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W 21a

ADDENDUM TO COMMISSION PACKET
FOR
ENERGY, OCEAN RESOURCES AND FEDERAL
CONSISTENCY DIVISION

FOR Wednesday, October 7, 2009

This addendum contains Correspondence for Item No. W 21a

**CC-056-09, City of San Diego, Resubmittal, Consistency Certification for
Secondary Treatment Waiver**

[Note – This packet consists of correspondence received for August 13, 2009, hearing on
CC-043-09 (i.e., the City's first submittal).]



Heal the Bay

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August 11, 2009

Chairperson Neely and Commissioners
California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, CA 94105-2219

Sent via Email [mdelaplaine@coastal.ca.gov]

Re: Comments on Consistency Certification No. CC-043-09 *Reissuance of CWA Section 301(h) Secondary Treatment Waiver for Point Loma Wastewater Treatment Plant Discharges offshore of San Diego.*

Dear Chairperson Neely and Commissioners,

On behalf of Heal the Bay, we appreciate the opportunity to provide the following comments on the above referenced Consistency Certification. Heal the Bay is an environmental organization with over 13,000 members dedicated to improving water quality in Santa Monica Bay and Southern California coastal waters for people and marine life.

We are writing to oppose the Consistency Certification for the reissuance of a waiver of Clean Water Act standards for the E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant and Ocean Outfall ("Plant" or "PLOO"). The Plant is one of the largest sewage treatment plants in California, dumping about 200 million gallons of wastewater into the Pacific Ocean every day. Despite the fact that publicly owned treatment works were required to upgrade to secondary treatment standards over 30 years ago, the Plant continues to operate under a waiver from these federal standards. As mentioned in the Staff Report, "the City of San Diego is the only municipal ocean discharger that has not either achieved or committed to implementing full secondary treatment." (Page 2). In fact, the Plant is the only major POTW in the entire country with a waiver that has not committed to upgrading to secondary treatment. From a technical standpoint, every other major POTW in the country has proven upgrading to secondary treatment is entirely feasible. As a policy matter, allowing one major discharger to continue to treat our oceans as a dumping ground for minimally-treated sewage is unjustified and unacceptable, especially at a time when water recycling is a critical part of the solution to California's water crisis. Secondary treatment is essential for any water recycling effort. As a legal matter, the Plant has failed to meet its burden of proof to obtain another 301(h) waiver under the Clean Water Act and has failed to comply with Sections 30230 and 30231 of the California Coastal Act. The Coastal Commission Staff recommendation to concur with the City of San Diego's consistency certification is thus unsupported by evidence and inappropriate.



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Applicable Legal Standards

As discussed in NRDC and Heal the Bay's January 28, 2009 letter to USEPA, the Plant has not met its burden of proof to obtain another 301(h) waiver under the Clean Water Act. To be eligible to receive a 301(h) waiver, the applicant must demonstrate that it can meet the "environmentally stringent criteria" under the Clean Water Act.¹ For many similar reasons, the discharge is also not consistent with applicable sections of the California Coastal Act. Specifically, we disagree with Staff's statement that the City's discharges under the renewal of the secondary treatment waiver would be consistent with the water quality and marine resources policies of the Coastal Act (Sections 30230, 30231) (Staff Report at Page 3).

Section 30230 states,

"Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes."

Section 30231 states,

"The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, **encouraging waste water reclamation**, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. [Emphasis added]"

The practice of dumping minimally treated sewage in the ocean is not consistent with these sections of the California Coastal Act, as it does not lead to maintenance, enhancement, or restoration of marine resources. Also as discussed in further detail below, current water reclamation efforts are inadequate and the monitoring program is insufficient as it does not adequately capture the movement of the plume and hence characterize the influence of the outfall on areas of special biological significance.

¹ *In re Mayaguez Regional Sewage Treatment Plant Puerto Rico Aqueduct and Sewer Authority*, 4 E.A.D. 772 (1993); 33 U.S.C. § 1311(h).



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Water Reclamation

As cited above, the California Coastal Act looks towards water reclamation as a key component in protecting coastal waters and habitats. The Point Loma Plant must go to full secondary to create much needed water recycling opportunities in San Diego. The region has aggressively moved forward on a controversial desalination plant at Carlsbad with considerable environmental impacts and extensive financial and energy costs, so clearly San Diego has already expressed an interest in finding new, reliable sources of local water. Upgrading the Plant is smart way for San Diego to create this reliable source of local water, yet San Diego refuses to embrace water recycling as a solution to augment their increasingly scarce water supplies.

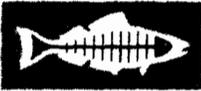
San Diego's neighbors to the north have redoubled their water recycling efforts—Orange County Water District, Los Angeles County Sanitation Districts, and West Basin Municipal Water District produce nearly 100 MGD of recycled wastewater, and recently the LA County Sanitation Districts agreed to a long term goal in the recently updated Santa Monica Bay Restoration Plan of over 200 MGD from their secondary treatment plant in Carson. Meanwhile, Pt. Loma continues to operate at primary treatment and San Diego continues to have a poor record on water recycling.

Earlier this year, the State Water Resources Control Board passed a comprehensive policy to increase water recycling statewide to combat California's increasing water scarcity due to climate change, growth, and recent water rights court decisions. The use of water recycling has never been more important to augment local water supplies and to move California to sustainable water management.

Monitoring Program

In order to ensure that marine resources are maintained as required by the California Coastal Act, an adequate monitoring program is necessary. Although Commission staff members have stated that the monitoring program has improved since the last waiver in 2002, we have yet to see these improvements. In fact at least three reports demonstrate that, among other deficiencies, the Plant's monitoring program is inadequate and therefore the Plant is unable to assure compliance with water quality standards, the protection and propagation of a balanced indigenous population, or compliance with the Ocean Plan.

- Scripps Institute of Oceanography Report (2004)
- Assessment of Water Conditions at Cabrillo National Monument (2006)
- University of California, San Diego Report (2007)



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Scripps Institute of Oceanography Report (2004)

After being hired by the City of San Diego to assess the adequacy of the Plant's monitoring program, Scripps Institute of Oceanography released its findings in 2004. Among other findings, Scripps bluntly concluded, "We don't know where the water goes, or where the plume goes."² Scripps described a number of other inadequacies in Plant's monitoring program:

- "The City does not adequately monitor or understand the physical circulation of the coastal waters relevant to the Point Loma Ocean Outfall in terms of spatial and temporal variability and synoptic patterns (e.g., seasonal variability or in response to episodic events), or the geographic extent of the 'receiving waters.'"
- "The location, movement, and dispersal of the plume from the outfall is also inadequately monitored and understood."
- "Because of the lack of knowledge of the plume's location, its impact on the planktonic community is unclear. The spatial and temporal resolution, and the types of measurements currently made are inadequate to quantify the effects of chronic nutrient loading on the plankton relative to natural nutrient sources and other anthropogenic sources."
- "Understanding the impact of the outfall on the benthic environment requires modification of the existing monitoring program, primarily to provide more appropriate control stations. Currently the control sites, because they are substantially different in the character of their sediments from the other monitoring sites, and because they may be contaminated from sources other than Point Loma, do not provide a basis for evaluating benthic impacts with confidence."
- "Present monitoring does not include integration of littoral transport cells. Therefore, it is possible that contaminated sediments are accumulating downslope from the shelf, and because this area is not monitored, there is presently no way to know if the effects of the PLOO or other sources of contaminants are accumulating in these areas."³

Further, the report states that in 2004 the City was considering an increase in the Plant's daily discharge from 175 mgd to the Plant's full capacity of 240 mgd. In response, Scripps stated, "A

² Scripps Institute of Oceanography, "Point Loma Outfall Project" (Sep. 2004), at 26.

