CCTV security systems at PS 64, PS 65, Penasquitos PS and East Mission Gorge as well as adding additional lighting and improving the perimeter fencing.

Justification: Improve the security of the pump stations

Schedule Milestones:
Planning: Completed
Design: Completed for PS-64
Construction: FY 2007, PS-64 only

2) **PS 65 CAPACITY**
CIP # To Be Determined
Council District: 1

Description: This project will add an additional 600 hp pump and motor

Justification: This project will increase the capacity and reliability of the pump station. BCE currently in progress.

Schedule Milestones:
Planning: FY 2007
Design: FY 2008
Construction: FY 2008

3) **PENASQUITOS REPLACE IMPELLERS WITH 2 VANE IMPELLER**
CIP # To Be Determined
Council District: 5

Description: Replace existing 3 vane impellers with 2 vane impeller.

Justification: Resolve a serious construction flow that allowed the pump station pump to continuously vibrate well above acceptable range.

Reference: Penasquitos Pump Station Master Plan and 2 Vain Impeller Study. Successful test results now being documented.

Schedule Milestones:
Planning: June 2007
Design: Complete
Construction: FY 2007-FY 2008

Project Title: **Annual Allocation – Unscheduled Projects**
CIP #: 46-505.0
Council District: Citywide
Budget: $4,592,976 (FY 2008-2011) Rate Case
$12,985,806 (FY 2008-2017)

Description: This annual allocation provides for repair and replacement of sewers in need of emergency or unscheduled repairs.

Justification: This project will provide for emergency repairs and replacement of sewer pipeline by City forces, to avoid failures of the Municipal Sewer System.

Schedule Milestones:
Planning: Ongoing
Design: Ongoing
Construction: Ongoing

Project Title: **Balboa Trunk Sewer**
CIP #: 46-196.6
Council District: 6
Budget: $11,942,780 (Project Total)

Description: This project consists of replacing 1,600 ft of existing 15-in pipe with new 24-in pipe, constructing 5,000 ft of new 18-in pipe, and replacing 800 ft of existing 12-in pipe with new 8-in pipe due to flow capacity issues.

Justification: Consent Decree requirement.

Schedule Milestones:

Planning:		
Design:	Complete	
Construction:	Start 4/09	Complete 10/10

Project Title: **East Mission Gorge Force Main Rehabilitations**
CIP # 46-169.0
Council District: 7
Budget: $6,934,363 (Project Total)

Description: This project will line sections of the Force main that are exposed to corrosive gases. CCTV inspection has determined that these sections are substantially deteriorated due to corrosion.

Justification: To prevent a catastrophic failure of the force main due to corrosion. Pre-Design Report for the Rehabilitation of the East Mission Gorge Force Main, HDR February 2004

Planning: Completed
Design Completed
Construction FY 2011 – 2012 (This project is being reviewed to see if project funding could be moved up to FY 2008.)

Project Title: **Lake Murray in Canyon Trunk Sewer**
CIP #: 46-197.9
Council District: 7
Budget: $15,611,395 (Project Total)

Description: This project consists of replacing the existing 3.0-mile long 12-inch to 18-inch vitrified clay trunk sewer with a new larger 18-inch to 27-inch trunk sewer due to capacity related issues.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning:
Design: Complete
Construction: Start 8/09, Complete 4/10

Project Title: **Miramar Road Trunk Sewer**
CIP #: 46-195.8
Council District: 1,7
Budget: $5,173,965 (Project Total)

Description: This project consists of replacing 5,500 feet of existing 15-inch pipeline with new 21-inch pipeline in Rose Canyon. The sewer replacement will be completed within the same alignment, and begins from approximately 1,500 feet east of I-805 and ends near Genesee Avenue.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning:
Design:
Construction: Start 4/07, Complete 11/07

Project Title: **Montezuma Trunk Sewer**
CIP #: 46-196.9
Council District: 7
Budget: $3,525,324 (Project Total)

Description: This project consists of replacing 7,740 feet of existing varying diameters of 12, 15, 21, and 27 inches with pipes of 15, 18, and 21 inches in diameter. Portions are also a relocation out of an environmentally sensitive area.

Justification: Consent Decree requirement.

Schedule Milestones:

Planning:		
Design:	Complete	
Construction:	Start 8/10	Complete 8/11

Project Title: **Otay Mesa Trunk Sewer**
CIP #: 40-930.0
Council District: 8
Budget: $28,687,249 (Project Total)

Description: This project will provide service to future wastewater flows generated within the Otay Mesa area. This project consists of approx. 3.7 miles gravity trunk sewer to service the Otay Mesa area.

Justification: In order to provide adequate sewage conveyance capacity and accommodate further growth in the Otay Mesa community, the City Council approved a participation agreement with Pardee to provide design services for the Otay Mesa Trunk Sewer (OMTS), Phase II, on December 3, 2001, Resolution No. 295816. To avoid excavating newly constructed road improvements at a new subdivision construction was accelerated for a portion of a OMTS Phase II, designated as 2A1 and 2A2, along with the design of 2B1. This action was authorized by Council Resolution No. RR-298803 on January 20, 2004. In addition, the City entered into an agreement with Caltrans to construct the portions of the trunk sewer that cross under the SR-905 freeway. The construction of 2A1 and 2A2 has been completed. The construction of 2B1 is scheduled pending continued development. Caltrans has scheduled SR-905 construction to begin in 2007.

Schedule Milestones:

Planning:		
Design:	Complete	
Construction:	Start 7/08	Complete 12/09

Project Title: **PS 64 Electrical Upgrades**
CIP # 41-936.0
Council District: 1
Budget: $239,200 (Project Total)

Description: This project will replace the automatic transfer switch and distribution switchboard A with a more reliable and EPA code compliant double-ended (two-electrical supplies) switchgear bus.

Justification: This project will improve station code compliance and reliability

Schedule Milestones:
Planning: Completed
Design: Ongoing
Construction: FY 2007 - 2008

Project Title:	**Pump Station 84 Upgrade & Pump Station 62 Abandonment**
CIP #:	41-939.0
Council District:	5,1
Budget:	$2,054,080 (Project Total)
Description:	A pre-design report has been prepared and submitted by HDR recommending to upgrade the SPS 84 plus the gravity sewer and sewer mains improvements. HDR has recommended that it is economically advantageous to abandon SPS 62 and upgrade 84. BCE will be performed to evaluate SPS 62 abandonment vs. upgrade.
Justification:	Consent Decree requirement.

Schedule Milestones:

Planning:	March, 2005
Design:	To be determined
Construction:	To be determined

Project Title: **Sewer Pump Station 79**
CIP #: 46-602.6
Council District: 1
Budget: $5,202,463 (Project Total)

Description: This project consists of the construction of 8,400 feet of 12-inch forcemain and upgrade of the existing pump station pumps and electrical equipment. The pump station is currently under capacity for the existing flows.

Justification: Consent Decree requirement.

Schedule Milestones:

Planning:		
Design:	Start 3/07	Complete 7/07
Construction:	Start 10/07	Complete 6/08

Project Title: **USIU Trunk Sewer**
CIP #: 46-197.6
Council District: 5
Budget: $7,116,756 (Project Total)

Description: This project consists of replacing the 2.2-mile long, 12-inch to 15-inch diameter existing trunk sewer with a new, larger 18-inch to 24-inch trunk sewer. 1,450 feet have already been installed in conjunction with school district construction.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning:
Design: Complete
Construction: Start 8/10 Complete 8/11

Project Title: **Annual Allocation - Pt. Loma Treatment Plant & Related Facilities**
CIP #: 46-119.0
Council District: 2
Budget: $3,223,272 (FY 2008-2011) Rate Case
$12,638,935 (FY 2008-2017)

Description: The Annual Allocation provides for minor renovation and upgrades of equipment at the Point Loma Wastewater Treatment Plant and its related facilities. The following is a list of known projects:

1) **PT. LOMA 84-INCH PENSTOCK SEISMIC RETROFIT AND INTERIOR LINING**
CIP# 46-193.0

Description: Phase 1 will install steel bracing along with concrete anchors to structurally secure the onshore outfall penstock piping and protect it against seismic events. Phase 2 will install additional lining inside the penstock piping to protect it against corrosion.

Justification: The penstock is located in north effluent conveyance system at the plant. It was installed in 1963 under older seismic design standards. These improvements are needed to more safely secure the penstock and protect it again corrosion.

Schedule Milestones:
Planning: Completed in February 2004
Design: Completed in July 2004
Construction: Start in June 2007

2) **PT. LOMA SOUTH USE AREAS**
CIP# 46-199.2

Description: This project will provide for the improvements from the plant entrance to Digester 8. The improvements will provide a staging area for digester cleaning operations and install erosion protection landscaping.

Justification: Contracted digester cleaning is staged in the project area bi-annually and requires the installation of a temporary pavement each time. The project area also is not protected against erosion and requires the installation of temporary erosion control facilities. This project will provide future cost savings with the installation of permanent facilities for the cleaning operation and erosion protection.

Schedule Milestones:

Planning:	Completed in 2005
Design:	Completed in November 2006
Construction:	Start in May 2007

Project Title: **Point Loma – Grit Processing Improvements**
CIP #: 45-943.0
Council District: 2
Budget: $46,188,399 (Project Total)

Description: The Grit Processing Improvements project will include reconstruction of the old south grit tanks and their adjacent pump gallery, replacement of the headworks building that was constructed in 1962 with a new drive-through facility, expansion of an existing odor removal system and replacement of auxiliary equipment.

Justification: Only four of six aerated grit basins are in operation at the treatment plant and existing grit removal equipment does not remove the finer non-organic materials. The material that is not removed leads to wear of equipment downstream and additional costs to remove that material from those facilities. This project will provide for more efficient removal of the grit material.

Schedule Milestones:
Planning:
Design: May 2003
Construction: Postponed due to potential conflicts with the potential Biological Aerated Filters (BAF) project. The delay in the GIP project is to prevent having to demolish the new grit building if a certain BAF alternative is determined to be the best alternative.

Project Title: **Annual Allocation - Metro Biosolids Center**
CIP #: 42-913.0
Council District: 7
Budget: $2,919,844 (FY 2008-2011) Rate Case
$8,183,581 (FY 2008-2017)

Description: The Annual Allocation provides for minor renovation or replacement of facilities due to increases in wastewater flow, regulatory changes, or asset depletion. The following is a list of known projects:

1) **LIME MIXER BYPASS/EMERGENCY TRUCK LOADOUT STATION**
CIP #: 42-916.2

Description: This project has 2 phases. Phase 1 consists of the Emergency Truck Load-out Station which provides manually- operated emergency load-out capability by extending existing pipelines directly from the biosolid storage silos to the truck load-out area. Phase 2 consists of the Lime Mixer By-pass which will construct by-pass piping around each lime mixer.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report: Phase 1 during maintenance or outage of the existing loadout system (one or both) short landfill operating hours, combined with odor control issue related to on-site storage of loaded truck, have reduced loadout capacity to the point that operating just one of the two loadouts will not meet production demands. Phase 2 Lime mixers plug frequently and limit cake feed to loadout bins.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: From 11/06 to 09/07

2) **CHEMICAL SYSTEM IMPROVEMENTS (PHASE I)**
CIP #: 42-916.9

Description: This project is to relocate motorized valves and electrical conduits and wirings in the spill containment areas of the Caustic Soda and Sodium Hypochlorite storage and feed piping systems to avoid submergence. Congested piping valves and electrical conduits in the spill areas are in also violation of OSHA safety requirements.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, motorized pump isolation and routing valves subject to damage by chemical flooding. Valves are inaccessible for repair.

Schedule Milestones:
Planning: From 10/06 to 02/07
Design: From 01/07 to 06/07
Construction: From 09/07 to 05/08

3) **BLENDING TANKS BYPASS** - This project is to install bypass piping around screens and blending tanks and install new pumps to allow direct pumping from the thickened sludge wet wells to the Digesters.

CIP #: 42-916.6

Description: This project is to install bypass piping around screens and blending tanks and install new pumps to allow direct pumping from the thickened sludge wet wells to the Digesters.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, the existing sludge screens are not in service. Intermittent operation of the thickened sludge transfer pumps configuration caused operational problems and would result in high wear and damage to screens. Digested biosolids feed pumps are under capacity. Digested biosolids reverse flows cause spills at the blending tanks.

Schedule Milestones:
Planning: Complete
Design: From 01/07 to 09/07
Construction: From 01/08 to 10/08

4) **ACCESS ROAD SURFACE DRAINAGE IMPROVEMENTS**
CIP #: 42-917.0

Description: This project is to construct drainage improvements to intercept and re-direct the storm water away from the access road.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, there is erosion in the existing access road caused by poor CALTRANS drainage.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: From 05/07 to 12/07

5) **PROCESS WATER ISOLATION VALVES**
CIP #: 42-916.7

Description: This project is to install isolation valves on the process water piping system to allow the system to stay on-line during repairs.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, the existing process water system is missing general isolation valves throughout water systems to isolate piping sections for repair/maintenance.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: From 01/07 to 09/07

6) **CENTRATE PIPE ACCESS PORTS**
CIP #: 42-916.8

Description: This project is to install access ports to provide access for inspection, flushing and draining of the 36-inch centrate pipeline and will prevent potential centrate backups at the dewatering and thickening centrifuges.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, in the existing 36-inch diameter main centrate (CN) collection header in the pipe gallery scale build-up due to the centrate's high pH is suspected. With no access means into this 36-inch pipe, its condition has not been verified nor can it be addressed. In addition, the 36-inch CN header has very minimal slope which limits flow capacity and is conducive to solids settling. There is no provision for flushing/draining this CN main.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: From 04/07 to 12/07

7) **CENTRATE FORCEMAIN UPGRADE**
CIP #: 42-913.0

Description: This project provides the installation of a descaling chemical system and a bypass connection to the raw sludge forcemain at NCWRP to allow flushing of the centrate forcemain.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, the high pressures due to scale buildup in the pipe result in low capacity of centrate pumps.

Schedule Milestones:
Planning: From 12/06 to 05/07
Design: From 06/07 to 03/08
Construction: From 07/08 to 01/09

8) **DIGESTER INFLOW SURGES**
CIP #: 42-913.0

Description: This project will investigate the cause of unstable flows from the PLWTP which has caused biogas to be vented from the digested biosolids storage tanks.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, PLWTP inflow surges cause Biosolids Storage Tanks to vent gas causing APCD violation and damage electrical equipment.

Schedule Milestones:
Planning: From 01/07 to 06/07
Design: From 07/07 to 03/08
Construction: From 07/08 to 01/09

9) **CAKE BINS LEVEL SENSOR FLUSHING SYSTEM**
CIP #: 42-913.0

Description: The installation of a water spray system to clean the level sensors will provide accurate hopper level readings and eliminate irregular cake pumping operations.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report the cake pump has erratic operation due to short cake bins resulting in increased pump maintenance.

Schedule Milestones:
Planning: Complete
Design: From 02/08 to 06/08
Construction: From 10/08 to 05/09

10) **RAW SOLIDS TANKS ISOLATION VALVES**
CIP #: 42-913.0

Description: The installation of isolation valves will prevent the emptying of a tank in the event that the connector ruptures during a seismic or abnormal hydraulic event.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report the lack of tank isolation valves can result in spill.

Schedule Milestones:
Planning: Complete
Design: From 02/07 to 06/07
Construction: From 09/07 to 04/08

11) **WASTEWATER PUMP STATION BACK-UP POWER** - This project will install a small emergency generator to provide back-up power to two of three 15-hp pumps of the Wastewater Pump Station.

CIP #: 42-913.0

Description: This project will install a small emergency generator to provide back-up power to the two existing 15-hp pumps of the Wastewater Pump Station.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, there is no back-up power to any pumps in Area 94. Power outages, either planned or unplanned, can result in on-site sewage spills and can flood the dry well and/or overflow into the centrate wet well.

Schedule Milestones:
Planning: From 03/07 to 06/07
Design: From 07/07 to 01/08
Construction: From 05/08 to 11/08

12) **DEWATERED BIOSOLIDS STORAGE & LOADING AHU PIPING MODIFICATIONS**
CIP #: 42-913.0

Description: This project will reroute the piping, relocate valves, and will provide condensate drain pans to existing air handling unit.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, the existing

chilled water piping and/or valves leak which can damage MCC room equipment.

Schedule Milestones:

Planning:	Complete
Design:	From 01/07 to 05/07
Construction:	From 08/07 to 12/07

Project Title: **Annual Allocation – Metro Operations Center**
CIP #: 45-956.0
Council District: 6
Budget: $528,373 (FY 2008-2011) Rate Case
$1,535,036 (FY 2008-2017)

Description: This annual allocation provides for minor renovations or upgrades to the Metropolitan Operations Center (MOC) facilities. The MOC facilities are used to house Metropolitan Wastewater Department (MWWD) employees, as well as to provide warehouse and storage space for MWWD assets and vehicles. Projects are identified and scheduled on a priority basis. An upgrade to the air conditioning system serving the computer room is anticipated to be installed in the near future (CIP #45-956.2).

Justification: To allow for renovation/upgrade to the various facilities that comprise the MOC.

Schedule Milestones:
Planning: On going
Design: As needed
Construction: As needed

Project Title: **Annual Allocation – Metropolitan System Pump Stations**
CIP #: 41-926.0
Council District: 2,8
Budget: $1,935,631 (FY 2008-2011) Rate Case
$4,466,275 (FY 2008-2017)

Description: The Annual Allocation provides for comprehensive upgrades, design modifications and major/minor renovation or replacement of facilities due to increases in wastewater flow, regulatory changes, or asset depletion. The following is a list of known projects:

1) **PS2 ELECTRICAL DISTRIBUTION SYSTEM MODIFICATIONS**
CIP # 41-929.2
Council District: 2

Description: This project will replace the 4.16kV switchgear, starters and cable due to age, condition, obsolescent. It will also replace the existing generator with one large enough to handle all identified emergency auxiliary loads (500 kVA).

Justification: The project will provide sufficient redundancy of power to the pumps and will provide for a future additional 4th power feed to the station to comply with EPA requirements of two sources of electrical power and provides new, safer and more automatic transfers of the loads to the emergency distribution bus.

Schedule Milestones:
Planning: Completed
Design: 7/07-10/07
Construction: 4/08-10/08

2) **PS1 ELECTRICAL DISTRIBUTION SYSTEM MODIFICATIONS**
CIP # 41-929.2
Council District: 8

Description: Installing an automatic transfer system to automatically switch the available active electrical feed to the motor control centers.

Justification: An automatic transfer switch provides additional safety for the plant operating staff by avoiding personal contact with the medium voltage switchgear systems, and by reducing the probability of human error in the switching process. A direct connection between MCC-1 and MCC-2 will be added, thereby removing potential single points of failure between the MCC's and the 4.16-kV/480-V transformers and improving code compliance.

Schedule Milestones:
Planning: Completed
Design: 7/07-10/07
Construction: 4/08-10/08

3) **PUMP STATION 1 SCREENING CHAMBER IMPROVEMENTS**
CIP # 41-929.9
Council District: 8

Description: This project will replace the existing fire damaged and spaulling liner in the PS 1 Screening room channel areas and wet wells.

Justification: The new liner will protect the concrete from deterioration and provide protection to the pumps from the spaulled lining.

Schedule Milestones:
Planning: Completed
Design: Completed
Construction: 4/07-10/07

4) **METRO PS SECURITY / CAMERA / LIGHTING / FENCING**
CIP # 41-931.1
Council District: Citywide

Description: This project will upgrade the existing CCTV security systems at the large Metro Pump stations. Otay River Pump Station upgrades were completed in FY 06. PS 1 and 2 are currently being upgraded and will be completed in FY 07. Grove Avenue Pump Station upgrades are planned for FY 08. Additional lighting and improving of perimeter fencing might be required at all pump stations.

Justification: Improve the security of the pump stations.

Schedule Milestones:
Planning: Completed
Design: On going
Construction: On going

5) **PS 1 FORCE MAIN VENT REPLACEMENT PROJECT**
CIP #: 41-926.0
Council District: 8

Description: Replace the exiting 6" APCO air release valve on the top of the force main with a combination air release/vacuum relief valves (CARVRV) to be installed at the spring line or center line on both station headers to protect against transient pressures. Dual 6-inch

CARVRV type RGX manufactured by Vent-O-Mat should be provided on each station header. These valves will provide more reliable and redundant force main protection. The two valves will provide protection for the pipeline, allowing one valve to be out of service due to either malfunction or for maintenance

Justification: Provide better transient pressures protection for the pipeline.

Reference: Brown Caldwell July 29, 2002 surge analysis for PS 1

Schedule Milestones:
Planning: Completed
Design: To Be Determined
Construction: To Be Determined

6) **PS 1 SCREENS REPLACEMENT**
CIP #:41-926.0
Council District: 8

Description: Replace the screens at PS1 with more reliable climber rake type screens. Part of the screening project, the conveyor belt carrying screenings to a trash bin and the trash bin itself will be enclosed and ventilated to the odor control system.

Justification: A screening study was completed by B&C in June 2003 for all major MWWD pump stations. It recommends a consistent plan for the use of screens in system pump stations and to minimize maintenance needs.

Reference: Preliminary Design Report for Large Pump Station Screen Modification Projects, Brown Caldwell October, 2003

Schedule Milestones:
Planning: Completed
Design FY 2018
Construction FY 2019

7) **PS 1 & 2 SPILL CONTAINMENT**
CIP # 41-930.8
Council District: 2 and 8

Description:

PS 1 – Install 30 feet of asphalt berm along the East end of the North edge of the site. This will assure larger spills can be contained on site and directed into the wet well. To avoid ponding minor resurfacing is also recommended.

PS 2 – Install paving in the most northeast corner of the station to minimize or prevent the discharge of chemicals to the ground surface. Also construct a removable swale dam two feet in front of the catch basin at the southwest corner of the site and replace 25 feet of 10-inch drain pipe with an 18-inch pipe

Justification: Provide protection against minor spills and prevent discharge to the storm drain system.

Reference: Business Case Evaluation Project: for the Spill Containment at the Large Pump Stations dated September 2006.

Schedule Milestones:

Planning:	Completed
Design	To Be Determined
Construction	To Be Determined

Project Title: **Annual Allocation - North City Water Reclamation Plant**
CIP #: 42-926.0
Council District: 5
Budget: $1,745,037 (FY 2008-2011) Rate Case
$1,859,888 (FY 2008-2017)

Description: The Annual Allocation provides for minor renovation or replacement of facilities due to increases in wastewater flow, regulatory changes, or asset depletion. The following is a list of known projects:

1) **Grit Piping Y-access Ports**
CIP #: 42-926.0

Description: This project will entail the installation of Y-access ports (cleaning ports) to improve pipe cleaning.

Justification: Due to the adhesive nature of grit, it tends to plug and obstruct the existing 4-inch discharge piping of the grit pumps. Currently there are no access ports on the grit piping to allow flushing to take place.

Schedule Milestones:
Planning: 04/08-07/08
Design: 08/08-03/09
Construction: 03/09-06/09

2) **Butterfly Valve Upgrade**
CIP #: 42-926.0

Description: This project is to upgrade the 24-inch butterfly valve to 48-inch.

Justification: The existing 24-inch is incapable of carrying the projected 2010 reclaimed water flow of 15 mgd.

Schedule Milestones:
Planning: 06/10-07/10
Design: 8/10-12/10
Construction: 03/11-6/11

3) **IPS Bridge Crane Modifications**
CIP #: 42-926.0

Description: This project will entail modifications to the existing bridge crane system to allow servicing of equipment without disassembling the motor and the pump shaft.

Justification: Servicing of valves and other equipment is very labor intensive due to the fact that the shaft and motor assembly would need to be disassembled every time other equipment fail.

Schedule Milestones:
Planning: 07/08-09/08
Design: 09/08-12/08
Construction: 04/09-07/09

4) **Primary Sedimentation Tank Foul Air Modifications**
CIP #: 42-926.0

Description: This project will entail ducting modifications so that the foul air from the equalization tanks will by-pass the influent channel and discharge directly into the front end of the Primary sedimentation tank. The foul air will be routed through 24-inch foul air duct installed directly above the PST.

Justification: Currently, due to small opening at the influent channel most of the foul air is not conveyed from equalization tanks to the primary sedimentation tanks as intended. Instead it remains stagnant at the influent channel and causes odorous air to be released out to the atmosphere through the gaps of the channel covers.

Schedule Milestones:
Planning: 5/06-6/06
Design: 6/06-12/06
Construction: 03/07-7/07

5) **Headworks Influent Channel Modifications**
CIP #: 42-926.0

Description: This project will investigate alternative methods to increase velocity through the influent channel to prevent the accumulation of grit.

Justification: Due to the large channels, the velocity of the flow is very low which results in grit settlement in the channels before and after the screens. The maintenance staff has observed that an average 2-3 feet of grit accumulates and must be manually removed on a regular basis.

Schedule Milestones:
Planning: 6/07-7/07
Design: 8/07-10/07
Construction: 10/07-6/08

6) **Headworks Scum Concentrators**
CIP #: 42-926.0

Description: This project will evaluate different methods to prevent scum from adhering to the scum storage tanks.

Justification: Due the adhesion of the scum to the storage tanks, scum pumping process is hampered, requiring the operation staff to manually flush the scum tanks.

Schedule Milestones:
Planning: 07/10-08/10
Design: 8/10-12/10
Construction: 03/11-6/11

7) **Primary Sedimentation Tank Odor Control System**
CIP #: 42-926.0

Description: This project will entail a study to determine the improved capacity needed of the odor control system.

Justification: Field data shows that Hydrogen Sulfide concentration in the collected foul air has been much higher than the design capacity. Therefore, a study is needed to determine the new capacity required.

Schedule Milestones:
Planning: 08/08-010/08
Design: 10/08-4/09
Construction: 04/09-08/09

8) **Primary Influent Channel Scum Removal**
CIP #: 42-926.0

Description: This project will address the restrictive openings between the Primary Sedimentation Tank and the Primary Influent Channel.

Justification: Due to the restrictive openings, a significant amount of scum has been accumulating and solidifying in the primary influent channel. With the current accessibility problems, it is very difficult for the operation staff to maintain and clean the channel.

Schedule Milestones:
Planning: 07/08-012/08
Design: 12/08-3/09
Construction: 06/09-10/09

9) **Scum Spray Valve replacement**
CIP #: 42-926.0

Description: This project is to remove corroded and hard-to access motorized scum spray valves from inside the tanks, reroute spray water piping and install new motorized valves on top of the tanks for easy O/M access.

Justification: The current location of the scum spray valves inside the PST makes difficult to maintain. Also due to the harsh environment equipment seems to corrode faster thus requiring more frequent replacement or maintenance.

Schedule Milestones:
Planning: 5/06-6/06
Design: 6/06-12/06
Construction: 01/07-7/07

10) **IPS Wetwell Stop Logs**
CIP #: 42-926.0

Description: This project will investigate methods to isolate the influent draft tube channel so maintenance on the stop log channels can be performed.

Justification: Since the current stop logs do not seat properly it is very difficult to perform "dry" servicing of a pump check valves.

Schedule Milestones:
Planning: 07/07-10/07
Design: 10/07-12/07
Construction: 12/07-06/08

11) **IPS Draft Tube Sump Pump**
CIP #: 42-926.0

Description: This project will entail upgrade of the Draft Tube Sump Pumps on the North City Influent Pump Station.

Justification: The Sump pumps fail on regular basis, thus requiring maintenance/replacement.

Schedule Milestones:
Planning: 07/08-10/08
Design: 10/08-11/08
Construction: 12/08-06/09

Project Title: **Annual Allocation - South Bay Water Reclamation Plant**
CIP #: 45-932.0
Council District: 8
Budget: $741,303 (FY 2008-2011) Rate Case
$2,731,228 (FY 2008-2017)

Description: The Annual Allocation provides for minor renovation and upgrades of equipment at the South Bay Water Reclamation Plant. The following is a list of known projects:

1) **Third Reclaimed Water Pump, Motor and VFD**
CIP #: 42-932.7

Description: The project will install a third 600 HP pump, motor and electrical variable frequency drive.

Justification: A third pump is needed to provide full redundancy for the committed supply of reclaimed water.

Schedule Milestones:
Planning: May 2006
Design: November 2006
Construction: May 2007

2) **Telemetry Work**
CIP #: 42-932.0

Description: This project includes the installation of telemetry equipment at the Otay Water District 12 MG reclaimed water tank and the SBWRP. The automated controls at the SBWRP reclaimed water pump station will be modified as part of this project.

