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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) CIV. NO. 03-CV-1349K (POR)  
 )  
v. ) SECOND PARTIAL CONSENT DECREE  
 )  
CITY OF SAN DIEGO, )  
 )  
Defendant. )

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SAN DIEGO BAYKEEPER, et al., )  
 )  
Plaintiffs, ) CIV. NO. 01-CV-0550B (POR)  
 )  
v. )  
 )  
CITY OF SAN DIEGO, )  
 )  
Defendant. )

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1           **WHEREAS**, the Plaintiffs allege that the City has violated and continues to violate the  
2 CWA as a result of sanitary sewer overflows (“SSOs”) from its publicly-owned treatment  
3 system;

4           **WHEREAS**, EPA issued a Finding of Violation and Order pursuant to Sections 308(a)  
5 and 309(a) of the CWA on April 5, 2002, setting forth a comprehensive set of requirements to be  
6 met by the City to reduce and eliminate sewage spills;

7           **WHEREAS**, the City contends that it has upgraded the operation and maintenance of its  
8 wastewater collection and treatment system to reduce unpermitted overflows and that its  
9 operation and maintenance program meets or exceeds all applicable federal and state regulations;

10           **WHEREAS**, the Mayor and Members of the City Council created a formal Citizen’s  
11 Clean Water Task Force to reduce SSOs and passed Resolution No. R-295587 on October 16,  
12 2001, which raised sewer service rates 7.5% for each of the Fiscal Years 2002-2005 and  
13 dedicated a specific portion of those increases exclusively to sewer pipe replacement and  
14 rehabilitation;

15           **WHEREAS**, the City contends that since calendar year 2000 the City has reduced  
16 wastewater overflows;

17           **WHEREAS**, the City paid penalties of \$6,258,900 to the Regional Board from 2000 to  
18 2005 for sewage spills occurring prior to October 1, 2004 (\$2,115,500 in cash and \$4,143,400 in  
19 supplemental environmental projects);

20           **WHEREAS**, the parties agree that the City must pursue short and long term  
21 infrastructure improvements and upgrades designed to reduce municipal sanitary sewer  
22 overflows;

23           **WHEREAS**, the parties previously entered into a Partial Consent Decree to immediately  
24 implement short-term capital improvement projects and operation and maintenance  
25 requirements, which expires on June 30, 2006;

26           **WHEREAS**, the City has substantially complied with the operations and maintenance  
27  
28



1 **III. PARTIES**

2 A. Baykeeper is a nonprofit public benefit corporation organized under the laws of  
3 the State of California, with its principal place of business in San Diego, California. Baykeeper  
4 is a membership organization that is dedicated to the preservation and enjoyment of the oceans,  
5 waves, and beaches. Its members currently use and enjoy the ocean and beaches of San Diego  
6 County for a variety of recreational, esthetic, economic, and other purposes. Baykeeper brought  
7 this action on behalf of itself and its members.

8 B. Surfrider is a nonprofit public benefit corporation organized under the laws of the  
9 State of California, with its principal place of business in San Clemente, California. Surfrider is  
10 a membership organization that is dedicated to the preservation and enjoyment of the oceans,  
11 waves, and beaches. Its members currently use and enjoy the ocean and beaches of San Diego  
12 County for a variety of recreational, esthetic, economic, and other purposes. Surfrider brought  
13 this action on behalf of itself and its members.

14 C. The United States appears on behalf of EPA, a federal agency with responsibility  
15 for enforcing the CWA.

16 D. The City is a California municipal corporation and possesses NPDES Permit No.  
17 CA0107409 to discharge treated effluent from the Point Loma Metropolitan Wastewater  
18 Treatment Plant. The City owns and operates a publicly owned treatment works as defined in  
19 33 U.S.C. § 1292 and 40 C.F.R. § 403.3.

20 **IV. DEFINITIONS**

21 Unless otherwise defined herein, terms used in this Second Partial Consent Decree shall  
22 have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251-1387, and the regulations  
23 promulgated thereunder. For the purposes of this Second Partial Consent Decree, the following  
24 terms shall have the meaning provided below:

25 “Acute Defect” means a defect that substantially increases the probability of a material  
26 SSO, and includes conditions leading to imminent structural collapse or that would create

1 repeated blockages.

2 “Administrative Order” means the Finding of Violation and Order, Docket No.  
3 CWA-309-9-02-17 that EPA issued to the City on April 5, 2002, pursuant to Sections 308(a) and  
4 309(a) of the CWA, which was withdrawn by the EPA upon entry of the previous Partial  
5 Consent Decree on September 13, 2005.

6 “Canyon Economic and Environmental Analysis” means an analysis of the feasibility of  
7 relocating sewer lines out of each canyon.

8 “Capital Improvement Program” (“CIP”) means the City’s ten (10) year “rolling” sewer  
9 repair, rehabilitation and replacement planning document.

10 “Collection System” means all pipes, manholes, sewer lines, pump stations, and  
11 appurtenances thereto under ownership of the City that are intended to convey domestic or  
12 industrial wastewater to the City’s wastewater treatment plants.

13 “Contractor” as used in this Second Partial Consent Decree, means the City’s  
14 contractor(s) and subcontractor(s), agents, assigns, successors, and duly authorized  
15 representatives of City contractors.

16 “Director” means the Director of the EPA Region 9 Water Division.

17 “Final Consent Decree” means a consent decree entered into by the United States and the  
18 City that extends until at least 2013 and requires the City to perform long-term operation and  
19 maintenance requirements and complete capital improvement projects relating to the City’s  
20 Collection System; and

21 “Lamping” means an inspection method in which a light source is put into a manhole and  
22 a visual device, such as a mirror, is placed in an adjacent manhole to try to detect blockages in  
23 the pipe.

24 “Large Diameter Pipes” means pipes in the City of San Diego’s wastewater collection  
25 system that are greater than fifteen (15) inches in diameter.

26 “Plan for Accelerated Cleaning Program” means the plan the City submitted to EPA on  
27

1 September 27, 2002.

2 “Plan for Root Control Program” means the plan the City submitted to EPA on  
3 September 27, 2002.

4 “Plan for Sewer Overflow Response and Tracking” means the plan the City submitted to  
5 EPA dated October, 2003.

6 “Plan for Sewer Pipe Inspection and Condition Assessment” means the plan the City  
7 submitted to EPA on September 27, 2002.

8 “Plan for Sewer Repair, Rehabilitation, and Replacement” means the plan the City  
9 submitted to EPA on September 27, 2002.

10 “Plan for Fats, Oils & Grease (“FOG”) Blockage Control” means the plan the City  
11 submitted to EPA on September 27, 2002.

12 “Plan for Canyon Area Spill Elimination” means the plan the City submitted to EPA on  
13 September 27, 2002.

14 “Plan for Pump Station and Force Main Spill Reduction Action” means the plan the City  
15 submitted to EPA on September 27, 2002.

16 “Plan to Address Other Sanitary Sewer Overflows” means the plan the City submitted to  
17 EPA on September 27, 2002.

18 “Plan for Capacity Assurance” means the plan the City submitted to EPA on September  
19 27, 2002.

20 “Plan for System-wide Cleaning Program” means the plan the City submitted to EPA on  
21 January 29, 2004.

22 “Sanitary Sewer Backup” or “SSB” is a wastewater backup into a building or solely onto  
23 private property from a private lateral that is caused by a blockage or other malfunction in the  
24 Collection System.

25 “Sanitary Sewer Overflow” or “SSO” means an overflow, spill, or release of wastewater  
26 from the Collection System at any point upstream of the sewage treatment plant. For purposes of  
27

1 this Second Partial Consent Decree only, an SSB is an SSO.

2 "Second Partial Consent Decree" means this consent decree.

3 "Section" shall mean the sections denoted by a roman numeral.

4 "Small Diameter Pipes" means pipes in the City of San Diego wastewater collection  
5 system that are less than or equal to fifteen (15) inches in diameter.

6 "United States" shall mean the United States of America.

7 **V. OBJECTIVES**

8 A. In entering into this Second Partial Consent Decree, the Parties intend to further  
9 the objectives set forth in Section 101 of the CWA, 33 U.S.C. § 1251, and to achieve expeditious  
10 compliance with this Second Partial Consent Decree for such purposes as eliminating spills to  
11 the extent feasible.