³ Scripps Institute of Oceanography, "Point Loma Outfall Project" (Sep. 2004), at 3.



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major conclusion of this review is that there is currently insufficient information to determine how the projected increase in the discharge at Point Loma would affect water quality"⁴ According to the Staff Report, the Plant made changes to its monitoring program (Page 5); however, the details of the changes were not provided in the staff report. Also, it is not indicated that these changes were made in light of Scripps' findings. Since the Plant has increased its daily discharge to 208 mgd for 2009, and is projected to further increase to 219 mgd for 2014,⁵ it follows that the Plant's current monitoring program is inadequate to determine how its current increased discharge affects water quality. As such, San Diego has failed to meet the burden of proof laid out in Section 301(h) of the Clean Water Act.

Assessment of Water Conditions at Cabrillo National Monument (2006)

Just to the south of the Plant lies the Cabrillo National Monument, part of the National Park Service ("Cabrillo"). In 2006, scientists at the Marine Science Institute at UC Santa Barbara, and the Bodega Marina Laboratory, released a study of the water quality conditions at Point Loma for the National Park Service's Water Resources Division.⁶ Like the Scripps report, this report discusses the problems that arise from insufficient information about the effluent plume:

This raises the possibility that the PLOO contributes to background concentrations of these constituents in the coastal ocean (i.e., farfield effects). Four of the analytes detected (copper, silver, cyanide and ammonia) were concentrated enough on average in effluent during 2004 to exceed EPA daily maxima or acute exposure criteria for marine life. Although the circumstances that could result in cross-shore transport of the PLOO effluent plume all the way to [Cabrillo] have not been described, it is possible that exposure to poorly diluted effluent could harm some biota. Such an exposure occurred in 1992 at [Cabrillo] when the outfall pipe was ruptured near shore. . . . [We] do not know if the PLOO can be reasonably ruled out as a source of these pollutants in the ocean near [Cabrillo]."⁷

University of California, San Diego Report (2007)

The City of San Diego also requested a scientific review of the impact of the Plant by the Environment and Sustainability Initiative at the University of California, San Diego. The report,

⁴ *Id.* at 26 (emphasis original).

⁵ EPA Tentative Decision, at 17.

⁶ Engle, D. and Largier, J., "Assessment of Coastal Water Resources and Watershed Conditions at Cabrillo National Monument, California" (Aug. 2006).

⁷ *Id.* at 141.



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which was released in 2007, did not conduct new research, but rather reviewed existing analyses and reports as requested by the City. Like in the 2004 report, the 2007 report found that the Plant's monitoring program was insufficient to track the effluent plume:

- "[T]he complexity of the oceanographic conditions in the Point Loma area demands more observations before any conclusions can be made about the transport of the plume."⁸
- "The physical oceanographic data at present is inadequate to predict with certainty either the location or the dilution rate of the plume."⁹

This report also noted that PCB levels in rockfish caught close to the outfall were "significantly higher" than PCB levels in fish north of the outfall. This may indicate an absence of a balanced indigenous population in the vicinity of the outfall. Yet due to the inadequacies of the monitoring program, there "currently is no way to know definitively whether the elevated levels" were due to the Plant or another source.¹⁰

This is not meant to be an exhaustive analysis of the Plant's application. Rather, these three reports demonstrate that the Plant has failed to meet its burden of proof and ensure that the discharge is consistent with Sections 30230 and 30231 of the Coastal Act. Staff should consider the findings of these reports in the Staff Report and to ensure the proposed monitoring plan adequately captures impacts of the PLOO before making the recommendation to concur with the with the City's consistency certification.

For the reasons discussed above, we urge the Commission to *not* concur with this consistency certification. This plant is already well-behind the rest of the country, and after 30 years of evading requirements of the Clean Water Act, the City needs to finally commit to upgrading to secondary treatment to provide opportunities for recycled water use and for the sake of the marine ecosystems that the California Coastal Act protects. Thank you for your consideration of these comments.

⁸ Environment and Sustainability Initiative, University of California, San Diego, "Final Report: Point Loma Outfall Review" (Oct. 1, 2007), at 4.

⁹ *Id.* at 16.

¹⁰ *Id.* at 9.



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If you have any questions, please contact us at 310-451-1500.

Sincerely,

Mark Gold, D. Env.
President, Heal the Bay

Michelle Mehta
Attorney, Natural Resources Defense Council

W. Susie Santilena, M.S., E.I.T.
Water Quality Scientist, Heal the Bay

CC-043-09, City of San Diego
EPA Response (received by CCC staff via email) to Heal the Bay
comments to CCC dated August 11, 2009

We responded to these comments in our joint response to comments with RB9.

35. January 28, 2009
Michelle Mehta
David Beckman
Mark Gold,
NRDC/Heal the Bay
Via email/oppose

Comment:

NRDC and Heal the Bay oppose reissuance of a 301(h) waiver for the Point Loma WTP. Commenters state that the USEPA policy allowing discharge of minimally treated sewage to the ocean is unjustified and unacceptable. The commenters state that the WTP fails to comply with 40 CFR 125.63 and present three reports (Scripps Institute of Oceanography, "Point Loma Outfall Project", September 2004; Engle, D. and Largier, J., "Assessment of Coastal Water Resources and Watershed Conditions at Cabrillo National Monument, California", August 2006; and Environment and Sustainability Initiative, University of California, San Diego, "Final Report: Point Loma Outfall Review", October 1, 2007), as evidence that the 301(h) monitoring program is inadequate to demonstrate compliance with 40 CFR 125.62.

a. 2004 Report: The commenters cite the inadequacies from the 2004 report, as follows:

"The City does not adequately monitor or understand the physical circulation of the coastal waters relevant to the Point Loma Ocean Outfall in terms of spatial and temporal variability and synoptic patterns (e.g., seasonal variability or in response to episodic events), or the geographic extent of the 'receiving waters'."

"The location, movement, and dispersal of the plume from the outfall is also inadequately monitored and understood."

"Because of the lack of knowledge of the plume's location, its impact on the planktonic community is unclear. The spatial and temporal resolution, and the types of measurements currently made are inadequate to quantify the effects of chronic nutrient loading on the plankton relative to natural nutrient sources and other anthropogenic sources."

“Understanding the impact of the outfall on the benthic environment requires modification of the existing monitoring program, primarily to provide more appropriate control stations. Currently the control sites, because they are substantially different in the character of their sediments from the other monitoring sites, and because they may be contaminated from sources other than Point Loma, do not provide a basis for evaluating benthic impacts with confidence.”

“Present monitoring does not include integration of littoral transport cells. Therefore, it is possible that contaminated sediments are accumulating downslope from the shelf, and because this area is not monitored, there is presently no way to know if the effects of the PLOO or other sources of contaminants are accumulating in these areas.”

The commenters further describe that the 2004 report states the City was considering an increase in the plant’s daily discharge from 175 mgd to 240 mgd and that a major conclusion of the 2004 report was there is currently insufficient information to determine how the projected increase in the discharge at Point Loma would affect water quality. The commenters state: “Although it does not appear that the Plant made changes to its monitoring program in light of the 2004 report findings by Scripps, the Plant has in fact increased its daily discharge to 208 mgd for 2009, and is projected to further increase to 219 mgd for 2014. The commenters conclude it follows that the Plant’s monitoring program is inadequate to determine how this current and projected increased discharge affects water quality.”