Justification: The project is needed to receive water level information from the Otay Water District tank and incorporate that information into the control strategies for the pump station controls.

Schedule Milestones:
Planning: March 2006
Design: June 2006
Construction: December 2006

3) **Reclaimed Water Drain Line**
CIP #: 42-192.7

Description: This project is in preliminary design. A possible project would construct 8-inch pipeline from the existing reclaimed water line to

the International Boundary and Water Commission Treatment Plant (IBWC) and connect it to the South Bay Outfall system.

Justification: During times when the reclaimed water stored in the 750,000 gallon reclaimed water tank does not meet the full permit requirements, the drain line is needed to quickly drain the tank and allow for the resumption of reclaimed water supply to the IBWC plant.

Schedule Milestones:

Planning:	January 2007
Design:	March 2007
Construction:	November 2007

Project Title: **Environmental Monitoring & Tech. Services Lab Boat Dock**
CIP #: 45-965.0
Council District: 2
Budget: $2,434,253 (Project Total)

Description: Boat dock to provide mooring for two ocean monitoring vessels in support of the Environmental Monitoring and Technical Services Laboratory

Justification: A new 40,000 square foot ocean monitoring laboratory was recently constructed and is now in operation. As a condition of our NPDES Permit, MWWD is required to conduct daily ocean monitory activities associated with the two outfalls. MWWD has two vessels used for this purpose that need to be docked adjacent to the facility to transport samples and equipment.. Design of this facility was completed during the design of the laboratory facility, but will require updating as a result of new vessels and coordination with the San Diego State University Foundation laboratory. Bathometric surveys in the adjacent channel have been completed to assist in the final design of the dock, but will require updating as well.

Schedule Milestones:
Planning: Complete
Design: 90% complete; final design to be completed before end of FY06
Construction: Anticipated in FY07

Project Title: **Metro Facilities Control System Upgrade**
CIP #: 45-966.0
Council District: 1, 2, 5, 7
Budget: $11,129,150 (FY 2008-2011) Rate Case
$13,205,547 (FY 2008-2017)

Description: In 1994, Metropolitan Wastewater Department (MWWD) contracted with Emerson Process Management Power and Water Solutions, Inc. ("Emerson Process Management, Inc." or "Emerson") to provide a Distributed Control System (DCS) that automates wastewater treatment plant processes throughout Metropolitan Wastewater facilities. The DCS system is a microprocessor and computer based industrial control system with controlling units spread throughout the facilities. These control units are linked with electronic data highways for communication with the control room and with the central operations and management center (COMC). The COMC is located at the Metropolitan Operations Center II (MOCII). The total cost of this complete system for all Metropolitan Wastewater facilities was $120 Millions. In the later phase of this project, Metro facilities such as South Bay, Pump Station 1, Pump Station 2 were installed with the latest and more capacity oriented DCS system or the latest version from Emerson. However the Metro facilities such as MBC, NC, Pt. Loma had the original WDPF DCS system installed from Emerson. This project accommodates the installation of the latest version of the DCS system from Emerson at these later facilities.

Justification: The DCS system installed at Metro Facilities (MBC, NC, Pt. Loma) is a Westinghouse Distributed Processing Family II (WDPFII) system with a ten to twelve year life cycle. The system and the network at these facilities are at almost full capacity. There are some existing localized control systems that are old and in need of replacement. These are planned to be brought into the plant DCS system. There are new CIP projects in the current budget that also need to be implemented into the DCS system. The existing system cannot handle these additions. This upgrade will extend the life of the system for another ten to twelve years, and will be able to accommodate all of the existing loads and the new projects discussed above

Schedule Milestones:
Planning: Start 11/06
Design: Start 03/07
Construction: Start 07/07 Completion: 06/2010

Project Title: **MBC Biosolids Storage Silos**
CIP #: 45-984.0
Council District: 7
Budget: $9,223,925 (Project Total)

Description: The project will add two more storage silos and will also evaluate alternatives for additional truck loadout stations.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report there is insufficient storage capacity particularly during peak conditions.

Schedule Milestones:
Planning: From 10/06 to 09/07
Design: From 10/07 to 12/08
Construction: From 09/09 to 01/11

Project Title: **MBC Dewatering Centrifuges Replacement**
CIP #: 45-983.0
Council District: 7
Budget: $5,084,815 (Project Total)

Description: The project will replace 4 of the 8 existing centrifuges with 4 new and larger capacity centrifuge units.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report there is capacity limitations due to design/operational constraints.

Schedule Milestones:
Planning: From 10/06 to 09/07
Design: From 08/08 to 11/09
Construction: From 09/10 to 02/13

Project Title: **MBC Odor Control Facility Upgrades**
CIP #: 45-989.0
Council District: 7
Budget: $5,622,908 (Project Total)

Description: This project will upgrade the existing Odor Control System.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report the equipment is underperformance, not enough capacities, inadequate exhaust capture, safety and permit issues, and potential APCD violations.

Schedule Milestones:
Planning: Completed
Design: From 05/07 to 5/08
Construction: From 02/09 to 02/10

Project Title: **MBC Standby Centrifuge Feed Facilities**
CIP #: 45-981.0
Council District: 7
Budget: $1,676,852 (Project Total)

Description: This project will provide for the addition of two standby centrifuge feed pumps and two standby polymer feed pumps. One set (consisting of a sludge pump and a polymer pump) will be dedicated to each of the two sets of 4-unit dewatering centrifuges to provide redundancy capability.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report the equipment is underperformance, redundancy problem as the stand by centrifuge feed pump and polymer feed pump are not always available.

Schedule Milestones:
Planning: From 12/06 to 07/07
Design: From 09/07 to 11/08
Construction: From 04/09 to 05/10

Project Title: **MBC Storm Drainage Upgrades**
CIP #: 45-990.0
Council District: 7
Budget: $ 4,459,637 (Project Total)

Description:

1) This project will eliminate the west discharge structure by re-routing flow to the east discharge structure.
2) Provide a new holding tank just prior to east discharge structure to catch the first flush and any chemical spills. Return the capture flow to the plant's sewer system.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report:

1) Erosion downstream of the west discharge structure.
2) Several process areas, including sludge and chemicals, flow directly into the plant's storm drain system.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: 06/13 to 10/14

Project Title: **MBC Switchgear Reconfiguration**
CIP #: 45-991.0
Council District: 7
Budget: $2,236,066 (Project Total)

Description: This project will reconfigure the MBC Main Plant Switchgear so that COGEN would have a more stable and direct interface with the utility power grid.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, when a fault is detected on the Utility side the Utility breaker trips and the COGEN goes down resulting in Plant power outage. When the Utility power goes down the COGEN tries to feed the grid and trips off due to overload.

Schedule Milestones:
Planning: From 01/07 to 08/07
Design: From 10/07 to 09/08
Construction: From 04/09 to 03/10

Project Title: **MBC Wastewater Forcemain Extention**
CIP #: 45-988.0
Council District: 7
Budget: $1,345,168 (Project Total)

Description: This will upgrade the wastewater pumps to by-pass the capacity-limited Muni-SPS86 and extend MBC's discharge pipeline past SPS86 and discharge directly to a gravity trunk sewer.

Justification: Per the MBC Capacity, Condition and Operation assessment Report and Master Plan for 2005-2030 (Camp) Report, the discharge flow rate from the MBC wastewater pumps is restricted because of capacity issues at the downstream pump station, Muni PS86. Restricting MBC's discharge flow causes wastewater to overflow to centrate pump station which impacts OPRA emissions.

Schedule Milestones:
Planning: From 09/06 to 12/06
Design: From 01/07 to 10/07
Construction: From 04/08 to 09/09

Project Title: **North City Raw Sludge/Point Loma Cathodic Protection**
CIP #: 45-964.0
Council District: 5
Budget: $552,499 (Project Total)

Description: This project involves the design and construction of new cathodic protection system for the North City Raw Sludge pipeline to prevent possible future corrosion.

Justification: In 2004, the MWWD in cooperation with its As-Needed Engineer (Brown & Caldwell) conducted a pre-cathodic protection design study to look at the existing cathodic protection on the three pipelines, the 16-inch Raw Sludge Pipeline, 20-inch Centrate Pipeline, and the reclaimed water pipeline. As a result of the study it was determined that the existing sacrificial anode cathodic protection system is ineffective and does not provide adequate protection against corrosion.

Schedule Milestones:

Planning:	April 2004
Design:	01/07-03/07
Construction	08/08-01/08

Project Title: **NCWRP-Sludge Pump Station Upgrade**
CIP #: 41-942.0
Council District: 5
Budget: $467,717 (Project Total)

Description: The current North City Water Reclamation Sludge Pump Station is experiencing extreme vibration that is preventing the pumps from being operated at full capacity, and reducing equipment life. This project will entail a study to determine the source of the vibration and to implement a remediation plan to eliminate the vibration and thus reduce maintenance, and increase equipment life.

Justification: Due to the vibration the existing sludge pump station can not be operated at its full capacity, also equipment life is being reduced dramatically due to the vibration.

Schedule Milestones:

Planning:	02/08-5/08
Design:	07/08-09/08
Construction	07/09-07/2010

Project Title: **NCWRP-Effluent Pump Station Upgrade**
CIP #: 41-944.0
Council District: 5
Budget: $865,151 (Project Total)

Description: This project will entail coating of equipment and venting of the wetwell and dry well to prevent chlorine laden air from damaging existing equipment.

Justification: Due to the chlorine laden air pumps and motors are corroding at a faster rate thus requiring frequent repairs.

Schedule Milestones:
Planning: 05/07-6/07
Design: 06/07-09/07
Construction: 01/8-08/09

Project Title: **NCWRP-Ultrafiltration & EDR Upgrade**
CIP #: 42-933.0
Council District: 5
Budget: $11,130,215 (Project Total)

Description: This project is to remove and upgrade all EDR equipment and install new Ultrafiltration treatment technology prior to the EDR. This project also entails the construction of an enclosure around the Demineralization facility.

Justification: Title 22 of the California Administrative Code requires coagulation of secondary effluent that has turbidity exceeding 5 NTU prior to filtration. During periods of high turbidity the operation staff applies ferric chloride as coagulant to reduce turbidity. The application of ferric chloride has a detrimental effect on the EDR because it blinds the membranes in just a few hours requiring manual cleaning of the units before they can be used again. To avoid blinding the EDR during periods of high turbidity, the staff by would like to utilize Ultrafiltration to prevent the EDR from being blinded.

Also when the EDR was constructed, it was supposed to be a temporary facility with no enclosure. As a result the EDRs, cartridge filters, pumps piping and other associated equipment are currently open to the environment and therefore are prone to ultraviolet light attack and coastal high salinity environment.

Schedule Milestones:
Planning: 07/08-10/08
Design: 10/08-09/10
Construction: 12/10-07/15

Project Title: **Pump Station 2 Onsite Standby Power**
CIP # 45-915.0
Council District: 2
Budget: $9,193,012 (Project Total)

Description: This proposed upgrade would replace the natural gas engine drives for pumps 4&5 with electric motors and provide two to three natural gas engines to supply prime electrical power on an electrical system that is isolated from SDG&E. Any two (and possibly three) of the 8 pumps at the station could operate on this power plant isolated from the SDG&E system.

Justification: This project will provide the required force main surge protection incase of an electrical utility outage, better operator flexibility and pump station reliability than the existing engine driven pumps. This is in addition to providing the fourth electrical power source required by the EPA. Its operation is intended to also reduce the pump station operational cost.

Schedule Milestones:
Planning: Completed
Design: FY 2007
Construction: FY 2008 - 2009

Project Title: **Pump Station 2 Screens**
CIP # 41-933.0
Council District: 2
Budget: $10,985,694 (Project Total)

Description: Replace the screens at PS2 with climber rake type screens. Part of the screening project, the conveyor belt carrying screenings to a trash bin and the trash bin itself will be enclosed.

Justification: A screening study was completed by B&C in June 2003 for all major MWWD pump stations. It recommends a consistent plan for the use of screens in system pump stations and to minimize maintenance needs. Business Case Evaluation (BCE) is pending.

Reference: Preliminary Design Report for Large Pump Station Screen Modification Projects, Brown Caldwell October, 2003

Planning: Completed
Design: FY 2018
Construction: FY 2018 - 2019

Project Title: **South Metro Sewer Rehabilitation Phase IIIB**
CIP #: 45-961.0
Council District: 2
Budget: $11,407,727 (Project Total)

Description: This project will rehabilitate the remaining 5000' of the 108" pipeline from Winship Lane to Pump Station 2.

Justification: The South Metro Sewer is over forty years old and inspections and rehabilitations are necessary to insure the structural integrity in the sewer.

Schedule Milestones:
Planning: Planning and inspection is scheduled for July 2007.
Design: FY 2013
Construction: FY 2014

Project Title: **Wet Weather Storage Facility**
CIP #: 45-940.0
Council District: 2, 5
Budget: $124,717,160 (Project Total)

Description: This project includes the implementation of the Live Stream Discharge of reclaimed water from the North City Water Reclamation Plant during heavy rain events to reduce the capacity demand on the downstream sewer system and facilities. This project also includes constructing a seven-million gallon (7-MG) Underground Storage Tank at the Liberty Station (vacated Naval Training Center) to provide hydraulic relief to the Pump Station 2, the South and North Metro Interceptors, and major trunk sewers.

Justification: In 1997, MWWD in cooperation with the firm of Montgomery Watson evaluated the risk of capacity related overflows and determined that a wet weather storage facility would be required to provide hydraulic relief for the sewer system during heavy rain events. Since then, a series of engineering studies consistently verified the need of a storage facility. Among these studies was the Peak Flow Management Strategy, which recommended additional strategies including the Live Stream Discharge. In 2006, a Business Case Evaluation confirmed that the implementation of the Live Stream Discharge defers the need of a storage facility and therefore reduces the high initial capital cost for the next 10 years.

Schedule Milestones: Live Stream Discharge
Planning: July 2006 – June 2007
Design: July 2007 – June 2009
Construction: July 2009 – June 2011

Schedule Milestones: 7-MG Underground Storage Tank
Planning: July 2011 – June 2014
Design: July 2014 – June 2017
Construction: July 2015 – June 2019

Project Title: **Pump Station Upgrades**
CIP #: 41-929.0
Council District: Citywide
Budget: $20,639,463

Description: This project consists of the upgrade to 23 municipal sewer pump stations. The upgrades will be broken into four construction packages. Upgrades include: forcemains, pump replacements, generator installations, and electrical equipment upgrades or replacements.

1) **GROUP I**
CIP# 41-929.1
Council District: Citywide
Description: Group I SPS Upgrades consists of the North County sewer pump stations #71, 73, 74, 75, 76, 80, and 82 and upgrades include: Replacement of submersible sewage pumps, addition of emergency storage tanks, gas generators, & flow meters.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: Start 7/07, Complete 6/13

2) **GROUP II**
CIP# 41-929.2
Council District: Citywide
Description: Group II SPS Upgrades consists of the citywide pump stations to construct underground emergency sewage overflow storage tanks, new generators, & flow meters. This group includes pump stations #43, 44, 47, 51 & 60A.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: Start 7/07, Complete 6/13

3) **GROUP III**
CIP# 41-929.3
Council District: Citywide
Description: This project consists of constructing new dual force mains at pump stations #44, 51, 54, 60A, 71, 73, 74, 75, 76, 80, 81 and 82.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: Start 7/07, Complete 6/13

4) **GROUP IV**
CIP# 41-929.4
Council District: Citywide
Description: This project consists of mainly the small comfort (bathroom) stations at Mission Bay Park, and other small stations citywide. This group includes stations #46, 52, 53, 54, 55, 56, 57 and 58.

Justification: Consent Decree requirement.

Schedule Milestones:
Planning: Complete
Design: Complete
Construction: Start 7/07, Complete 6/13

Project Title: **Pump Station 64 Fiber Optics Network**
CIP #: 41-940.0
Council District: 1,5
Budget: $1,484,565 (Project Total)

Description: This project provides for the installation of fiber optic cable/conduit between Pump Station 64 and North City Water Reclamation Plant.

Justification: This project is needed to install the fiber optic link between Pump Station 64 and North City Water Reclamation Plant. The implementation of this project will complete the Metropolitan Wastewater Department Operation and Maintenance Communication Network and enable the pump station to be monitored from the Central Control and Information Center located at Metro Operation Center (MOC II)

Schedule Milestones:
Planning:
Design: FY2008
Construction: FY2009

Footnote No. 101

EXECUTION COPY

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MASTER

INSTALLMENT PURCHASE

AGREEMENT

by and between the

CITY OF SAN DIEGO

and the

PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO

Dated as of September 1, 1993

RELATING TO
INSTALLMENT PAYMENTS SECURED BY
THE SEWER REVENUE FUND OF
THE CITY OF SAN DIEGO, CALIFORNIA

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LA1-3889.15

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MASTER INSTALLMENT PURCHASE AGREEMENT

This MASTER INSTALLMENT PURCHASE AGREEMENT, made and entered into as of September 1, 1993, by and between the CITY OF SAN DIEGO, a municipal corporation organized and existing under a charter duly adopted pursuant to the provisions of the Constitution of the State of California (the "City"), and the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the "Authority").

W I T N E S S E T H:

WHEREAS, the City proposes to undertake the acquisition, construction, installation and improvement of its wastewater system as more fully described in Exhibit A hereof and as modified in conformity with same (the "Project");

WHEREAS, the Authority has agreed to assist the City by financing the construction of the Project for the City;

WHEREAS, the City has determined that the purchase of components and the Project by the City is necessary and proper for City uses and purposes;

WHEREAS, the Authority proposes to sell components of the Project from time to time to the City and the City desires to purchase components of the Project from the Authority upon the terms and conditions set forth herein;

WHEREAS, the City and the Authority have duly authorized the execution of this Installment Purchase Agreement;

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, all of the following definitions shall be equally applicable to both the singular and plural forms of any of the terms defined herein:

Accountant's Report

The term "Accountant's Report" means a report signed by an Independent Certified Public Accountant.

Acquisition [or Construction] Fund

The term "Acquisition [or Construction] Fund" means the fund by that name established pursuant to any Issuing Instrument.

Authority

The term "Authority" means the Public Facilities Financing Authority of the City of San Diego, a joint powers authority duly organized and existing under and by virtue of the laws of the State of California.

Authorized City Representative

The term "Authorized City Representative" means the Mayor, the City Manager or the Treasurer of the City or such other officer or employee of the City or other person who has been designated as such representative by resolution of the City Council of the City.

Authorizing Ordinance

The term "Authorizing Ordinance" means the ordinance pursuant to which the Installment Purchase Agreement was authorized and any additional Ordinance or official authorizing act of the Council of the City approving execution and delivery of any Supplement to the Installment Purchase Agreement or any Issuing Instrument.

Balloon Indebtedness

The term "Balloon Indebtedness" means, with respect to any Series of Obligations twenty-five percent (25%) or more of the principal of which matures on the same date or within a 12-month period (with sinking fund payments on Term Obligations deemed to be

payments of matured principal), that portion of such Series of Obligations which matures on such date or within such 12-month period; provided, however, that to constitute Balloon Indebtedness the amount of indebtedness maturing on a single date or over a 12-month period must equal or exceed 150% of the amount of such Series Obligations which matures during any preceding 12-month period. For purposes of this definition, the principal amount maturing on any date shall be reduced by the amount of such indebtedness which is required, by the documents governing such indebtedness, to be amortized by prepayment or redemption prior to its stated maturity date.

Bond Counsel

The term "Bond Counsel" means a firm of attorneys which are nationally recognized as experts in the area of municipal finance.

Charter

The term "Charter" means the Charter of the City as it now exists or may hereafter be amended, and any new or successor Charter.

City

The term "City" means the City of San Diego, a municipal authority organized and existing under the Charter, and any successor to the City as a result of a transfer authorized under Section 6.20.

Code

The term "Code" means the Internal Revenue Code of 1986, and the regulations thereunder, as amended, and any successor provisions of law.

Components

The term "Components" means components of the Project specified in a Supplement.

Consultant

The term "Consultant" means the consultant, consulting firm, engineer, architect, engineering firm, architectural firm, accountant or accounting firm retained by the City to perform acts or carry out the duties provided for such consultant in this Installment Purchase Agreement. Such consultant, consulting firm, engineer, architect, engineering firm or architectural firm shall be nationally recognized within its profession for work of the character required. Such accountants or accounting firm shall be

independent certified public accountants licensed to practice in the State of California.

Contracts

The term "Contracts" means any contract or lease of the City (including the Installment Purchase Agreement) authorized and executed by the City, the installment or lease payments of which are payable from the Net System Revenues and which are on a parity with Installment Payments.

Credit Provider

The term "Credit Provider" means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any Credit Support arrangements for some or all of the Parity Obligations.

Credit Provider Reimbursement Obligations

The term "Credit Provider Reimbursement Obligations" means obligations of the City to repay, from Net System Revenues, amounts advanced by a Credit Provider as credit support or liquidity for Parity Obligations.

Credit Support

The term "Credit Support" means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a Credit Provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any Parity Obligations.

Debt Service

Except as otherwise provided in the next sentence, the term "Debt Service" means, for any Fiscal Year, the sum of (1) the interest payable during such Fiscal Year on all outstanding Parity Obligations, assuming that all outstanding Serial Parity Obligations are retired as scheduled and that all outstanding Term Parity Obligations are redeemed or paid from sinking fund payments as scheduled (except to the extent that such interest is to be paid from the proceeds of sale of any Parity Obligations), (2) that portion of the principal amount of all outstanding Serial Parity Obligations maturing on the next succeeding principal payment date which falls in such Fiscal Year (excluding Serial Obligations which at the time of issuance are intended to be paid from the sale of a corresponding amount of Parity Obligations), (3) that portion of the principal amount of all outstanding Term Parity Obligations required to be redeemed or paid on any redemption date which falls

in such Fiscal Year (together with the redemption premiums, if any, thereon); provided that, (1) as to any Balloon Indebtedness, Tender Indebtedness and Variable Rate Indebtedness, interest thereon shall be calculated as provided in the definition of Maximum Annual Debt Service and principal shall be deemed due at the nominal maturity dates thereof; (2) the amount on deposit in a debt service reserve fund on any date of calculation of Debt Service shall be deducted from the amount of principal due at the final maturity of the Parity Obligations for which such debt service reserve fund was established and in each preceding year until such amount is exhausted; (3) the amount of any interest payable on any Parity Obligation for which there exists a Qualified Swap Agreement shall be the net amount payable by the City as provided in paragraph (iv) or paragraph (viii), as applicable, of the definition of Maximum Annual Debt Service; and (4) the amount of payments on account of Parity Obligations which are redeemed, retired or repaid on the basis of the accreted value due on the scheduled redemption, retirement or repayment date shall be deemed principal payments, and interest that is compounded and paid as part of the accreted value shall be deemed payable on the scheduled redemption, retirement or repayment date but not before.

Defaulted Obligations

The term "Defaulted Obligations" means Obligations in respect of which an Event of Default has occurred and is continuing.

District

The term "District" shall mean the San Diego Wastewater Management District created under Chapter 803 of 1992 Session Laws.

Engineer's Report

The term "Engineer's Report" means a report signed by an Independent Engineer.

Event of Default

The term "Event of Default" means an event described in Section 8.01.

Fiscal Year

The term "Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official Fiscal Year of the City.

Independent Certified Public Accountant

The term "Independent Certified Public Accountant" means any firm of certified public accountants appointed by the City, and each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

Independent Engineer

The term "Independent Engineer" means any registered engineer or firm of registered engineers of national reputation generally recognized to be well qualified in engineering matters relating to wastewater systems, appointed and paid by the City.

Installment Payment Date

The term "Installment Payment Date" means any date on which an Installment Payment is due as specified in or determined pursuant to a Supplement.

Installment Payments

The term "Installment Payments" means the Installment Payments scheduled to be paid by the City under and pursuant hereto and any Supplement.

Installment Payment Obligations

The term "Installment Payment Obligations" means Obligations consisting of or which are supported in whole by Installment Payments.

Installment Purchase Agreement

The term "Installment Purchase Agreement" means this Master Installment Purchase Agreement by and between the City and the Authority, dated as of September 1, 1993, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

Issuing Instrument

The term "Issuing Instrument" shall mean any indenture, trust agreement or Installment Purchase Agreement including any Supplement under which Obligations are issued or created.

Law

The term "Law" means the Charter and all laws of the State supplemental thereto.

Maintenance and Operation Costs of the Metropolitan System

The term "Maintenance and Operation Costs of the Metropolitan System" means (a) a Qualified Take or Pay Obligation related to the Metropolitan System and (b) reasonable and necessary costs spent or incurred by the City for maintaining and operating the Metropolitan System, calculated in accordance with generally accepted accounting principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Metropolitan System in good repair and working order, and including administrative costs of the City attributable to the Components which are part of the Metropolitan System, salaries and wages of employees, payments to employees retirement systems (to the extent paid from Metropolitan System Revenues), overhead, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Obligations the proceeds of which are used to acquire Components which are part of the Metropolitan System, including any amounts required to be deposited in the Rebate Fund pursuant to the Tax Certificate relating to the financing of Components which are part of the Metropolitan System, fees and expenses payable to any Credit Provider (other than in repayment of a Credit Provider Reimbursement Obligation), and including expenses incurred or accrued incident to the formation of an entity to which the City may transfer substantially all of the Metropolitan System pursuant to Section 6.20, but excluding in all cases (i) depreciation, replacement and obsolescence charges or reserves therefor, (ii) amortization of intangibles or other bookkeeping entries of a similar nature, (iii) costs of capital additions, replacements, betterments, extensions or improvements to the Metropolitan System, which under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation, (iv) charges for the payment of principal and interest on any general obligation bond heretofore or hereafter issued for Metropolitan System purposes, and (v) charges for the payment of principal and interest on account of any Obligation.

Maintenance and Operation Costs of the Municipal System

The term "Maintenance and Operation Costs of the Municipal System" means (a) a Qualified Take or Pay Obligation related to the Municipal System and (b) the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Municipal System, calculated in accordance with generally accepted accounting principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Municipal System in good repair and working order, and including administrative costs of the City attributable to the Components which are part of the Municipal System, salaries and wages of employees, payments to

employees retirement systems (to the extent paid from Municipal System Revenues), overhead, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Obligations the proceeds of which are used to acquire Components which are part of the Municipal System, including any amounts required to be deposited in the Rebate Fund pursuant to the Tax Certificate relating to the financing of Components which are part of the Municipal System, fees and expenses payable to any Credit Provider (other than in repayment of a Credit Provider Reimbursement Obligation), but excluding in all cases (i) depreciation, replacement and obsolescence charges or reserves therefor, (ii) amortization of intangibles or other bookkeeping entries of a similar nature, (iii) costs of capital additions, replacements, betterments, extensions or improvements to the Municipal System, which under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation, (iv) charges for the payment of principal and interest on any general obligation bond heretofore or hereafter issued for Municipal System purposes, and (v) charges for the payment of principal and interest on account of any Obligation.

Maintenance and Operation Costs of the Wastewater System

The term "Maintenance and Operation Costs of the Wastewater System" means (a) a Qualified Take or Pay Obligation and (b) the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Wastewater System, calculated in accordance with generally accepted accounting principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and including administrative costs of the City attributable to the Project and the Installment Purchase Agreement, salaries and wages of employees, payments to employees retirement systems (to the extent paid from System Revenues), overhead, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Obligations, including this Installment Purchase Agreement, including any amounts required to be deposited in the Rebate Fund pursuant to the Tax Certificate, fees and expenses payable to any Credit Provider (other than in repayment of a Credit Provider Reimbursement Obligation), and expenses incurred or accrued incident to the formation of an entity to which the City may transfer substantially all of the Metropolitan System pursuant to Section 6.20, but excluding in all cases (i) depreciation, replacement and obsolescence charges or reserves therefor, (ii) amortization of intangibles or other bookkeeping entries of a similar nature, (iii) costs of capital additions, replacements, betterments, extensions or improvements to the Wastewater System

which under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation, (iv) charges for the payment of principal and interest on any general obligation bond heretofore or hereafter issued for Wastewater System purposes, and (v) charges for the payment of principal and interest on any debt service on account of any obligation on a parity with or subordinate to the Installment Payments.