12 **VI. BINDING EFFECT**

13 A. The provisions of this Second Partial Consent Decree shall apply to, and be  
14 binding upon the City, United States, EPA, Baykeeper, and Surfrider and their successors and  
15 assigns.

16 B. The City shall give written notice, and provide a copy of this Second Partial  
17 Consent Decree to any person or entity to whom the City may transfer ownership or operation of  
18 its publicly owned treatment works, including any portion of the Collection System. The City  
19 shall notify the United States and EPA in writing of any successor in interest at least forty-five  
20 (45) days prior to any such transfer.

21 C. The City shall provide a copy of this Second Partial Consent Decree, or otherwise  
22 make it available to:

23 1. each engineering, consulting, and contracting firm to be retained to  
24 perform any material activities required by this Second Partial Consent Decree upon execution  
25 of any contract relating to such work; and

26 2. each engineering, consulting, and contracting firm already retained for

1 such purpose.

2 D. In an action to enforce this Second Partial Consent Decree, the City shall not  
3 assert as a defense against the Plaintiffs that any of its officers, directors, employees, agents,  
4 servants, Contractors, successors or assigns are responsible for the City's failure to perform  
5 under this Second Partial Consent Decree.

6 **VII. COMPLIANCE ACTIONS**

7 A. The City has completed the plans listed below for the operation and maintenance  
8 of its Collection System. The City shall use best efforts to implement the plans identified below  
9 for the operation and maintenance of the Collection System. The City may subsequently modify  
10 these Paragraph A plans to incorporate new information and to make maintenance of the  
11 collection system more efficient or to make other changes that the City deems appropriate that  
12 are not inconsistent with the objectives of this Second Partial Consent Decree. The City's  
13 obligation to implement these Paragraph A plans shall not be subject to enforcement under this  
14 Second Partial Consent Decree.

- 15 1. Plan for Sewer Overflow Response and Tracking;
- 16 2. Plan for System-wide Cleaning Program;
- 17 3. Plan for Accelerated Cleaning;
- 18 4. Plan for Root Control Program;
- 19 5. Plan for Sewer Pipe Inspection and Condition Assessment;
- 20 6. Plan for Sewer Repair, Rehabilitation and Replacement;
- 21 7. Plan for Fats, Oils & Grease ("FOG") Blockage Control;
- 22 8. Plan for Canyon Area Spill Elimination;
- 23 9. Plan for Pump Station and Force Main Spill Reduction Action;
- 24 10. Plan to Address Other Sanitary Sewer Overflows; and
- 25 11. Plan for Capacity Assurance.

26 The City shall implement and meet the specific requirements of Paragraphs B - H below.

1 In the event of a conflict between the requirements in Paragraphs B - H below and the Paragraph  
2 A plans listed above, the requirements in Paragraphs B - H below shall supercede the listed  
3 plans.

4 B. SSO RESPONSE AND TRACKING

5 1. In addition to the information required to be reported pursuant to  
6 Regional Board Order WDR 96-04, the City's NPDES permit, and any other applicable local,  
7 state or federal requirement, the City's Quarterly SSO reports required under Section VII  
8 (Compliance Actions) Paragraph H of this Second Partial Consent Decree shall include at a  
9 minimum:

- 10 a. the name of the trunk sewer (for SSOs relating to trunk sewers);
- 11 b. the name of the canyon (for SSOs relating to canyons);
- 12 c. the total SSO volume (excluding SSBs), the volume returned to  
13 the system, and the volume not captured; and
- 14 d. the total SSB volume.

15 2. The City shall have crews on duty and available for response to SSOs  
16 twenty-four (24) hours per day every day of the year with the exception of the ten (10) holidays  
17 designated by the City. On each of the ten (10) holidays, the City shall have a duty supervisor  
18 on call who is able to immediately mobilize response crews. The City shall make all reasonable  
19 efforts to respond to a SSO within thirty (30) minutes of notification.

20 3. For any SSB about which a private customer contacts the City for  
21 assistance or the City otherwise responds to, if either a licensed plumber or the City concludes  
22 that an SSB has occurred, the City must follow the same response procedures as it follows for  
23 other SSOs.

24 4. The City shall maintain a SSO response log including response times. The  
25 City may maintain a separate log for SSBs.

26 5. The City shall operate and maintain a flow metering alarm system that

1 covers at least ninety percent (90%) of the flow weighted length of the City's three hundred forty  
2 (340) miles of trunk sewers, including all canyon trunk sewers. The system must be capable of  
3 detecting and notifying City staff within ninety (90) minutes of reductions in flow of twenty-five  
4 percent (25%) or more of the average dry weather flow during dry weather conditions.

5 C. CONTROL OF NON-CAPACITY RELATED SSOS

6 1. SYSTEM-WIDE GRAVITY COLLECTION SYSTEM CLEANING  
7 PROGRAM

8 a. By March 31, 2004, with the exception noted below, the City  
9 shall complete at least one (1) cleaning of each sewer pipe in the City's two thousand eight  
10 hundred nineteen (2,819) mile gravity municipal collection system. However, the City may  
11 decide not to clean up to thirty (30) miles of pipe located in environmentally sensitive areas  
12 and/or in non-right-of-way areas if the CCTV inspection demonstrates the pipe is clear, or for  
13 which permits cannot be obtained by the City to allow for the cleaning prior to March 31, 2004.  
14 The City will make all reasonable efforts to obtain such permits in a timely manner. In the event  
15 the CCTV inspection demonstrates that the pipe requires cleaning, the City shall continue with  
16 the permitting process for sewer pipe cleaning and complete the required cleaning activities  
17 within six (6) months of completing the cleaning permit process.

18 b. Starting April 1, 2004, the City shall clean each sewer pipe in the  
19 City's two thousand five hundred thirty-eight (2,538) mile small diameter gravity collection  
20 system on a minimum five (5) year frequency. For each five (5) year cleaning cycle, the City  
21 may elect to exclude from cleaning up to thirty (30) miles in environmentally sensitive non-right  
22 of way areas if the CCTV inspection demonstrates the pipe is clear. Starting April 1, 2004, the  
23 City shall clean each sewer pipe in the City's two hundred eighty-one (281) mile large diameter  
24 gravity system on a minimum five (5) year frequency unless the City can demonstrate the pipe is  
25 adequately clean through a cleaning needs assessment consisting of CCTV and hydraulic  
26 investigation, manhole inspection, and/or personnel entry into the sewer pipe. All miles cleaned  
27  
28

1 under this Paragraph may be included in the one thousand five hundred (1,500) miles of annual  
2 cleaning required in Section VII (Compliance Actions) Paragraph C 2a.

3 c. By March 1st of each calendar year and pursuant to Section VII  
4 (Compliance Actions) Paragraph G of this Second Partial Consent Decree, the City shall submit  
5 an annual report to EPA for review pursuant to Section VIII (Plan and Report Review and  
6 Approval) that documents which sewers and how many miles of pipe were cleaned as part of the  
7 system-wide cleaning program during the previous calendar year. The report shall distinguish  
8 between sewer pipes in canyon and non-canyon areas. The annual report shall describe the  
9 status of any pipes included in the thirty (30) miles described in Paragraphs a. and b. above,  
10 specify which miles were included in the thirty (30) miles, and explain the basis for not cleaning  
11 any Large Diameter Pipes.

12 2. ACCELERATED PREVENTIVE MAINTENANCE (ACCELERATED  
13 PM) CLEANING PROGRAM

14 a. The City shall clean a minimum of one thousand five-hundred  
15 (1,500) miles of pipe per year. Calculation of the 1,500 miles may include problem pipe  
16 segments that are cleaned more frequently than annually.

17 b. To make changes to the cleaning frequency of its pipes, the City  
18 shall use a cleaning algorithm based upon SSO history and the pipe conditions observed in the  
19 field. The City shall use the following "condition findings" in its algorithm used to adjust pipe  
20 cleaning frequencies:

21 c. **CONDITION FINDINGS:**

Clear	Light	Medium	Heavy
No observable grease, roots, or sludge	1.0 to 1.5 gallons of sludge, small chunks of grease, slight detection of root mass, 20 to 30 minutes to clean a line, 1 to 2 passes to clear the water.	2 to 3 gallons of sludge, moderate chunks of grease, observable root mass, 30 minutes to clean a line, 2 to 3 passes to clear the water.	4 or more gallons of sludge, grease, clumps of roots, more than 30 minutes to clean, more than 4 passes to clear the water.