Response:

USEPA and the Regional Water Board disagree that the City has failed to meet its burden of proof that the monitoring program assures compliance with water quality standards; a balanced indigenous population, or compliance with the California Ocean Plan. As evidence, the introduction to the 2004 report, page 1, states:

“The City of San Diego’s ocean monitoring program has been underway since 1991, in response to regulatory requirements associated with the discharge of wastewater from the PLOO. This effort provides a very significant foundation, particularly in the benthos, for understanding environmental impacts. The City’s program has been useful to regulatory agencies in assessing requirements for treatment and provides the context for future work.

The City, working with other interested stakeholders, recognized that new information is available from ongoing research, and new monitoring capabilities are being developed. As a result, the City asked for this report to help consider enhancements to its ongoing monitoring effort making it more effective in assessing the impact to human and ecosystem health and preparing for the possibility of increased output from the PLOO in the future. The report and its recommendations should not be taken as criticism of the City’s program. Rather, they represent a forward-looking long-term view of the broad needs of the region. The report provides a means for the City to gain a more quantitative understanding of the role of the PLOO in the local and regional context of water motion,

planktonic and benthic ecosystems, and potential human health effects. We have also addressed emerging technologies that may soon be suitable for inclusion in routine monitoring programs to help responsible agencies anticipate and prepare.”

With respect to the 2004 study, USEPA and the Regional Water Board acknowledge the desirability of developing more rigorous tools to characterize the impact of the City’s sewage treatment on biological communities and distinguish these impacts from the possible influence of confounding factors. The commenters note that the 2004 study identifies the possibility of developing such tools to improve the characterization of impacts to planktonic and benthic communities. However, USEPA believes that the analytical methods currently available to USEPA are sufficient to assess compliance with the 301(h) criteria.

With regard to the planktonic community, USEPA agrees that the analytic tools currently available cannot specifically address the relative effects of the outfall and other potential inputs (e.g., ambient water temperature) on community structure. However, this level of analysis is not necessary given that the data is sufficient to warrant a conclusion that the planktonic community is essentially intact; and, hence, not being adversely affected by the City’s discharge.

Similarly, with regard to the benthic community, USEPA agrees that comparisons of stations potentially affected by the City’s discharge with the appropriate control stations are a useful tool for assessing impacts of the discharge on the benthic community and that it is always appropriate to consider whether better control stations can be identified. However, no station is likely to serve as the perfect control. USEPA is persuaded that the control stations used in this assessment provide useful information that supports the conclusion that benthic communities are not being unduly stressed by the discharge, particularly in light of other measures of benthic community health analyzed in the TDD (TDD, pp. 56-64).

With respect to the criticism that USEPA failed to evaluate current and projected increased discharges from Point Loma WTP and resulting effects on water quality, USEPA points out that pages 16-21 and Table 1 of the TDD describe both the current and projected increased flows from the treatment plant through 2014. The average annual flow for 2007 was 161 mgd and the projected average annual flow for 2014 is 202 mgd. These actual and projected flows remain below the flows evaluated by USEPA for the 1995 301(h) application. Consequently, in the 2008 TDD, USEPA has continued to evaluate impacts to water quality using the initial dilution values it reviewed in 1995 (TDD, pp. 9-20, 32-38, 40-43). Based on these initial dilution values and measures of effluent quality, USEPA concluded that California Ocean Plan water quality standards would be met and that the existing monitoring program is adequate to evaluate compliance with state water quality standards.

b. 2006 Report: The commenters cite the inadequacies from the 2006 report, as follows:

Insufficient information about the effluent plume "...raises the possibility that the PLOO contributes to background concentrations of these constituents in the coastal ocean (i.e., farfield effects). Four of the analytes detected (copper, silver, cyanide and ammonia) were concentrated enough on average in effluent during 2004 to exceed USEPA daily maxima or acute exposure criteria for marine life. Although the circumstances that could result in cross-shore transport of the PLOO effluent plume all the way to [Cabrillo] have not been described, it is possible that exposure to poorly diluted effluent could harm some biota. Such an exposure occurred in 1992 at [Cabrillo] when the outfall pipe was ruptured near shore. ... [We] do not know if the PLOO can be reasonably ruled out as a source of these pollutants in the ocean near [Cabrillo]."

Response:

With regard to the 2006 study, the 1992 outfall break was a highly anomalous condition that is not indicative of the impacts of the City's current and proposed discharge. The discharge from the broken outfall was not properly diffused and was in much shallower water than the current discharge, greatly reducing initial dilution. In addition, the discharge from the 1992 outfall break was much closer to shore than the City's current discharge. Thus, it is not surprising that the un-permitted discharge from the broken outfall would have had some impacts on resources in Cabrillo National Monument; however, such impacts provide little support for the proposition that a much better diffused disinfected wastefield being discharged much further from shore is likely to adversely affect water quality.

For the 2008 TDD, USEPA evaluated the Point Loma WTP effluent data for metals, ammonia, and toxic organic chemicals detected in the undiluted effluent at least once, during the period 2002 to 2006. These included copper, silver, cyanide, and ammonia. For this response, USEPA reviewed data worksheets prepared for the TDD and compared maximum effluent values in 2004 for copper, silver, cyanide, and ammonia to USEPA's water quality criteria for the protection of aquatic life (CMC, one-hour average). While CMC values can be exceeded in the undiluted effluent, under the critical initial dilution condition modeled by USEPA (99:1), CMC values are achieved. This conclusion is supported by acute toxicity testing results for fish and shrimp, conducted using the California Ocean Plan regulatory dilution value for acute toxicity (20.4:1), showing no acute toxicity. USEPA believes the effluent analyses conducted for the TDD support the conclusion that ocean waters near Cabrillo National Monument are protected under the conditions of the currently permitted discharge.

c. 2007 Report: The commenters cite the inadequacies from the 2007 report, as follows:

"[T]he complexity of the oceanographic conditions in the Point Loma area demands more observations before any conclusions can be made about the transport of the plume."
University of California, San Diego, 2007.

“The physical oceanographic data at present is inadequate to predict with certainty either the location or the dilution rate of the plume.”

The commenters also state the 2007 report notes that PCB levels in rockfish caught close to the outfall were “significantly higher” than PCB levels in fish north of the outfall and that there is no way to know definitively whether the elevated levels were due to the plant or another source.

The commenters conclude these reports demonstrate that in at least one of the criteria to gain a 301(h) waiver, the plant has failed to meet its burden of proof that the monitoring program assures compliance with water quality standards, a balanced indigenous population, or compliance with the Ocean Plan.

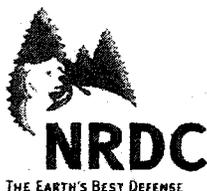
Response:

The 2007 report focused on microbiology, sediment chemistry, and bioaccumulation. USEPA notes that the introduction to the 2007 report, page 3, states: “We found no evidence of significant adverse impacts of the PLOO.”

With respect to physical oceanography and plume transport, the 2007 report, page 4, concluded that the probability of the plume surfacing was very low and the spatial distribution of bacteria suggests the plume is trapped at depth and does not reach the shore. The report also noted that hydrographic work to track the plume and fine-scale modeling in order to better understand shoreward plume transport are both planned by the City for the near future and monitoring for these analyses is already underway.