Maximum Annual Debt Service

The term "Maximum Annual Debt Service" means, at any point in time, with respect to Parity Obligations then Outstanding, the maximum amount of principal and interest becoming due on the Parity Obligations in the then current or any future Fiscal Year, calculated by the City or by an Independent Certified Public Accountant as provided in this definition and provided to the Trustee. For purposes of calculating Maximum Annual Debt Service, the following assumptions shall be used to calculate the principal and interest becoming due in any Fiscal Year:

(i) in determining the principal amount due in each year, payments shall (except to the extent a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including the amount of any Parity Obligations which are or have the characteristics of commercial paper and which are not intended at the time of issuance to be retired from the sale of a corresponding amount of Parity Obligations, and including any scheduled mandatory redemption or prepayment of Parity Obligations on the basis of accreted value due upon such redemption or prepayment, and for such purpose, the redemption payment or prepayment shall be deemed a principal payment; in determining the interest due in each year, interest payable at a fixed rate shall (except to the extent subsection (ii) or (iii) of this definition applies) be assumed to be made at such fixed rate and on the required payment dates;

(ii) if all or any portion or portions of an Outstanding Series of Parity Obligations constitutes Balloon Indebtedness or if all or any portion or portions of a Series of Parity Obligations or such payments then proposed to be issued would constitute Balloon Indebtedness, then, for purposes of determining Maximum Annual Debt Service, each maturity which constitutes Balloon Indebtedness shall be treated as if it were to be amortized in substantially equal annual installments of principal and interest over a term of 25 years commencing in the year the stated maturity of such Balloon Indebtedness occurs, the interest rate used for such computation shall be determined as provided in (iv) or (v) below, as appropriate, and all payments of principal and

interest becoming due prior to the year of the stated maturity of the Balloon Indebtedness shall be treated as described in (i) above;

(iii) if any of the Outstanding Series of Parity Obligations constitutes Tender Indebtedness or if Parity Obligations proposed to be issued would constitute Tender Indebtedness, then for purposes of determining Maximum Annual Debt Service, Tender Indebtedness shall be treated as if the principal amount of such Parity Obligations were to be amortized in accordance with the amortization schedule set forth in such Tender Indebtedness or in the standby purchase or liquidity facility established with respect to such Tender Indebtedness, or if no such amortization schedule is set forth, then such Tender Indebtedness shall be deemed to be amortized in substantially equal annual installments of principal and interest over a term of 25 years commencing in the year in which such Series first subject to tender, the interest rate used for such computation shall be determined as provided in (iv) or (v) below, as appropriate;

(iv) if any Outstanding Parity Obligations constitute Variable Rate Indebtedness (except to the extent paragraph (ii) relating to Balloon Indebtedness or paragraph (iii) relating to Tender Indebtedness applies), the interest rate on such Obligation shall be assumed to be 110% of the daily average interest rate on such Parity Obligations during the 12 months ending with the month preceding the date of calculation, or such shorter period that such Parity Obligations shall have been Outstanding; provided that in the event that such Variable Rate Indebtedness has been issued in connection with a Qualified Swap Agreement, the interest rate for purposes of computing Maximum Annual Debt Service shall be determined by (x) calculating the annualized net amount paid by the City under such Variable Rate Indebtedness and Qualified Swap Agreement (after giving effect to payments made under the Variable Rate Indebtedness and made and received by the City under the Qualified Swap Agreement) during the 12 months ending with the month preceding the date of calculation, or such shorter period that such Qualified Swap Agreement has been in effect, and (y) dividing the amount calculated in clause (x) by the average daily balance of the related Parity Obligations Outstanding during the 12-month period contemplated by clause (x);

(v) if Parity Obligations proposed to be issued will be Variable Rate Indebtedness (except to the extent subsection (ii) relating to Balloon Indebtedness or subsection (iii) relating to Tender Indebtedness applies), then such Parity Obligations shall be assumed to bear interest at 110% of the average of the J.J. Kenny High Grade Index during the prior 12 months ending with the month preceding the date of sale of

such additional Parity Obligations, or if that index is no longer published, another similar index selected by the City, or if the City fails to select a replacement index, an interest rate equal to 80% of the yield for outstanding United States Treasury bonds having an equivalent maturity, or if there are no such Treasury bonds having such maturities, 100% of the lowest prevailing prime rate of any of the five largest commercial banks in the United States ranked by assets; provided that in the event that such Variable Rate Indebtedness will be issued in connection with a Qualified Swap Agreement, the interest rate for purposes of computing Maximum Annual Debt Service shall be determined by (a) calculating the net amount to be paid by the City under such Variable Rate Indebtedness and Qualified Swap Agreement after giving effect to payments to be made under the Variable Rate Indebtedness and to be made and received by the City under the Qualified Swap Agreement) for the period during which the Qualified Swap Agreement is to be in effect and for this purpose any variable rate of interest agreed to be paid thereunder shall be deemed to be the rate at which the related Parity Obligation shall be assumed to bear interest, and (b) dividing the amount calculated in clause (a) by the average principal amount of the related Parity Obligation to be Outstanding during the first year after the issuance of such Parity Obligation;

(vi) if moneys or Permitted Investments have been deposited by the City into a separate fund or account or are otherwise held by the City or by a fiduciary to be used to pay principal and/or interest on specified Parity Obligations, then the principal and/or interest to be paid from such moneys, Permitted Investments or from the earnings thereon shall be disregarded and not included in calculating Maximum Annual Debt Service;

(vii) if Parity Obligations are Paired Obligations, the interest thereon shall be the resulting linked rate or effective fixed rate to be paid with respect to such Paired Obligations; and

(viii) in the event that an agreement or commitment which, at the time of calculation is a Qualified Swap Agreement is or is to be in effect with respect to a Parity Obligation which is not Variable Rate Indebtedness, the interest rate of such Parity Obligation for purposes of calculating Maximum Annual Debt Service shall be calculated as follows:

(a) for such a Qualified Swap Agreement which is in effect on the date of calculation, the interest rate shall be calculated in the same manner as is specified in paragraph (iv) for a Qualified Swap

Agreement issued in connection with Variable Rate Indebtedness which is Outstanding on the date of calculation; and

(b) for such a Qualified Swap Agreement which is not in effect on the date of calculation, the interest rate shall be calculated in the same manner as is specified in paragraph (v) for a Qualified Swap Agreement to be issued in connection with Variable Rate Indebtedness to be Outstanding after the date of calculation, and for this purpose any variable rate of interest agreed to be paid thereunder shall be assumed to be the rate assumed for Variable Rate Indebtedness described in paragraph (v).

Maximum Rate

The term "Maximum Rate" means, on any day, the maximum interest rate allowed by law.

Metropolitan System

The term "Metropolitan System" means any and all facilities, properties and improvements designated by the City in its sole discretion as part of the Metropolitan System, and used for the conveyance from the Municipal System and treatment of sewage collected by the City through its Municipal System or by any of the Participating Agencies.

Metropolitan System Revenues

The term "Metropolitan System Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Metropolitan System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges (including standby and capacity charges), or other moneys derived by the City from the wastewater services, facilities, and commodities or byproducts sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Metropolitan System, and including, without limitation, investment earnings on the operating reserves to the extent that the use of such earnings is limited to the Metropolitan System by or pursuant to law, earnings on any Reserve Fund for Obligations the proceeds of which were used to finance improvements which are part of the Metropolitan System, or to fund or refund any such Obligations, but only to the extent that such earnings may be utilized under the Issuing Instrument for the payment of debt service for such Obligations; (2) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Metropolitan System; (3) any amount received from the levy or collection of taxes which are solely available and are earmarked for the support of the operation

of the Metropolitan System; (4) amounts received under contracts or agreements with governmental or private entities and designated for capital costs for Components which are to be part of the Metropolitan System; and (5) grants received from the United States of America or from the State of California for Components which are to be part of the Metropolitan System; provided, however, that Metropolitan System Revenues shall not include: (a) in all cases, customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City; and (b) the proceeds of borrowings. Notwithstanding the foregoing, there shall be deducted from Metropolitan System Revenues any amounts transferred into a Rate Stabilization Fund as contemplated by Section 6.08(b), and there shall be added to Metropolitan System Revenues any amounts transferred out of such Rate Stabilization Fund to pay Maintenance and Operation Costs of the Metropolitan System.

Moody's

The term "Moody's" means Moody's Investors Service, Inc., a Delaware corporation, and its successors, and if such corporation shall for any reason no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

Municipal System

The term "Municipal System" means any and all facilities, properties and improvements at any time owned, controlled or operated by the City, and designated by the City in its sole discretion as part of the Municipal System, for the collection of sewage from the points of origination thereof and the conveyance thereof to the Metropolitan System.

Municipal System Revenues

The term "Municipal System Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Municipal System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges (including standby and capacity charges), or other moneys derived by the City from the wastewater services, facilities, and commodities or byproducts sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Municipal System, and including, without limitation, investment earnings on the operating reserves to the extent that the use of such earnings is limited to the Municipal System by or pursuant to law, earnings on any Reserve Fund for Obligations the proceeds of which were used to finance improvements which are part of the Municipal System, or to fund or refund any such Obligations, but only to the extent that such earnings may be

utilized under the Issuing Instrument for debt service for such Obligations; (2) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Municipal System; (3) any amount received from the levy or collection of taxes which are solely available and are earmarked for the support of the operation of the Municipal System; (4) amounts received under contracts or agreements with governmental or private entities and designated for capital costs for Components which are to be part of the Municipal System; and (5) grants received from the United States of America or from the State of California for Components which are to be part of the Municipal System; provided, however, that Municipal System Revenues shall not include: (a) in all cases, customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City; and (b) the proceeds of borrowings. Notwithstanding the foregoing, there shall be deducted from Municipal System Revenues any amounts transferred into a Rate Stabilization Fund as contemplated by Section 6.08(b), and there shall be added to Municipal System Revenues any amounts transferred out of such Rate Stabilization Fund to pay Maintenance and Operation Costs of the Municipal System.

Net Proceeds

The term "Net Proceeds" means, when used with respect to any insurance, self insurance or condemnation award, the proceeds from such award remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such proceeds.

Net Metropolitan System Revenues

The term "Net Metropolitan System Revenues" means, for any Fiscal Year, the Metropolitan System Revenues for such Fiscal Year less the Maintenance and Operation Costs of the Metropolitan System for such Fiscal Year.

Net Municipal System Revenues

The term "Net Municipal System Revenues" means, for any Fiscal Year, the Municipal System Revenues for such Fiscal Year less the Maintenance and Operation Costs of the Municipal System for such Fiscal Year.

Net System Revenues

The term "Net System Revenues" means, for any Fiscal Year, the System Revenues for such Fiscal Year less the Maintenance and Operation Costs of the Wastewater System for such Fiscal Year.

Obligations

The term "Obligations" means (i) obligations of the City for money borrowed (such as bonds, notes or other evidences of indebtedness) or as installment purchase payments under any contract (including Installment Payments), or as lease payments under any financing lease (determined to be such in accordance with generally accepted accounting principles), the principal and interest on which are payable from Net System Revenues; (ii) obligations to replenish any debt service reserve funds with respect to such obligations of the City; (iii) obligations secured by or payable from any of such obligations of the City; and (iv) obligations of the City payable from Net System Revenues under (a) any contract providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, (b) any contract to exchange cash flows or a series of payments or (c) any contract to hedge payment, currency, rate spread or similar exposure, including but not limited to interest rate swap agreements and interest rate cap agreements.

Outstanding

The term "Outstanding," when used as of any particular time with respect to Obligations, means all Obligations theretofore or thereupon executed, authenticated and delivered by the City or any trustee or other fiduciary, except (i) Obligations theretofore cancelled or surrendered for cancellation; (ii) Obligations paid or deemed to be paid within the meaning of any defeasance provisions thereof; (iii) Obligations owned by the City or the Authority; (iv) Obligations in lieu of or in substitution for which other Obligations have been executed and delivered; and (v) Obligations assumed by the District or other successor in accordance with Section 6.20.

Owner

The term "Owner" means any person who shall be the registered owner of any outstanding Obligation certificate or other evidence of a right to receive Installment Payments directly or as security for payment of the Obligation.

Paired Obligations

The term "Paired Obligations" shall mean any Series (or portion thereof) of Parity Obligations designated as Paired Obligations in a Supplement or related Issuing Instrument or other document authorizing the issuance or incurrence thereof, which are simultaneously issued or incurred (i) the principal of which is of equal amount maturing and to be redeemed (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (ii) the interest rates which, taken together, result in an

irrevocably fixed interest rate obligation of the City for the terms of such Paired Obligations.

Parity Installment Obligation

The term "Parity Installment Obligation" means Obligations consisting of or payable from Installment Payments which are not subordinated in right of payment to other Installment Payments.

Parity Obligations

The term "Parity Obligations" means (i) Parity Installment Obligations, (ii) Obligations the principal and interest of which are payable on a parity with Parity Installment Obligations, (iii) Qualified Take or Pay Obligations and (iv) Qualified Swap Agreements. Notwithstanding the foregoing, any amounts payable with respect to a Qualified Swap Agreement which represent termination payments or unwinding payments shall not be deemed to be Parity Obligations unless (a) such Qualified Swap Agreement expressly states that such termination payments or unwinding payments are to be considered Parity Obligations and (b) each Rating Agency which currently maintains a rating with respect to any Parity Obligation confirms in writing to the City that the inclusion of such termination payments or unwinding payments as Parity Obligations will not result in a downgrading, withdrawal or suspension of such rating.

Participating Agencies

The term "Participating Agencies" shall mean the cities and other agencies providing local sewage collection services within their respective areas and which (a) have entered into contracts with the City pursuant to which the City is providing sewage collection, transportation, treatment or disposal services or (b) are having such services provided by the District or other successor to the City to which the Metropolitan System has been transferred pursuant to Section 6.20.

Paying Agent or Paying Agents

The term "Paying Agent" or "Paying Agents" means, with respect to an Installment Payment Obligation or Series of Installment Payment Obligations, the bank, trust company or other financial institution, if any, or other entities designated as the place or entity which shall make payment on such Installment Payment Obligation or a Series of Installment Payment Obligations and/or the interest thereon instead of or in addition to the City Treasurer's office.

Payment Fund

The term "Payment Fund" means the fund designated in the Issuing Instrument as the fund into which Installment Payments are to be deposited for the purposes of paying principal or interest on related Obligations.

Permitted Investments

The term "Permitted Investments" means investments which pursuant to an Issuing Instrument are permissible for the investment of funds received from the sale of Obligations pursuant to the Issuing Document or from other funds held pursuant to the Issuing Document.

Project

The term "Project" means the construction, replacement and improvements to the Wastewater System described in Exhibit A hereto and as modified with respect to Components in conformance with Section 3.02 hereof.

Purchase Price

The term "Purchase Price" means the principal amount plus interest thereon owed by the City to the Authority under the terms hereof as provided in Section 4.01 and as specified in a Supplement.

Qualified Swap Agreement

The term "Qualified Swap Agreement" means a contract or agreement, payable from Net System Revenues on a parity with Parity Obligations, intended to place Obligations on the interest rate, currency, cash flow or other basis desired by the City, including, without limitation, any interest rate swap agreement, currency swap agreement, forward payment conversion agreement or futures contract, any contract providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, any contract to exchange cash flows or a series of payments, or any contract, including, without limitation, an interest rate floor or cap, or an option, put or call, to hedge payment, currency, rate, spread or similar exposure, between the City and a counterparty; provided that not less than 30 days prior to the City's execution of such contract or agreement, each Rating Agency which maintains a rating with respect to any Parity Obligation receives notice in writing of the City's pending execution thereof; and provided further that at the time of origination each Rating Agency which maintains a rating with respect to any Parity Obligation confirms in writing to the City that the City's execution and delivery of such contract will not result in a downgrading, withdrawal or suspension of such rating.

Qualified Take or Pay Obligation

The term "Qualified Take or Pay Obligation" means the obligation of the City to make use of any facility, property or services, or some portion of the capacity thereof, or to pay therefor from System Revenues, or both, whether or not such facilities, properties or services are ever made available to the City for use, and there is provided to the City a certificate of an Independent Engineer to the effect that the incurrence of such obligation will not adversely affect the ability of the City to comply with the provisions of Section 6.08(a).

Rating Agencies

The term "Rating Agencies" means Moody's and S&P, or whichever of them is rating Parity Obligations.

Rebate Fund

The term "Rebate Fund" means the fund by that name established pursuant to any Issuing Instrument.

Rebate Requirement

The term "Rebate Requirement" shall have the meaning specified in any Tax Certificate.

Reserve Fund and Reserve Account

The terms "Reserve Fund" and "Reserve Account" shall have the meanings given to such terms in any Issuing Instrument or Supplement.

Reserve Requirement

The term "Reserve Requirement" shall have the meaning given to such term in any Issuing Instrument or Supplement.

S&P

The term "S&P" means Standard & Poor's Corporation, a New York corporation, and its successors, and if such corporation shall for any reason no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

Serial Parity Obligations

The term "Serial Parity Obligations" means Serial Obligations which are Installment Payments or are payable on a parity with Parity Installment Obligations.

Serial Obligations

The term "Serial Obligations" means Obligations for which no sinking fund payments are provided.

Series

The term "Series" means Obligations issued at the same time or sharing some other common term or characteristic and designated as a separate Series.

Sewer Revenue Fund

The term "Sewer Revenue Fund" has the meaning ascribed thereto in Section 5.02 hereof.

Subordinated Obligations

The term "Subordinated Obligations" means any Obligations, the payment of principal and interest on which are subordinated in right of payment to Parity Obligations.

Supplement

The term "Supplement" means a Supplement, substantially in the form of Exhibit B hereto, providing for the payment of specific Installment Payments as the Purchase Price for Components of the Project, executed and delivered by the City and the Authority.

System Revenues

The term "System Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Wastewater System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges (including standby and capacity charges), or other moneys derived by the City from the wastewater services, facilities, and commodities or byproducts sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Wastewater System, but including, without limitation, investment earnings on the operating reserves to the extent that the use of such earnings is limited to the Wastewater System by or pursuant to law, earnings on any Reserve Fund for Obligations but only to the extent that such earnings may be utilized under the Issuing Instrument for the payment of debt service for such Obligations;

(ii) the proceeds derived by the City directly or indirectly from the lease of a part of the Wastewater System; (iii) any amount received from the levy or collection of taxes which are solely available and are earmarked for the support of the operation of the Wastewater System; (iv) amounts received under contracts or agreements with governmental or private entities and designated for capital costs; and (v) grants received from the United States of America or from the State of California; provided, however, that System Revenues shall not include: (a) in all cases, customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City; and (b) the proceeds of borrowings. Notwithstanding the foregoing, there shall be deducted from System Revenues any amounts transferred into a Rate Stabilization Fund as contemplated by Section 6.08(b), and there shall be added to System Revenues any amounts transferred out of such Rate Stabilization Fund to pay Maintenance and Operation Costs of the Wastewater System.

Tax Certificate

The term "Tax Certificate" shall mean any certificate delivered with respect to the maintenance of the tax-exempt status of Tax-Exempt Installment Payment Obligations.

Tax-Exempt Installment Payment Obligations

The term "Tax-Exempt Installment Payment Obligations" means Installment Payment Obligations in respect of which it is intended that the interest component thereof will be excluded from gross income pursuant to Section 103 of the Code.

Tender Indebtedness

The term "Tender Indebtedness" means any Parity Obligations or portions of Parity Obligations, a feature of which is an option, on the part of the holders thereof, or an obligation, under the terms of such Parity Obligations, to tender all or a portion of such Parity Obligations to the City, a Paying Agent or other fiduciary or agent for payment or purchase and requiring that such Bonds or portions of Bonds or that such rights to payments or portions of payments be purchased if properly presented.

Term Parity Obligations

The term "Term Parity Obligations" means Term Obligations which are Parity Installment Obligations or are payable on a parity with Parity Installment Obligations.

Term Obligations

The term "Term Obligations" means Obligations which are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Obligations on or before their specified maturity dates.

Trustee

The term "Trustee" means a financial institution acting in its capacity as Trustee under and pursuant to the any Issuing Instrument, and its successors and assigns.

Variable Rate Indebtedness

The term "Variable Rate Indebtedness" means any portion of indebtedness evidenced by Parity Obligations the interest rate on which is not established at the time of incurrence of such indebtedness and has not, at some subsequent date, been established at a rate which is not subject to fluctuation or subsequent adjustment, excluding Paired Obligations.

Wastewater Service

The term "Wastewater Service" means the wastewater collection and treatment services made available or provided by the Wastewater System.

Wastewater System

The term "Wastewater System" means any and all facilities, properties and improvements at any time owned, controlled or operated by the City as part of the Sewer Revenue Fund (defined in Section 5.02 hereof) for the collection, treatment, distribution, administration, disposal or reclamation of waste, including the Municipal System and the Metropolitan System. After any transfer of the Metropolitan System permitted by Section 6.20, the term "Wastewater System" shall mean the Municipal System with respect to the City and the Metropolitan System with respect to the transferee.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the City. The City makes the following representations:

(a) The City is a municipal corporation organized and existing under the Charter, which was duly adopted pursuant to the provisions of the Constitution of the State of California.

(b) The City has full legal right, power and authority to enter into this Installment Purchase Agreement and carry out its obligations hereunder, to carry out and consummate all transactions contemplated by this Installment Purchase Agreement, and the City has complied with the provisions of the Law in all matters relating to such transactions.

(c) By proper action, the City has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

(d) The execution and delivery of this Installment Purchase Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the City is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the City.

(e) The City has determined that it is necessary and proper for the City uses and purposes within the terms of the Law that the City acquire the Project in the manner provided for in this Installment Purchase Agreement, in order to provide essential services and facilities to the persons residing in the City.

SECTION 2.02. Representations and Warranties by the Authority. The Authority makes the following representations and warranties:

(a) The Authority is a joint exercise of powers entity formed under the laws of the State of California.

(b) The Authority has full legal right, power and authority to enter into this Installment Purchase Agreement and to carry out and consummate all transactions contemplated by this Installment Purchase Agreement.

(c) By proper action, the Authority has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

(d) The execution and delivery of this Installment Purchase Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Authority is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default

(with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority.

(e) The interest components of Tax-Exempt Installment Payment Obligations will not be includable in the gross income of the owners of such Obligations for federal income tax purposes.

ARTICLE III

ACQUISITION AND CONSTRUCTION OF THE PROJECT

SECTION 3.01. **Acquisition and Construction of the Project; Components.** The Authority hereby agrees to cause the Project to be constructed, acquired and installed by the City, as agent of the Authority. The City shall enter into contracts and provide for, as agent of the Authority, the complete construction, acquisition and installation of the Project. The City hereby agrees that it will cause the construction, acquisition and installation of the Project to be diligently performed.

It is hereby expressly understood and agreed that, except to the extent of proceeds of Obligations which are deposited in an Acquisition Fund, the Authority shall be under no liability of any kind or character whatsoever for the payment of any cost of any Components. In the event the proceeds of Obligations deposited in an Acquisition Fund are insufficient to complete the construction, acquisition and installation of Components, the City shall cause to be deposited in such Acquisition Fund (or shall otherwise appropriate and encumber) from and to the extent of available amounts on deposit in the Sewer Revenue Fund (or other lawfully available moneys) an amount equal to that necessary to complete the construction, acquisition and installation of such Components.

The Authority will not undertake to cause any component of the Project to be constructed, acquired or installed unless and until the City and the Authority have entered into a Supplement specifying the components of the Project to be installed, the date of completion, the purchase price to be paid by the City hereunder for that component of the Project, and the Installment Payments or the method of calculating Installment Payments.

SECTION 3.02. **Changes to the Project.** (a) From time to time and at any time, the City may modify or amend the description of the Project, to eliminate any part thereof and/or to substitute another Project or Projects, all without obtaining any consent, by filing an amended Exhibit A with the Authority and the Trustee; provided however, that no such amendment shall substitute a Project or Projects which are not to be owned by the Sewer Revenue Fund or

shall in any way impair the obligations of the City contained in any Supplement executed and delivered prior to any such amendment.

(b) The City may substitute other improvements for those listed as Components in any Supplement, but only if the City first files with the Authority and the Trustee a certificate of an Authorized City Representative:

(i) identifying the Components to be substituted and the Components they replace;

(ii) stating that the substituted Components will be owned by the Sewer Revenue Fund; and

(iii) stating that with respect to Components financed with Tax-Exempt Installment Payment Obligations, the estimated costs of construction, acquisition and installation of the substituted improvements are not less than such costs for the improvements previously planned.

Substituted Components may include or consist of an undivided interest in such Components, in which event the costs associated with the substituted Components over and above the undivided interest need not be deposited in the Acquisition Fund (or otherwise appropriated and encumbered); provided that the certificate of an Authorized City Representative specifies that the funds necessary to complete the substituted Components are on deposit in the Acquisition Fund or otherwise appropriated and encumbered.

ARTICLE IV

INSTALLMENT PAYMENTS

SECTION 4.01. Purchase Price.

(a) The City will pay the Purchase Price for any Components being purchased as provided in a Supplement. The Purchase Price to be paid by the City to the Authority pursuant to any Supplement hereto, solely from Net System Revenues and from no other sources, is the sum of the principal amount of the City's obligations under such Supplement plus the interest to accrue on the unpaid balance of such principal amount from the effective date thereof over the term thereof, subject to prepayment as provided therein.

(b) The principal amount of the Installment Payments to be made by the City under a Supplement shall be paid at least five days prior to the date such Installment Payments are payable as specified in such Supplement or at such other earlier time or times and in the manner or manners as specified in such Supplement.

(c) The interest to accrue on the unpaid balance of such principal amount shall be paid at least five days prior to the date such interest is payable as specified in a Supplement or at such other earlier time or times as specified in such Supplement, and shall be paid by the City as and constitute interest paid on the principal amount of the City's obligations thereunder. Interest shall be payable in an amount not exceeding the Maximum Rate, at such intervals and according to such interest rate formulas as shall be specified in a Supplement or by reference to any Issuing Instrument to which such Supplement relates, and shall be payable with such frequency as shall be specified therein.

SECTION 4.02. Installment Payments; Reserve Fund Payments.

(a) The City may, subject to any rights of prepayment provided for in a Supplement, pay to the Authority, solely from Net System Revenues and from no other sources, the Purchase Price in installment payments over a period not to exceed the maximum period permitted by law, all as specified in a Supplement.

In the event that a Trustee notifies the City that the amount on deposit in a Reserve Fund or Reserve Account is less than the Reserve Requirement, the City shall deposit or cause to be deposited, solely from Net System Revenues, in such Reserve Fund or Reserve Account such amounts on a monthly basis as are necessary to increase the amount on deposit therein to the Reserve Requirement in the ensuing six months.

(b) The obligation of the City to make the Installment Payments solely from Net System Revenues is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), the City will not discontinue or suspend any Installment Payments required to be made by it under this section when due, whether or not the Project or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments shall not be subject to reduction whether by offset or otherwise and shall not be conditioned upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

ARTICLE V

SYSTEM REVENUES

SECTION 5.01. Commitment of the Net System Revenues. All Parity Obligations, including Parity Installment Payment Obligations, shall be secured by a prior lien on and pledge of Net System Revenues, and within such lien priority, such Parity

Obligations shall be of equal rank without preference, priority or distinction of any Parity Obligations over any other Parity Obligations. The City does hereby grant such prior lien on and pledge of Net System Revenues to secure Parity Obligations. Such lien and pledge shall constitute a first lien on Net System Revenues. The City hereby represents and states that it has not previously granted any lien or charge on any of the Net System Revenues; provided, however, that out of Net System Revenues there may be apportioned such sums for such purposes as are expressly permitted by this Article V.

SECTION 5.02. Allocation of System Revenues. (a) In order to carry out and effectuate the commitment and pledge contained in Section 5.01, the City agrees and covenants that all System Revenues shall be received by the City in trust and shall be deposited when and as received in the City of San Diego Sewer Revenue Fund, which fund was established pursuant to the Ordinances of the City Council of the City (the "Sewer Revenue Fund") and which fund the City agrees and covenants to maintain so long as any Installment Payments or payments due by the City under any Qualified Swap Agreement remain unpaid, and all moneys in the Sewer Revenue Fund shall be so held in trust and applied and used solely as provided herein. The City shall pay (i) directly or as otherwise required all Maintenance and Operation Costs of the Wastewater System, (ii) to the Trustee, as assignee of the Authority, for deposit in the Payment Fund for Parity Obligations, the amounts specified in any Issuing Instrument, as payments due on account of Parity Obligations other than (A) payments due on account of Qualified Take or Pay Obligations and (B) payments due by the City under a Qualified Swap Agreement, (iii) to the obligee specified therein, any payment due as to Qualified Take or Pay Obligations, and (iv) to the counterparty specified in any Qualified Swap Agreement, the amounts or payments due under such Qualified Swap Agreement. In the event there are insufficient Net System Revenues to make all of the payments contemplated by clauses (ii), (iii) and (iv) of the immediately preceding sentence, then said payments should be made as nearly as practicable, pro rata, based upon the respective unpaid principal amounts of said Parity Obligations.