26 Note: A "line" is a pipe segment of approximately 300 feet length between two manholes.

d. Based on one of the methods below, the City may determine whether to increase or decrease the pipe cleaning frequency changes.

(i) Method 1: Software Algorithm Recommendations

Cleaning Frequency Decreases:		
Category	Findings	Frequency Step Change
1 to 6 Month:	Clear for three consecutive cleaning cycles	A One-Step Frequency Decrease to a time interval of 3, 6, or 12 months.
12 to 24 Month:	Clear for two consecutive cleaning cycles	A One-Step Frequency Decrease to a time interval of 24 or 60 months.
60 Month:	N/A	Small diameter pipes on a 60 month schedule will never be cleaned less frequently. Large Diameter pipes may skip cleaning if a physical inspection per Section VII (Compliance Actions) Paragraph C 1b., determines that the pipe is clear.
Cleaning Frequency Increases:		
Category	Findings	Frequency Step Change
1 to 6 Month:	Findings of either 1 Medium Or 1 Heavy during any cleaning cycle	A One-Step Frequency Increase to a time interval of 1 or 3 months. An existing 1 month time interval will not be reduced but will be transferred for further consideration under Method 2: Crew/ Supervisor Recommendations.
12 to 24 Month:	Findings of either 2 Medium Or 1 Heavy during any cleaning cycle	A One-Step Frequency Increase to a time interval of 6 or 12 months.
60 Month:	Findings of either 1 Medium Or 1 Heavy during any cleaning cycle	A One-Step Frequency Increase to a time interval of 24 months.
Note: All Findings Depict Pipes that have been cleaned within +/-25% of their current frequency's scheduled cleaning date.		

(ii) Method 2: Crew/ Supervisor Recommendations

Changes to cleaning frequencies for pipes that recently have been repaired, rehabilitated,

1 or replaced shall be made in Regular Sanitary Sewer Overflow Report Tracking (“SSORT”) or  
2 other appropriate meetings held by City staff. Corrective actions and appropriate frequency  
3 adjustments shall be made based upon SSO/ blockage relief cleaning findings, historical cleaning  
4 data, and if available, CCTV data.

5  
6 e. By March 1st of each year, and pursuant to Section VII  
7 (Compliance Actions) Paragraph G of this Second Partial Consent Decree, the City shall submit  
8 an annual report to EPA for review pursuant to Section VIII (Plan and Report Review and  
9 Approval) that: (i) documents which sewers and how many miles of pipe were cleaned as part of  
10 the Accelerated PM cleaning program during the previous calendar year; (ii) includes a table  
11 containing the number of miles of sewer pipes within each cleaning frequency and the number of  
12 miles identified for the Repair, Rehabilitation, and Replacement Program; (iii) describes the  
13 success of the program at preventing repeat blockages and sewage overflows from pipes  
14 included in the Accelerated PM cleaning program; and (iv) distinguishes between pipes in  
15 canyons and pipes located elsewhere.

16  
17  
18 3. ROOT CONTROL PROGRAM

19 a. The City shall utilize mechanical root control to clean at least three  
20 hundred fifty (350) miles of pipe each year. The 350 miles of pipe mechanically cleaned under  
21 this Paragraph may be included in the cleaning miles required in Section VII (Compliance  
22 Actions) Paragraph C 2a.

23  
24 b. The City shall utilize chemical root control to treat at least one  
25 hundred fifty (150) miles of pipe each year. Mileage chemically-treated under this Paragraph  
26

1 may be included in the cleaning miles required in Section VII (Compliance Actions) Paragraph  
2 C 2a., if the chemical treatment is independent from the mechanical root cleaning miles counted  
3 in Section VII (Compliance Actions) Paragraph C 3a.

4  
5 c. By March 1st of each year, the City shall submit an annual report  
6 pursuant to Section VII (Compliance Actions) Paragraph G of this Second Partial Consent  
7 Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval)  
8 documenting how many miles of pipe were subject to mechanical and chemical root control,  
9 respectively, during the previous year. The report shall evaluate the success of the program,  
10 distinguish between pipes in canyons and pipes located elsewhere and document any problem  
11 pipe segments or lines that are referred to the Sewer Repair, Rehabilitation, and Replacement  
12 Program in Paragraph C 5 below.

13  
14 4. SEWER PIPE INSPECTION AND CONDITION ASSESSMENT

15  
16 a. The City shall inspect each sewer pipe that experiences a blockage  
17 leading to an SSO using CCTV or other appropriate inspection methods as soon as is practicable  
18 but no later than two (2) weeks following the SSO. Lamping may not be used for purposes of  
19 satisfying the obligations of this Paragraph 4.

20  
21 b. Having completed CCTV inspection of one thousand two-hundred  
22 (1,200) miles of its pipelines, including all but two miles of pipeline in all forty-two (42)  
23 canyons, all pipe installed prior to 1965, all trunk sewers prior to 1991, and all high maintenance  
24 sites by June 2004, the City shall complete CCTV inspection of at least forty (40) miles of its  
25 pipelines each year, focusing on pipelines in high-maintenance areas and ensuring that all pipe  
26

1 over forty (40) years old is inspected by CCTV. The calculation of the 40 miles requirement  
2 may not include CCTV inspections done pursuant to Paragraph a. above or Section VII  
3 (Compliance Actions) Paragraph C 1.  
4

5 c. The City shall inspect all manholes in its collection system every  
6 five (5) years, starting from September 13, 2005.

7 d. The City shall prepare condition assessment reports following  
8 CCTV inspections that, at a minimum, document the following:  
9

10 (i) defects that materially threaten the structural integrity of  
11 the pipe or structure;

12 (ii) material defects that allow infiltration, inflow, or  
13 exfiltration;

14 (iii) material pipe defects, including but not limited to, cracks,  
15 holes, corrosion, misaligned joints, root intrusion, sags, improper lateral taps, or other defects  
16 that make the pipe or structure prone to grease, root, or debris blockages;

17 (iv) a rank or score of the condition of each inspected pipe or  
18 structure on a sliding scale that indicates the severity of any defects found;

19 (v) whether the pipe or structure requires either short or long-  
20 term repair under Paragraph 5 below;

21 (vi) changes to cleaning frequency as a result of the assessment;

22 and

23 (vii) an estimate of the expected remaining life of the pipe or  
24  
25  
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28

1 structure.

2 e. By March 1st of each year, the City shall submit an annual report  
3 pursuant to Section VII (Compliance Actions) Paragraph G of this Second Partial Consent  
4 Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval)  
5 summarizing the findings of the sewer pipe condition assessments conducted during the previous  
6 calendar year, documenting any past changes in inspection methods, and differentiating between  
7 inspections and condition assessments of pipes in canyons and pipes located elsewhere.  
8

9  
10 5. SEWER REPAIR, REHABILITATION, AND REPLACEMENT

11 a. The City shall repair all Acute Defects within one (1) year of  
12 discovery of the defect. The City shall maintain a log listing all sewer line Acute Defects in  
13 need of expeditious repair or replacement, the date the City discovered the Acute Defect, a  
14 schedule for performing the repair or replacement, and the date of project completion.  
15

16 b. Between January 1, 2002 and June 30, 2007, the City shall replace,  
17 rehabilitate, or permanently repair two hundred (200) miles of pipeline. Permanent repair means  
18 the correction of a structural defect in a manhole to manhole pipe segment such that the repaired  
19 segment has the same life expectancy as a rehabilitated pipe segment. The City shall maintain a  
20 log listing each sewer pipe and structure project completed during the previous year and the date  
21 the project was completed.  
22

23 c. The City shall maintain a rolling ten (10) year CIP.

24 d. By March 1st of each year, the City shall submit an annual report  
25 pursuant to Section VII (Compliance Actions) Paragraph G, to EPA for review pursuant to  
26

1 Section VIII (Plan and Report Review and Approval) which describes all Acute Defect and long-  
2 term projects completed in the previous year pursuant to this Paragraph, distinguishes between  
3 canyon and non-canyon projects, documents all projects referred to programs under other  
4 Paragraphs of this Section, and includes copies of the Acute Defect logs for the previous year.  
5 Upon request by EPA, the City shall provide EPA with a copy of its full CIP within thirty (30)  
6 days. Nothing in this Paragraph 5 shall require the City to implement any of the projects listed  
7 in the CIP not otherwise required hereunder.  
8

9  
10 6. FATS, OILS & GREASE (FOG) BLOCKAGE CONTROL PROGRAM

11 a. For at least the duration of this Second Partial Consent Decree, the  
12 City shall implement a Residential Grease Outreach and Education Program consisting of the  
13 following elements.