The TDD’s conclusions regarding impacts on fish are based on USEPA’s review of the applicant’s fish monitoring data collect pre-discharge (1991-1993) and from 1994-2006. Regarding the presence of PCBs in fish in the vicinity of the outfall, USEPA disagrees with the commenters’ assertion. USEPA has concluded that regional data do not demonstrate a spatial-temporal pattern indicating an impact from the outfall. USEPA has determined that the modified discharge allows for recreational activities (fishing) beyond the zone of initial dilution. Note that USEPA disagrees with the 2007 report’s conclusion that the LA-5 disposal site is the most likely source of significant PCB contamination in fish on the Point Loma shelf. USEPA believes that more comprehensive PCB monitoring in the San Diego region could provide: additional information to better characterize PCB levels in regional sediments and a more thorough explanation for the observed PCB contamination in the region’s fish.

No changes have been made to the final decision or order/permit in response to this comment.



NATURAL RESOURCES DEFENSE COUNCIL

September 10, 2009

Colonel Thomas H. Magness, IV
58th Commander, Los Angeles District
U.S. Army Corps of Engineers
915 Wilshire Blvd., Suite 1101
Los Angeles, CA 90017

Mr. David J. Castanon
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Los Angeles District
Box 532711
Los Angeles, CA 90053-2325

Dear Col. Magness and Mr. Castanon:

The Natural Resources Defense Council ("NRDC"), a national, non-profit environmental organization with over 250,000 members and activists in California, provides this letter to express the concerns of its members about a pending application for a nationwide permit ("NWP") under Section 404 of the Clean Water Act ("CWA") for the proposed Gregory Canyon Landfill ("Landfill") in northern San Diego County. The NWP would allow the applicant, Gregory Canyon Ltd. ("GCL"), to construct a bridge across the San Luis Rey River for the sole purpose of providing access to Gregory Canyon where 30 million tons of garbage is proposed to be dumped.

NRDC's position is that issuance of a NWP to allow construction of the bridge and the Landfill would be wrong because the Army Corps of Engineers ("Army Corps" or "Corps") (1) has improperly concluded that it does not have jurisdiction under the CWA over the blue-line stream in Gregory Canyon, (2) has ignored its legal obligations under the National Environmental Policy Act ("NEPA") to take a hard look at the impacts of the entire Landfill project, and (3) has failed to comply with the consultation requirements of Section 106 of the National Historic Preservation Act ("NHPA").

I. Background

Briefly, the applicant proposes to construct a 308-acre Landfill footprint in Gregory Canyon adjacent to the San Luis Rey River. The area along the river is designated as critical habitat for the endangered least Bell's vireo and the southwestern willow flycatcher, and provides important habitat for the endangered southwestern arroyo toad and the threatened coastal California gnatcatcher. Golden eagles have been identified on

Gregory Mountain, which borders the east side of the canyon. Gregory Canyon itself contains coastal sage scrub and live oak woodland habitat that supports numerous species. The Landfill would significantly impact this habitat.

The Landfill also would threaten important sources of drinking water. The San Diego Aqueduct, two pipelines that supply most of the drinking water used in San Diego County, bisects the site. In addition, the Pala Basin aquifer and other connected downstream aquifers that underlie the San Luis Rey River provide critical drinking water sources for thousands of residents and businesses throughout the region.

Finally, the proposed Landfill also would desecrate sites considered sacred by the Pala Band of Mission Indians ("Pala Band") and other Luiseños. These sites include Gregory Mountain, a residence of the powerful spiritual being Taakwic and a site considered to be a source of spiritual power and healing, and Medicine Rock, a spiritual site with ancestral rock art figures that is located just outside the footprint of the proposed Landfill.

II. Because The Corps Has Jurisdiction Over The Stream In Gregory Canyon, An Individual Section 404 Permit Is Required.

The Corps' position regarding its jurisdiction over fill activities in Gregory Canyon has changed over the years. Based on a jurisdictional delineation completed by GCL's consultant, Helix Environmental Planning, Inc., the original Section 404 permit application submitted in 1998 identified impacts to 7.3 acres of jurisdictional waters from construction of the bridge, the Landfill footprint, and a proposed 65-acre borrow pit. These included wetlands and other waters identified by the presence of an ordinary high water mark ("OHWM"). Even after the project design was modified, on May 1, 2001, the Corps determined that the footprint of the proposed Landfill contained approximately 1.03 acres of waters of the United States. That conclusion was based on the presence of an OHWM in the Gregory Canyon stream, an updated 2000 Jurisdictional Report by Helix, and site visits by Mr. Terry Dean of the Corps.

At that time, however, the Corps' jurisdiction was in question because of the ruling in *Resource Investments, Inc. v. U.S. Army Corps of Engineers*, 151 F.3d 1162 (9th Cir. 1998), that there was no jurisdiction under the CWA over solid waste landfills if a permit for the landfill had been issued under the Resource Conservation and Recovery Act ("RCRA") or a state-law equivalent. In response to that case, the Corps and EPA issued new rules confirming CWA jurisdiction over fill activities at landfills. 67 Fed. Reg. 31,129 (May 9, 2002). In a letter to GCL dated January 17, 2003, the Corps acknowledged that it had withdrawn GCL's previous Section 404 permit application, and indicated that any new Section 404 permit application would need to address fill activities in Gregory Canyon itself.

Because the new rule confirmed that the Corps could regulate fill activities in Gregory Canyon, GCL maneuvered the Corps into making a complete about-face regarding its jurisdiction. In October of 2003, representatives of GCL and their consultant, former

Corps employee David Barrows, met with Mr. Durham and Mr. Castanon regarding the project, and Mr. Barrows claimed that there was no OHWM in Gregory Canyon. In response to the Corps' request, in May of 2004, Mr. Barrows submitted a new jurisdictional report prepared by URS Corporation ("URS Report").

The URS Report dismissed the previous delineation by Helix, and claimed that there were no "waters of the United States" in Gregory Canyon. URS supported that conclusion primarily with hydrological modeling data, which URS argued showed that regular water flows in the canyon did not create an OHWM. Based on the URS Report, the Corps reversed its position, and in a letter dated October 28, 2004, agreed that there were no longer any "waters of the United States" in Gregory Canyon. This decision limited the Corps' jurisdiction to the bridge crossing of the San Luis Rey River.¹

The Corps maintained that position even though the Pala Band provided a critique of the URS modeling in May of 2005, and photographs of significant water flows in Gregory Canyon from January of that year. While the San Diego County Flood Control District determined that the flows in the photographs were from a two-to-five year storm event, URS claimed that the flows were representative of 10-37 year flows based on their previous modeling (*i.e.*, the 14.1-inch annual rainfall modeling). The Corps agreed with URS as indicated in its letter to the Pala Band dated November 9, 2005.

The Pala Band rejected the Corps' position in a letter dated March 10, 2006. We have reviewed that letter and agree with its conclusions.

First, the Corps' theory that the OHWM disappeared due to "erosion and accretion" is not supported by any evidence. The Corps had theorized that the OHWM had disappeared as the result of small to moderate storm events that caused surface flow to spread out over the valley floor, depositing sediment, eliminating physical evidence of the stream channels, and leaving only marginal evidence of surface flow. However, the Corps offered no evidentiary basis for this novel theory. In fact, the Corps has admitted that this would be a "fairly unusual" situation for an ephemeral stream, because the typical dry land river/stream system does not usually exhibit this type of erosion/accretion process.