(b) After the payments contemplated by paragraph (a) above have been made, and in any event not less frequently than May 15 and November 15 of each year, any remaining Net System Revenues shall be used to make up any deficiency in the Reserve Funds and Reserve Accounts for Parity Obligations. In the event there are insufficient Net System Revenues to make up all deficiencies in all Reserve Funds and Reserve Accounts for Parity Obligations, such payments into Reserve Funds and Reserve Accounts shall be made as nearly as practicable pro rata based on the respective unpaid principal amount of all Parity Obligations. Any amounts thereafter remaining in the Sewer Revenue Fund may from time to time be used to pay for capital expenditures for the

Wastewater System or any other Wastewater System purpose, including payments on account of Subordinated Obligations, provided the following conditions are met:

(1) all Maintenance and Operation Costs of the Wastewater System are being and have been paid and are then current; and

(2) all deposits and payments contemplated by clauses (ii), (iii) and (iv) of paragraph (a) above shall have been made in full and no deficiency in any Reserve Fund or Reserve Account for Parity Obligations shall exist, and there shall have been paid, or segregated within the Sewer Revenue Fund, the amounts payable during the current month pursuant to clauses (ii), (iii) and (iv) of paragraph (a) above.

SECTION 5.03. <u>Additional Obligations</u>.

(a) The City may not create any Obligations the payments of which are senior or prior in right to the payment by the City of Parity Obligations.

(b) Without regard to Section 5.03(c), the City may at any time enter into or create an obligation or commitment which is a Credit Provider Reimbursement Obligation or a Qualified Swap Agreement provided the Obligation to which the Qualified Swap Agreement relates is a Parity Obligation.

(c) After the initial issuance of Parity Obligations hereunder, the City may at any time and from time to time issue or create any other Parity Obligations, provided:

(1) There shall not have occurred and be continuing (i) an Event of Default under the terms of this Installment Purchase Agreement or any Issuing Instrument or (ii) an Event of Default or Termination Event (as defined in any Qualified Swap Agreement) under any Qualified Swap Agreement; and

(2) The City obtains or provides a certificate or certificates, prepared by the City or at the City's option by a Consultant, showing that:

(A) the Net System Revenues as shown by the books of the City for any 12 consecutive month period out of the 18 consecutive months ending immediately prior to the incurring of such additional other Parity Obligations shall have amounted to at least 1.20 times the Maximum Annual Debt Service on all Parity Obligations Outstanding during such period. For purposes of preparing the certificate or certificates described above, the Consultant or Consultants may rely upon financial statements prepared by the City, which have not been

subject to audit by an independent certified public accountant if audited financial statements for the period are not available; and

(B) the estimated Net System Revenues for the next 12 months following the date of issuance of such other Parity Obligations will be at least equal to 1.20 times the Maximum Annual Debt Service for all Parity Obligations which will be Outstanding immediately after the issuance of the proposed Parity Obligations.

For purposes of the computations to be made as described in clause (B) above, the determination of Net System Revenues:

(i) may take into account any increases in rates and charges which relate to the Wastewater System and shall take into account any reduction in such rates and charges, which will, for purposes of the test described in clause (B), be effective during the fiscal year ending within the 12-month period for which such estimate is made; and

(ii) may take into account an allowance for any estimated increase in such Net System Revenues from any revenue producing additions or improvements to or extensions of the Wastewater System, to be made with the proceeds of such additional indebtedness or with the proceeds of Parity Obligations previously issued, all in an amount equal to the estimated additional average annual Net System Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is respectively to be in operation, all as shown by such certificate of the City or a Consultant, as applicable; and

(iii) for the period contemplated by clause (B) Maintenance and Operation Costs of the Wastewater System shall be deemed to be equal to such costs for the 12 consecutive months immediately prior to incurring such other Parity Obligations, but adjusted if deemed necessary, by the City or a Consultant, as applicable, for any increased Maintenance and Operations Costs of the Wastewater System which are, in the judgment of the City or a Consultant, as applicable, essential to maintaining and operating the Wastewater System and which will occur during the Fiscal Year ending within the period contemplated by clause (B).

The certificate or certificates described above in clause (B) shall not be required if the Parity Obligations

being issued are for the purpose of (i) issuing the Parity Obligations initially issued under this Agreement or (ii) refunding (x) then Outstanding Parity Obligations if at the time of the issuance of such Parity Obligations a certificate of an Authorized City Representative shall be delivered showing that Debt Service in each Fiscal Year on all Parity Obligations Outstanding after the issuance of the refunding Parity Obligations will not exceed Debt Service in each corresponding Fiscal Year on all Parity Obligations Outstanding prior to the issuance of such Parity Obligations; or (y) then Outstanding Balloon Indebtedness, Tender Indebtedness or Variable Rate Indebtedness, but only to the extent that the principal amount of such indebtedness has been put, tendered to or otherwise purchased by a standby purchase or other liquidity facility relating to such indebtedness.

(d) Without regard to Section 5.03(c), if (i) no Event of Default has occurred and is continuing and (ii) no Event of Default or Termination Event (as defined in any Qualified Swap Agreement) under any Qualified Swap Agreement has occurred and is continuing, the City may issue or incur Subordinated Obligations, and such Subordinated Obligations may be paid only in accordance with the provisions of the second paragraph of Section 5.02.

ARTICLE VI

COVENANTS OF THE CITY

SECTION 6.01. Compliance with Installment Purchase Agreement and Ancillary Agreements. The City will punctually pay Parity Obligations in strict conformity with the terms hereof and thereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate the Installment Purchase Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained herein required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected herewith or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Authority or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lock outs, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

The City will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Installment Purchase Agreement, including Supplements, and any Issuing Instrument or Qualified Swap Agreement relating to Parity Obligations required to be observed and performed by it, and it is expressly understood and agreed by and between the parties to the Installment Purchase Agreement that, subject to Section 10.07 hereof, each of the agreements, conditions, covenants and terms contained herein and therein is an essential and material term of the purchase of and payment for each Component by the City pursuant to, and in accordance with, and as authorized under the Law.

The City will faithfully observe and perform all of the agreements and covenants of the City contained in each Authorizing Ordinance and will not permit the same to be amended or modified so as to adversely affect the Owners of Installment Payment Obligations or the counterparty to any Qualified Swap Agreement that is in effect.

The City shall be unconditionally and irrevocably obligated, as long as any Installment Payment Obligations remain outstanding and unpaid, to take all lawful action necessary or required to continue to entitle the City to collect and deposit such System Revenues in the Sewer Revenue Fund for use as provided in this Installment Purchase Agreement, provided however, such obligation does not, in any way, limit the City's ability to undertake any and all legal actions, including any appeals, in the defense of a federal court order dictating a wastewater system configuration other than that approved and adopted by the City.

SECTION 6.02. Against Encumbrances. The City will not make any pledge of or place any lien on the Net System Revenues except as otherwise provided or permitted herein.

SECTION 6.03. Debt Service Reserve Fund. The City will maintain or cause to be maintained each Reserve Fund and Reserve Account at the applicable Reserve Requirement. In the event the amount in any such fund or account falls below the applicable Reserve Requirement, the City will replenish such fund or account up to the applicable Reserve Requirement pursuant to Section 5.02.

SECTION 6.04. Against Sale or Other Disposition of Property. Except as otherwise provided in Section 6.20, the City will not sell, lease or otherwise dispose of the Wastewater System or any part thereof essential to the proper operation of the Wastewater System or to the maintenance of the System Revenues, except as provided herein. Further, the City will not, except as otherwise provided herein, enter into any agreement or lease which impairs the operation of the Wastewater System or any part thereof necessary to secure adequate Net System Revenues for the payment of the Parity Obligations or which would otherwise impair the rights of the Authority with respect to the System Revenues or the

operation of the Wastewater System. Any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the Wastewater System, or any material or equipment which has become worn out, may be sold if such sale will not materially reduce the Net System Revenues and if the proceeds of such sale are deposited in the Sewer Revenue Fund.

SECTION 6.05. Against Competitive Facilities. Except as permitted by Section 6.20, the City will not, to the extent permitted by existing law, construct, acquire, maintain or operate and will not, to the extent permitted by existing law and within the scope of its powers, permit any other public or private agency, authority, district or political subdivision or any person whomsoever to acquire, construct, maintain or operate within the City any wastewater system competitive with the Wastewater System.

SECTION 6.06. Prompt Acquisition and Construction. The City will take all necessary and appropriate steps to construct, acquire and install the Project, as agent of the Authority, with all practicable dispatch and in an expeditious manner and in conformity with law so as to complete the same as soon as possible.

SECTION 6.07. Maintenance and Operation of the Wastewater System; Budgets. The City will maintain and preserve the Wastewater System in good repair and working order at all times and will operate the Wastewater System in an efficient and economical manner and will pay all Maintenance and Operation Costs of the Wastewater System as they become due and payable. The City will adopt and file with the Authority, on or before the effective date hereof, a budget approved by the City Council of the City setting forth the estimated Maintenance and Operation Costs of the Wastewater System for the period from such date until the close of the then current Fiscal Year. On or before August 1, of each Fiscal Year, the City will adopt, and on or before one hundred and twenty (120) days after the beginning of the Fiscal Year, file with the Authority a budget approved by the City Council of the City setting forth the estimated Maintenance and Operation Costs of the Wastewater System for such Fiscal Year. Any budget may be amended at any time during any Fiscal Year and such amended budget shall be filed by the City with the Authority.

SECTION 6.08. Amount of Rates and Charges; Rate Stabilization Fund.

(a) The City will fix, prescribe and collect rates and charges for the Wastewater Service which will be at least sufficient (i) to pay all Obligations (other than Parity Obligations), and (ii) to yield during each Fiscal Year Net System Revenues equal to one hundred twenty percent (120%) of the Debt Service for such Fiscal Year. The City may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce

the rates and charges then in effect unless the Net System Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this section.

(b) The City may establish, as a fund within the Sewer Revenue Fund, a fund denominated the Rate Stabilization Fund. From time to time the City may deposit into the Rate Stabilization Fund, from current System Revenues, such amounts as the City shall determine and the amount of available current System Revenues shall be reduced by the amount so transferred. Amounts may be transferred from the Rate Stabilization Fund solely and exclusively to pay Maintenance and Operation Costs of the Wastewater System, and any amounts so transferred shall be deemed System Revenues when so transferred. All interest or other earnings upon amounts in the Rate Stabilization Fund may be withdrawn therefrom and accounted for as System Revenues.

SECTION 6.09. Payment of Claims. The City will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Net System Revenues or any part thereof or on any funds in the hands of the City or the Trustee might impair the security of the Installment Payments, but the City shall not be required to pay such claims if the validity thereof shall be contested in good faith.

SECTION 6.10. Compliance with Contracts. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Wastewater System and all other contracts affecting or involving the Wastewater System to the extent that the City is a party thereto.

SECTION 6.11. Insurance.

(a) The City will procure and maintain or cause to be procured and maintained insurance on the Wastewater System with responsible insurers, or provide self insurance reserves, in such amounts and against such risks (including accident to or destruction of the Wastewater System) as are usually covered in connection with wastewater systems similar to the Wastewater System. In the event of any damage to or destruction of the Wastewater System caused by the perils covered by such insurance or self insurance, the Net Proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Wastewater System. The City shall begin such reconstruction, repair or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such Net Proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the Wastewater System shall be free and clear of all claims and liens unless the

City determines that such property or facility is not necessary to the efficient or proper operation of the Wastewater System and therefore determines not to reconstruct, repair or replace such project or facility. If such Net Proceeds exceed the costs of such reconstruction, repair or replacement, then the excess Net Proceeds shall be deposited in the Sewer Revenue Fund and be available for other proper uses of funds deposited in the Sewer Revenue Fund.

(b) The City will procure and maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Authority, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with wastewater systems similar to the Wastewater System; provided that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with wastewater systems similar to the Wastewater System and is, in the opinion of an accredited actuary, actuarially sound.

All policies of insurance required to be maintained herein shall, to extent reasonably obtainable, provide that the Authority and the Trustee shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby. The City shall certify to the Authority and Trustee annually on or before August 31 that it is in compliance with the insurance requirements hereunder.

SECTION 6.12. <u>Accounting Records; Financial Statements and Other Reports</u>.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Wastewater System, which records shall be available for inspection by the Authority and the Trustee at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Authority and the Trustee annually within the number of days specified below after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 1994) --

(1) within two hundred and seventy (270) days, financial statements of the Sewer Revenue Fund for the preceding Fiscal Year prepared in accordance with generally accepted accounting principles, together with an Accountant's Report thereon; and

(2) within forty-five (45) days, a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Wastewater System as of the close of such Fiscal Year, including the names of

the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

(c) The City will furnish a copy of the financial statements referred to in (b)(1) above to any Owner of the Bonds requesting a copy thereof.

SECTION 6.13. Protection of Security and Rights of the Authority. The City will preserve and protect the security hereof and the rights of the Authority to the Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

SECTION 6.14. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Wastewater System or any part thereof or upon the System Revenues when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Wastewater System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

SECTION 6.15. Collection of Rates and Charges; No Free Service. The City will have in effect at all times rules and regulations for the payment of bills for Wastewater Service. Such regulations may provide that where the City furnishes water to the property receiving Wastewater Service, the Wastewater Service charges shall be collected together with the water rates upon the same bill providing for a due date and a delinquency date for each bill. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the City may disconnect such premises from the water service, and such premises shall not thereafter be reconnected to the water service except in accordance with City operating rules and regulations governing such situations of delinquency. The City will not permit any part of the Wastewater System or any facility thereof to be used or taken advantage of free of charge by any authority, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public authority or agency thereof).

SECTION 6.16. Eminent Domain Proceeds. If all or any part of the Wastewater System shall be taken by eminent domain proceedings, then subject to the provisions of any Authorizing Ordinance, the Net Proceeds thereof shall be applied to the replacement of the property or facilities so taken, unless the City determines that such property or facility is not necessary to the efficient or proper operation of the Wastewater System and therefore determines not to replace such property or facilities.

Any Net Proceeds of such award not applied to replacement or remaining after such work has been completed shall be deposited in the Sewer Revenue Fund and be available for other proper uses of funds deposited in the Sewer Revenue Fund.

SECTION 6.17. Tax Covenants. There shall be included in each Supplement relating to Tax-Exempt Installment Payment Obligations such covenants as are deemed necessary or appropriate by Bond Counsel for the purpose of assuring that interest on such Installment Payment Obligations shall be excluded from gross income under Section 103 of the Code.

SECTION 6.18. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Authority of the rights and benefits provided to it herein.

SECTION 6.19. Operate Wastewater System. The City will operate the Wastewater System in an efficient and economical manner, provided that the City may remove from service on a temporary or permanent basis such part or parts of the Wastewater System so long as (a) Net System Revenues are equal to one hundred twenty percent (120%) of the Debt Service for the then current Fiscal Year and for each Fiscal Year thereafter to and including the Fiscal Year during which the last Installment Payment is due as evidenced by an Engineer's Report on file with the City, and (b) the City shall have filed with the Trustee an opinion of nationally recognized Bond Counsel to the effect that the removal of such part or parts of the Wastewater System will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on Tax-Exempt Installment Payment Obligations.

SECTION 6.20. Transfer of Metropolitan System Components. Notwithstanding anything to the contrary herein contained, the City may transfer ownership of substantially all of the Metropolitan System, including amounts in the Sewer Revenue Fund attributable to the Metropolitan System, and any amounts in the Rate Stabilization Fund agreed upon by the City and the transferee as being attributable to the Metropolitan System, to the District or any other governmental agency whose primary purpose is to provide wastewater treatment and disposal service, provided such entity agrees to assume all Obligations the proceeds of which were used to acquire Components which are part of the Metropolitan System and all other obligations relating to the Metropolitan System which are payable from Metropolitan System Revenues, Net Metropolitan System Revenues, System Revenues or Net System Revenues, including but not limited to salaries and benefits payable to employees who are to become employees of such entity, all accounts payable, Qualified Swap Agreements, Credit Provider Reimbursement Obligations and all other obligations with respect

thereto such as capital improvement expenditure obligations and tort claims, and the obligation to pay fines, penalties or damages arising out of or relating to violation of federal, state or local laws or regulations which are applicable or purported to be applicable to the operation of the Metropolitan System, and provided that the following conditions are met:

(a) There shall not have occurred and be continuing an Event of Default under the terms of the Installment Purchase Agreement, or any other Issuing Instrument or Qualified Swap Agreement or any Termination Event (as defined in a Qualified Swap Agreement) under any Qualified Swap Agreement;

(b) There shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that the proposed transfer will not have an adverse effect on the exclusion from gross income for federal income tax purposes of the interest component of Tax-Exempt Installment Payment Obligations;

(c) The entity shall have obtained all necessary licenses, permits and consents from all governmental agencies or authorities having or asserting jurisdiction over the activities of the Metropolitan System;

(d) There shall be delivered to all trustees for any Obligations and to any Qualified Swap Provider an opinion of counsel, who may be the City Attorney of the City, to the effect that the Supplements referred to in clauses (h)(1) and (h)(2) below are valid, binding and enforceable against the transferee in the case of a Supplement referred to in clause (h)(1) below and against the City in the case of a Supplement referred to in clause (h)(2) below;

(e) The City obtains or provides a certificate prepared by a Consultant showing that (i) the estimated Net Metropolitan System Revenues for the next 12 months following the date of transfer will be at least equal to 1.20 times the Maximum Annual Debt Service for all Outstanding Parity Obligations to be assumed by the transferee, assuming for this purpose that the Outstanding Parity Obligations to be assumed by the transferee will include all such Obligations; and (ii) the estimated Net Municipal System Revenues for the next 12 months following the date of transfer will be at least equal to 1.20 times the Maximum Annual Debt Service for all Outstanding Parity Obligations not to be assumed by the transferee, assuming for this purpose that the Outstanding Parity Obligations not to be assumed by the transferee will include all such Obligations;

(f) There shall be delivered to the Trustee a notice of each of the Rating Agencies then providing ratings on any Obligations to be outstanding immediately after the transfer, reconfirming the ratings on all such Obligations in effect

immediately prior to such transfer, or alternatively all such Obligations shall be defeased or paid in full prior to such transfer;

(g) There shall be delivered to each Owner notice of the intended transfer of Metropolitan System Components not less than 30 nor more than 60 days prior to the expected transfer date; and

(h) Incident to a transfer of the Metropolitan System permitted by this Section 6.20,

(1) the transferee shall execute and deliver to the Trustee a Supplement which shall contain the following:

(A) the assumption and indemnification by the transferee of all obligations of the City hereunder, but only as they relate to the Metropolitan System, including Obligations the proceeds of which were used to acquire Components for the Metropolitan System;

(B) a pledge by the transferee of Net Metropolitan System Revenues for the payment of assumed Parity Obligations which shall be in substantially the same form as the pledge of the City hereunder of Net System Revenues to secure the payment of all Parity Obligations;

(C) representations of the transferee substantially in the form of Section 2.01, but only as to the Obligations assumed by the transferee and the covenants to be contained in such Supplement;

(D) covenants of the transferee substantially in the form set forth in Sections 3.01 and 3.02, but only as to the Components which are or are to be part of the Metropolitan System;

(E) covenants of the transferee substantially in the form of Sections 4.01 and 4.02, but only as they relate to Parity Obligations being assumed by the transferee and the Net Metropolitan System Revenues;

(F) covenants of the transferee substantially in the form of Section 5.02, but limited only to Parity Obligations assumed by the transferee and moneys deposited from Metropolitan System Revenues and Net Metropolitan System Revenues;

(G) covenants of the transferee substantially in the form of Section 5.03, but only in respect of Parity Obligations payable from Net Metropolitan System Revenues (for this purpose the calculations and coverages contemplated thereby shall relate only to Metropolitan System Revenues,

Maintenance and Operations Costs of the Metropolitan System and Net Metropolitan System Revenues);

(H) covenants of the transferee substantially in the form of Article VI (exclusive of Sections 6.20 and 6.21), but only to the extent of the Metropolitan System and Installment Payment Obligations payable from Metropolitan System Revenues and Net Metropolitan System Revenues and Installment Payment Obligations assumed by or of the transferee;

(I) Events of Default and remedies substantially in the form of Article VIII, but only relating to Parity Obligations assumed by the transferee; and

(J) Covenants of the transferee substantially in the form of Sections 10.02, 10.03 and 10.12, but only with respect to Parity Obligations assumed by the transferee.

(2) the City shall execute and deliver a Supplement which shall reaffirm all of the City's representations and warranties under the Installment Payment Agreement and each Supplement, the pledge provided for in Article V, and each of the covenants of the City contained in Article VI of the Installment Payment Agreement or elsewhere in either the Installment Payment Agreement or any Supplement, provided that such representations, warranties, pledge and covenants shall be limited solely and exclusively to the Municipal System, Municipal System Revenues, Maintenance and Operations Costs of the Municipal System and Net Municipal System Revenues, as the case may be.

Upon execution and delivery of the foregoing Supplements and upon satisfaction of the conditions hereinabove specified, the City shall be relieved and discharged from any and all Installment Payment Obligations payable from Net System Metropolitan Revenues and which have been assumed by a transferee.

SECTION 6.21. Subcontracting. Notwithstanding anything to the contrary herein contained, the City may subcontract to provide Wastewater Services to Participating Agencies through any entity to which it may thereafter transfer assets as permitted under Section 6.20, so that such entity may provide comparable services to Participating Agencies provided (i) such entity agrees to subcontract for all such Wastewater Services exclusively with the City; and (ii) the entity agrees to charge the same rates the City charged for such services at the time the contract with the entity takes effect or such other rates as the City may prescribe.

SECTION 6.22. Additional Covenants.

The City may provide additional covenants pursuant to any Supplement, including covenants relating to any Credit Support obtained for Installment Payment Obligations; provided, however, that such additional covenants do not materially and adversely affect the right of Owners of Outstanding Obligations issued prior to any such Supplement.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.01. Prepayment of Installment Payments.

Provisions may be made in any Supplement for the prepayment of Installment Payments, in whole or in part, in such multiples and in such order of maturity and from funds of any source, and with such prepayment premiums and other terms as are specified in the Supplement. Said Supplement shall also provide for any notices to be given relating to such prepayment.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF THE AUTHORITY

SECTION 8.01. Events of Default and Acceleration of Maturities. If one or more of the following Events of Default shall happen, that is to say --

(1) if default shall be made in the due and punctual payment of or on account of any Parity Obligation as the same shall become due and payable;

(2) if default shall be made by the City in the performance of any of the agreements or covenants required herein to be performed by it (other than as specified in (1) above), and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Authority;

(3) if any Event of Default specified in any Supplement, Authorizing Ordinance or Issuing Instrument shall have occurred and be continuing; or

(4) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without

the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default the Authority shall upon the written request of the Owners of twenty-five percent (25%) or more of the aggregate principal amount of all Series of Parity Installment Obligations Outstanding, voting collectively as a single class, by notice in writing to the City, declare the entire unpaid principal amount thereof and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding; provided, that with respect to a Series of Parity Installment Obligations which is credit enhanced by Credit Support, acceleration shall not be effective unless the declaration is consented to by the related Credit Provider and, provided further, that nothing herein shall affect the rights of the parties to a Qualified Swap Agreement to terminate such Qualified Swap Agreement. This subsection however, is subject to the condition that if at any time after the entire principal amount of all Series of Parity Installment Obligations and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Authority a sum sufficient to pay the unpaid principal amount of all such Series of Parity Installment Obligations and the unpaid payments of any other Parity Obligations referred to in clause (1) above due prior to such declaration and the accrued interest thereon, with interest on such overdue installments at the rate or rates applicable thereto in accordance with their terms, and the reasonable expenses of the Authority, and any and all other defaults known to the Authority (other than in the payment of the entire principal amount of the unpaid Parity Installment Obligations and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Authority or provision deemed by the Authority to be adequate shall have been made therefor, then and in every such case the Authority, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

SECTION 8.02. **Application of Net System Revenues Upon Acceleration.** Subject to the provisions of any Issuing Instrument or Authorizing Ordinance, all Net System Revenues received after

the date of the declaration of acceleration by the Authority as provided in Section 8.01 shall be applied in the following order --

First, to the payment of the costs and expenses of the Authority if any, in carrying out the provisions of this article, including reasonable compensation to its accountants and counsel; and

Second, to the payment of the entire principal amount of the unpaid Parity Installment Obligations and the unpaid principal amount of all other Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable thereto in accordance with their respective terms. In the event there are insufficient Net System Revenues to pay the entire principal amount and accrued interest on all Parity Obligations, then accrued interest (and payments due to the counterparty to a Qualified Swap Agreement) shall first be paid and any remaining amount shall be paid on account of principal, and in the event there are insufficient Net System Revenues to fully pay either interest or principal in accordance with the foregoing, then payment shall be prorated within a priority based upon the total amounts due in the priority.

SECTION 8.03. Other Remedies of the Authority.

The Authority shall have the right, subject to receipt of consent from any Credit Provider with respect to a particular Series of Parity Installment Obligations--

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any councilmember, officer or employee thereof, and to compel the City or any such councilmember, officer or employee to perform and carry out its or his duties under the Law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its councilmembers, officers and employees to account as the trustee of an express trust.

SECTION 8.04. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments to the Authority at the respective due dates or upon prepayment from the Net System Revenues and the other funds herein committed for such payment, or shall affect or impair the right of the Authority, which is also absolute and unconditional,

to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Authority shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by the Law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 8.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Authority or a counterparty to a Qualified Swap Agreement is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE IX

DISCHARGE OF OBLIGATIONS

SECTION 9.01. Discharge of Obligations.

If (i) the City shall pay or cause to be paid or there shall otherwise be paid to the Owners all Outstanding Installment Payment Obligations of a Series the interest thereon and the principal thereof and the redemption premiums, if any, thereon or if all such Outstanding Obligations shall be deemed to have been paid at the times and in the manner stipulated in the applicable Issuing Instrument, or (ii) the transfer of ownership of substantially all of the Metropolitan System, as contemplated by Section 6.20 shall have occurred, then all agreements, covenants and other obligations of the City hereunder shall thereupon cease, terminate and become void and be discharged and satisfied (but only as to such Series in the case of an event described in clause (i) and only as provided in Section 6.20 in the case of a transfer of the Metropolitan System as provided in Section 6.20) except for the

obligation of the City to pay or cause to be paid all sums due hereunder.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. Liability of City Limited to System Revenues. Notwithstanding anything contained herein, the City shall not be required to advance any moneys derived from any source of income other than the Net System Revenues and the other funds provided herein for the payment of the Installment Payments or for the performance of any other agreements or covenants required to be performed by it contained herein. The City may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Installment Payments is a special obligation of the City payable solely from such Net System Revenues and other funds provided for herein, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

SECTION 10.02. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City, the Authority or the assigns of the Authority and any Credit Provider any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Authority shall be for the sole and exclusive benefit of the other party. Each party hereto agrees for the benefit of any counterparty to a Qualified Swap Agreement that covenants contained herein that are expressly applicable to such a counterparty, are also intended to benefit such counterparty and each such counterparty shall be deemed to be a third party beneficiary with respect thereto, entitled to enforce directly and in its own name any rights or claims it may have against such party and otherwise protect its rights hereunder.

SECTION 10.03. Amendments.

This Agreement may be amended with respect to a Series of Installment Payment Obligations in writing as may be mutually agreed by the City and the Authority, with the written consent of any Credit Provider which is providing insurance until the final maturity or payment in full of one or more maturities of such Installment Payment Obligations, or any other Credit Provider for such Installment Payment Obligations and the Owners of a majority

the aggregate principal amount of such Installment Payment Obligations then Outstanding, provided that no such amendment shall (a) extend the payment date of any Installment Payment, or reduce the amount of any Installment Payment without the prior written consent of the Owner of each Obligation so affected, (b) reduce the percentage of Installment Payment Obligations the consent of the Owners of which is required for the execution of any amendment of this Installment Purchase Agreement, or (c) amend the provisions of Section 6.20 hereof without an unqualified opinion of nationally recognized Bond Counsel to the effect that such amendment does not adversely affect the exclusion of the interest portion of the Installment Payments received by the Owners of Tax-Exempt Installment Payment Obligations from gross income under Section 103 of the Code. Notwithstanding the foregoing, the City agrees that, so long as it shall have any obligations under a Qualified Swap Agreement, it shall not amend or modify, or consent to the amendment or modification of, this Agreement that would in any way adversely affect (A) the rights of counterparty to a Qualified Swap Agreement hereunder, or (B) the obligations of the City hereunder to such a counterparty without the prior written consent of such Qualified Swap Provider.