14 (i) The City shall distribute informational FOG postcards to all  
15 residents living within a one thousand (1,000) foot radius of each residential grease SSO within  
16 ten (10) working days of a SSO;

17 (ii) The City shall prepare and distribute FOG inserts with City  
18 water/sewer bills semiannually;

19 (iii) The City shall produce residential grease Public Service  
20 Announcements and broadcast them on the City's public access channel at least twice per week;

21 (iv) The City shall prepare and maintain grease education  
22 information on the MWWD web site; and

23 (v) The City shall attend the annual Apartment and  
24



1 pursuant to Section VII (Compliance Actions) Paragraph G of this Second Partial Consent  
2 Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval)  
3 documenting the activities carried out under the FOG Blockage Control Program during the  
4 previous year. The report shall: (i) include copies of the FSE inspection and enforcement log  
5 for the previous year, and (ii) discuss budget and staffing levels for the previous and current  
6 years.  
7

8 7. CANYON AREA SSO ELIMINATION  
9

10 a. By no later than March 1, 2009, the City shall complete the  
11 Canyon Economic and Environmental Analyses for the forty-two (42) canyons listed below in  
12 order to evaluate the feasibility and need to relocate the sewer lines out of canyon bottoms. The  
13 economic and environmental analyses shall include both quantitative and qualitative costs and  
14 benefits of alternatives, weigh environmental impacts, and address stakeholder and community  
15 input. The analyses shall consider the life cycle costs of the alternatives. When estimating the  
16 cost to maintain sewer facilities in canyons, the cost of the increased risk of an SSO occurring  
17 and the cost of the impacts to the canyon habitat resulting from necessary canyon access and  
18 maintenance, as required by Section VII (Compliance Actions) Paragraphs C 1, C 2, C 3, and C  
19 7 will be considered. Where the life cycle cost of redirecting flow is less than thirty-five percent  
20 (35%) more than the life cycle cost of leaving the flow in place, and where environmental and  
21 community interest factors indicate that flow should be redirected in whole or in part, redirection  
22 shall be undertaken. Those sewers identified for relocation shall be included in the next update  
23 of the City's CIP. Nothing in Section VII (Compliance Actions) of this Second Partial Consent  
24  
25  
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28



- 1           ·       Mission Gorge (Junipero Serra)
- 2           ·       Chollas Creek
- 3           ·       Chocolate (Home Avenue)
- 4           ·       Switzer
- 5           ·       Carroll (Rock Quarry)
- 6           ·       Alvarado
- 7           ·       Sorrento/Flintkote
- 8           ·       Roselle/Sonico
- 9           ·       Lopez
- 10          ·       Peñasquitos
- 11          ·       Peñasquitos Bluffs
- 12          ·       Rose Creek East of I-805
- 13          ·       Mesa College and I-805 (Onalaska)
- 14          ·       Black Mountain
- 15          ·       Shawn
- 16          ·       Shepherd (Santo Road)
- 17          ·       Woodman
- 18          ·       Lexington
- 19          ·       Washington Creek
- 20          ·       Highway 163 Corridor
- 21          ·       El Camino Real/San Dieguito Road



1 twenty-four (24) hour period).

2 (iv) The City shall conduct cleaning and annual maintenance of  
3 each canyon area sewer pipe and maintenance hole structure, including, but not limited to,  
4 control of erosion that may undermine sewer pipes or maintenance hole structures, diversion of  
5 channels when necessary to protect the infrastructure, rebuilding of deteriorated maintenance  
6 hole structures, and the securing of maintenance hole covers to prevent vandalism as specified in  
7 Section VII (Compliance Actions) Paragraph C 9b.  
8

9 (v) The City shall obtain short and long-term access to each  
10 canyon area sewer pipe sufficient to allow for the cleaning and annual inspection of such pipes  
11 as required by this Second Partial Consent Decree.  
12

13 d. By March 1st of each year the City shall submit an annual report to  
14 EPA for review pursuant to Section VII (Compliance Actions) Paragraph G of this Second  
15 Partial Consent Decree, documenting which canyon sewers were cleaned and/or inspected during  
16 the previous calendar year, listing all potentially vulnerable sections of canyon pipelines  
17 identified in Subparagraph c.(ii) above, describing the plans the City intends to undertake for the  
18 then current year, summarizing and including the sewer relocation economic and environmental  
19 analyses completed in the previous calendar year, and listing those canyons for which economic  
20 and environmental analyses will be done in the current year.  
21  
22

23 8. PUMP STATION AND FORCE MAIN SSO REDUCTION ACTION  
24 PROGRAM  
25

26 a. The City shall complete the following projects by the dates  
27  
28

1 specified below:

2 PUMP STATIONS WITH IMPROVEMENTS UNDER DESIGN AND CONSTRUCTION:

3

Pump Station No.	Construction Completion Date	Description of Work
77A	June 2006	Major mechanical & electrical upgrades (replace and upsize pumps and motors; replace flow meters; add A/C to VFD room, add alarms, automatic transfer switch, and all necessary new SCADA control systems); structural modification of facility

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9 b. By March 1<sup>st</sup> of each year the City shall submit an annual report  
10 pursuant to Section VII (Compliance Actions) Paragraph G of this Second Partial Consent  
11 Decree, to EPA for review pursuant to Section VII (Plan and Report Review and Approval),  
12 documenting the City's progress in the projects during the previous year.

13  
14 9. PROGRAM TO ADDRESS OTHER CAUSES OF SSOs

15 a. Upon entry of this Second Partial Consent Decree, the City shall  
16 require all Contractors working under a new construction contract to have an approved SSO  
17 response plan prior to initiating work if the construction work is to occur within a public right-  
18 of-way or sewer easement. All City construction contracts must contain provisions that allow  
19 the City to impose penalties and/or cleanup costs on any Contractor whose activities, or failure to  
20 act, result in an SSO or other violation of this Second Partial Consent Decree.

21  
22 b. The City shall secure at least six hundred (600) manhole covers in  
23 remote areas each year with all five thousand eight hundred (5,800) +/- covers to be secured  
24 prior to termination of this Second Partial Consent Decree. If more than 600 manhole covers in  
25  
26

1 remote areas are secured in one (1) year, the City may hold these secured covers in reserve to be  
2 applied, if needed, against the requirement to secure 600 manhole covers per year in any future  
3 year.  
4

5 c. The City shall conduct a Public Outreach Program to educate the  
6 public about vandalism.

7 d. By March 1st of each year the City shall submit an annual report  
8 pursuant to Section VII (Compliance Actions) Paragraph G of this Second Partial Consent  
9 Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval),  
10 documenting the activities carried out under this program, summarizing the SSOs caused by  
11 Contractors or vandalism, and distinguishing between SSOs in canyon and non-canyon areas.  
12

13 D. COLLECTION SYSTEM CAPACITY ASSESSMENT AND ASSURANCE

14 1. Capacity Assessment

15 a. The City shall continue to use the dynamic model developed as  
16 required by the U.S.A. v. City of San Diego, Case No. 88-1101-B, Stipulated Final Order for  
17 Injunctive Relief, to analyze the hydraulic capacity of all trunk sewers 15 inch in diameter or  
18 greater. The City will ensure that system capacity is sufficient and will continue to collect flow  
19 monitoring data in both dry and wet weather and perform a dynamic modeling analysis for all of  
20 the City's trunk sewers. The City will add thirteen (13) new permanent flow meters on trunk  
21 sewers fifteen (15) inches in diameter or greater by December 31, 2005, at an additional cost of  
22 approximately \$1.3 million. Combining the existing and additional flow meters, the total  
23 monitoring coverage in flow weighted length shall exceed ninety percent (90%). The data from  
24  
25  
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1 this additional metering will be incorporated into the criticality assessment for the trunk sewers.  
2 The modeling analysis shall include trunk-by-trunk model calibrations based on dry weather  
3 flow monitoring data and model simulations for the present, future (5-10 years), and wet weather  
4 scenarios. By July 31, 2006, the City shall submit a Trunk Sewer Capacity Assessment Report  
5 documenting the findings of the above mentioned modeling analysis. The report shall prioritize  
6 the trunk sewers as either critical, semi-critical, or non-critical, according to the flow monitoring  
7 and modeling results. The City shall update the Trunk Sewer Capacity Assessment Report on an  
8 annual basis, considering new flow trends, changes in the sewer system, and other modifications.  
9 The report and/or updates shall be provided to Plaintiffs annually.  
10  
11