Second, NRDC rejects the Corps' position that its jurisdiction is limited to those areas impacted by five-year or smaller flow events. The definition of an OHWM focuses on the presence of *physical evidence* -- such as a "clear, natural line impressed on the bank," the "presence of litter and debris," or "other appropriate means that consider the characteristics of the surrounding areas." 33 C.F.R. § 328.3(e). Contrary to the Corps' position, nothing in the regulations limits the Corps' jurisdiction to those areas of a streambed impacted by five-year or smaller flood events.

¹ We note that the URS modeling was based on a median annual rainfall of 14.1 inches. In recent revisions to the Environmental Impact Report for the Landfill, however, GCL used an annual average rainfall of 25 inches to calculate the "safe yield" from groundwater monitoring wells on the site. If the annual average rainfall is actually 25 inches, the URS modeling cannot be used to support the argument that there is no OHWM in the canyon.

In addition, the Corps' decision on its jurisdiction must be revisited based on the Supreme Court's ruling in *Rapanos v. United States*, 547 U.S. 715 (2006), and guidance issued by the Corps and EPA in response to that decision. While the stream in Gregory Canyon may be a non-navigable and not relatively permanent tributary, it clearly has a significant nexus to the San Luis Rey River, a traditionally navigable water ("TNW"). The fact that the stream in Gregory Canyon has the ability to carry pollutants to a TNW, provides significant habitat for numerous species, and serves as a transitional area between upland areas and the river are all factors the guidance points out as being evidence of a significant nexus.

An accurate determination of the Corps' jurisdiction is critical to ensuring that permitted projects do not frustrate the CWA's stated objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The Corps cannot simply ignore past evidence of an OHWM, and GCL's use of a low annual rainfall amount, to claim no jurisdiction exists. The Corps also cannot limit its jurisdiction over areas with an OHWM created by five-year-or-less storm events, and must revisit its jurisdictional determination based on *Rapanos*.

III. A Nationwide Permit Is Inappropriate For A Project With Such Significant Environmental Impacts.

Even if the Corps did not have jurisdiction over the stream in Gregory Canyon (which we believe it does), authorizing the proposed Landfill by issuing a NWP for construction of the bridge necessary to access the Landfill would be wrong. NWPs were intended for activities that have only "minimal" adverse effects on the environment, such as maintenance activities, minor alterations to existing projects, and minor discharges. 33 U.S.C. § 1344(e); 33 C.F.R. § 330.1(b); 72 Fed. Reg. 11,092 (Mar. 12, 2007). The Corps' rules specifically state that if the "proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the public interest," the Corps "shall" modify the NWP "to reduce or eliminate those adverse effects" or require an individual permit. 33 C.F.R. § 330.1(d).

NRDC believes that the Corps must require an individual permit for the Landfill because landfills are not the type of projects that fit any preapproved NWP category of minimally harmful activities. See 33 U.S.C. § 1344(e). A NWP also would provide no opportunity for public participation, which is critical for a project with such a large ecological footprint. NWPs are for "minor activities that are usually not controversial and would result in little or no public or resource agency comment if they were reviewed through the standard permit process." 67 Fed. Reg. 2020, 2022 (Jan. 15, 2002). While NRDC disagrees strongly with the Corps' abdication of its CWA jurisdiction, it also opposes the use of an NWP to allow the project to proceed.

IV. A Nationwide Permit Is Inappropriate Given The Significant Impacts The Proposed Landfill Would Have On Sacred Gregory Mountain.

As you are aware, the proposed Landfill would result in the disposal of millions of tons of garbage on the side of Gregory Mountain, a site eligible for listing on the National Register of Historic Places. By rule, a NWP cannot be issued for any “activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places . . . until the [District Engineer] has complied with the provisions of 33 CFR part 325, appendix C.” 33 C.F.R. § 330.4(g) (emphasis added). An activity “may affect” a historic resource if it causes the “[i]ntroduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting” or if it “may diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.” 33 C.F.R. Part 325, App. C.15. All of these “adverse effects” would occur if 30 million tons of garbage was buried on this sacred mountain.

The rules also prohibit a non-federal permittee from beginning a proposed activity until the Corps notifies the permittee “that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized.” 33 C.F.R. § 330.4(g)(2). Critically, if activities within the “permit area” will adversely affect a historic property, the Corps may properly require an individual permit. *Id.* at (g)(2)(ii). A “permit area” includes “uplands directly affected as a result of authorizing the work or structures,” and upland areas are considered “permit areas” if the activity (1) “would not occur but for the authorization of the work or structures within the waters of the United States,” (2) is “integrally related to the work or structures to be authorized,” and (3) is “directly associated (first order impact) with the work or structures to be authorized.” 33 C.F.R. Part 325, App. C.1.g. Because the bridge would provide the only means of access to the Landfill footprint (and would provide access only to the Landfill footprint), the “permit area” includes Gregory Mountain, and an individual permit application should be required.²

V. NEPA Requires The Corps To Assess The Environmental Impacts Of The Entire Landfill Project And Evaluate A Range Of Alternatives.

Case law is clear that the scope of analysis under NEPA may extend well beyond the “waters that provide the initial jurisdictional trigger,” and if a development cannot proceed without a Federal permit, the Federal involvement is “sufficient to grant ‘Federal control and responsibility’ over the project” under NEPA. *White Tanks Concerned Citizens, Inc. v. Strock*, 563 F.3d 1033, 1039-40 (9th Cir. 2009); *see also* 33 C.F.R. Part 325, App. B §§ 7.b(1), 7.b(2)(iv)A. Thus, the fact that the area proposed to be filled under the NWP would be small is irrelevant. As the court in *White Tanks* stated, “[i]t is

² As a threshold matter, issuance of any permit by the Army Corps would be premature. First, consultation under Section 106 of the NHPA, which is a prerequisite to issuance, has not yet occurred. In addition, the California Regional Water Quality Control Board has not issued a certification for the project under Section 401 of the CWA.

not the quantity of the water that matters, but the fact that the waters will be affected, and further, whether the waters must be affected to fulfill the project's goals." 563 F.3d at 1041.

There is no argument that "but for" the Corps' approval, a bridge could not be built. Likewise, there is no argument that without the bridge, the proposed Landfill could not be constructed and operated. In other words, as in *White Tanks*, "the developers have told the Corps that, without the permit, the project as they conceive it, could not proceed." 563 F.3d at 1041-42. Because the bridge has no "independent utility" and is required to achieve the "project's goals," the impacts of the entire Landfill project must be analyzed under NEPA.

It is also important to emphasize that the NEPA review for the Landfill must include a full and comprehensive evaluation of alternatives. 42 U.S.C. § 4332(2)(C)(iii). This is especially critical here, because no such consideration has ever been done for this project. Not only has there been no fair-minded consideration of a full range of alternative approaches (e.g., increased waste diversion, utilizing existing landfill capacity more efficiently, movement of waste by rail, etc.), but remarkably no objective, robust evaluation of alternative sites has ever been conducted to determine whether there might actually be a more appropriate location for a landfill than the applicant's own San Luis Rey River-adjacent parcel in Gregory Canyon. In fact, when the County, at the outset, reviewed a range of potential landfill sites, it actually *rejected* Gregory Canyon as a viable site, because the location failed seven out of eight County landfill siting criteria. However, in 1994, the Landfill proponents performed an end-run around the County's siting process and employed a controversial ballot initiative to authorize a landfill on the site, thus circumventing a rigorous alternatives analysis at that time.