With the written consent of any Credit Provider, this Agreement and the rights and obligations of the City and the Authority hereunder may also be amended or supplemented at any time by an amendment hereof or supplement hereto which shall become binding upon execution by the City and the Authority, without the written consents of any Owner of Installment Obligations, but only to the extent permitted by law and only upon receipt of an unqualified opinion of nationally recognized Bond Counsel selected by the City and approved by the Authority to the effect that such amendment or supplement is permitted by the provisions of this Agreement and is not inconsistent with this Agreement and does not adversely affect the exclusion of the interest portion of the Installment Payments received by the Owners from gross income for federal income tax purposes, and only for any one or more of the following purposes --

(1) to add to the covenants and agreements of the Authority or the City contained in this Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Authority or the City, and which shall not adversely affect the interests of the Owners of the Installment Payment Obligations;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Agreement or in regard to questions arising under this Agreement, as the Authority or the City may deem necessary or desirable and which shall not adversely affect the interests of the Owners of the Installment Payment Obligations; and

(3) to make such other amendments or modifications which shall not materially adversely affect the interests of the Owners of the Installment Payment Obligations.

SECTION 10.04. **Successor Is Deemed Included in all References to Predecessor.** Except as otherwise provided herein, whenever either the City or the Authority is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City or the Authority, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Authority shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 10.05. **Waiver of Personal Liability.** No official, officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments, but nothing contained herein shall relieve any official, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 10.06. **Article and Section Headings, Gender and References.** The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to the Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 10.07. **Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Authority shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof.

SECTION 10.08. **Assignment.** The Installment Purchase Agreement and any rights hereunder may be assigned by the Authority, as a whole or in part, without the necessity of obtaining the prior consent of the City. The assignment of the Installment Purchase Agreement or rights hereunder or under a Supplement to a Trustee is solely in its capacity as Trustee and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Issuing Instrument.

SECTION 10.09. **Net Contract.** The Installment Purchase Agreement shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or setoff whatsoever.

SECTION 10.10. **California Law.** The Installment Purchase Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 10.11. **Notices.** All written notices to be given hereunder shall be given by first class mail, postage prepaid, courier or hand delivery to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:	City of San Diego Financial Management Dept. City Administration Bldg., 202 C Street, Mail Station 9B San Diego, CA 92101 Attn: Director
If to the Authority:	Public Facilities Financing Authority of the City of San Diego 202 C Street, Mail Station 9B San Diego, CA 92101 Attn: Auditor and Comptroller

SECTION 10.12. **Effective Date.** The Installment Purchase Agreement shall become effective as to Installment Payments provided for in a Supplement upon the execution and delivery of such Supplement or as otherwise specified therein, and shall terminate as to such Supplement when the Installment Payments contemplated by such Supplement shall have been fully paid or prepaid (or provision for the payment thereof shall have been made as provided herein) and any related Qualified Swap Agreement is no longer in effect.

SECTION 10.13. **Execution in Counterparts.** The Installment Purchase Agreement and each Supplement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF SAN DIEGO

By _____
City Manager

(SEAL)

Attest:

_____
City Clerk

PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO

By _____
Chairman

Attest:

_____
Secretary

APPROVED AS TO FORM

Attorney of the City of San Diego

_____
City Attorney

IN WITNESS WHEREOF, the parties hereto have executed and attested this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF SAN DIEGO

By _____
City Manager

(SEAL)

Attest:

_____
City Clerk

PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO

By _____
Chairman

Attest:

_____
Secretary

APPROVED AS TO FORM

City Attorney of the City of San Diego

By _____
Title: City Attorney

LA1-3889.15

EXHIBIT A

DESCRIPTION OF ENTIRE PROJECT

(Consumers' Alternative)

Pursuant to Section 3.02 of the Installment Purchase Agreement, this Exhibit A may be amended from time to time and at any time to modify or amend the description of the Project, to eliminate any part thereof and/or to substitute a Project or Projects, all without obtaining any consent, by filing an amended Exhibit A with the Authority and the Trustee; provided however, that no such amendment shall in any way impair the obligations of the City contained in any Supplement executed and delivered prior to any such amendment.

EXHIBIT A

Clean Water Program

Capital Project Descriptions

75-910.1 AGRONOMIC STUDY
(FORMERLY AGRONOMISTS ECONOMIC STUDY)

This project provides for the study of soil and vegetation in order to determine the effects of reclaimed water on plant growth and soil chemistry. This study will also assess potential water-quality related problems and assist in development of effective irrigation management practices. The first phase of the project was completed in June 30, 1993. Phase I effort included setting up three (3) different plot sites, whose soil characteristic and climatic zone differ and representative of distinct areas in San Diego. Initial data from experiments conducted on the plots provide preliminary findings.

45-910.2 CLEAN WATER PROGRAM PREDESIGN AND ENGINEERING SUPPORT
(FORMERLY CLEAN WATER PROGRAM MANAGEMENT AND ADMINISTRATION)

This project provides for support activities performed by consultants relating to program management, records management, scheduling, quality assurance and control, and procurement support during design and construction. This project has the potential for funding from future bond issues.

40-910.4 EAST MISSION BAY EFFLUENT PIPELINE
(FORMERLY EAST MISSION BAY RECLAMATION WATER PIPELINE)

This project provides for construction of a pipeline to transport effluent from the Rose Canyon pipeline to the Point Loma Tunnel Outfall (designation was originally the San Diego River Land Outfall) at the I-5/I-8 intersection for disposal into the ocean. This project provides for a 54 inch diameter pipeline that will be approximately 23,000 feet long. It will be either ductile iron, steel or concrete cylinder pipe. It will transport North City Water Reclamation Plant (NCWRP) effluent from the new Rose Canyon Trunk Sewer to a junction structure located near the intersection of I-5 and I-8 (in the north east quadrant of this intersection).

40-921.0 FIRP PHASE II DIGESTED SLUDGE AND CENTRATE PIPELINES
(FORMERLY CENTRATE PIPELINE EXTENSION)

This project provides for the second phase of the relocation of the sludge facilities from Fiesta Island. It includes a continuation of the digested sludge pipeline from Sunset Cliffs to the proposed Northern Sludge Processing Facility (NSPF) and a centrate pipeline from NSPF to an interceptor sewer in Mission Valley. There are two pipelines to be laid in one excavation.

DIGESTED SLUDGE PIPELINE
Length: Approximately 10 miles
Pipe Dimension: Approximately 12-inch to 24-inch in diameter
Material: Polyethylene-lined ductile iron pipe with taped coating, or coal-tar epoxy lined steel pipe with cement mortar or taped coating. Final selection of the pipe material and exterior coating should be based on an engineering and corrosion investigation.

CENTRATE PIPELINE
Length: Approximately 10 miles.
Pipe Dimension: Approximately 16-inch to 36-inch in diameter.
Material: Polyethylene-lined ductile iron pipe with taped coating. Final selection of the pipe material and exterior coating should be based on an engineering and corrosion investigation.

LAND ACQUISITION
At the north end of the preferred alignment is private property (11.5 acres) which is located directly across State Route 52 (SR-52) from the plant site, from Copley Drive, northward up the existing private access roadway, between lots 6 & 7, to the Caltrans Right-Of-Way (ROW). The project will tunnel under the freeway and turn northwest, parallel to the ROW, to the currently proposed utility corridor.

46-055.0 FIRP PUMP STATION
(FORMERLY FIESTA ISLAND REPLACEMENT PROJECT)

This project provides for the first phase of the relocation of the sludge facilities from Fiesta Island in Mission Bay Park to a new site yet to be identified. This project includes an approximately 6-mile long 12-inch ductile iron digested sludge pipeline from Point Loma to Sunset Cliffs Bridge, a sludge pump station at Point Loma and environmental work.

The proposed FIRP Sludge Pump Station will pump digested sludge from the Point Loma Wastewater Treatment Plant (PLWTP) to the NSPF. This project will be located at the intersection of Gatchell Road and Second Street at the south end of PLWTP. This facility will house three biosolids/sludge pumps and associated equipment for pumping and screening of biosolids.

The FIRP Pump Station facility will include:

- A lower below grade pump room level (approximately 90 feet x 35 feet, at elevation 68) which contains the main sludge pumps, a bridge crane, sludge feed pumps and associated mechanical equipment (the feed pumps may be located in the adjacent gallery).
- A mezzanine level (approximately 90 feet x 20 feet, at elevation 80) which contains sludge grinders and the associated mechanical equipment (the sludge grinders may be located in the adjacent gallery with the feed pumps).
- A main at grade level (approximately 90 feet x 55 feet, at elevation 95, i.e., existing grade) which contains switch gear, motor control centers, a pump access and maintenance area, and a possible future drive-through facility for loading sludge screenings.
- A possible second level (90 feet x 55 feet, at elevation 110) which may contain the sludge screening equipment. The roof of the pump station may extend to a maximum height of 30 feet above existing grade or an approximate elevation of 125 feet.
- A truck loading facility will be designed into the facility to remove the screenings.

A below grade gallery extension adjacent to the pump station will also be constructed with this project (from 20 feet south of C Street to 20 feet south of the pump station). The gallery will be a below-grade structure 15 feet high by a minimum of 15 feet wide at elevation 76. The width will be determined by the space required for future equipment.

A 12-inch discharge force main will exit the pump station to the east or north and be routed around to the east side of the existing digesters. The force main will be attached to a 6-foot high retaining wall that is being constructed along with slope revegetation to help alleviate the erosion on the hillside east of Third Street.

45-920.0 METRO SYSTEM CONTROL CENTER

This project provides for a Wastewater Operations Management Network (COMNET) which will unite all process monitoring and control systems and local area computer networks (LAN) in and between new and existing facilities. The purpose of this project is to provide for centralized management and planning for all the major existing and new wastewater and reclaimed water facilities for the Clean Water Program. The project will also provide for furnishing and installing a computerized control system and will also include the

instrumentation and control units at the major wastewater treatment and water reclamation plants, sludge processing facilities and pumping plants.

45-920.1 METRO SYSTEM OPERATIONS CENTER

This project will provide for design, land acquisition (which includes suitable buildings) and refurbishment for Clean Water Program laboratories. This project will provide a facility for housing the operation staff of the Clean Water Program. It will also provide a location for COMNET, which is the centralized computer monitoring/control system for the Clean Water Program. It will also be used for pre-equipment purchase storage and serve as an operating training for the new facilities. This project will involve the acquisition of an existing facility located in the Kearny Mesa area. The facility has two existing buildings. One building at 9192 Topaz Way has approximately 106,204 square feet which contains approximately 43,000 square feet of office space. It is a two-story building with 100% heating and air conditioning systems with parking for 280 vehicles. Zoning is M1B (light industrial). This building is approximately 12 years old.

The other building located at 9150 Topaz Way has approximately 30,260 square feet contains approximately 7,260 square feet of office space with 100% heating and air-conditioning systems. It is a single-story building and has parking for 63 vehicles. The building is zoned M1B (light industrial). The building is approximately 40 years old. The acquisition also consists of a two-acre empty lot located adjacent and to the north of the building sites.

42-910.7 MISSION GORGE WATER RECLAMATION PLANT

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

Planning and predesign work was performed for construction of a water reclamation plant on the Navy's Admiral Baker Field with a capacity of up to 15 million gallons per day. The proposed plant was to be a facility to treat and reclaim sewage water from the adjacent Mission Gorge Interceptor to produce irrigation quality effluent.

40-910.0 MISSION VALLEY EFFLUENT PIPELINE

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

Planning and predesign work was performed for a series of pipelines to transport excess plant effluent from the Santee Water Reclamation Plant, the Mission Gorge Water Reclamation Plant, and the Mission Valley Water Reclamation Plant.

The Mission Valley Pipeline was to extend from the west end of the future East Mission Gorge Interceptor (CIP No. 43-104.0) to the I-5/I-8 intersection. It was to be approximately 33,600 feet of 54" pressurized pipe intended to carry a peak flow of 72 million gallons per day.

42-910.5 MISSION VALLEY SLUDGE PIPELINE

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

Planning and predesign work were performed for this project to provide the pipeline that would transport the raw sludge generated at the Mission Valley Water Reclamation Plant, Mission Gorge Water Reclamation Plant, and potentially the Santee Water Reclamation Plant to the Northern Sludge Processing Facility.
The Mission Valley Sludge Pipeline was to begin at the Mission Gorge Water Reclamation Plant and proceed west to a junction at the San Diego Jack Murphy Stadium parking lot. It was then to proceed north along Murphy Canyon Road

and then west through City streets to the Northern Sludge Processing Facility. This pipeline was to be 10 to 14 inches in diameter and approximately 75,741 feet in length.

46-159.0 MISSION VALLEY WATER RECLAMATION PLANT

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

Planning and predesign work was performed for construction of a water reclamation plant on the south side of Camino del Rio North (to be realigned) near the present aquaculture plant in Mission Valley. This treatment plant was to generate up to 15 million gallons per day of reclaimed water, provide full secondary treatment of wastewater discharged to the ocean, and accommodate future increases in wastewater flows.

46-147.0 MODIFIED WASTEWATER TREATMENT FACILITY PLANT

This project provides for the preliminary facilities planning process necessary to select the treatment concept(s) and locations for the modified Metropolitan Sewerage Facilities. The project has been completed.

46-147.1 MODIFIED WASTEWATER TREATMENT FACILITY - STATE OCEAN PLAN COMPLIANCE

This project provides for studies and design services to achieve State Ocean Plan Compliance at the Point Loma Wastewater Treatment Plant.

40-910.6 NORTH CITY EFFLUENT PIPELINE
(FORMERLY NORTH CITY RECLAIMED WATER PIPELINE)

This project provides for construction of a 54-inch diameter reclaimed water transmission pipeline to connect the NCWRP with the new Rose Canyon Trunk Sewer. It will run southward within City-owned land from Miramar Road on the east side of I-805, into Rose Canyon. This project provides for a 54-inch diameter pipeline that will be approximately 5,200 feet long. It will be either steel or concrete cylinder pipe. It will transport NCWRP effluent from the west end of the North City Tunnel Connector to the new Rose Canyon Trunk Sewer.

42-911.3 NORTH CITY RAW SLUDGE AND WATER PIPELINES

This project provides for the planning, design and construction of a raw sludge force main and a water pipeline from the NCWRP to the Northern Sludge Processing Facilities, and a raw sludge pump station at the NCWRP. This project provides for the planning, design and construction of a raw sludge force main and reclaimed water pipeline from the NCWRP to the Northern Sludge Processing Facilities, Phase II and construction of a raw sludge pump station at the NCWRP. The project is currently in the conceptual design stage. To avoid environmental impacts we are looking at alternative pipeline alignments.

The project will most likely consist of an 18-inch raw sludge pipeline and a 36-inch reclaimed water pipeline. Depending on the alternative alignment selected, the length will vary from 16,200 feet to 35,000 feet. The recommended pipe materials for the sludge line are coal-tar epoxy lined steel pipe with cement mortar or tape coating and polyethylene-lined ductile iron pipe with a taped coating. For the water line, the recommended materials are ductile iron pipe cement mortar lined with tape coating and reinforced concrete pressure pipe, steel cylinder type, AWWA C-300.

42-910.0 NORTH CITY SLUDGE PROCESSING FACILITIES
(FORMERLY NORTH CITY SLUDGE STABILIZATION FACILITY)

This project will provide environmental documentation for the Northern Sludge Processing Facility - Phase II. This project will provide the site-specific

environmental documentation (EIS/EIR) required for the Northern Sludge Processing Facility, Phase II and the North City Raw Sludge and Water Pipeline which are both proposed to be located on federal property.

42-910.8 NORTH CITY TUNNEL CONNECTOR
(FORMERLY NORTH CITY WASTEWATER DIVERSION FACILITIES)

This project brings wastewater into the NCWRP by diverting flow from the Pump Station 64 force main. It will provide capacity relief to the downstream wastewater collection and treatment facilities. This project consists of an approximately 17-foot diameter tunnel that will be approximately 1800 feet long. It will provide a conduit under I-805 between the NCWRP to the east of I-805 and various utilities to the west of I-805. This tunnel will house several pipelines. One will be an 84-inch sewer influent line that will carry wastewater flows from the Pump Station 64 force main into the NCWRP. Another will be a 54-inch effluent pipeline that will connect the NCWRP to the North City Pipeline. Other pipelines include a 48-inch reclaimed water pipeline and a 24-inch plant waste pipeline. A fiber optic conduit is also included. The tunnel will be approximately two-thirds filled with concrete. The pipeline materials will be either ductile iron, steel, PVC or concrete cylinder pipe. The tunnel materials are not known at this time.

42-910.1 NORTH CITY WATER RECLAMATION PLANT

This project provides for construction of a water reclamation plant near the intersection of I-805 and Miramar Road to generate up to 30 million gallons per day (MGD) of reclaimed water for Phase I and 45 MGD for Phase II. This project provides for construction of a water reclamation plant to generate up to 30 MGD of reclaimed water for Phase I and 45 MGD for Phase II. The 34-acre plant site is located just East of I-805 and North of Miramar Road. The site extends north to Eastgate Mall Road. The influent arriving at the NCWRP will be processed by screening followed by primary sedimentation, aeration in an activate sludge reactor, secondary sedimentation, filtration, and chlorination. The process facilities are designed to meet the comprehensive reclaimed water requirements set forth in Title 22 of the California Code of Regulations for tertiary treated water. The following major onsite facilities would be constructed with reinforced concrete:

Administration /Operation and Maintenance (O&M) Building is approximately 30,000 square feet and will house the administrative, operation and maintenance staff.

Influent Pump Station will pump the wastewater to the head work facilities. This building is approximately 10,000 square feet.

Headwork facilities: The wastewater will be screened and then grit would be removed in an aerated grit chamber. In this process, particle such as sand, gravel and other heavy, solid materials are removed. The approximate square footage of this building is 21,000.

Primary Sedimentation Tanks: In these tanks, the velocity of the water slows sufficiently to allow most solids to settle by gravity. The solids are removed as primary sludge from the bottom of the tanks. This process can remove up to 70 percent of suspended solids from the wastewater. The tanks are approximately 11-foot deep and 41,000 square feet.

Aeration Basins: The wastewater would flow at a slow rate through the aeration basins. The highly concentrated microorganisms consume the soluble organic matter in the wastewater. Air is bubbled through the wastewater at all times to meet the oxygen requirements of the organisms and maintain aerobic condition. These tanks are approximately 81,000 square feet.

Secondary Sedimentation Basins: The function of these tanks is similar to the primary sedimentation basins. Up to 90 percent of the suspended solids will

be removed from wastewater in these tanks. These thanks are approximately 63,000 square feet.

Tertiary Filters: The flow from secondary sedimentation tanks will flow to tertiary filters for additional solids removal. The filters are approximately 29,000 square feet.

Chlorine Contact Tanks: The filtered wastewater will be mixed with chlorine and directed to the chlorine contact tanks for disinfection. With detention time of 120 minutes, the bacteriological content of the water can be brought into compliance with the requirements of the Title 22. The tanks are approximately 36,000 square feet.

Chlorination Building: Chlorine will be stored in this building. Two 20-ton chlorine tanks will be stored for the phase I. A third tank would be added for phase II. This building will be approximately 10,000 square feet. 6

Chemical Building: Chemical such as Ferric Chloride, Caustic and Sodium Hypochlorite will be stored in this building. This building is approximately 17,000 square feet.

42-911.4 NORTHERN SLUDGE PROCESSING FACILITY PHASE II

This project provides for the planning, design and construction of facilities for sludge processing. It will thicken, digest, dewater and dry sludge from the NCWRP and the PLWTP. This project provides for the planning, design, and construction of facilities for sludge processing. It will thicken, digest, dewater and dry sludge from the northern area reclamation plants and from the PLWTP. The facility is proposed to be located at a 30-39 acre site on NAS Miramar, immediately north of State Route 52 and west of Convoy Street. The project is currently in the conceptual design phase and is subject to change. However, it is proposed to include the following facilities:

Raw Biosolids Receiving Tank - The tank will receive raw biosolids from the NCWRP and is intended to dampen peak flows. The receiving tank will be of the same configuration as the anaerobic digesters. It will be 105 feet in diameter and have a liquid depth of 45 feet. The tank will be constructed using a cast-in-place core wall wound with post-tensioning wires and covered with shotcrete. The tank will have a PVC liner cast-in-place with the concrete which will cover the roof and walls to reduce potential for corrosion.

Biosolids Thickening (Centrifuge) Building - The thickening building will house high solids centrifuges which will thicken wet biosolids from about 0.5% to 0.8% dry solids to 5-6% solids using a high speed rotating drum. Depending on manufacturer, centrifuge model, polymer feed rate, etc. throughput capacities vary significantly. However, assuming one unit will be out of service and one unit will be provided as standby, it is estimated that five centrifuges will be needed. The building will be two-story and constructed as a reinforced concrete precast tile-up structure. It will also include mechanical equipment rooms, a control room, an electrical room, staff restrooms and other support space. The building is approximately 31,400 square feet.

Thickened Biosolids Screening and Blending Tanks - The dual compartmented thickened biosolids blending tanks will receive thickened and screened biosolids and blend them to achieve a more homogeneous feed to the digesters. The blending tanks will be located adjacent to the thickening building. The concrete tanks will be 12 square feet and have a liquid depth of about 11 feet.

Anaerobic Digesters - Anaerobic digesters will be provided that are a single high rate complete mix, with overflow withdrawal. The facility will consist of five 105 foot diameter tanks with a liquid depth of 45 feet. The digester tanks will be constructed using a cast-in-place core wall wound with post-

tensioning wires and covered with shotcrete. The tanks will have a PVC liner cast-in-place with the concrete. Each digester will have a fixed concrete cover supported by tank walls and interior columns.

Digested Biosolids Storage Tanks - The storage tanks will provide storage capacity for maximum peak flows expected from the digesters and for emergencies if the dewatering process is out of service. Three 105 diameter tanks with a liquid depth of 45 feet, in the same configuration as the digesters will be provided.

Biosolids Dewatering Building - The dewatering building will house process equipment. The digested biosolids will be dewatered using the centrifuge dewatering process. In this process, water is removed by forcing biosolids to the outer wall of a rotating bowl. Based upon the design criteria, it is estimated that eight centrifuges at 200 gpm are necessary. This assumes that two centrifuges will be out of service, one for repair and one for standby. The building also will include an operations control room, staff restrooms, elevator, elevator equipment room, electrical room, service area and maintenance vehicle access. Adjacent to the building will be a storage truck loading structure which houses silos, pumps and truck loading equipment. The basic structural system will be a reinforced concrete precast tilt-up system. The building is approximately 31,600 square feet. The thickening building and the dewatering building may be combined into one structure in future phases of design.

Wastewater Pump Station - A wastewater pump station will be built at the southwest corner of the NSPF site. It will receive wastewater from various processes and centrate and subnatant from the dewatering process. This waste will be pump through the centrate pipeline to a sewer in Mission Valley. The pump station will have wet wells, two dry well stories below grade, and one dry well story above grade. The station substructure will be approximately 104 feet x 53 feet in plan and 40 feet deep. The single story superstructure will be about 16 feet high. The basic structural system will be a cast-in-place reinforced concrete system. The station will be large enough to house seven pumps. However, based upon the estimated flows, three duty and two standby variable speed pumps will initially be installed, three for wastewater and two for centrate. Each pump will be capable of pumping 2,500 gpm.

Chemical Storage and Odor Control Building - This building will be used to house chemical feed equipment used in the various processes. Pumps, compressors and other equipment will be housed in the enclosed one story cast-in-place reinforced concrete building. The building is approximately 5,100 square feet. The chemicals, which include caustic soda, sodium hypochlorite, sulfuric acid, ferric chloride and polymer, will be stored in outdoor tanks with containment basins where required.

Energy Building - This building will house hot water boilers, chillers and associated mechanical equipment. The necessary electrical and control equipment will also be housed in this one story precast tilt-up building. The building is approximately 11,000 square feet.

Operations Building - The Operations Building is a one story tilt-up reinforced concrete building consisting of three components: administration offices, operations function, and maintenance function. Within these components are the Manager's office, Supervisor's offices, clerical offices, security office, visitors lobby, visitors assembly room, public/staff restrooms, main control room, electrical room, computer/termination room, process control laboratory, staff shower/locker room, machining, carpentry, paint, electrical, electronics, hazardous materials storage and equipment cleaning area. The building is approximately 30,000 square feet.

Truck Wash Facility - The truck wash facility is a one story building which will serve as a washing area for biosolids transport trucks as they enter the facility. It will house an equipment room, office/laundry area, electrical

room and an open covered washing area. This building encompasses 2,646 square feet.

40-910.3 OTAY VALLEY EFFLUENT PIPELINE

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A predesign report was prepared and consultant contracts were negotiated in the event the project was approved for implementation in the first phase.

The Otay Valley Pipeline was to convey excess effluent from the Otay Valley Water Reclamation Plant to the South Bay Wastewater Treatment plant and Water Reclamation Plant site and into the South Bay Land Outfall for ocean disposal. This pipeline was to have the primary function of serving as a fail-safe mechanism for disposing of all plant effluent, especially during coincident periods of low reclaimed water demand and high plant flows. The pipeline size of 36-inch was determined based on a peak flow of 19.2 mgd from the Otay Valley Water Reclamation Plant. The total length of the pipeline was to be approximately 43,000 feet.

40-910.7 OTAY VALLEY SLUDGE PIPELINE

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A predesign report was prepared and consultant contracts were negotiated in the event the project was approved for implementation in the first phase.

The Otay Valley Sludge Pipeline was to transport unthickened sludge from the Otay Valley Water Reclamation Plant to the Southern Sludge Processing Facility located at the same site as the South Bay Treatment Plant. The Southern Sludge Processing Facility was scheduled for completion after the Otay Valley Water Reclamation Plant was in operation. During this interim period, the sludge was to be diverted to the San Ysidro Sewer. Upon start-up of the South Bay Sludge Processing Facility, the diversion was to be abandoned and the sludge transported to the processing facility.

An 8-inch diameter pipe had been selected for the Otay Sludge Pipeline with the following pipe material alternatives: steel pipe, and ductile iron pipe.

42-910.3 OTAY VALLEY WATER RECLAMATION PLANT

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A predesign report was prepared and consultant contracts were negotiated in the event the project was approved for implementation in the first phase.

The recommended plan for the Otay Valley system was to construct an on-line water reclamation plant at Otay Valley Road East site. Initial capacity was to be
6 mgd. The plant was to be expanded to 12 mgd by 2010. Two new wastewater diversion structures and a new pump station were to be constructed to deliver wastewater to the plant. A reclaimed water transmission line was to convey the treated water to users and to the South Bay land outfall for discharge when supply exceeds demand. Sludge generated in the Otay Valley plant was to be pumped to the southern sludge processing site. The recommended layout places all process units and support buildings on a 30-acre site. The following were the major structures of the Otay Valley Water Reclamation Plant:

Influent and Sludge Pump Station was to have two floors below the finished grade and one floor above the finished grade. It was to be reinforced

concrete structure. The lowest floor was to be divided into two areas, an influent pump room and two wet wells. The first floor was to be finished grade was to have a crane/hoist room, a motor control center (MCC) room, and a mechanical equipment and HVAC room.

Headworks/Grit Tanks/Primary Sedimentation Tanks facility included a headworks building, two grit tanks, and six primary sedimentation tanks. The headworks building was a two story structure above the finished grade. The first floor of the building consisted of a truck loading area, an MCC room, a scum concentration room, and a bar screen room. The second floor directly above the bar screen room was to house the grit dewatering equipment, belt conveyors and storage hoppers. There were to be two grit tanks, 15 feet wide, 10 feet deep, and 34 feet long. There were six primary sedimentation tanks, each approximately 20 feet wide, 12 feet deep, and 100 feet long.

Aeration Basins area included four aeration tanks, an influent distribution channel, a mixed liquor channel, and a blower gallery. Each aeration channel was to be approximately 63 feet wide by 15 feet deep by 95 feet long. The wastewater would flow at a slow rate through the aeration basins. The highly concentrated microorganisms would consume the soluble organic matter in the wastewater. Air would be bubbled through the wastewater at all times to meet oxygen requirements of the organisms and maintain aerobic condition.

Tertiary Filters area consisted of eight filter basins, an influent channel, a filter gallery, and waste filter backwash conduits. Each filter basin was to be approximately 19 feet wide by 9 feet deep by 19 feet long. The flow from sedimentation tanks was to flow to tertiary filters for additional solids removal.