12 b. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

13 2. Capacity Assurance Program

14 The City shall implement and complete the following capacity improvement  
15 projects on the schedule below. These projects may be included in the mileage required in  
16 Section VII (Sewer Repair, Rehabilitation, and Replacement) Paragraph C 5b.  
17

18 TRUNK SEWERS

19

Trunk	Trunk Name	Construction Completion Date
43	Sorrento Valley	June 2007
40	Miramar	December 2007

20  
21  
22

23 As a result of the ongoing capacity assessment, the City shall describe any proposed  
24 schedule or project changes/additions it seeks to make to this Paragraph with a justification and  
25 seek EPA's approval under Section VIII (Plan and Report Review and Approval) Paragraphs A  
26  
27



1 program modifications during the prior calendar year;

2 c. assess the City's progress towards meeting the requirements of this  
3 Second Partial Consent Decree program-by-program and overall;

4 d. report the volume, number, and location of SSBs;

5 e. report the volume, number, and location of SSOs, with the  
6 exception of SSBs reported under Subparagraph d. above, and compare the volume, number, and  
7 location of the SSOs reported under this Subparagraph to SSOs occurring since 1997; and  
8

9 f. propose new or modified plans in any area where the City has  
10 materially failed to comply with the requirements of this Second Partial Consent Decree. The  
11 plan shall identify the material impact of the proposed changes on other obligations in this  
12 Section VII (Compliance Actions) of this Second Partial Consent Decree. Nothing in this  
13 Paragraph shall require the City to perform any work not otherwise required in Section VII  
14 (Compliance Actions).  
15  
16

17 3. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

18 H. QUARTERLY SSO REPORTS

19 On the first day of February, May, August, and November in each calendar year  
20 in which activities are conducted pursuant to this Second Partial Consent Decree, the City shall  
21 submit a summary of all SSOs occurring during the previous calendar quarter to EPA, with  
22 copies to Baykeeper and Surfrider, along with the primary factors contributing to the SSOs if  
23 known. The reports shall:  
24  
25  
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- 1           1.     indicate which SSOs occurred in canyons;  
2           2.     indicate whether SSOs entered waters of the United States and, if so,  
3 whether they entered via storm drains or other man-made conveyances; and  
4  
5           3.     differentiate between SSBs and all other SSOs.

6           I.     OTHER REPORTS

7           Upon the request of a Plaintiff, the City shall provide any information required by  
8 this Second Partial Consent Decree or relevant to implementation or compliance with any  
9 provision of this Second Partial Consent Decree.  
10

11           J.     PACIFIC BEACH POINT STUDY

12           By June 30, 2006, the City will complete a study of Pacific Beach Point to:

- 13           1.     seek to identify the sources, if any, of bacteriological contamination; and  
14           2.     develop recommendations to remedy the sources identified, if any. This  
15 study shall not exceed a cost of \$250,000, and the final report shall be furnished to Baykeeper,  
16 Surfrider, and EPA. Nothing contained in this section shall require the City to perform any work  
17 or remediation recommended in said study.  
18  
19

20                           **VIII. PLAN AND REPORT REVIEW AND APPROVAL**

21           A.     The submittal of any plan or report required by this Second Partial Consent  
22 Decree shall be subject to EPA's review and/or approval as specified in Section VII (Compliance  
23 Actions) and Paragraphs B - D below. Copies of all such plans and reports and follow-up  
24 correspondence shall be provided simultaneously to Citizen Plaintiffs. The City shall respond to  
25  
26  
27

1 reasonable requests for additional documentation by Citizen Plaintiffs.

2 B. For new or modified plans submitted under Section VII (Compliance Actions)

3 Paragraph G 2f.:

4 1. EPA shall:

5 a. approve the submission or request in whole or in part;

6 b. approve the submission or request with specified conditions;

7 c. modify the submission or request to cure any deficiency;

8 d. disapprove the submission or request in whole or in part, directing

9 the City to correct any deficiency; or

10 e. any combination of the above.

11 2. Citizen Plaintiffs shall submit any written comments to EPA and the City  
12 within thirty (30) days of the City's submission.

13 3. EPA shall use its best efforts to take the actions in Paragraph 1 above  
14 within ninety (90) days of receipt of the City's submission. If EPA does not take action by the  
15 end of the ninety (90) days, the City's submission shall be deemed disapproved.

16 4. The City shall revise the plan or report to correct any deficiency identified  
17 by EPA within sixty (60) days of receipt of EPA's action, unless the time is extended by mutual  
18 agreement of EPA and the City.

19 5. In the event that a revised submission is disapproved in whole or in part,  
20 EPA may again require the City to correct the deficiencies. The City shall take the action



1 **IX. DISPUTE RESOLUTION**

2 A. Unless otherwise expressly provided for in this Second Partial Consent Decree,  
3 the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve  
4 disputes arising under or with respect to this Second Partial Consent Decree. However, the  
5 procedures set forth in this Section shall not apply to:  
6

7 1. actions by the United States to enforce obligations of the City that have  
8 not been disputed in accordance with this Section; or  
9

10 2. any disputes concerning the issuance, modification, revocation, or  
11 reissuance of NPDES permits.

12 3. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.  
13

14 B. A dispute shall be considered to have arisen when one (1) party sends the other  
15 party a written Notice of Dispute. As used in this Paragraph, parties shall refer to the Chief,  
16 CWA Compliance Office, Water Division, EPA Region 9, for the United States, the Director of  
17 the Metropolitan Wastewater Department for the City, and the attorneys for Citizen Plaintiffs.  
18 Any dispute that arises under or with respect to this Second Partial Consent Decree shall in the  
19 first instance be the subject of informal negotiations between the parties to the dispute. During  
20 the informal negotiations the EPA shall identify the reasons for the non-approval. The period for  
21 informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it  
22 is modified by written agreement of the parties.  
23  
24

25 C. 1. In the event that the Parties cannot resolve a dispute by informal  
26 negotiations under the preceding Paragraph B, the City or Citizen Plaintiffs may invoke formal  
27

1 dispute resolution procedures by providing the Director with a written statement of position on  
2 the matter in dispute, including, but not limited to, any factual data, analysis or opinion  
3 supporting that position and any supporting documentation relied upon by the City or Citizen  
4 Plaintiffs. Such statement of position shall be provided within thirty (30) days of the end of  
5 informal negotiations. If the City or Citizen Plaintiffs do not invoke formal dispute resolution  
6 within thirty (30) days, EPA's position shall be binding on the City and Citizen Plaintiffs.  
7

8           2. Within thirty (30) days after receipt of a City's or Citizen Plaintiffs'  
9 statement of position, the Director shall provide a written Response to the City's or Citizen  
10 Plaintiffs' statement of position, including, but not limited to, any factual data, analysis, or  
11 opinion supporting that position and all supporting documentation relied upon by EPA. That  
12 position shall be considered binding and the City and Citizen Plaintiffs shall waive any right to  
13 challenge that position unless, within thirty (30) days after receipt of the Director's decision, the  
14 City or Citizen Plaintiffs file and serve upon the United States a motion for judicial review of the  
15 decision. The motion shall include a description of the matter in dispute, the efforts made by the  
16 Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must  
17 be resolved to ensure orderly implementation of this Second Partial Consent Decree. The  
18 schedules contained in the local rules for the United States District Court shall apply to the  
19 dispute; provided, however, the United States shall have at least thirty (30) days to file a  
20 response with an alternative proposal for resolution.  
21  
22  
23

24           3. In proceedings on any dispute governed by this Section, the moving party  
25 shall have the burden by a preponderance of the evidence to prevail in the dispute regarding  
26  
27  
28

1 EPA's decision; provided, however, the City shall be considered the moving party with respect  
2 to Section VII (Compliance Actions); Section VIII (Plan and Report Review and Approval);  
3 Section XI (Stipulated Penalties); and Section XXIV (Termination).  
4

5 D. The invocation of formal dispute resolution procedures under this Section shall  
6 not extend, postpone, or affect in any way any obligation of the City under this Second Partial  
7 Consent Decree, not directly in dispute unless and until final resolution of the dispute so  
8 provides. Stipulated penalties with respect to the disputed matter shall continue to accrue;  
9 provided, however, that the City may argue to the Court that stipulated penalties should not run  
10 after the matter has been fully briefed and submitted to the Court and provided that Plaintiffs  
11 may argue the contrary. Payment shall be stayed pending resolution of the dispute. Except as  
12 provided above, stipulated penalties shall accrue from the first day of non-compliance with any  
13 applicable provision of this Second Partial Consent Decree. In the event that the City does not  
14 prevail on the disputed issue, stipulated penalties may be assessed as provided in Section XI  
15 (Stipulated Penalties) of this Second Partial Consent Decree.  
16  
17

18 E. Citizen Plaintiffs have the right to invoke Dispute Resolution pursuant to this  
19 Section IX (Dispute Resolution) in the following circumstances:  
20

21 1. Citizen Plaintiffs may challenge an EPA action approving a major  
22 modification of the activities required in Section VII (Compliance Actions). The Citizen  
23 Plaintiffs retain the right to dispute what constitutes a major modification. For purposes of  
24 establishing what constitutes a major modification under this Subparagraph, Citizen Plaintiffs  
25 shall have the burden of establishing the same based upon the arbitrary and capricious standard  
26  
27  
28

1 of proof.