While the environmental impact analysis prepared under the California Environmental Quality Act ("CEQA") purported to address several sites, it did so in only a cursory way, looking at two potential alternative sites in the region and then rejecting them summarily based on purported infeasibility. Final EIR at 6-37 to 6-55. Specifically, the EIR concluded that the two alternative sites were infeasible because they weren't owned by the Landfill proponents, GCL, or for sale, and were not zoned for a landfill. *Id.* at 6-46, 6-54 to 6-55. Thus, according to the EIR, the Gregory Canyon site is a superior choice solely because it is available and because its proponents were able to obtain re-zoning by way of a deceptive ballot initiative.

This self-serving, limited, and post-hoc analysis is worse than no analysis at all, because it is intended only to give an impression of fair review when, in fact, the applicant's sole purpose was to compel the selection of its own site. As such, it falls far short of what is required either as a matter of law or as a matter of common sense when, as here, the applicant has selected a previously rejected site literally on the banks of a major water source in a drought-afflicted region like north San Diego County – a site that, "coincidentally," the applicant happens to own. Such an analysis makes a mockery of the common-sense requirements in CEQA and NEPA that a reasoned and fair assessment of

all reasonable alternatives be prepared, circulated for public review and comment, and considered by the decision-maker *before* any permitting decisions are made.

And these obligations exist independently under state and federal law. Thus, however one assesses the adequacy of the CEQA review of this Landfill project, there can be no question that a comprehensive NEPA analysis, including an analysis of alternatives, is vital and legally required.

VI. Conclusion

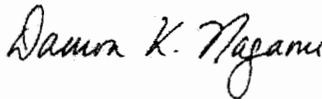
The proposed Landfill presents a real and substantial threat to the region's precious drinking water supplies. It threatens to destroy hundreds of acres of pristine open space and wildlife habitat. It will encroach upon sacred Native American lands. The Corps must not adhere to its erroneous jurisdictional determination and let this project proceed without adequate scrutiny. NRDC strongly urges the Corps to restore its initial jurisdictional determination that Gregory Canyon contains "waters of the United States" and require an individual permit for the proposed project. The Corps also must comply with the NHPA and NEPA. Only in that manner can the Corps ensure that this ecologically valuable watershed is protected to the fullest extent our environmental laws allow.

Thank you for your attention to this important matter.

Very truly yours,



Joel Reynolds
Senior Attorney
Director, Urban Program



Damon Nagami
Staff Attorney

Cc: Mr. Robert Smith, Tribal Chairman, Pala Band of Mission Indians
Ms. Lenore Lamb, Pala Band of Mission Indians
Walter E. Rusinek, Esq., Procopio, Cory, Hargreaves & Savitch LLP
Ted J. Griswold, Esq., Procopio, Cory, Hargreaves & Savitch LLP
Representative Bob Filner, 51st Congressional District
Representative Susan Davis, 53rd Congressional District
Assemblymember Lori Saldaña, 76th Assembly District
Supervisor Pam Slater-Price, San Diego County Board of Supervisors
Supervisor Greg Cox, San Diego County Board of Supervisors
Supervisor Dianne Jacob, San Diego County Board of Supervisors
Supervisor Ron Roberts, San Diego County Board of Supervisors

Col. Thomas H. Magness, IV
September 10, 2009
Page 8 of 8

Supervisor Bill Horn, San Diego County Board of Supervisors
Councilmember Sherri Lightner, San Diego City Council
Council President Pro Tem Kevin Faulconer, San Diego City Council
Councilmember Todd Gloria, San Diego City Council
Councilmember Tony Young, San Diego City Council
Councilmember Carl DeMaio, San Diego City Council
Councilmember Donna Frye, San Diego City Council
Councilmember Marti Emerald, San Diego City Council
Council President Ben Hueso, San Diego City Council
Mr. David Smith, U.S. Environmental Protection Agency
Mr. John Robertus, San Diego Regional Water Quality Control Board
Mr. James J. Fletcher, Bureau of Indian Affairs
Mr. Jim Bartel, U.S. Fish and Wildlife Service
Mr. Hershell Price, San Diego County Water Authority
Olivenhain Municipal Water District
Fallbrook Public Utility District
San Luis Rey Municipal Water District



CITY OF CORONADO

OFFICE OF THE MAYOR

CASEY TANAKA

1825 STRAND WAY • CORONADO, CA 92118 • (619) 522-7320 • CTANAKA@CORONADO.CA.US

August 3, 2009

California Coastal Commission
Chairperson Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Mark Delaplaine

SUBJECT: Coastal Commission Meeting, Thursday, August 13, 2009.

Item 11b. Federal Consistency CC-043-09 (City of San Diego)
Consistency Certification by City of San Diego for secondary treatment waiver
(i.e., Environmental Protection Agency (EPA) Reissuance under section 301(h) of
the Clean Water Act, of a modified National Pollutant Discharge Elimination
System (NPDES) Permit) for Point Loma Wastewater Treatment Plant Discharges
offshore of San Diego, San Diego County. (MPD-SF)

Dear Commissioners:

The City of Coronado would like to express its complete support for the reissuance of the 301 (h) modified NPDES permit for the City of San Diego's E. W. Blom Point Loma Wastewater Treatment Plant.

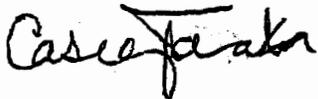
The Point Loma Wastewater Treatment Plant is a major component of the Metropolitan Sewerage System, which is operated by the City of San Diego, with the participation of fifteen other municipalities and agencies. Nearly one third of the total flow to the system originates from these participating agencies. As a participating agency, the City of Coronado has a unique interest in decisions that affect the operation of the Metro system. Additionally, as a coastal city with approximately 9.75 miles of ocean coastline, home to the world-renowned Coronado Center Beach and Hotel del Coronado. Coronado's beaches are located south of the Point Loma outfall and north of the South Bay outfall. Due to our proximity to these outfalls, our community has a heightened concern that the public health and environment of our local waters are protected.

California Coastal Commission
Point Loma Treatment Plant
August 3, 2009
Page Two (2)

The City of Coronado has been actively involved in all the secondary waiver processes at Point Loma, and our elected officials are educated in this subject. We feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. As well, comprehensive ocean monitoring over the past 15 years, along with scientific analysis, has not revealed any harmful impacts to the ocean environment. The City of Coronado supports the U. S. Environmental Protection Agency's Approval Decision, as well as the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit, because this decision continues to protect the environment while being fiscally prudent with public resources.

Therefore, the City of Coronado urges the California Coastal Commission to make the finding that San Diego's modified waiver complies with the California Coastal Management Program and that it will be conducted in a manner consistent with this program.

Sincerely,



Casey Tanaka
Mayor



CITY OF
CHULA VISTA

OFFICE OF THE MAYOR

CHERYL COX
MAYOR

August 3, 2009

California Coastal Commission
Chairperson Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Mark Delaplaine

SUBJECT: Coastal Commission Meeting, Thursday, August 13, 2009.

Item 11b. Federal Consistency CC-043-09 (City of San Diego)
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Dear Commissioners:

This letter is written in support of the reissuance of the 301(h) modified NPDES permit for the City of San Diego's E. W. Blom Point Loma Wastewater Treatment Plant.

The Point Loma Wastewater Treatment Plant is a major component of the Metropolitan Sewerage System. It is operated by the City of San Diego, with participation from 15 other municipalities and agencies. Nearly one third of the total flow to the system originates from these participating agencies. Chula Vista, as San Diego County's second largest city, has an interest in decisions that affect the operation of the Metro system. As one of several coastal communities as participating agencies, our concern is also that the public health and environment of local waters are protected.