Chlorine Contact Tanks/Reclaimed Water Pump Station - the filtered wastewater was to be mixed with chlorine and directed to the chlorine contact tanks for disinfection. With detention time of 120 minutes, the bacteriological content of the water could be brought into compliance with the requirements of Title 22.

Administration Building was to be a single-story above grade structure. The basic structural system of the building was to be cast-in-place concrete frames and a concrete roof. It was to serve both as a work place and visitor center.

Maintenance building was to be a single-story above grade structure, which would house operations and maintenance functions for the OVWRP. The basic structural system of the building was to be cast-in-place concrete frames and a concrete roof.

Chemical Building consisted of a chemical storage/feed room, a chlorine storage room, a chlorine feed room, a chlorine leak scrubber room and a truck unloading area.

Electrical Building consisted of an engine room and an electrical switch gear and MCC room.

46-170.0 <u>POINT LOMA - DIGESTER FACILITY UPGRADE AND EXPANSION</u>

This project provides for upgrading and expanding the PLWTP digester facility. Upgrading includes heating, mixing, heat recovery, digester feed/withdrawal and gas handling. Expansion consists of constructing a seventh digester. This project will allow for the upgrade and expansion of the sludge digestion and gas utilization system at the PLWTP, the design of an additional sludge digester including automation, electrical, instrumentation and piping for the proposed and existing Sludge Digesters, the design or improvements to the Gas Utilization Facility and replacement Waste Gas Burner including relocation, piping, valves and automated controls and ignition. This project will also allow for increased efficiency and capacity of the existing sludge digestion system at the PLWTP.

The Digester upgrade portion of the project will upgrade the existing digesters to allow for smooth operation of the digester system. Digester 7 will be a new concrete digester at the south east corner of the PLWTP immediately south if the existing digesters. This digester, as are all the other six, will be 125 feet in diameter, approximately 38 feet in height and has a volume of approximately 470,000 cubic feet.

9 910 9 POINT LOMA PLANT SECONDARY CONVERSION

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

Planning and predesign work was performed for converting and upgrading the Point Loma Wastewater Treatment Plant from an advanced primary treatment facility to a secondary treatment facility.

70-920 15 POINT LOMA TUNNEL OUTFALL

This project provides for design and construction of the land and ocean outfall to transport excess reclaimed water from the north and central regions for disposal into the ocean. The proposed outfall project will be an approximately 9.1 mile long tunnel transporting treated effluent to a bottom lay pipe presently being constructed 12,000 feet offshore near the PLWTP. The tunnel will be constructed of concrete segments ranging in size from 9 to 12 feet in diameter.

The tunnel will begin in the vicinity of the intersection of Napa Street and Friars Road at a proposed headworks location. This headworks will combine flows from different areas of the city. The headworks will be located on a 1.8 acre site. It will combine flows from the northern and central treatment areas and neutralize the chlorine in the flows. The majority of the structure will be below grade.

The proposed Point Loma Tunnel Outfall (PLTO) will head due west through the Rose Canyon Fault. At that point, just west of I-5 it will bear south/southwest toward the north end of North Island where a construction shaft will be located.

A possible construction shaft will be at the northern end of North Island. This site will also serve as a construction staging area. The tunnel from North Island will then bear west toward the PLWTP.

A drop shaft will be located at the plant to pick up the effluent flows from the treatment plant. A valving structure will also be located at the plant. This will allow for diversions to the existing outfall if the need arises.

From the plant the tunnel will parallel the existing outfall where it will terminate offshore at the riser shaft. This riser shaft will rise to the ocean floor and connect to the outfall extension. This outfall structure is presently being constructed.

4 910 3 PROGRAM PLANNING AND STUDIES ACTIVITIES

This project provides for activities relating to the preparation of a facility plan for the Clean Water Program, including the Framework Plan, project report, EIR/EIS, as-needed consultant services, and financial and revenue plans. This project also provides specialized institutional studies and activities relating to financing and reorganizing the Metropolitan Sewerage System.

70 910 2 RECLAIMED WATER DISTRIBUTION MASTER PLAN

This project provides for master planning of Citywide conveyance pipelines and distribution networks for reclaimed water use from the water reclamation plants to reclaimed water type 1 users and nearby incidental users. This

project was completed in November 1992. The master plan identified approximately 40,000 acre-foot-per-year (AFY) existing and 20,600 AFY anticipated future reclaimed water demand within the City of San Diego. This brings the total potential demand to 60,600 AFY. The recommended distribution system consisting of approximately 158 miles of pipelines, 102 storage tanks and 10 pumping stations, could serve 35,000 AFY of demand.

40-920.0 ROSE CANYON TRUNK SEWER - CWP PORTION

This project provides funding for the Clean Water Program's share of the Rose Canyon Trunk Sewer Project (CIP 46-111.0) to be constructed by the Water Utilities Department. This project provides an outlet for the disposal of any excess reclaimed water.

This project will provide for the construction of a pipeline, 72-inch maximum, that will initially carry untreated wastewater from Pump Station No. 64 to the PLWTP. After the NCWRP is operational, this proposed pipeline will be converted to an effluent pipeline which will carry excess reclaimed effluent from the NCWRP to the Point Loma Outfall.

The proposed pipeline consists of approximately 4.8 miles of variably sized pipelines. Specifically, this includes 22,750 linear feet (lf) of 60-inch diameter pipeline, 1,410 lf of 48-inch diameter pipeline, 680 lf of 54-inch diameter pipeline, and 545 lf of 72-inch diameter pipeline. This project also includes property acquisition and associated structures, including a concrete utility bridge (crossing Rose Creek at Santa Fe Street), two junction structures, three diversion structures, and numerous manholes.

42-911.0 SAN PASQUAL SLUDGE LAND APPLICATION FACILITY

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A predesign report was prepared on this project which was for the beneficial use of composted biosolids (sludge) in San Pasqual Valley.

There was to be no design or construction, only a coordination effort. Application would not begin until receipt (in 1995 or 1996) of a Class A "Exceptional Quality" biosolids compost product.

75-910.3 SAN PASQUAL VALLEY WATER/WASTEWATER MASTER PLAN

This project provides for master planning of water reclamation projects in the San Pasqual Valley. The project was carried out in two phases. Phase I is a feasibility study which reviewed the existing and projected wastewater flows to the Hale Avenue Recovery Facility (HARF) in Escondido, potential reclaimed water demand in the San Pasqual Valley and Rancho Bernardo areas, potential sources of reclaimed water and potential programs for reclaimed water management, groundwater management and sludge management. Phase II is a facilities plan which involves the development and evaluation of alternative facilities, based on the recommendations in the feasibility study (Phase I), required to distribute reclaimed water from the HARF in Escondido to identified users in the San Pasqual Valley and Rancho Bernardo, and conceptually review the implementation of a groundwater management plan in the San Pasqual Basin.

42-910.2 SLUDGE AND BIOSOLIDS MANAGEMENT FACILITY
(FORMERLY SOUTHERN SLUDGE DISPOSAL FACILITY)

This project provides for the processing and final disposal of excess sludge from the metro system which cannot be beneficially reused. There are

currently two candidate sites.

SITE #1

This is a 77 acre site and access road under private ownership, located within the City of San Diego and adjacent to NAS Miramar. The owner conducts a rock extraction and processing business on the site and on adjacent land owned by the U.S. Navy. Four or five lessees occupy space on the privately-owned land and operate businesses compatible with the rock extraction activities, such as a concrete batch plant, asphalt emulsion plant, satin seal plant and truck maintenance shop.

One concrete block, 10,000 square feet office building, an 8,500 square feet concrete block maintenance building, and three or four 2,000 square feet metal warehouse-type buildings are on the site. One unfilled pit is on the site and a second area is slated for future excavation. In total, the two pits consume approximately one third of the 77-acre site.

If used by the CWP for a biosolids disposal site, it is expected that the pits will be lined with a synthetic material to render them water-tight. The entire site, including the pits, would then be filled with a biosolids/soil mix. Filling operations would be consistent with a reclamation plan that would be approved by the City of San Diego and the State Division of Mines and Geology. It is expected that one or two buildings would also be constructed on the site for storage and maintenance of equipment if existing buildings are not suitable for this purpose.

SITE #2

This is an undeveloped 300-acre canyon on Otay Mesa near the international border. It is adjacent to other undeveloped land that is proposed and zoned for industrial development. Immediately south of the site is a candidate site for a new San Diego County municipal waste landfill. Immediately east of the site is land owned by the Bureau of Land Management.

If developed as a biosolids management and disposal site, approximately 100 acres would be lined with a synthetic liner and used as a monofill for a mixture of biosolids and soil. It is expected that an administration/maintenance building would be constructed on the site and would be a concrete structure of about 10,000 to 20,000 square feet. A new half-mile to one-mile long access road would be included in the project. Current access is by a jeep trail.

46-154.0 SOUTH BAY LAND OUTFALL

This project provides for CWP's portion of costs for the construction of a dual purpose gravity sewer pipeline to capture and convey sewage overflows from Mexico and flows anticipated from future growth in the South San Diego Area. This project provides for CWP's portion of costs for the planning, design and construction of the first phase of an outfall system in the South Bay that will be used to convey treated effluent from the International Treatment Plant and future City southern region plants to the ocean for final disposal. Construction of the outfall is completed and consists of:

- 10,075 feet of 144-inch diameter reinforced concrete pipe with coal tar epoxy exterior, Class I.
- 1,775 feet of 144-inch diameter reinforced concrete pipe with coal tar epoxy exterior, Class II.
- 450 feet of 144-inch diameter reinforced concrete pipe with coal tar epoxy exterior, Class III, all pipe was manufactured by Ameron.
- 8 cast-in-place structural reinforced concrete manholes.

- 24 cathodic monitoring stations.
- A 60-foot wide permanent easement along the pipeline alignment.

40-910.1 SOUTH BAY OUTFALL EXTENSION

This project provides for construction of an extension to the South Bay Land Outfall to convey treated effluent from the proposed international treatment plant and the City's southern region treatment plants into the ocean. This project provides for CWP's portion of costs for the planning, design and construction of an extension to the South Bay Land Outfall to convey treated effluent from the International Treatment Plant and future City southern region plants to the ocean for final disposal. The project is currently in the conceptual design phase and consists of two parts: a land outfall extension and an ocean outfall. Four alternatives are being considered. They include conventional, open-cut construction (Alternative A) and tunnel construction (Alternative B), with two initial dilution rates: 100:1 and 80:1. These alternatives consist of:

Alternative A - Land Outfall Extension
6,420 feet of 114-inch diameter pipe. Pipe materials that would meet the criteria for the outfall extension are concrete pressure pipe and steel pipe. A 60-foot wide permanent easement along the pipeline alignment.

Alternative A - Ocean Outfall
18,550 feet of 114-inch diameter pipe for an initial dilution of 100:1 and 14,350 feet of 108-inch diameter pipe for 80:1. Possible pipe materials are reinforced concrete non-cylinder pipe and steel pipe.

Alternative B
A 23,690-foot tunnel with an internal diameter of 132 inches for an initial dilution of 100:1. Support of the excavated tunnel will be with pre-cast reinforced concrete sections. A 96-inch diameter steel liner will be provided inside the pre-cast concrete tunnel liner over a distance of 6,000 feet at fault crossings.

A 19,420-foot tunnel with an internal diameter of 126 inches for an initial dilution of 80:1. A 90-inch diameter steel liner will be provided inside the pre-cast concrete tunnel liner over a distance of 5,000 feet at fault crossings.

A 100-foot wide easement along the alignment of the outfall.

40-911.1 SOUTH BAY SECONDARY SEWERS, PHASE I

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

The Secondary Plant Conveyance System Step 1 (SBSS1) and Step 2 (SBSS2) was to carry wastewater unsuitable for reuse to the South Bay Secondary Treatment Plant. The SBSS2 was to convey wastewater from the northern portion of the South Region to the SBSS1. The SBSS1 will convey wastewater from the SBSS2 and the sewers in the southern portion of the South Region to the South Bay Secondary Treatment Plant where it was to be treated prior to discharge to the ocean.

The northernmost pump station was to be the Sweetwater River Pump Station (PS-2), a facility of the SBSS2 to be located in Chula Vista at the north end of Bay Boulevard near the Sweetwater River. SBSS2 was planned as a 20,350 foot long pressure and a gravity system extending from PS-2 to PS-1 with a diameter of 72 inches. SBSS1 with a diameter of 60 and 102 inches is planned to run 24,000 feet from PS-1 to the South Bay Secondary Treatment Plant.

40-911.2 SOUTH BAY SECONDARY SEWERS, PHASE II

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

In the process of preparing the predesign reports for Phase I SBCS it was determined there was insufficient flow to operate the treatment plant. Therefore, Phase II sewers would need to be included in Phase I. Costs accumulated in Phase II were a part of the predesign report for Phase I.

42.910.5 SOUTH BAY SLUDGE PROCESSING FACILITIES

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A preliminary feasibility study was performed on this project. The Southern Sludge Processing Facility (SSPF) was to process the sludge generated from the South Bay Treatment Plant and the sludge generated at the Otay Valley Water Reclamation Plant. The SSPF, a component of the South Bay Treatment Plant, was to provide successive processes consisting of thickening, anaerobic digestion, and centrifugal dewatering. After further processing, the dried sludge could be trucked to landfill for disposal or to beneficial use markets. The facility was to be totally enclosed to protect against potential odor and visual impacts associated with sludge processing operations. The SSPF was to share the following major facilities with SBWRP and SBSTP: administration building, operations and maintenance building, electrical substation, headworks building, chemical building, chlorination building, dechlorination facilities and parking facilities. In addition the following major on-site facilities would be constructed:

Dissolved Air Flotation Thickeners building was to house the mechanical equipment serving the DAFTs, digester feed pumps, and the plant service air system. Primary and waste activated sludge was to be co-thickened using the DAFT process. Circular DAFTs will be used in this process. Sludge particles were to be floated to the surface by air bubbles which were to be introduced into the incoming sludge stream via a separate pressurized flow stream which would be supersaturated with air. Particles which do not float were to be collected from the thickener as bottom sludge.

Anaerobic Digesters - four digesters were to be constructed in Phase 1 and two more will be constructed in Phase 2. The digesters were to be cylindrical with a diameter of 105 feet and a side-water-depth of 40 feet. They were to be mixed by external pumps.

Energy Building was to house the standby engine-driven generator sets, gas fired steam boilers and associated mechanical equipment. The necessary control panels, switchgear, HVAC equipment, and offices were also to be housed in the building. An MCC room will also be provided.

Sludge Dewatering Building was to be designed to dewater digested sludge from the SBTP, which includes raw sludge from the OVWRP. The digested sludge was to be dewatered using the centrifuge dewatering process. In this process water would be removed by forcing sludge solids to the inner wall of a rotating outer bowl. The solids would be conveyed to the dewatered sludge cake discharge end of the opposite end of the centrifuge over adjustable weirs.

Sludge Storage Tanks was to be similar to the digesters in size, shape, mixing system, and heating system. It could be used as a digester if necessary. The storage tank was sized to provide sludge storage when peak flows are sustained for several days. It was to provide enough storage capacity to handle a peak flow of 2.5 times the annual average flow for 7.3 days.

42-910.6 SOUTH BAY WATER RECLAMATION & SECONDARY PLANTS

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A preliminary feasibility study was performed on this project. The South Bay Water Reclamation Plant (SBWRP) was to have a capacity to produce up to 14 million gallons per day (mgd) of reclaimed water for agricultural and industrial use in the San Diego metropolitan area. The South Bay Secondary Treatment Plant (SBSTP) was to have an initial capacity of 41 mgd and was to be expandable to 55 mgd in Phase 2 to treat the flows projected for the year 2050. The SBWRP was to produce reclaimed water for reuse markets in the communities of San Ysidro, Imperial Beach, Chula Vista and National City and in unincorporated areas in the vicinity. SBSTP was to treat all flows generated in the south Bay portion of the Metropolitan Sewerage System not routed to the two South Bay system water reclamation plants, Otay Valley and the South Bay. Structures of the SBWRP and SBSTP consisted of the major structures:

Headworks and Primary Sedimentation Tanks - the headworks building was to house the mechanical bar screens and the grit classification equipment including grit aeration blowers. In the primary sedimentation tanks, the velocity of the water slows sufficiently to allow most solids to settle by gravity. The solids would be removed as primary sludge from the bottom of the tanks. This process could remove up to 70 percent of suspended solids from wastewater.

Aeration Basins was to consist of 12 tanks 20 feet wide by 454 feet long with 20 feet side water depth. Three more tanks were to be constructed in Phase 2. The plan dimension of the structure was approximately 320 feet by 480 feet. The wastewater would flow at a slow rate through the aeration basins. The highly concentrated microorganisms consume the soluble organic matter in the wastewater. Air would be bubbled through the wastewater at all times to meet oxygen requirements of the organisms and maintain aerobic condition.

Secondary Clarifiers were to consist of 40 basins, influent and effluent, and an underground RAS pump gallery. The total plan dimension of the clarifiers were to be approximately 720 feet by 180 feet. Up to 90 percent of the suspended solids were to be removed from wastewater in these clarifiers.

Chorine Contact Tanks would consist of 5 basins in an underground rectangular concrete box structure. The plan dimension of the structure was to be approximately 350 feet by 150 feet. Four of the 5 basins were to be built in Phase 1 of construction. The filtered wastewater was to be mixed with chlorine and directed to the chlorine contact tanks for disinfection. With detention time of 120 minutes, the bacteriological content of the water could be brought into compliance with the requirements of the Title 22.

Blower Building was to house the air blowers required for process aeration and for agitation of the influent and effluent channels of the primary sedimentation tanks, aeration basins and secondary clarifiers. The basic system of the structure could be a reinforced concrete frame which would support a bridge crane at 40 feet span.

Chlorine Building was to consist of a chlorine storage room to house bulk storage tanks and a chlorine feed room with liquid chlorine evaporators and chlorinators.

Tertiary Filters - the flow from sedimentation tanks was to flow to tertiary filters for additional solids removal.

The following were common facilities shared with the South Bay Sludge

Processing Facilities:

Energy Building was to house the standby engine-driven generator sets, gas fires steam boilers and associated mechanical equipment. The necessary control panels, switchgear, HVAC equipment, and offices were also to be housed in the building. An MCC room was to be provided.

Chemical Building was to house the chemical storage tanks and chemical feeding equipment used in the various treatment processes.

Administration Building was to be a single-story above grade structure. The basic system of the structure could be reinforced concrete frames.

Operations and Maintenance Building was to be a single-story above grade structure. The basic system of the structure could be reinforced concrete frames.

Plant Drainage Pump Station was to be located at the southwest side of the chlorine contact tank. It was to be a below grade reinforced concrete box structure. The top of the structure would be above finished grade.

Odor Control Facilities - there were to be two odor facilities. One was to be located next to the headworks and the other next to the DAFT complex. Each of the two facilities was to consist of five trains of tanks and pumps, fans, and foul air ducts. Both facilities were to be located outdoors on a concrete slab on grade.

40-911.3 SOUTH BAY WATER RECLAMATION SEWERS

This project is not a part of the City Council's Consumers Alternative work plan and is currently on hold. Expenditures to date are reimbursable.

A preliminary feasibility study was performed on this project. The South Bay to Reclamation Plant Conveyance System (SBRS) was a project that provided for the construction of sewer pipelines and pump stations with in the Otay Mesa/Nestor and Tijuana River Valley communities to divert better quality wastewater. The SBRS would carry wastewater with less than 1,000 mg/l total dissolved solids on an average daily basis (and therefore suitable for reclamation and reuse) to the South Bay Water Reclamation Plant. The diameter of the pipes would be approximately 30 and 36 inches on a route of over 25,500 feet long.

46-155.0 STATE OCEAN PLAN COMPLIANCE FACILITIES - PHASE I

This short-term project provided for compliance with the California State Ocean Plan by extending the ocean outfall at Point Loma Wastewater Treatment Plant. This project has been completed.

40-911.5 STATE OCEAN PLAN COMPLIANCE FACILITIES - PHASE II

This project provides for compliance with the California State Ocean Plan by extending the ocean outfall at the PLWTP. The project consists of extending the existing outfall 12,500 feet starting from the existing diffuser wye (wye is a single pipe that splits--with "Y" or "T" configuration), 2.2 miles out in the ocean at a depth of 210 feet to about 4.5 miles out at a depth of 316 feet and ending in a new Y-shaped diffuser wye that will extend the effluent carrying pipe an additional 2,500 feet to the north and south of the main barrel alignment to aid dispersion. The pipe will be laid in 20-foot sections. Each section of the main barrel is made of reinforced concrete 12-foot internal diameter and weighs about 70 tons. The diffuser pipes are also made from reinforced concrete and vary in size from 7-foot internal diameter to 4-foot internal diameter. The pipe is being manufactured by Hydro Conduit Corporation in Corona, California.

46-144.0 TIJUANA WASTEWATER DEFENSIVE MEASURES PROJECT

This project provided for initial collection and treatment of wastewater flows along the international border. This project was, in part, grant funded and has been completed.

EXHIBIT B

SUPPLEMENT DATED _____, 19___ TO MASTER INSTALLMENT PURCHASE AGREEMENT DATED AS OF SEPTEMBER 1, 1993 BY AND BETWEEN THE CITY OF SAN DIEGO AND THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO

WHEREAS, the City of San Diego (the "City") and the Public Facilities Financing Authority of the City of San Diego (the "Authority") have heretofore entered into a Master Installment Purchase Agreement dated as of September 1, 1993 (the "Agreement") pursuant to which the Authority has agreed to provide the Project to the City and the City has agreed from time to time to purchase Components of the Project as are specified in a Supplement; and

WHEREAS, with respect to Components of the Project identified in a Supplement the City will agree to purchase the same and pay in Installment Payments for such Components pursuant to a Supplement; and

WHEREAS, Installment Payments specified in a Supplement will then be served as the collateral for Obligations the proceeds of which will be used to finance the Project; and

WHEREAS, the City and the Authority now wish to specify the Components of the Project which are to be currently financed by execution and delivery of this Supplement;

NOW THEREFORE, the parties hereto have agreed as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. All of the definitions contained in the Installment Purchase Agreement shall apply to this Supplement except as otherwise expressly provided. In addition, the following terms are defined herein.

Components

The term "Components" means the components of the Project specified in Exhibit A hereto for which the City will be making Installment Payments as hereinafter specified.

Component Installment Payments

The term "Component Installment Payments" means the Installment Payments herein specified which are to pay the Purchase Price of the Components.

Component Obligation Series ____

The term "Component Obligation Series ____" means [herein described Obligations to be supported by Component Installment Payments].

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. The City hereby makes the following representations:

[The representations contained in Sections 2.01 of the Agreement (but expanding the same to include this Supplement)]

SECTION 2.02. The Authority hereby makes the following representations and warranties:

[The representations and warranties contained in Section 2.02(a)-(d) (but expanding the same to include this Supplement) and Section 2.02(e) (but only if the Installment Payments to be made pursuant to Article III are intended to be Tax-Exempt Installment Payment Obligations)]

ARTICLE III

COMPONENT INSTALLMENT PAYMENTS

SECTION 3.01. The City agrees to pay as Component Installment Payments, solely from Net System Revenues as provided in the Agreement, the following:

SECTION 3.02. The Component Installment Payments specified herein are [Parity Installment Obligations/Subordinated Obligations].

ARTICLE IV

TENDER FOR PURCHASE

SECTION 4.01 The City shall have the following obligations with respect to the Component Obligation Series ____ to the extent the same are tendered for purchase by the City:

ARTICLE V

PREPAYMENT AND REDEMPTION

SECTION 5.01 Prepayment and Redemption. The City shall have the following rights and duties to prepay Component Installment Payments:

ARTICLE VI

ADDITIONAL COVENANTS

SECTION 6.01 Additional Covenants. In addition to the covenants specified in the Agreement, the following additional covenants are added with respect to the Component Obligation Series:

[Tax Covenant for Tax-Exempt Installment Payment Obligations: The City will not directly or indirectly use or permit the use of any proceeds of the Component Obligation Series or any other funds of the City or of the Project or take or omit to take any action that would cause the Component Obligation Series to be "private activity bonds" within the meaning of Section 141 of the Code, or obligations which are "federally guaranteed" within the meaning of Section 149(b) of the Code.

The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest represented by the Component Obligation Series under Section 103 of the Code. The City will not directly or indirectly use or permit the use of any proceeds of the Component Obligation Series or any other funds of the City, or take or omit to take any action, that would cause the Component Obligation Series to be "arbitrage bonds" within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code to the extent applicable to the Component Obligation Series. In the event that at any time the City is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee under the [Issuing Instrument] or otherwise, the City shall so instruct the Trustee in writing, and shall cause the Trustee to take such action as may be necessary in accordance with such instructions.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Component Obligation Series ____ from time to time. This covenant shall survive payment in full or defeasance of the Component Obligation Series ____. The City specifically covenants to pay or cause to be paid to the United

States of America at the times and in the amounts determined under this Section the Rebate Requirement, as described in the Tax Certificate and to otherwise comply with the provisions of the Tax Certificate executed by the City in connection with the execution and delivery of the Component Obligation Series ____.

Notwithstanding any provision of this Section, if the City shall provide to the Trustee an opinion of nationally recognized Bond Counsel to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Component Obligation Series ____ pursuant to Section 103 of the Code, the City may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent].

ARTICLE VII

ADDITIONAL EVENTS OF DEFAULT

SECTION 7.01 Additional Events of Default. The following shall be added as Events of Default under Section 8.01 of the Agreement which are applicable solely to this Supplement.

IN WITNESS WHEREOF, this Supplement has been executed by the City and the Authority as of the year and date first above written.

CITY OF SAN DIEGO

By_____
City Manager

PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO

By_____
Chairman

APPROVED AS TO FORM:

City Attorney of the City of San Diego

By _____
Assistant City Attorney

LA1-3889.15

See footnote 101

Footnote No. 102

Footnote No. 103

THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: October 10, 2001 REPORT NO. 01-209

ATTENTION: Honorable Mayor and City Council
Docket of October 16, 2001

SUBJECT: Sewer Revenue Fund, Sewer Service Charges

REFERENCE: City Manager's Report No. 99-03, issued January 7, 1999
City Manager's Report No. 99-11, issued January 15, 1999
Deputy City Manager's memo to Mayor and Council, dated December 3, 1999

SUMMARY

Issues:

Should the City Council adopt Sewer Service Charges for Fiscal Years 2002, 2003, 2004 and 2005 which will increase sewer system revenues by 7.5% per year for four successive years, effective March 1st of each year, to fund the continued upgrade and expansion of the wastewater system which is required to comply with federal and state mandates including the Clean Water Act, the Ocean Pollution Reduction Act (OPRA), the State Ocean Plan, the National Pollutant Discharge Elimination System (NPDES) Permit, and the federal Stipulated Final Order for Injunctive Relief (Stipulated Order).

Manager's Recommendations:

Consistent with the City Council's direction of May 15, 2001, direct the City Manager to increase all sewer service charges by 7.5% on March 1, 2002 (FY 2002), 7.5% on March 1, 2003 (FY 2003), 7.5% on March 1, 2004 (FY 2004) and 7.5% on March 1, 2005 (FY 2005), to ensure continued compliance with the requirements of the Clean Water Act, OPRA, the State Ocean Plan, the NPDES Permit, and the Stipulated Order.

Other Recommendations - None.

Environmental Impact - This project is exempt from CEQA pursuant to Section 15060 (c)(3) as defined by the State CEQA Guidelines.

Fiscal Impact:

The cost of the Metropolitan Wastewater Department's Capital Improvement Program (CIP) from FY 2002 through FY 2005 is estimated to be $517.2 million. Funding this effort will require issuing sewer revenue bonds as well as increasing sewer service charge revenues 7.5% per year in Fiscal Years 2002, 2003, 2004 and 2005. Additional service charge increases will be necessary to fund needed capital improvements in subsequent years. The estimated cost of the CIP from FY2006 through FY2010 is $695.3 million, for a total estimated cost for the period from FY2002 through FY2010 of more than $1.2 billion.

BACKGROUND

The last sewer rate increases were approved by City Council on January 19, 1999. The Council approved sewer service charge increases of 5% per year for three consecutive years, FY 1999, FY 2000 and FY 2001 to fund the continued upgrade and expansion of the wastewater system. Attachment 1 provides a summary of the key events that impacted the City's Metropolitan Sewerage System prior to that, from 1987 through 1998.