2                   2.     Citizen Plaintiffs may challenge an EPA action terminating the Second  
3  
4 Partial Consent Decree pursuant to Section XXIV (Termination).

5                   3.     With respect to any motion under this Section, the Citizen Plaintiffs shall  
6 be considered the moving party.

7  
8                                   **X. FORCE MAJEURE**

9                   A.     “Force majeure,” for purposes of this Second Partial Consent Decree, is defined  
10 as any event arising from causes beyond the control of the City, of any entity controlled by the  
11 City, or of the Contractors, that delays or prevents the performance of any obligation under this  
12 Second Partial Consent Decree, despite the City’s best efforts to fulfill the obligation. The  
13 requirement that the City exercise “best efforts to fulfill the obligation” includes using  
14 reasonable efforts to anticipate any potential force majeure event and best efforts to address the  
15 effects of any potential force majeure event as it is occurring and following the potential force  
16 majeure event, such that the delay is minimized to the greatest extent possible. “Force Majeure”  
17 shall not, in any event, include unanticipated or increased costs associated with implementation  
18 of this Second Partial Consent Decree, changed financial circumstances, or other financial or  
19 budgetary issues.

22                   B.     If any event occurs or has occurred that may delay the completion of any  
23 requirement of this Second Partial Consent Decree, whether or not caused by a force majeure  
24 event, the City shall notify EPA in writing, with copies to Baykeeper and Surfrider, within thirty  
25 (30) days of when the City first knew, or in the exercise of reasonable diligence under the  
26

1 circumstances, should have known of such event. The notice shall indicate whether the City  
2 claims that the delay should be excused as a force majeure event. The notice shall describe in  
3 detail the basis for the City's contention that it experienced a force majeure delay; the anticipated  
4 duration of the delay; the precise cause or causes of the delay; all actions taken or to be taken to  
5 prevent or minimize the delay; and a schedule for implementation of any measures to be taken to  
6 prevent or mitigate the delay or the effect of the delay. The City shall adopt all reasonable  
7 measures to avoid and minimize such delays. Failure to comply with the above requirements  
8 shall preclude the City from asserting any claim of force majeure. The City shall be deemed to  
9 know of any circumstance of which the City, any entity controlled by the City, or the Contractors  
10 knew or should have known.  
11

12  
13 C. If EPA agrees that the delay or anticipated delay is attributable to a force majeure  
14 event, the time for performance of the obligations under this Second Partial Consent Decree that  
15 are affected by the force majeure event will be extended by EPA in writing for such time as is  
16 necessary to complete those obligations and stipulated penalties shall not be due for such period.  
17 If EPA does not agree that the delay or anticipated delay has been or will be caused by a force  
18 majeure event, EPA will notify the City in writing of its decision. If the City elects to invoke the  
19 Dispute Resolution procedures set forth in Section IX (Dispute Resolution) of this Second Partial  
20 Consent Decree, it shall do so no later than thirty (30) days after receipt of EPA's notice. In any  
21 such proceeding, the City shall have the burden of demonstrating by a preponderance of the  
22 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,  
23 and that the duration of the delay or the extension sought was or will be warranted under the  
24  
25  
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28

1 circumstances. Copies of all documents under this Subparagraph shall be provided to Baykeeper  
2 and Surfrider.

3  
4 D. An extension of the time for performance of the obligations the City contends are  
5 affected by the force majeure event shall not, of itself, extend the time for performance of any  
6 other obligation. The City must make an individual showing of proof regarding each delayed  
7 incremental step or other requirement for which an extension is sought.

8  
9 **XI. STIPULATED PENALTIES**

10 A. The City shall pay the stipulated penalties listed below upon written demand by  
11 the United States. Pursuant to its non-reviewable enforcement discretion, the United States may  
12 waive or reduce stipulated penalties. EPA need not provide a Notice of Violation prior to  
13 assessing stipulated penalties. A copy of the demand shall be provided to Baykeeper and  
14 Surfrider.  
15

16 B. **COMPLIANCE MILESTONES**

17  
18 The City shall pay stipulated penalties for each failure to implement, achieve, or  
19 complete a requirement identified in Section VII (Compliance Actions) Paragraphs B - D of this  
20 Second Partial Consent Decree as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Milestone Date per Day of Violation</u>
Days 1 - 14	\$750
Days 15 - 28	\$1,500
Days over 28	\$3,000

1 C. REPORTING AND PLAN SUBMISSION

2 The City shall pay the stipulated penalties below for each day it fails to submit or  
3  
4 revise a report or plan required by this Second Partial Consent Decree.

<u>Period of Noncompliance</u>	<u>Penalty per Report/Plan per day of Violation</u>
5 Days 1 - 14	\$375
6 Days 15 - 28	\$750
7 Days over 28	\$1,500

8  
9  
10 D. SANITARY SEWER OVERFLOWS

11 1. Except as provided in Paragraph E below, the stipulated penalties set forth  
12 in this Paragraph apply to any SSO over one thousand (1,000) gallons if any portion of that spill  
13 reaches navigable waters. The stipulated penalties set forth in this Paragraph apply to those  
14 SSOs that occur after the entry of the Second Partial Consent Decree. Gallons refer to the total  
15 size of the overflow, spill, or release. Successive SSOs refer to the same part or reach of sewer  
16 line (from manhole to manhole or from manhole to pump station), the same manhole, or the  
17 same pump station under similar circumstances. The City shall provide notice of the SSO to  
18 EPA:  
19

- 20  
21 a. when required by law to be reported to the Board and/or EPA; and  
22  
23 b. when required by the reports under Section VII (Compliance  
24 Actions) of this Second Partial Consent Decree.

25 2. EPA may assess penalties as provided below:  
26  
27

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- a. Over one thousand (1000) and up to ten thousand (10,000) gallons
  - (i) First successive SSO \$ 2,000
  - (ii) Second successive SSO \$ 5,000
  - (iii) Third successive SSO \$ 7,500
  - (iv) Fourth and subsequent successive SSOs \$10,000
  
- b. More than 10,000 gallons
  - (i) First successive SSO \$ 4,000
  - (ii) Second successive SSO \$10,000
  - (iii) Third successive SSO \$15,000
  - (iv) Fourth and subsequent successive SSOs \$20,000

If the City does not reasonably estimate the size of a SSO, the SSO will be presumed to be more than ten thousand (10,000) gallons for the purpose of determining stipulated penalties.

E. OTHER PROVISIONS:

1. The City shall not be liable for stipulated penalties under Paragraph D above if the City demonstrates that it is in compliance with both the response and reporting requirements in Section VII (Compliance Actions) Paragraphs B 1 - 4, and Paragraphs C 1b.; C 2a.; C 3a.-b.; C 4a.-d., C 5a.-b.; C 6b. (i-v); C 7a.; C 7c.(i-iv); C 8a.; C 9b.; and D 2.

2. The City shall not be liable for stipulated penalties under Paragraph D

1 above if the City demonstrates that the SSO was caused by an Act of God, vandalism, a non-City  
2 Contractor, or any act of a third party not working directly or indirectly on behalf of the City.