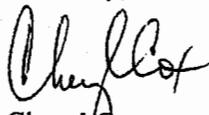
As Chula Vista's representative on The Metro JPA, I have been actively involved in the secondary waiver processes at Point Loma. I believe that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. Comprehensive ocean monitoring and scientific analysis over the past 15 years has revealed no harmful impacts to the ocean environment. I support the U. S. Environmental

California Coastal Commission
Chairperson Neely
August 3, 2009
Page 2

Protection Agency's Approval Decision and the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit. This decision continues to protect the environment while being fiscally prudent with public resources.

Therefore, I urge the California Coastal Commission to find that San Diego's modified waiver complies with the California Coastal Management Program and that it will be conducted in a manner consistent with this program.

Sincerely,



Cheryl Cox
Mayor



City of Del Mar



August 10, 2009

California Coastal Commission
Chair Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Mark Delaplaine

RE: Coastal Commission Meeting, Thursday, August 13, 2009

Item 11b. Federal Consistency CC-043-09 (City of San Diego)
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the Clean Water Act, of a modified National Pollutant Discharge Elimination
System (NPDES) Permit) for Point Loma Wastewater Treatment Plant Discharges
offshore of San Diego, San Diego County. (MPD-SF)

Dear Commissioners:

The Metro Wastewater Commission and JPA (together "Metro JPA") has expressed their complete support for the reissuance of the 301 (h) modified NPDES permit for the City of San Diego's E. W. Blom Point Loma Wastewater Treatment Plant. As the City of Del Mar's representative to the Metro JPA, on behalf of the City, I also express complete support.

The Point Loma Wastewater Treatment Plant is a major component of the Metropolitan Sewerage System, which is operated by the City of San Diego, with the participation of fifteen other municipalities and agencies including the City of Del Mar. Nearly one third of the total flow to the system originates from these participating agencies and, therefore, as a member agency we have an interest in decisions that affect the operation of the Metro system. Additionally, as a coastal community, we have a concern that the public health and environment of our local waters are protected.

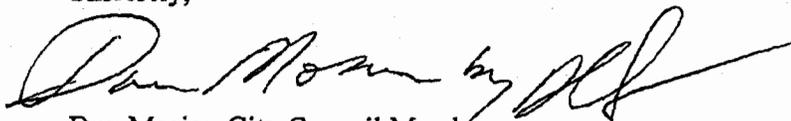
The Metro JPA has been actively involved in all the secondary waiver processes at Point Loma, and as a participating agency, we feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. As well, comprehensive ocean monitoring over the past 15 years, along with scientific analysis, has not revealed any harmful impacts to the ocean environment. We support the U. S. Environmental Protection Agency's Approval Decision, as well as the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit, because this decision continues to protect the environment while being fiscally prudent with public resources.



Coastal Commission
Point Loma Treatment Plant
August 10, 2009
Page Two (2)

Therefore, as a member of the Metro JPA, we urge the California Coastal Commission to make the finding that San Diego's modified waiver complies with the California Coastal Management Program and that it will be conducted in a manner consistent with this program.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Mosier" followed by a stylized flourish.

Don Mosier, City Council Member
City of Del Mar

CC: Mayor and City Council



City of Del Mar



August 10, 2009

California Coastal Commission
Chair Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Mark Delaplaine

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AUG 10 2009

CALIFORNIA
COASTAL COMMISSION

RE: Coastal Commission Meeting, Thursday, August 13, 2009

Item 11b. Federal Consistency CC-043-09 (City of San Diego)
Consistency Certification by City of San Diego for secondary treatment waiver
(i.e., Environmental Protection Agency (EPA) Reissuance under section 301(h) of
the Clean Water Act, of a modified National Pollutant Discharge Elimination
System (NPDES) Permit) for Point Loma Wastewater Treatment Plant Discharges
offshore of San Diego, San Diego County. (MPD-SF)

Dear Commissioners:

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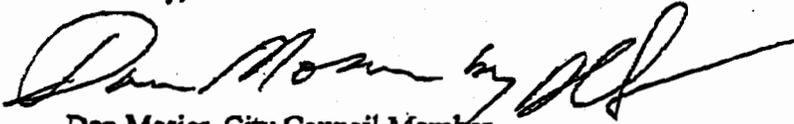
The Metro JPA has been actively involved in all the secondary waiver processes at Point Loma, and as a participating agency, we feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. As well, comprehensive ocean monitoring over the past 15 years, along with scientific analysis, has not revealed any harmful impacts to the ocean environment. We support the U. S. Environmental Protection Agency's Approval Decision, as well as the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit, because this decision continues to protect the environment while being fiscally prudent with public resources.



Coastal Commission
Point Loma Treatment Plant
August 10, 2009
Page Two (2)

Therefore, as a member of the Metro JPA, we urge the California Coastal Commission to make the finding that San Diego's modified waiver complies with the California Coastal Management Program and that it will be conducted in a manner consistent with this program.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Mosier" with a stylized flourish at the end.

Don Mosier, City Council Member
City of Del Mar

CC: Mayor and City Council

August 5, 2009

Chairperson Bonnie Neely
and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

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AUG 10 2009
CALIFORNIA
COASTAL COMMISSION

Attention: Mark Delaplaine

RE: Coastal Commission Meeting, Thursday, August 13, Item 11b.
Federal Consistency CC-043-09 (City of San Diego)
Consistency Certification by City of San Diego for secondary treatment waiver (i.e.,
Environmental Protection Agency (EPA) Reissuance under section 301(h) of the Clean
Water Act, of a modified National Pollutant Discharge Elimination System (NPDES) Permit)
for Point Loma Wastewater Treatment Plant Discharges offshore of San Diego,
San Diego County. (MPD-SF)

Dear Chairperson Neely and Commissioners:

The San Diego Regional Chamber of Commerce would like to express its strong support for the approval of a 301 (h) variance from the federal secondary treatment standards for San Diego's Point Loma Wastewater Treatment Plant.

The ocean outfall, which is situated 4.5 miles from the shoreline, is one of the longest, and deepest, in the world. Swift currents in the deep water help disperse the effluent widely. Chemically assisted primary treatment and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the past 15 years have proven to be protective of the public health and the environment. Further, the Point Loma Treatment Plant has consistently been in compliance with all State and federal permit requirements.

The U.S. Environmental Protection Agency (EPA) as well as the San Diego Regional Water Quality Control Board have approved the modified permit because their decision continues to protect the environment while being fiscally prudent with public resources. Therefore, the San Diego Chamber urges your support of the variance.

Sincerely,



Ruben Barrales
President & CEO

RB:av



CITY OF LEMON GROVE

"Best Climate On Earth"

Office of the Mayor

August 10, 2009

California Coastal Commission
Chairperson Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Mark Delaplaine

SUBJECT: Coastal Commission Meeting, Thursday, August 13, 2009.

Item 11b. Federal Consistency CC-043-09 (City of San Diego)
Consistency Certification by City of San Diego for secondary treatment waiver (i.e., Environmental Protection Agency (EPA) Reissuance under section 301(h) of the Clean Water Act, of a modified National Pollutant Discharge Elimination System (NPDES) Permit) for Point Loma Wastewater Treatment Plant Discharges offshore of San Diego, San Diego County. (MPD-SF)

Dear Commissioners:

The Metro Wastewater Commission and JPA (together "Metro JPA") would like to express their complete support for the reissuance of the 301 (h) modified NPDES permit for the City of San Diego's E. W. Blom Point Loma Wastewater Treatment Plant.