In 1999, the following changes occurred, impacting the Sewer Fund Financing Plan in a positive way: On April 30, 1999, the City accepted a NAD/Bank Grant in the amount of $17.2 million for the South Bay Water Reclamation Plant. On October 26, 1999, the City accepted an EPA Grant in the amount of $2.1 million for the South Bay Reclamation Sewer and Pump Station. On June 8, 1999, the City Council approved acceptance of five low interest State Revolving Fund (SRF) Loans, two for the Point Loma Wastewater Treatment Plant and three for the South Bay Water Reclamation Plant, with a total estimated value of $80.8 million. Estimated savings in interest costs for these low interest loans was $17.8 million on a present value basis when compared to traditional bond financing. On June 21, 1999, the City Council approved the expansion of the South Bay Water Reclamation Plant from 7 million gallons per day (mgd) to 15 mgd. With this expansion and the 30 mgd of capacity at the North City Water Reclamation Plant, the City met its requirement under OPRA to provide 45 mgd of water reclamation capacity by 2010. As a result of expanding the South Bay Water Reclamation Plant, the City was able to delete the Mission Valley Water Reclamation Plant from its Sewer Fund Capital Improvement Program, which will save the City approximately $105 million.

In December, 1999, City staff updated the Financing Plan incorporating the above changes. The following tables compare the sewer rate increases and average single family residential monthly sewer costs for the previously approved FY1999 Financing Plan and updated FY2000 Financing Plan. From 1993 to date, a total of $1.165 billion dollars in bonds have been issued and used to finance the wastewater capital improvement program.

Annual Rate Increases

	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08
Projected FY99	5%	5%	5%	10%	9%	4%	4%	4%	2%	2%
Projected FY00	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%

Average Single Family Residential Monthly Sewer Costs

	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08
Projected FY99	$27.03	$28.38	$29.80	$32.78	$35.73	$37.16	$38.65	$40.19	$41.00	$41.82
Projected FY00	$27.03	$28.38	$29.80	$31.29	$32.85	$34.50	$36.22	$38.03	$39.93	$41.93

DISCUSSION

Through 1999, the emphasis had been on the maintenance, repair, upgrade and expansion of the Metropolitan System (treatment facilities and outfalls) in order to ensure compliance with OPRA and the Stipulated Order. As the City approached the completion of the major upgrades to the Metropolitan System, the emphasis shifted to the Municipal System, which consists of nearly 3,000 miles of pipeline and 80 pump stations. The Municipal System is operated and maintained by the Metropolitan Wastewater Department's Wastewater Collection (WWC) Division.

In 1999, as part of the City's Zero-Based Management Review (ZBMR) Program, the WWC Division began a two year assessment, benchmarking and optimization study. The study was conducted by two consultants with separate but complementary responsibilities. The "Benchmarking" consultant reported directly to the City Optimization Program Manager and was responsible for a detailed benchmarking study and a mock bid to gauge the private sector competitive budget level for this operation. The "Optimization" consultant was deployed to work more directly with the workforce to determine best industry practices, perform an independent operational assessment, and integrate all information from the workforce and from both consultant efforts into an optimization plan.

The "Optimization" consultant's two-year examination indicated in part:

- The System consists of almost 3000 miles of sewer pipelines and 80 pump stations.
- 800 - 1000 miles of the System are over 50 years old.
- About 60% of the System is vitrified clay pipe. Clay pipes built before 1965 lack gaskets between the pipe sections, making the lines susceptible to root intrusion at the joints.
- Approximately one half of spills are caused by root intrusion.
- About 7% of the System is concrete pipe. These pipes are susceptible to corrosion, deterioration, and blockage. The recent Municipal CIP has focused on replacement of concrete pipes.
- Between one quarter and one third of spills are caused by grease blockages.
- 10 - 15 spills are caused each year by vandalism, particularly debris thrown into manholes.
- Priority for cleaning of the System has focused on "hot spots" where grease blockages or root intrusion is known to be a problem. Half of the System is not routinely cleaned.
- Lack of access to 320 miles of pipelines and their associated manholes in canyons and open space has led to minimal maintenance of the System in those areas.

The WWC Division mock bid indicated that the operating and maintenance budget for the collection system is in the competitive range. However, both the mock bid analysis and the optimization study indicated or recommended a number of measures to better utilize resources and continuously move toward best industry practices. Additionally, the "Optimization" consultant's assessment included an evaluation of available benchmarking data concerning the total number of Sanitary Sewer Overflows (SSO's) or spills in the wastewater collection system of the City of San Diego compared to other cities / agencies. The data demonstrated that San Diego's collection system spills have reduced considerably over recent history, but remain in excess of the number expected of a "good performing" agency. To achieve the level of good performing agencies, the "Optimization" consultant's summary briefing at the April 18, 2001 NR&C Committee meeting indicated that both the implementation of Best Management Operations and Maintenance Practices and the execution of an adequate Capital Improvement Program are required. These targeted reductions are intended to protect the environment and support the Mayor's goal of reducing beach postings and closures.

In November 2000, the "Optimization" consultant noted the deteriorated condition of the Municipal System (like many collection systems across the country) and the attendant need for an increased capital improvement program in order to fully implement some of the O&M optimization measures. The consultant emphasized that to reach the benchmarked reductions in sanitary sewer overflows, both the implementation of recommended optimization measures and an increased capital improvement program were needed.

The consultant prepared a preliminary estimate of annual capital expenditures required to bring the system up to a sustainable condition. This preliminary estimate was based on national industry standards for construction cost and life expectancy for sewer pipelines and pump stations, and resulted in a range of $109 million to $137 million each year over a 10 year period. A focused system condition assessment utilizing televised and other diagnostic data was also recommended.

The Metropolitan Wastewater Department's (MWWD) Engineering and Planning Section performed an independent analysis of this issue using available GIS data regarding sewer age and material. The MWWD staff reached similar conclusions regarding annual capital expenditure levels required for the Municipal System.

While the current sewer spills record and ongoing televising of pipelines indicate that a significant amount of the system is in a deteriorated state, it is anticipated that some pipelines to be assessed will be in adequate condition (revised life expectancy will exceed preliminarily estimated life expectancy) and will either not require near-term replacement, or will be able to be rehabilitated using less expensive construction techniques. With this in mind, an average annual expenditure level of $100 million (somewhat below the lower end of the consultant's estimated range) was utilized for immediate work load and financial planning. This figure will be revisited as the focused assessment of the System is executed over the next several years. It is felt unlikely that the revised level can be lower without increased risk of not attaining benchmarked reductions in sanitary sewer overflows. However, such factors as constructability and neighborhood disruption may argue against it being significantly higher. To date, 273 Municipal System projects with an estimated cost of $322.8 million have been identified and scheduled from FY2002 through FY2005.

The proposed 10 year program includes ramping up the rehabilitation and replacement of deteriorated pipelines from the current 15 to 20 miles per year to 60 miles per year.

Based on the recommendation contained in the assessment and optimization study, the City developed what is referred to as the "Accelerated Municipal Program." The Accelerated Municipal Program's objective is to achieve the goal of reducing sewer spills from 10.3 to 6.6 spills per 100 miles of sewer by the end of calendar year 2006. The Accelerated Municipal Program addresses both operation and maintenance (O&M) and capital improvement needs. The costs associated with the Accelerated Municipal Program for the period from FY2002 through FY2010 are shown in the following table. See Attachment 2 for a listing of Muni Capital Improvement Projects.

Municipal System
(Inflated Dollars in Millions)

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	Total
O&M	$101.3	$112.1	$119.1	$123.4	$127.6	$133.9	$140.3	$143.9	$149.9	$1,151.5
CIP	$58.6	$89.2	$87.7	$87.3	$108.7	$120.0	$128.0	$130.0	$133.1	$942.6
Total	$159.9	$201.3	$206.8	$210.7	$236.3	$253.9	$268.3	$273.9	$283.0	$2,094.1

Although the emphasis has shifted from treatment facilities and outfalls to the collection system, the Metropolitan System still represents a significant funding requirement when considering both O&M and capital improvements, as indicated in the following table. See Attachment 3 for a listing of Metro Capital Improvement Projects.

Metropolitan System
(Inflated Dollars in Millions)

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	Total
O&M	$194.6	$203.3	$208.6	$217.2	$222.3	$230.7	$240.3	$246.4	$255.5	$2,018.9
CIP	$69.1	$50.7	$41.9	$34.5	$27.3	$16.4	$14.2	$12.8	$7.8	$274.7
Total	$263.7	$254.0	$250.5	$251.7	$249.6	$247.1	$254.5	$259.2	$263.3	$2,293.6

In summary, the funding requirements for both the Municipal System and the Metropolitan System for both O&M and capital improvements are significant, as indicated in the following table.

Municipal & Metropolitan Systems
(Inflated Dollars in Millions)

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	Total
Muni	$159.9	$201.3	$206.8	$210.7	$236.3	$253.9	$268.3	$273.9	$283.0	$2,094.1
Metro	$263.7	$254.0	$250.5	$251.7	$249.6	$247.1	$254.5	$259.2	$263.3	$2,293.6
Total	$423.6	$455.3	$457.3	$462.4	$485.9	$501.0	$522.8	$533.1	$546.3	$4,387.7

To implement the combined Metropolitan and Accelerated Municipal Programs, annual rate increases of 7.5% will be required for FY2002 through FY2005. In addition, rate increases will be required for FY2006 through FY2010. The following table shows the proposed and projected rate increases, as well as the average single family residential monthly sewer costs for FY2002 through FY2010.

Annual Rate Increases
&
Average Single Family Residential Monthly Sewer Costs

PROPOSED				PROJECTED				
FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
7.5% $32.04	7.5% $34.44	7.5% $37.02	7.5% $39.80	6.5% $42.38	5.0% $44.50	5.0% $46.72	5.0% $49.06	5.0% $51.51

The City Council's approval of the City Manager's recommendation that a series of four annual 7.5% increases in rates be adopted is important for these reasons:

1. Doing so allows the City to meet current bond covenants and supports the continued orderly execution of the capital plan for which the existing bonds were sold; and

2. It provides sufficient funding for needed wastewater system maintenance and improvements in compliance with federal and state mandates, and demonstrates a good faith effort and the City's continuing commitment in the context of the Stipulated Order and the ongoing waiver renewal process.

CONCLUSION

The City has pursued a successful course of legislative, legal and financing actions that has resulted in significant reductions in the scope and cost of mandated sewer system upgrades and of projected monthly sewer service charges while continuing to responsibly protect the environment. To maintain and build upon those successes, continued funding of the wastewater capital program is essential, as is an increased level of municipal maintenance and repair. Ongoing compliance with the NPDES Permit, the waiver-enabling OPRA and the Stipulated Order associated with the Municipal System require that current and proposed increases in maintenance, repair, upgrade and replacement continue. The action requested today will allow the City to meet those requirements.

ALTERNATIVE

Consider delaying the sewer service charge increases requested for FY 2002, FY 2003, FY 2004 and FY 2005 or setting those increases at levels lower than 7.5%. These actions are not recommended because this could prevent the issuance of additional debt on a scale necessary for the construction of projects the City needs to comply with the requirements the NPDES Permit, Clean Water Act, OPRA, and the requirements of the Stipulated Order to upgrade and maintain the Municipal Sewer System.

Respectfully submitted,

SCOTT TULLOCH
Metropolitan Wastewater Department Director

GEORGE LOVELAND
Senior Deputy City Manager

Note: Attachment 3 is not available in electronic format. A copy of the attachment is available for review in the office of the City Clerk.

ATTACHMENTS:

1. Metropolitan Sewerage System Key Events 1987 through 1998
2. Metropolitan Wastewater Department FY 2002 Final Budget Muni System Appropriation Schedule

3. Metropolitan Wastewater Department FY 2002 Final Budget Metro System

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City of San Diego
Metropolitan Sewerage System
Key Events
1987 through 1998

In early 1987, the City began the planning process to upgrade and expand the sewage system to serve the region through the year 2050 and to comply with the federal Clean Water Act.

In July 1988, the City was sued by the federal and state governments for noncompliance with the Clean Water Act's requirements for secondary treatment of wastewater. A proposed Consent Decree was negotiated allowing for environmental, planning and construction schedules that would have required all water reclamation facilities to be operational by 1999 and the Point Loma Wastewater Treatment Plant ("Point Loma") to be upgraded to full secondary treatment level by December 31, 2003. This agreement was the basis for the design configuration of the upgrade to secondary sewage treatment approved by the City Council (adopted as "Alternative IV"). The cost of the program was estimated at $2.5 billion (capital costs excluding the costs of financing) through the year 2003. It should be noted that the program and the $2.5 billion in estimated expenditures only addressed the upgrade and expansion of the Metro System and did not include the work on the Municipal System.

On June 19, 1990, the City Council approved a five year sewer financing plan which incorporated annual increases of 6% in monthly sewer service charges and 16% in sewer capacity charges. These increases were based on the 1990 "Wastewater Financial Plan and Revenue Program" and were predicated upon incurring bonded indebtedness to finance the majority of the Capital Improvement Program required to meet the Clean Water Act. Implementation of this financing plan was completed July 1, 1994, when the last rate increase was effective.

In September 1991, the City Council directed the City Manager to pursue a means of preserving the Point Loma Treatment Plant at advanced primary treatment. That effort focused on the pursuit of amendments to the Clean Water Act that would either allow the City to re-apply for a waiver of the Act's secondary treatment requirements, or amend the Act to provide for different discharge standards for coastal waters, thereby saving the region's ratepayers significant future capital and operating costs.

In April 1992, a rate analysis and financing package was brought to the City Council for the first issuance of bonds for projects required by the proposed Consent Decree (Alternative IV). The rate analysis reflected a requirement for annual sewer service charge increases of 15% for the period FY 1993 through FY 1997, an 8% increase in FY1998, and 1.5% increases thereafter. This analysis also included projected sewer capacity charge increases of 16% annually through FY 1997.

In light of the magnitude of these rate increases, the City Council requested development of an alternative program which was smaller in scope and resulted in lower rate increases. In response, the "Consumers' Alternative" system configuration was developed, then adopted by Council, to

replace Alternative IV. The Financing Plan presented to Council for the Consumers' Alternative included the issuance of $1 billion of debt to finance most of the capital construction, contained no increase in capacity charges beyond FY 1995 and increased sewer service charges by 6% per year through FY 2001, a projected rate profile significantly lower than that required for Alternative IV.

In September 1993, the initial issue ($250 million) of sewer revenue bonds was sold. As part of this issuance, Council committed to adjust future sewer charges as necessary to meet the financial tests prescribed in the bond covenants.

In April 1994, the federal court set aside the proposed Consent Decree, finding that it was not in the public interest. This action eliminated Alternative IV as a viable system configuration.

In August 1994, the U.S. District Court approved and filed an Interim Order which directed the construction of facilities consistent with the Council adopted-Consumers' Alternative. This Interim Order included all of the capital projects to be constructed until the remaining issues between the Environmental Protection Agency (EPA) and the City could be resolved.

On October 31, 1994, Congress passed the Ocean Pollution Reduction Act (OPRA) of 1994 which amended the Clean Water Act to permit the City to apply for a waiver from secondary treatment standards at Point Loma. The OPRA legislation required the City to commit to the implementation of a wastewater reclamation program that, at a minimum, would achieve a system capacity of 45 million gallons of reclaimed wastewater per day (mgd) by January 1, 2010, and would result in a reduction in the quantity of suspended solids (mass emissions) discharged into the marine environment during the period of modification (waiver). In addition, the modification had to result in the removal of not less than 58% of the biological oxygen demand (on an annual average) and not less than 80% of total suspended solids (on a monthly average) in the discharge.

In February, 1995, ground was broken on the Metro Biosolids Center (MBC). In accordance with the 1981 agreement between the City and the California Coastal Commission, MBC replaced the Fiesta Island Sludge Processing Center, so that Fiesta Island could be converted to recreational use. MBC went into operations in February, 1998. The cost of MBC and its related facilities was $332.9 million.

In April, 1995, the City filed an application with the EPA for a waiver, and in August 1995 the EPA issued a tentative decision approving the waiver and a modified National Pollutant Discharge Elimination System (NPDES) permit. On November 9, 1995, the EPA granted the City's request for a modified NPDES permit pursuant to a waiver. The permit incorporated both federal NPDES and state wastewater discharge requirements, required the upgrade at Point Loma to meet the requirements, and required construction of water reclamation facilities capable of treating 45 million gallons per day by the year 2010, all of which the Wastewater System Capital Improvement Program contemplates. The waiver does not in any way modify the court's Final Order or the Wastewater System Capital Improvement Program. The waiver had a term of five years which ended on November 9, 2000. The City has applied for a five-year waiver extension in order to maintain its

exemption from the secondary treatment standards of the Clean Water Act.

On September 13, 1996, the City and all parties to the U.S.A. v. City litigation agreed to a Stipulated Final Order from Injunctive Relief (Stipulated Order) that resolved all of the remaining issues concerning alleged violations of the Clean Water Act. The Final Order provided for specified upgrades of the sewer collection system including the replacement of sixty miles of concrete mains by June 30, 2003, a comprehensive pump station and force main audit, an upgraded information system, additional grease control, and incorporation of the capital improvement projects listed in the Interim Order. After appropriate public noticing and a hearing on public comments, the Final Order was signed and entered by the judge on June 6, 1997. With this entry, all projects listed in the Final Order became mandated by the court and the allegations regarding the Clean Water Act were resolved.

The OPRA legislation clearly results in significantly lower sewer bills than would have occurred without the legislation. However, the cost of the projects necessary to comply with OPRA and the court-ordered projects still requires rate increases.

On October 2, 1996, the City Council approved sewer service charge increases of 6% in both FY 1997 and FY 1998.

WATER DEPARTMENT TABLE OF EXHIBITS

1. Water Department General Info. (Index). FNS. 1, 3, 8, 19
2. City of San Diego Water Department PUAC Presentation, November 28, 2006. FNS. 2
3. Public Facilities Financing Authority, Sub. Water Revenue Bonds, Series 2002 Oct. 2002. FNS. 4, 11, 13, 25, 27, 29, 30, 31, 38
4. Strategic Plan for Water Supply 1997-2015, July 1997. FNS. 5, 6, 18, 21, 23, 37
5. City of San Diego Water Utility 2002 Annual Financial Report. FNS. 7, 9, 12
6. Natural Resources & Culture Committee Executive Summary Sheet, December 1, 2006. FNS. 10
7. Water Cost of Service Rate Study Final Report, Raftelis Financial Cons., 12/14/2006. FNS. 14, 24, 45, 46, 47, 48, 49, 50, 51, 52
8. Water Department General Information (CIP). FNS. 15, 17, 20
9. Public Facilities Financing Authority, Sub. Water Revenue Bonds, Series 1998 Aug. 1998. FNS. 16, 32, 43
10. City of San Diego Long-Range Water Resources Plan (2002-2030), Dec. 9, 2002. FNS. 22
11. DHS, January 22, 1997, Compliance Order No. 04-14-96CO-022. FNS. 26
12. DHS, Apr. 27, 2004, Amend. #10 to Compliance Order 04-14-96CO-022. FNS. 28
13. Memorandum, Dennis Kahlie, March 2, 1994; August 8, 2005 Revision; City Council Resolutions. FNS. 33, 40, 88
14. Report to City Council, Prop. 218 Noticing, 12/18/2006. FNS. 34, 39, 41, 44, 54
15. Union-Tribune, 12/27/06, *Rash of ruptures has San Diego scrambling to make costly repairs*. FNS. 35
16. Engineering News Record Website. FNS. 36
17. Mayer Hoffman McCann P.C. Audit Report, August 7, 2006. FNS. 53
18. Union-Tribune, 01/05/07, *Water main bursts in downtown, closing lanes*. FNS. 107

Footnote No. 104

THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: January 3, 2007 REPORT NO: 07-006

ATTENTION: Council President and Members of the City Council, City Council Meeting of January 8, 2007

SUBJECT: Proposition 218 Noticing of Proposed Sewer Rate Adjustments

REFERENCE:

REQUESTED ACTION:

- Council authorization to notice, pursuant to Proposition 218 to include the following:
  - Proposed sewer rate adjustments, increasing sewer system revenues by 8.75% in Fiscal Years 2007 and 2008 and 7% in Fiscal Years 2009 and 2010
  - Shames' Lawsuit settlement impact to Sewer Service Charges of 3.05% in Fiscal Years 2007 and 2008, 0.6% in Fiscal Year 2009, and 0.5% in Fiscal Year 2010, assuming the above rate increases are also implemented
  - Raise Single Family Residential (SFR) billing cap from 14 Hundred Cubic Feet (HCF) to 20 HCF
  - Reduce return to sewer ("return") factor for SFR water usage from 100% to 95%
  - New SFR customer rate increase from $35.88 to $38.32; and
- Set the public hearing date to consider proposed rate adjustments at the City of San Diego Council Mmeeting of February 26, 2007; and
- Receive the Wastewater Cost of Service Rate Study as the basis for establishing the rate structure.

STAFF RECOMMENDATION:

- Authorize the Mayor or his designee to initiate Proposition 218 noticing for the sewer rate adjustments by 8.75% on May 1, 2007 and May 1, 2008 (Fiscal Years 2007 and 2008), 7.00% on May 1, 2009 and May 1, 2010 (Fiscal Years 2009 and 2010) to ensure continued compliance with federal and state mandates and allow MWWD to enter into a Final Consent Decree with the United States Environmental Protection Agency (EPA) by June 30, 2007.
- Set the public hearing date to consider proposed wastewater rate adjustmetns at City of San Diego Council Meeting of February 26, 2007; and
- Receive the Wastewater Cost of Service Rate Study .

RAMIFICATIONS OF NO RATE INCREASES:

The proposed rate increases are on a critical timeline that is driven by litigation over past sewer spills in the consolidated cases of *United States v. City of San Diego* (Case No. 03-CV-1349K) and *Baykeeper v. City of San Diego* (Case No. 01-CV-0550B). The City is currently operating under a Partial Consent Decree entered in these cases, which expires on June 30, 2007. If the City has not obtained the funding necessary to approve and lodge a Final Consent Decree with the Court by June 30, 2007, it is likely the stay of litigation will be lifted and the cases will proceed to trial. This would result in rate payer-generated revenues being applied to litigation costs in addition to court-mandated improvements to the infrastructure. In addition, MWWD will be unable to access public or private financing, resulting in significant delays or suspension of infrastructure projects. Delays in these critical infrastructure projects will put the system at risk of collection and treatment system failures, increased sewage spills, violation of regulatory permits, and potential fines or other enforcement actions from regulatory agencies.

In order to approve and lodge a Final Consent Decree by June 30, 2007 and avoid the potential problems described above, the following timeline is imperative:

- January 8, 2007 - City Council hearing to set the public hearing as required by Proposition 218
- January 11, 2007 - Proposition 218 notice must be mailed to meet the 45 day noticing requirement
- February 26, 2007 - City Council public hearing to consider proposed rate increases (45 days after mailing the Proposition 218 notices) and introduction of ordinance authorizing a bond issuance and financing documents. The bond financing is anticipated to be a private financing.
- April 2007 – Closing of the bonds, and bond funds available for the Wastewater System and City Council consideration of a Final Consent Decree
- May 1, 2007 - rate increase effective to support the bond issuance and signing of the Final Consent Decree
- June 30, 2007 - deadline to lodge Final Consent Decree

This timeline and each of its dates for specific action is critical to ensure that MWWD complies with the EPA mandates. The Court has allowed MWWD to postpone the signing of the Final Consent Decree due to the City's financial crisis. However, the Court has firmly indicated that it will not allow further postponement of signing the Final Consent Decree.

The Raftelis Financial Consultants, Inc. Cost of Service Study's (COSS) recommendations are consistent with and are reflected in the wastewater basis for the sewer rate base fee and HCF fees being proposed. The City Council's ability to deviate from these rates is limited: the rate adjustments proposed by this report can only be changed if the alterations are consistent with the COSS. Changes that are inconsistent with the COSS could violate the requirement of Proposition 218 and State guidelines that sewer fees not exceed the proportionate cost of providing the service to each parcel. Therefore, any proposed changes should be examined carefully.

SUMMARY:

Background

Under the Final Consent Decree, the City is required to replace or rehabilitate pipelines and trunk sewers, upgrade various pump stations, and maintain the Operations & Maintenance (O&M) system at current levels. The Capital Improvement Program (CIP) is intended to address these issues as well as ensure sufficient O&M activities. In order to support this CIP, additional funds will be required through a

combination of bonds, grants, state revolving fund loans and cash. This investment in infrastructure will require a series of rate increases beginning May 1, 2007. Pursuant to Proposition 218, and prior to Council's formal consideration of rate increases, the City must provide property owners 45 days advance notice when any rate increases will be considered. This action authorizes this Notice to take place.

Proposition 218

On November 5, 1996, the voters of the State of California approved Proposition 218, the "Right to Vote on Taxes Act." Proposition 218, effective July 1, 1997, added Articles XIIIC and XIIID to the State Constitution, which contain a number of provisions affecting the ability of local governments to levy and collect both existing and future taxes, assessments, fees and charges. Article XIIID, section 6(a)(1) imposes noticing procedures for imposing a new or increasing an existing property-related fee or charge. This initiative changed the way the public is notified of proposed fee increases. Specifically, it requires that notices be mailed to all property owners of record at least 45 days in advance of the date on which a proposed property related fee increase may be adopted.

Therefore, it is the intent of MWWD to mail notices on or before January 11, 2007, to property owners of record and City of San Diego sewer bill customers, advising them that the City Council of the City of San Diego will hold a public hearing on February 26, 2007 to consider adoption of the proposed revisions to existing sewer fees and charges. If adopted, the revisions would become effective on May 1, 2007 and annually thereafter through May 1, 2010.

History

In June, 1990, City Council approved a 6% increase in sewer service charges for five consecutive years, Fiscal Years 1991 through 1995. At that time the City Council also approved a 16% increase in sewer capacity charges. In January, 1999, Council again approved increasing all sewer service charges by 5% for three consecutive years, Fiscal Years 1999 through 2001. The emphasis of these increases was on the maintenance, repair, upgrade and expansion of the Metropolitan System in order to ensure compliance with the Ocean Pollution Reduction Act (OPRA) and the Stipulated Order in *United States v. City of San Diego* (Case No. 88-1101-B). The Stipulated Order required specified upgrades of the sewer collection system, including the replacement of 60 miles of concrete mains by June 30, 2003, a comprehensive pump station and force main audit, an upgraded information system, additional grease control, and incorporation of the capital improvement projects listed in the Interim Order.

Major accomplishments during this timeframe include the completion of the North City Water Reclamation Plant, South Bay Water Reclamation Plant, Metropolitan Biosolids Center, South Bay Ocean Outfall, Wastewater Operations Management Network, and major upgrades to the interceptor system and the Point Loma Wastewater Treatment Plant. As MWWD approached the completion of the major upgrades to the Metropolitan System, the emphasis shifted to the Municipal System, which consists of nearly 3,000 miles of pipeline and 80 pump stations.

In October, 2001, City Council approved increasing all sewer service charges by 7.5% for four consecutive years, Fiscal Years 2002 through 2005, to ensure continued compliance with the requirements of the Clean Water Act, OPRA, the State Ocean Plan, the National Pollutant Discharge Elimination System Permit, and the Stipulated Order (City Manager's Report No. 01-209). A portion of these increases was required to fund an Administrative Order from the EPA to reduce sewer spills. The following are the rate increases that were considered in October, 2001 of which the first four where approved and implemented:

FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
7.5%	7.5%	7.5%	7.5%	6.5%	5.0%	5.0%	5.0%	5.0%

The proposed program included increasing the rehabilitation and replacement of the deteriorated pipelines from the current 15 to 20 miles to 60 miles per year. Subsequently an extensive closed circuit televising condition assessment of over one third of the pipeline system led to the recommendation that the pipeline rehabilitation and replacement program only be increased to 45 miles per year. This assessment determined that certain areas of the pipeline system were in satisfactory condition, resulting in a revised life expectancy that exceeded preliminary estimates.

Additionally, as the program was implemented, it was determined that only half of the nearly 3,000 mile pipeline system was being cleaned on a regular basis. Therefore, the City Council approved a staff recommendation to increase Wastewater Collection Division personnel and equipment assigned to pipeline maintenance. The additional maintenance resulted in the entire system being cleaned on a regular, scheduled basis, resulting in an 81% reduction in the number of sewage spills through Fiscal Year 2006.