3  
4 3. The City shall not be liable for stipulated penalties under Paragraph D  
5 above for any SSO downstream of the Marine Corps Air Station Miramar that was caused by the  
6 Marine Corps Air Station Miramar; provided however, this exception applies only if the City  
7 utilizes best efforts to reach an agreement with Marine Corps Air Station Miramar to address the  
8 potential for SSOs.  
9

10 4. Payment of stipulated penalties as provided in this Section shall be in  
11 addition to any other rights or remedies, including statutory penalties, which may be available to  
12 the United States by reason of the City's failure to comply with this Second Partial Consent  
13 Decree and all applicable federal, state, or local laws, regulations, wastewater discharge permits,  
14 and all other applicable permits.  
15

16 5. The United States will credit the City for any stipulated penalty paid with  
17 respect to any SSO pursuant to this Second Partial Consent Decree in any future enforcement  
18 action in which EPA seeks penalties for that SSO. The United States will credit the City against  
19 any stipulated penalty assessed pursuant to this Second Partial Consent Decree with respect to  
20 any EPA enforcement action in which penalties were paid for that SSO.  
21

22 6. In exercising its discretion of whether to assess a stipulated penalty for an  
23 SSO, the United States will consider the amount of sewage recovered.  
24

25 7. In exercising its discretion of whether to assess a stipulated penalty for an  
26 SSO, the United States will consider the length of time after which a disputed issue has been  
27

1 fully briefed and is under the consideration of the United States District Court pursuant to  
2 Section IX (Dispute Resolution) of this Second Partial Consent Decree.

3  
4 8. SSBs shall not be subject to stipulated penalties under this Second Partial  
5 Consent Decree.

## 6 **XII. PAYMENTS**

7  
8 The City shall pay stipulated penalties owing to the United States by certified or cashier's  
9 check in the amount payable to the "United States Department of Justice" referencing "DOJ No.  
10 90-5-1-1-4364/1" and United States Attorney's file number (to be provided), and delivered to the  
11 office of the United States Attorney, Southern District of California, 880 Front Street, Room  
12 6293, San Diego, California, 92101. In the event that any payments are not received when due,  
13 interest shall continue to accrue on the unpaid balance through the date of payment at the rate  
14 established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961.

## 15 **XIII. RIGHT OF ENTRY**

16  
17  
18 A. EPA, their employees, and authorized agents (including contractors and  
19 subcontractors) upon presentation of valid credentials or other official authorization, shall have  
20 access to enter the City's publicly-owned treatment works for the purposes of monitoring,  
21 investigating, and/or verifying the City's compliance with all terms of this Second Partial  
22 Consent Decree. Where appropriate, EPA shall provide reasonable notice to the City.

23  
24 B. Nothing in this Section shall be construed to limit the right of the United States to  
25 enter the City's property, to require monitoring, or to obtain information pursuant to federal or  
26 state law or regulation.

1 **XIV. NOT A PERMIT**

2 This Second Partial Consent Decree is neither a permit nor a modification of existing  
3 permits under any federal, state, or local law and in no way relieves the City of its  
4 responsibilities to comply with all applicable federal, state, and local laws, and regulations.  
5

6 **XV. ONGOING COMPLIANCE RESPONSIBILITIES**

7 A. This Second Partial Consent Decree does not relieve the City of any obligation to  
8 apply for, obtain and comply with the requirements of any new or existing NPDES permit or its  
9 duty to comply with the CWA and any other applicable federal and state laws, regulations, and  
10 permits.  
11

12 B. The United States, by its consent to the entry of this Second Partial Consent  
13 Decree, does not warrant or aver in any manner that the City's compliance with this Second  
14 Partial Consent Decree will result in compliance with the provisions of the CWA or with any  
15 NPDES permit.  
16

17 C. Notwithstanding review or approval by the United States of any plans, reports,  
18 policies, or procedures formulated pursuant to this Second Partial Consent Decree, the City shall  
19 remain solely responsible for any non-compliance with the terms of this Second Partial Consent  
20 Decree, all applicable permits, the CWA, and regulations promulgated thereunder.  
21

22 **XVI. EFFECT OF SETTLEMENT**

23 A. This Second Partial Consent Decree resolves claims for civil penalties for spills  
24 occurring on or before October 1, 2004, unless any one of the following events occur:  
25  
26  
27



1 equitable remedies, including but not limited to injunctive relief, to address any imminent and  
2 substantial endangerment to the public health or welfare or the environment. The United States  
3 reserves the right to raise and the City reserves the right to contest the factual circumstances of  
4 past spills and the City's past and future operations relating to the Collection System in any  
5 future enforcement action for violations not addressed in this Second Partial Consent Decree.  
6

7 D. This Second Partial Consent Decree shall be considered "diligent prosecution" for  
8 purposes of Section 1319(G)(6) of the CWA.  
9

10 **XVII. RESERVATION BY BAYKEEPER AND SURFRIDER**

11 Baykeeper and Surfrider may submit comments to EPA regarding the City's annual  
12 report or the City's request for a major modification to this Second Partial Consent Decree.  
13 Comments must be submitted within thirty (30) days of EPA's receipt of the City's annual report  
14 or the City's request for a major modification of the Partial Consent Decree.  
15

16 **XVIII. NO ADMISSION OF LIABILITY**

17 Neither the execution of this Second Partial Consent Decree nor any action taken  
18 hereunder is an admission of any fact, liability, or wrongdoing of any kind regarding any of the  
19 matters addressed in the Second Partial Consent Decree.  
20

21 **XIX. CERTIFICATION OF SUBMISSIONS/RECORD RETENTION**

22 A. Any notice, report, certification, data presentation, or other document submitted  
23 by the City pursuant to this Second Partial Consent Decree, which discusses, describes,  
24 demonstrates, or supports any finding or makes any representation concerning the City's  
25 compliance or non-compliance with any requirement(s) of this Second Partial Consent Decree,  
26  
27

1 shall contain the following certification by the City, signed by a responsible City official:

2 "I certify under penalty of law that this document and all attachments were  
3 prepared under my direction or supervision in accordance with a system  
4 designed to assure that qualified personnel properly gather and evaluate  
5 the information submitted, based on my inquiry of the person or persons  
6 who manage the system, or those persons directly responsible for  
7 gathering the information, the information submitted is, to the best of my  
8 knowledge and belief, true, accurate, and complete. I am aware that there  
9 are significant penalties for submitting false information, including the  
10 possibility of fine and imprisonment for knowing violations."

9 \_\_\_\_\_  
Signature

Title

10 B. The notice and reporting requirements contained in this Second Partial Consent  
11 Decree do not relieve the City of its obligations to submit any other reports or information  
12 required by applicable law. Notice of a violation does not excuse the violation. Any  
13 information provided under the reporting requirements of this Second Partial Consent Decree  
14 may be admissible evidence in any proceeding to enforce the provisions of this Second Partial  
15 Consent Decree or the applicable law.

17  
18 **XX. FORM OF NOTICE**

19 A. Unless otherwise specified, or as may be changed from time to time, all reports,  
20 notices, or any other written communications required to be submitted under this Second Partial  
21 Consent Decree shall be sent to the respective Parties at the following addresses:

22  
23 As to the City:

24 City Attorney  
25 City of San Diego  
26 1200 Third Avenue, Suite 1100  
27 San Diego, California 92101

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As to Surfrider and Baykeeper:

Executive Director  
Surfrider Foundation  
P.O. Box 6010  
San Clemente, California 92674-6010

Surfrider Foundation  
San Diego County Chapter  
P.O. Box 1511  
Solana Beach, California 92075

San Diego Baykeeper  
2924 Emerson Street, Suite 220  
San Diego, California 92106

Marco A. Gonzalez  
Rory Wicks  
Coast Law Group LLP  
169 Saxony Road, Suite 204  
Encinitas, California 92024

Daniel Cooper  
Lawyers for Clean Water  
1004 A O'Reilly Street  
San Francisco, California 94129

As to the United States

Section Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

1 Gail Cooper, RC-2  
2 Air, Toxics, Water, and General Law Group  
3 Office of Regional Counsel  
4 U.S. Environmental Protection Agency  
5 75 Hawthorne Street  
6 San Francisco, California 94105

7 Jo Ann Cola, WTR-7  
8 Water Management Division  
9 U.S. Environmental Protection Agency  
10 75 Hawthorne Street  
11 San Francisco, California 94105

12 B. Notifications of communications shall be deemed submitted on the date they are  
13 postmarked and sent by certified mail, return receipt requested, or deposited with an overnight  
14 mail/delivery service.