Despite reducing the Municipal Capital Program from the projected 60 miles per year to 45 miles per year, construction cost increases substantially exceeded inflation-based cost projections. In 2004, MWWD received a $152 million loan from Bank of America, which allowed the department to continue working on the Administrative Order, enabling completion of 30 miles of pipe replacement and rehabilitation per year. Because MWWD did not receive the proposed Fiscal Year 2006 rate increase, the CIP program has been substantially reduced in order to stay within current revenues.

City staff is currently working on a private financing option expected to be executed in April, 2007 to retire the outstanding loan obligation with Bank of America and fund the first year of capital projects required by the proposed Final Consent Decree in the consolidated cases of *United States v. City of San Diego* (Case No. 03-CV-1349K) and *Baykeeper v. City of San Diego* (Case No. 01-CV-0550B) in order to continue rehabilitation and replacement efforts. The next bond offering required to meet the Fiscal Years 2008 and 2009 capital needs is expected to occur in April, 2008. To ensure accurate estimates, an external consultant has conducted an analysis of the projected costs. Since the 2001 rate case anticipated needs through 2010 and construction costs have increased substantially over the 2001 assumptions, it is expected that additional rate increases will be needed to continue the system replacement and upgrade efforts beyond the current rate proposal.

Current Need

The City owns and operates a regional wastewater system that includes both the Municipal (Muni) and Metropolitan (Metro) Systems. The Muni system is a sewage collection system of nearly 3,000 miles of pipe that serves the City's service area. The Metro system, which services both the City and Participating Agencies (PAs), includes facilities which provide advanced primary treatment, secondary treatment, tertiary reclamation, sludge processing and effluent disposal. The Metro System currently includes three wastewater treatment plants that are operational, two ocean outfalls, a biosolids processing center, three major pump stations, and several miles of force mains and gravity flow interceptors. Due to the complex exchange of effluents, solids and centrates, sharing of one common outfall and receipt of flows from the participating agencies, the Metro system is viewed and operated as "a regional system" from a permitting, regulatory compliance and operational efficiency standpoint.

MWWD focused on the needs of the Muni system in the early 2000s and there continues to be a critical need to rehabilitate or replace many pipelines, trunk sewers and pump stations through 2013. The following is the list of needs contemplated in the rate case and in compliance with the proposed sewer spills consent decree:

- Replacement and rehabilitation of 250 miles of sewer pipeline, including 17 specific trunk sewers
- Upgrade of 12 sewer pump stations

- Replace aging infrastructure, estimated at $648 million, including specific projects required by the proposed Final Consent Decree: (see Attachment)
    - $277 million for pipeline replacement and rehabilitation
    - $197 million for trunk sewer rehabilitation
    - $82 million for treatment plants
    - $32 million for municipal sewer pump stations
    - $15 million for large sewer pump stations
    - $45 million for other projects, primarily the Metro Facilities Control System Upgrade, Wet Weather Storage Facility, and Annual Allocation - CIP Contingencies
- Meet ongoing O&M needs of the wastewater system, which includes mandates from the proposed Final Consent Decree
- Meet CIP pay-go costs of approximately 20% of the $648 million CIP program

The rate case evaluates the financial needs and accounts for all costs related to the system. The current rate case is intended to provide the first four years of necessary rate increases for the capital and operation and maintenance (O&M) program that is planned. Additional rate increases will be necessary to continue the program after that point in order to sustain compliance with the proposed Final Consent Decree. However, monies saved from ongoing department-wide Business Process Re-engineering (BPR) and Bid to Goal or Managed Competition will be applied to minimize future rate increases. The following is an overview of the Rate Case analysis and the Cost of Service Study performed to determine the necessary rates and assure apportionment of the rates in a fair and equitable manner.

Rate Case

To provide for the continued operation of the City's regional wastewater system on a sound financial basis, the revenues must be sufficient to meet the funding requirements or cash obligations of the system. Revenue requirements include O&M and CIP expenditures, principal and interest payments on existing debt and other obligations. The wastewater enterprise's annual expenditures are divided between: the Muni expenditures and the Metro expenditures. Muni relates essentially to the collection system in the City's own retail service area and Metro relates to treatment and disposal services shared both by the City and the Participating Agencies (PA).

The MWWD Services and Contracts Division annually receive O&M and capital expenditure information for both the Metro and Muni infrastructure components. The Division utilizes these costs to develop comprehensive O&M and CIP cost projections for the entire wastewater enterprise as part of its financing plan development.

The information regarding the financing plan is used to determine the overall revenue needs of the wastewater system, which is then used to determine the rate increases necessary to carry out the financial plan. In February, 2006, the City of San Diego entered into a consultant services agreement with Berryman & Henigar, Inc. to develop a current sewer rate case for MWWD based on the financing plan developed by MWWD. In addition, the financing plan was reviewed by the Public Utilities Advisory Commission (PUAC) wastewater rate sub-committee, the accounting firm Mayer Hoffman McCann, P.C., and Raftelis Financial Consultants, Inc. for the cost of service study. After several meetings and document review, the PUAC subcommittee recommended supporting the proposed rate increases and the full PUAC voted to unanimously support the proposed rates. The accounting firm of Mayer Hoffman McCann, P.C. provided an agreed-upon procedures review and also indicated that the rates were reasonably supported (see attachments). Finally, the proposed rate increases are required to allow the City to sign the proposed Final Consent Decree with the EPA by June 30, 2007. These proposed rates will fund the O&M and CIP projects mandated in the first four years of the Final Consent Decree.

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Office of the Mayor
City of San Diego

Independent Accountant's Report on Agreed-Upon Procedures
Applied to Proposed Wastewater Rate Increases

We have applied the procedures enumerated below to the City of San Diego's proposed wastewater rate increases. These procedures, which were agreed to by the City of San Diego were performed solely to assist the City in evaluating the proposed wastewater rate increases.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

For purposes of comparisons referenced in this report, amounts are considered to be consistent if the difference between the compared amounts is less than $1 million and also less than 15%.

BACKGROUND

The Wastewater rate model was developed by outside consultants. The rate model contains projections of future expected revenues, operating costs, and capital costs. The model requires the rate increases to be sufficient to cover net operating costs and 20% of annual capital costs while not violating certain constraints. The model's constraints include maintaining $10 million in unrestricted, undesignated equity and maintaining a debt coverage ratio of at least 125% through fiscal year ending June 30, 2017. The model projects the following rate increases beginning:

May 1, 2007	8.75%
May 1, 2008	8.75%
May 1, 2009	7%
May 1, 2010	7%

PROCEDURES PERFORMED

The procedures performed and the results of those procedures were as follows:

1. We agreed the beginning unrestricted, undesignated equity balance at June 30, 2006 to unaudited accounting system reports.

   Results: The unaudited accounting system reports supported the amounts included in the rate model.

2. The rate model projects revenues based on historical trends and projections of future demand. The rate model includes the following revenue projections (in thousands):

	Fiscal Year Ending June 30,				
	2007	2008	2009	2010	2011
Service Charge Revenues	$ 238,538	261,769	293,274	316,409	337,207
Sewage Treatment Plant Services	70,389	73,916	77,518	81,142	84,705
Interest Earnings	3,963	4,867	5,358	6,134	6,482
Capacity Charge	14,984	15,139	15,294	15,450	15,607
Other Revenue	17,507	10,794	11,093	11,404	11,728
	$ 345,381	366,485	402,537	430,539	455,729

- We agreed the 2003 to 2006 revenues to unaudited accounting system reports. These revenues are used in the model to calculate historical trends.

  Results: For the years ended June 30, 2003 through 2006, the revenues are consistent with unaudited accounting system reports.

- We agreed the 2007 revenue amounts to the 2007 Annual Budget.

  Results: The 2007 Annual Budget is consistent with the projected revenues used in the rate model calculation.

- For *Service Charge Revenues*, we analytically tested the projected revenues for the years ending June 30, 2007 through 2011 by calculating revenues as a percentage of the sewered population as projected by San Diego Association of Governments. We also reviewed Service Charge Revenues by comparing future increases to historical increases.

  Results: Projected revenues as a percentage of the population are consistent with historical years. Additionally, projected revenues, excluding inflation and projected rate increases, are consistent with historical revenues.

- For *Interest Income*, we calculated the rate of return using unaudited accounting system reports.

  Results: The projected rate of return is consistent with current market interest rates.

- For *Sewage Treatment Plant Services*, *Capacity Charges*, and *Other Revenues* we compared each projected year to the prior year, beginning with the fiscal year ended June 30, 2005.

  Results: Projected revenues did not significantly vary from prior year data except for Other Revenues during 2007 to 2008. This is a result of a one-time refund to the Wastewater Department from the Motive Equipment Fund. The refund is attributed to the Wastewater Department's accumulation of funds in the Motive Equipment Fund which exceeds projected fleet vehicle requirements in operations over a 30-year period. The action is currently in the process of being approved by City Council.

3. The rate model projects other sources of funding based on long-term budgeting expectations. The rate model includes the following projections of other sources (in thousands):

	For the years ended June 30,				
	2007	2008	2009	2010	2011
Bond Proceeds	$ 199,345	80,270	95,590	148,380	147,534
Other Sources	14,435	-	-	-	-
Total	$ 213,780	80,270	95,590	148,380	147,534

- *Bond Proceeds* are issued to fund 80% of expected capital project expenditures. Wastewater revenues are used to fund the remaining 20% of capital projects. We recalculated 80% of the capital project expenditures to determine if the amount of bond proceeds is accurate.

  Results: Bond proceeds reported in 2007 are equal to 60% of eligible capital project expenditures, a reimbursement of 2007 eligible capital project expenditures, and $152 million of proceeds to be used to refund outstanding debt. Bond proceeds reported in 2008 through 2011 are consistent with 80% of eligible capital project expenditures.

- We inquired about significant changes in *Other Sources*.

  Results: The $14 million of Other Sources in 2007 represents known grant funding in 2007 that is unknown for future years.

4. The rate model projects operating expenses based on historical trends and projections of future demand. The rate model includes the following expense projections:

	Fiscal Year Ending June 30,				
	2007	2008	2009	2010	2011
Debt Service	$ 95,947	99,248	105,747	113,477	125,492
Operating & Maintenance	245,158	247,709	265,865	281,359	292,308
	$ 341,105	346,957	371,612	394,836	417,800

- We agreed the 2003 to 2006 expenditures to unaudited accounting system reports. These expenditures are used in the model to calculate historical trends.

  Results: For the years ended June 30, 2003 through 2006, expenditures per the unaudited accounting system reports are consistent with expenditures in the rate model.

- We agreed the 2007 expenditure amounts to the 2007 Annual Budget.

  Results: The 2007 expenditures per the model are consistent with the approved expenses in the 2007 Annual Budget.

- For *Operating & Maintenance Expenditures* we compared each projected year to the prior year starting with the fiscal year ended June 30, 2005. Operating and maintenance expenses did not increase by more than 15% in any year and are consistent with historical amounts. We obtained a detailed listing of what makes up the operating and maintenance expense amounts. For significant fluctuations between fiscal years, we obtained an explanation from management.

  Results: The major changes in Operating & Maintenance Expenditures are as follows:

  - Increase in Pension Contribution – We agreed the increase to projections provided by the Office of the Mayor.
  - Increase in Retirement Heath Benefits – We agreed the increase to projections provided by the Office of the Mayor.
  - Increase in General Government Services – We agreed the increase to detailed reports of the General Governmental Service Allocation.
  - Decrease in use of Service Level Agreements – We agreed the decrease to the Mayor's response to the Grand Jury findings.

- For *Operating & Maintenance Expenditures,* we calculated expenditures as a percentage of flow as reported and projected by the San Diego Association of Governments for both historical and future years.

  The results are as follows:

	For the years ended June 30,				
	2007	2008	2009	2010	2011
Ratio of Flow to Operating & Maintenance Expenditures	0.08%	0.08%	0.07%	0.07%	0.07%

Historical Average for 2003 - 2006 = 0.08%

- For *Debt Service Expenditures,* we agreed principal and interest payments to bond maturity schedules on outstanding debt. We also agreed debt service payments to the City's bond model that projects debt service on bonds that have not yet been issued.

  Results: No exceptions were noted.

5. The rate model projects capital expenditures based on specific project start dates and cost estimates. The capital project expenditures include a 3.5% contingency cost and an inflation factor of 4%. We compared the capital project expenditures in the rate model to the City's Capital Improvement Budget.

   Results: The capital improvement budget included in the 2007-2011 annual budget report totals $979 million. The capital improvement expenses from 2007-2011 in the rate model total $643 million. The variance of $336 million is mainly attributed to management's decision to schedule certain projects in later years than previously budgeted for in the capital projects budget. The modified projects are as follows:

Project Number	Project Name
44-001.0	Annual Allocation - Sewer Main Replacements
46-194.0	Annual Allocation - Trunk Sewer Rehabilitations
46-206.0	Annual Allocation - Accelerated Projects
40-933.0	Annual Allocation - MWWD Trunk Sewers
45-940.0	Wet Weather Storage Facility
42-933.0	NCWRP - Ultrafiltration and EDR Upgrade
41-933.0	Pump Station 2 Screens
42-930.0	SBWRP Demineralization Phase 1 and 2
46-502.0	Pooled Contingency
46-505.0	Annual Allocation - Unscheduled Projects

* * * * *

We were not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on the subject matter. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the City of San Diego, California and is not intended to be and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

Mayer Hoffman McCann P.C.

Irvine, California
November 17, 2006

Footnote No. 105

SECTION 6: STUDY ISSUES

In addition to the Cost of Service and Rate Setting process, this Study focused on three major areas:

- Adherence to SWRCB regulation and guidance on wastewater ratemaking;
- Modifications to rate design with respect to the SFR sewer cap and return factor; and,
- Options for cost allocations to the base fee.

These Study issues are discussed in the following subsections.

6.1 Compliance with Legal and Regulatory Requirements

The SWRCB provides direction on how sewer charges should be developed in California. Some of this direction is in the form of regulations contained in the Revenue Program Guidelines, while other direction is in the form of less formal guidance from SWRCB staff. The City's rate structure is in compliance with the revenue program guidelines, however, the SWRCB commented on the single family residential usage cap discussed below.

In addition Proposition 218 applies to water and sewer rates that require rates not exceed the cost of providing service and that rate revenues only be used for providing service. In addition, to comply with Proposition 218, the City must provide notices by mail to property owners and conduct a public hearing not less than 45 days after mailing the notice. At the public hearing, the City must consider all protests against the fee. If *written* protests against the proposed fee are not presented by a majority of owners of the parcels, the agency **may** impose the fee. Voter approval at an election is not required. The City intends to meet these requirements.

6.2 Impact on the Residential Sewer Cap

At the conclusion of the last study the City received notification from the SWRCB that the proposed cap on SFR customers must be set high enough to capture at least 95 percent of the users or all SFR customers with winter water use above the existing cap be surveyed to verify that each account is a SFR user and not multi-family or commercial user.

RFC performed an analysis of the winter water usage for the last five years and determined that the five-year average to cover 95 percent of the users resulted in a cap of 20 hcf per month. Using this cap and a 95% return factor, RFC conducted a mass balance as described in Section 4.4 of this report and obtained a reasonably good balance on the wastewater flow. The mass balance supports a revision of the monthly SFR usage cap from the current 14 hcf per month to 20 hcf and a 95% return factor.

6.3 Cost Allocation to the Base Fee

Another focus of this Study was to examine options for an equitable allocation of costs for recovery through the customer base fee. It is accepted practice in the utility ratemaking industry to identify costs that may be appropriately allocated to customer accounts and recover these costs through the customer base fee. RFC first examined Muni and Metro system O&M costs to isolate the types of expenditures typically allocated for base charge recovery. These costs fall into four categories:

- Customer service, billing, meter reading, and meter maintenance;
- A proportionate share of other administrative and general costs;

Footnote No. 106

C

Apartment Ass'n of Los Angeles County, Inc. v. City of Los AngelesCal.App.2.Dist.APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., et al., Plaintiffs and Respondents,
v.
CITY OF LOS ANGELES et al., Defendants and Appellants
Civ. No. 50268.

Court of Appeal, Second District, Division 4, California.
November 14, 1977.

SUMMARY

Plaintiffs sought to invalidate a city ordinance imposing a sewer service charge on the ground that the system of classification used in the ordinance constituted a denial of equal protection. The ordinance provided for imposition of the charge on governmental, industrial and commercial users. Commercial users included apartment houses, condominiums, stock cooperatives and community apartment projects consisting of five or more dwelling units served by a single water meter. The trial court upheld plaintiffs' claim of unconstitutionality. (Superior Court of Los Angeles County, No. CA 48753, Robert P. Schifferman, Judge.)

The Court of Appeal reversed the judgment of unconstitutionality. The court noted that classification of residential structures on the basis of number of units exists in various legislative enactments, and that there was no practical alternative to the classification in this case given the city's contention that the only available billing system was that of the department of water and power, which had long utilized these classifications in its operations.(Opinion by Kingsley, J., with Files, P. J., concurring. Separate dissenting opinion by Jefferson (Bernard), J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 94--Equal Protection--Traditional and Pragmatic Bases for Classification.
A judgment holding a sewer service***14** charge ordinance unconstitutional on equal protection grounds, was reversible error, where the classification involved in the ordinance was one traditionally used and where the only billing source adaptable to collection of the charges utilized that classification. The classification in dispute exempted residential structures containing four or fewer units and larger structures with individual water meters, while including five- or more unit structures with one meter in the definition of commercial users subject to the charge.
[See **Cal.Jur.3d,** Constitutional Law, § 323; **Am.Jur.2d,** Constitutional Law, § 506.]

COUNSEL
Burt Pines, City Attorney, Thomas C. Bonaventura and John F. Haggerty, Assistant City Attorneys, for Defendants and Appellants.
Kaplanis & Grimm, Trevor A. Grimm, Horvitz, Greines & Horowitz and Ellis J. Horvitz for Plaintiffs and Respondents.
KINGSLEY, J.
The city, and the department of water and power appeal from a judgment holding unconstitutional a city ordinance imposing a sewer service charge. We reverse the judgment.

The ordinance involved imposes a sewer service charge on governmental, industrial and commercial users. The charge, measured by the amount of water used, is billed and collected for the city by the department. The ordinance defined commercial users as including apartment houses, condominiums, stock cooperatives and community

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apartment projects consisting of five or more dwelling units served by a single water meter. The charge was not imposed on such structures having four or less units, nor on structures of any size having individual water meters for each unit.***15**

The attack here is solely on the ground that the distinction between the five or more unit structure with one meter and a smaller structure or a large structure with individual meters is a denial of equal protection.

I

Preliminarily, the appellants contend that the plaintiffs, not being shown to be the owners of the kind of residential structure subject to the charge, are not proper parties to sue; and that the trial court's findings do not support the judgment. Since we conclude that the record does not support the ultimate finding of unequal protection and because of the public interest in the merits of the litigation, we do not determine the validity of either of those contentions.

II

(1) It is well settled, and respondents do not dispute, that the ordinance, whether considered as enacted under the police power or under the taxing power, is valid if the classification made therein is based on some reasonable basis. We conclude that the record here shows such a reasonable basis. The respondents do not contend that a classification that distinguishes between purely residential users and industrial and commercial users is invalid. As we understand them, they challenge only the limited type of residential structures that are classified in the ordinance as being commercial.

It is true that sewage discharge from an apartment house or similar structure of less than five units will be proportionally as large as from a larger structure. It is also true that a five- or more unit structure with individual meters will discharge the same volume of sewage as one of that size with a single meter. However, an ordinance may make a valid classification based on traditional distinctions and on pragmatic considerations. The classification of residential structures on the basis of five or more units exists in various legislative provisions. FN1 The city maintains no billing system adaptable for the assessment and collection of the charge herein involved; its department of water and power has such a***16** system. Resort to the department as a collection agency was a rational decision. However, the department's existing billing system for water charges, to which the sewer charge is added, distinguishes, and long has distinguished, in its operation, between the five-or more unit structure on a single meter and the other types of residential users. Absent an ordinance that imposed a sewage charge on all residential users there existed no practical alternative to the classification herein involved. The ordinance is based on reasonable grounds and is valid.

FN1 For example: Los Angeles County Ordinance No. 5860, section 572, imposes a business license fee on apartment houses of five or more units; the Federal Fair Housing Law (42 U.S.C.A. § 3603(c)(3)), applies only to dwelling structures of five or more units; the California Fair Housing Law, Health and Safety Code, section 35720, subdivision 5, also distinguishes between dwelling structures on the same basis.

The judgment is reversed.

Files, P. J., concurred.
JEFFERSON (Bernard), J.
I dissent.

The majority reverses a judgment of the trial court which declared unconstitutional a city ordinance imposing a sewer service charge. The attack on the ordinance is predicated on the contention that it violates plaintiffs' constitutional right to equal protection of the laws. Under the ordinance, no sewer service charge is imposed on structures containing four units or less irrespective of whether such structures are serviced by a single water meter or a water meter for each unit. For structures

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containing five or more units, the sewer service charge is imposed only as to those structures having a single water meter. If a structure contains five or more units with an individual water meter for each unit, no sewer service charge is imposed as to that structure.

The trial judge found that the ordinance constitutes a violation of equal protection of the laws in levying a sewer service charge - declared to be a tax - on structures with five or more units based on whether there was a single water meter or a water meter for each unit, and in exempting from the charge structures containing four units or less. I agree with the trial judge that the distinctions made by the ordinance are arbitrary and not based upon any reasonable classification. Hence, the ordinance is invalid.

The majority sustains the validity of the ordinance on the theory that the ordinance makes a valid classification based on traditional distinctions and pragmatic considerations. The *traditional-distinctions* justification is simply stated to be that in various legislative provisions, a classification has been made between multi-unit structures with the***17** dividing line being structures with four units or less and those with more than four units. The *pragmatic* consideration is premised upon the theory that the city has no billing system adaptable for the assessment and collection of the sewer charge, but that the department of water and power has a computerized billing system which permits the collection of a sewer charge on multi-unit buildings which have a single water meter servicing such building.

I recognize that the issue of the constitutional validity of an ordinance, insofar as equal protection of the laws is concerned, is to be approached through the well-established principle that "the constitutionality of an ordinance is favored and courts are reluctant to declare an ordinance unconstitutional. Ordinances are *presumed* to be constitutional if *any rational consideration* supports their enactment ...." (*English Manor Corp. v. Vallejo Sanitation & Flood Control Dist.* (1974) 42 Cal.App.3d 996, 1003 [117 Cal.Rptr. 315].) (Italics in original.) The *English Manor* case dealt with an ordinance which based a sewer connection fee for a hospital on the number of bed spaces. The *English Manor* court, in sustaining the validity of the ordinance, held that a charge per bed space bore a reasonable relationship to the burden on the sewer system.

It is generally recognized that a classification of users based upon their effects on the sewer system represents a reasonable classification. For a classification to be free from arbitrariness or invidious discrimination, however, it must be reasonably commensurate with the burdens placed on the sewer system by the users of the system. Using this test of reasonable relationship, sewer service charges - based upon a variety of factors - have been upheld as constitutional. Thus, sewer service charges based upon water consumption have been declared valid on the theory that the amount of water that flows into a building is apt to be roughly proportional to what flows out as sewage. (*In re City of Philadelphia* (1941) 343 Pa. 47 [21 A.2d 876].) Similarly, an ordinance basing sewer service rates on the number and type of plumbing fixtures has been held to be a valid classification. (*Town of Port Orchard* v. *Kitsap County* (1943) 19 Wn.2d 59 [141 P.2d 150].)

In *Boynton v. City of Lakeport Mun. Sewer Dist.* (1972) 28 Cal.App.3d 91 [104 Cal.Rptr. 409, 61 A.L.R.3d 1228], a sewer rate classification for commercial establishments was based generally upon the number of (1) available restrooms, (2) kitchens, and (3) people served. Although these factors do not correspond exactly with the amount of water used, the***18** *Boynton* court upheld the ordinance as "reasonably related to the burden imposed upon the sewer system. While other methods, including the use of water metered rates, could be used in fixing sewer rates, the method here used was not unreasonable or discriminatory." (*Boynton, supra*, 28 Cal.App.3d 91, 96.)

In *Associated Homebuilders v. City of Livermore* (1961) 56 Cal.2d 847, 852-853 [17 Cal.Rptr. 5, 366 P.2d 448], the court dealt with ordinances which prescribed sewer-connection charges "measured by the use to which the property (and consequentially the city's sewer system) will be put, including the

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number and type of plumbing fixtures to be installed. Accordingly, it ... is in the nature of an excise tax imposed on all persons thereafter applying for building permits for the privilege of connection to (and is reasonably commensurate with the burden to be imposed on) the facilities of defendant's sewer system."

In the case at bench, the classification between property owners who must pay a sewer service charge and those *not* required to pay is not reasonably related to any factors seeking to measure the burden on the sewer system such as are set forth in *Boynton, English Manor Corp., Associated Homebuilders, In re City of Philadelphia*, or *Town of Port Orchard.*

The case at bench is not unlike that of *Gowens v. City of Bakersfield* (1960) 179 Cal.App.2d 282 [3 Cal.Rptr. 746]. In this case a city ordinance required hotels that offered lodgings for five or more persons for compensation to collect a tax on transients of 4 percent of the compensation paid by such transients. *Gowens* held the tax scheme to be arbitrary, discriminatory and a violation of the constitutional principle of equal protection of the laws. *Gowens* took the view that no reasonable classification was made in exempting from imposition of the tax establishments containing less than five lodgings. The court stated that it could " find no reasonable distinction for tax purposes from the viewpoint of a lodger between one seeking and using a large hostelry capable of accommodating many people and a small one accommodating a lesser number." (*Gowens, supra*, 179 Cal.App.2d 282, 286.)

The only justification which is urged to support the classification set up in the ordinance before us is that of so-called pragmatic considerations or administrative convenience. Occasionally there is found in the decisional law a statement such as " [a]dministrative convenience and***19** expense in the collection or measurement of a tax are alone a sufficient justification for treating some taxpayers differently than others." (*City of San Jose v. Donohue* (1975) 51 Cal.App.3d 40, 45 [123 Cal.Rptr. 804].) In making this statement, the *City of San Jose* court remarked that in using utilities to collect the tax, only a small percentage of the total number of utility users were *not* being taxed under the circumstances presented.

It is also to be noted that the *City of San Jose* case - for its view of administrative convenience - relied on *Carmichael v. Southern Coal Co.* (1937) 301 U.S. 495 [81 L.Ed. 1245, 57 S.Ct. 868, 109 A.L.R. 1327], which dealt with the Alabama Unemployment Compensation Act which taxed employers who had eight or more employees, but exempted employers with less than eight employees. The *Carmichael* court stated: " Administrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification for the difference between the treatment of small incomes or small taxpayers and that meted out to others. [Citations.] We cannot say that the expense and inconvenience of collecting the tax from small employers would not be disproportionate to the revenue obtained. For it cannot be assumed that the legislature could not rightly have concluded that generally the number of employees bears a relationship to the size of the payroll and therefore to the amount of the tax, and that the large number of small employers and the paucity of their records of employment would entail greater inconvenience in the collection and verification of the tax than in the case of larger employers." (*Carmichael, supra*, 301 U.S. 495, 511 [81 L.Ed. 1245, 1254].)

I cannot support the view that administrative convenience is sufficient to support the classification made in the case at bench. The situation presented before us is clearly different from that presented in *City of San Jose* and in *Carmichael*. A classification based upon whether an owner of a multi-unit building utilizes a single water meter as contrasted with an owner who uses a separate water meter for each unit of the building and imposes a sewer service charge only on the owner who has a single water meter for all of the units is arbitrary, unreasonable and bears no reasonable relationship to the basis of the imposition of the sewer service charge, to wit, the burden imposed upon the sewer system. The burden imposed upon the sewer system is roughly the same whether a building contains separate meters for

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each unit or one meter for all of the units. The water received by the buildings will be approximately the same and so will the water discharged from the buildings into the sewage system.***20**

Furthermore, the exemption from the sewer charge of structures containing four or less dwelling units is not predicated on any factors relating to the burden on the sewer system. Thus, the four units or less structure is exempted from the sewer charge irrespective of the volume of water delivered to the structure, the volume of water discharged from the structure in the form of sewage, the number of occupants per unit, or the number of sewer-connected facilities per unit - factors which have a bearing on the burden to the system.

I would sustain the judgment of the trial court holding the ordinance to be invalid.

A petition for a rehearing was denied December 1, 1977. Jefferson (Bernard), J., was of the opinion that the petition should be granted. Respondents' petition for a hearing by the Supreme Court was denied January 26, 1978. Bird, C. J., Tobriner, J., and Mosk, J., were of the opinion that the petition should be granted.

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