15 **XXI. COSTS OF SUIT/COMPLIANCE MONITORING**

16 A. The City will pay Baykeeper and Surfrider up to \$10,000 for compliance  
17 oversight. Payment under this Section shall be made within thirty (30) days of receipt of a  
18 properly documented invoice showing the nature of the oversight, time expended, and the charge  
19 per hour. Such payments shall not exceed the total listed herein during the period of this Second  
20 Partial Consent Decree.

21 B. In the event Baykeeper or Surfrider prevail in demonstrating that the City is not in  
22 compliance with the Second Partial Consent Decree, Baykeeper or Surfrider may be entitled to  
23 recover fees consistent with Section 1365 of the CWA.

24 C. Upon execution of a Final Consent Decree, Baykeeper and Surfrider may be  
25 eligible for reasonable attorneys' fees.  
26



1 **XXIV. TERMINATION**

2 A. This Second Partial Consent Decree shall terminate on June 30, 2007, provided  
3 that the City has certified to EPA with appropriate documentation that the City has complied  
4 with all of its obligations under this Second Partial Consent Decree and paid any penalties, fees  
5 and interest due under Section XI (Stipulated Penalties). To the extent this Second Partial  
6 Consent Decree includes a task or requirement that extends beyond June 30, 2007, that task or  
7 requirement shall be prorated or apportioned on a monthly basis. requirements

8  
9 B. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

10 C. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

11  
12 D. The Second Partial Consent Decree shall not terminate: 1) if the City has not  
13 filed the certification described in Paragraph A, or 2) if EPA, Baykeeper or Surfrider object in  
14 writing to the City's certification within three (3) months of the City's certification. Such  
15 objections shall set forth the specific components of the certification alleged not to be complete.  
16 If any party objects in writing to the City's certification, such dispute shall be resolved pursuant  
17 to Section IX (Dispute Resolution). This Second Partial Consent Decree shall remain in effect  
18 pending resolution of the dispute, provided however, the City shall not be obligated to perform  
19 any obligation not expressly contested pursuant to this Paragraph.  
20

21 **XXV. SIGNATORIES**

22  
23 A. The signatories for the Parties certify that they are fully authorized to enter into  
24 the terms and conditions of this Second Partial Consent Decree and to execute and legally bind  
25 such Parties to this document.

26 B. The Parties shall identify on the attached signature pages the name, address,  
27

1 telephone number, and fax number of one (1) agent who is authorized to accept service by mail  
2 on the Party's behalf with respect to all matters arising under or related to this Second Partial  
3 Consent Decree.

4  
5 **XXVI. COUNTERPARTS**

6 This Second Partial Consent Decree may be executed in any number of counterpart  
7 originals, each of which shall be deemed to constitute an original agreement, and all of which  
8 shall constitute one (1) agreement. The execution of one counterpart by any party shall have the  
9 same force and effect as if that party had signed all other counterparts.

10  
11 **XXVII. PUBLIC COMMENT**

12 The United States consents to the entry of this Second Partial Consent Decree subject to  
13 the publication of notice of this Second Partial Consent Decree pursuant to 28 C.F.R. 50.7. The  
14 United States reserve its rights to withdraw or withhold consent to this Second Partial Consent  
15 Decree if public comments disclose facts or considerations indicating this Second Partial  
16 Consent Decree is inappropriate, improper, or inadequate. The City agrees to entry of this  
17 Second Partial Consent Decree without further notice.

18  
19  
20 IT IS SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2006.

21  
22  
23 \_\_\_\_\_  
24 HON. RUDI M. BREWSTER  
25 UNITED STATES DISTRICT COURT JUDGE  
26 SOUTHERN DISTRICT OF CALIFORNIA  
27

1 THE UNDERSIGNED PARTY enters into this Second Partial Consent Decree in the matter of  
2 United States, et al. v. City of San Diego.

3  
4 FOR THE UNITED STATES OF AMERICA:  
5

6  
7  
8 \_\_\_\_\_  
9 SUE ELLEN WOOLDRIDGE  
10 Assistant Attorney General  
11 Environment and Natural Resources  
12 Division  
13 United States Department of Justice  
14 Washington, DC 20530

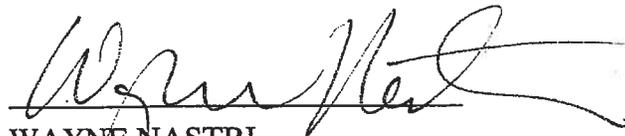
\_\_\_\_\_ Dated

15 \_\_\_\_\_  
16 BRADLEY O'BRIEN  
17 Environmental Enforcement Section  
18 Environment and Natural Resources  
19 Division  
20 United States Department of Justice  
21 301 Howard Street, Suite 1050  
22 San Francisco, California 94105

\_\_\_\_\_ Dated

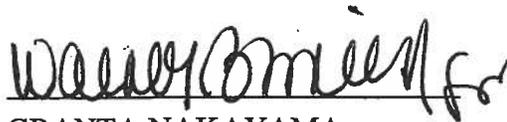
1 THE UNDERSIGNED PARTY enters into this Second Partial Consent Decree in the matter of  
2 United States, et al. v. City of San Diego.

3  
4 FOR THE ENVIRONMENTAL PROTECTION AGENCY:

5  
6  
7 

8 WAYNE NASTRI  
9 Regional Administrator  
10 U.S. Environmental Protection Agency  
11 Region IX  
12 75 Hawthorne Street  
13 San Francisco, California 94105

26 JULY 2006  
Dated

14  
15 

16 GRANTA NAKAYAMA  
17 Assistant Administrator  
18 for Enforcement & Compliance Assurance  
19 U.S. Environmental Protection Agency  
20 1200 Pennsylvania Avenue, NW  
21 Washington, DC 20460-0001

8/10/06  
Dated

22 

23 GAIL COOPER  
24 Office of Regional Counsel  
25 U.S. Environmental Protection Agency  
26 Region IX  
27 75 Hawthorne Street  
28 San Francisco, California 94105

7/24/06  
Dated

1 THE UNDERSIGNED PARTY enters into this Second Partial Consent Decree in the matter of  
2 United States, et al. v. City of San Diego.

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FOR SAN DIEGO BAYKEEPER:

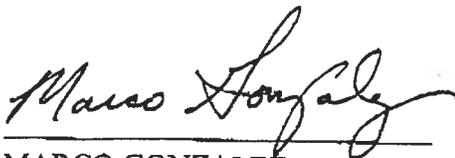


BRUCE REZNIK

Dated

Executive Director

San Diego Coastkeeper (formerly San Diego Baykeeper)



MARCO GONZALEZ

Dated

Coast Law Group LLP

169 Saxony Road, Suite 204

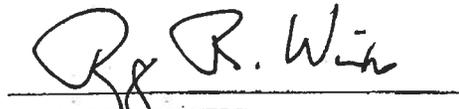
Encinitas, CA 92024

1 THE UNDERSIGNED PARTY enters into this Second Partial Consent Decree in the matter of  
2 United States, et al. v. City of San Diego.

3  
4 FOR SURFRIDER FOUNDATION:

5  
6  
7  
8   
9 Michelle C. Kremer  
10 Chief Operating Officer  
11 Surfrider Foundation

7/12/06  
Dated

12  
13  
14  
15   
16 RORY H. WICKS  
17 Coast Law Group LLP  
18 169 Saxony Road, Suite 201  
19 Encinitas, CA 92024

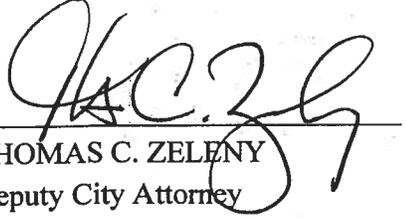
07/12/2006  
Dated

1 THE UNDERSIGNED PARTY enters into this Second Partial Consent Decree in the matter of  
2 United States, et al. v. City of San Diego.

3  
4 FOR THE CITY OF SAN DIEGO:

5  
6  
7  
8   
9 RICHARD HAAS  
10 Deputy Chief of Public Works  
11 202 C Street  
12 San Diego, California 92101

  
7/6/06  
Dated

13  
14   
15 THOMAS C. ZELENY  
16 Deputy City Attorney  
17 Office of the San Diego City Attorney  
18 1200 3<sup>rd</sup> Avenue, Suite 1100  
19 San Diego, California 92101

7/6/06  
Dated