The Point Loma Wastewater Treatment Plant is a major component of the Metropolitan Sewerage System, which is operated by the City of San Diego, with the participation of fifteen other municipalities and agencies. Nearly one third of the total flow to the system originates from these participating agencies and, therefore, the Metro JPA, the coalition of municipalities and special districts sharing in the use of the City of San Diego's regional wastewater facilities, has an interest in decisions that affect the operation of the Metro system. Additionally, with coastal communities as participating agencies, we have a concern that the public health and environment of our local waters are protected.

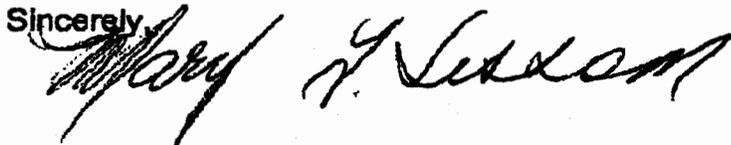
The Metro JPA has been actively involved in all the secondary waiver processes at Point Loma, and the elected officials of the participating agencies are educated in this subject. We feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. As well, comprehensive ocean monitoring over the past 15 years, along with scientific analysis, has not revealed any harmful impacts to the ocean

August 10, 2009
California Coastal Commission
Page Two

environment. The Metro JPA supports the U. S. Environmental Protection Agency's Approval Decision, as well as the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit, because this decision continues to protect the environment while being fiscally prudent with public resources.

Therefore, the Metro JPA urges the California Coastal Commission to make the finding that San Diego's modified waiver complies with the California Coastal Management Program and that it will be conducted in a manner consistent with this program.

Sincerely,



Mary Teresa Sessom
Chairperson, Lemon Grove Sanitation District Board of Directors

Cc: Jerry Jones, Lemon Grove Sanitation District Board Member / Metro JPA
Liaison

Jerry Selby, Lemon Grove Sanitation District Board Member
Mary England, Lemon Grove Sanitation District Board Member
George Gastil, Lemon Grove Sanitation District Board Member
Graham Mitchell, Executive District Director
Patrick Lund, District Engineer



PADRE DAM
Municipal Water District

RECEIVED

AUG 10 2009

CALIFORNIA
COASTAL COMMISSION

August 6, 2009

California Coastal Commission
Chairperson Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Mark Delaplaine

RE: Coastal Commission Meeting, Thursday, August 13, 2009

Item 11b - Federal Consistency CC-043-09 (City of San Diego): Consistency Certification by City of San Diego for secondary treatment waiver (i.e., Environmental Protection Agency (EPA) Reissuance under section 301(h) of the Clean Water Act, of a modified National Pollutant Discharge Elimination System (NPDES) Permit) for Point Loma Wastewater Treatment Plant Discharges offshore of San Diego, San Diego County. (MPD-SF)

Dear Commissioners:

The Padre Dam Municipal Water District ("Padre Dam") would like to express its complete support for the reissuance of the 301 (h) modified NPDES permit for the City of San Diego's Point Loma Wastewater Treatment Plant.

The Point Loma Wastewater Treatment Plant is a major component of the Metropolitan Sewerage System, which is operated by the City of San Diego, with the participation of fifteen other municipalities and agencies. Nearly one third of the total flow to the system originates from these participating agencies. As a participating agency, Padre Dam has a unique interest in decisions that affect the operation of the Metro system. Additionally, with coastal communities as participating agencies, we have a concern that the public health and environment of our local waters are protected.

Padre Dam has been actively involved in all the secondary waiver processes at Point Loma, and its elected officials are educated in this subject. We feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. Additionally, the comprehensive ocean monitoring over the past 15 years, along with scientific analysis, has not revealed any harmful impacts to the ocean environment. Padre Dam supports the U.S. EPA's Approval Decision, as well as the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit, because this decision continues to protect the environment while being fiscally prudent with public resources.

California Coastal Commission
Point Loma Treatment Plant
August 6, 2009
Page 2 of 2

Therefore, Padre Dam urges the California Coastal Commission to make the finding that San Diego's modified waiver complies with the California Coastal Management Program and it will be conducted in a manner consistent with this program.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas S. Wilson". The signature is written in a cursive style with a large initial "D" and "W".

Douglas S. Wilson
CEO/General Manager



CITY OF
LA MESA

JEWEL of the HILLS

August 6, 2009

Chairperson Neely
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Mark Delaplaine

SUBJECT: Coastal Commission Meeting, Thursday, August 13, 2009.

Item 11b. Federal Consistency CC-043-09 (City of San Diego) Consistency Certification by City of San Diego for secondary treatment waiver (i.e., Environmental Protection Agency (EPA) Reissuance under section 301(h) of the Clean Water Act, of a modified National Pollutant Discharge Elimination System (NPDES) Permit) for Point Loma Wastewater Treatment Plant Discharges offshore of San Diego, San Diego County. (MPD-SF)

Dear Commissioners:

The City of La Mesa would like to express their complete support for the reissuance of the 301 (h) modified NPDES permit for the City of San Diego's E. W. Blom Point Loma Wastewater Treatment Plant.

The Point Loma Wastewater Treatment Plant is a major component of the Metropolitan Sewerage System, which is operated by the City of San Diego, with the participation of fifteen other municipalities and agencies. Nearly one third of the total flow to the system originates from these participating agencies and, therefore, the City of La Mesa, the coalition of municipalities and special districts sharing in the use of the City of San Diego's regional wastewater facilities, has an interest in decisions that affect the operation of the Metro system. Additionally, with coastal communities as participating agencies, we have a concern that the public health and environment of our local waters are protected.

The City of La Mesa has been actively involved in all the secondary waiver processes at Point Loma, and the elected officials of the participating agencies are educated in this subject. We feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. As well, comprehensive ocean monitoring over the past 15 years, along with scientific analysis, has not revealed any harmful impacts to the ocean environment. The City of La Mesa supports the U. S. Environmental Protection Agency's Approval Decision, as well as the San Diego Regional Water Quality Control Board's unanimous decision to approve the modified permit, because this decision continues to protect the environment while being fiscally prudent with public resources.

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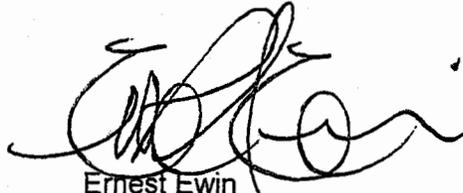
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CALIFORNIA
COASTAL COMMISSION

Therefore, the City of La Mesa urges the California Coastal Commission to make the finding that San Diego's modified waiver complies with the California Coastal Management Program and that it will be conducted in a manner consistent with this program.

Sincerely,


Art Madrid
Mayor


Ernest Ewin
Councilmember



August 11, 2009

California Coastal Commission
Chairperson Neely
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Mark Delaplaine

SUBJECT: Coastal Commission Meeting, Thursday, August 13, 2009.

**ITEM 11b: Federal Consistency CC-043-09 City of San Diego
Consistency Certification by City of San Diego for
Secondary Treatment Waiver**

Dear Chair Neely:

The Industrial Environmental Association (IEA) represents manufacturing, high tech and research and development companies throughout the region. We have closely followed the issue of the secondary treatment waiver at the City of San Diego's E. W. Blom Point Loma Wastewater Treatment Plant for a number of years.

The Point Loma Plant is a major component of the Metropolitan Sewerage System operated by the City of San Diego, with the participation of fifteen other municipalities and agencies that serve our businesses. Nearly one third of the total flow to the system originates from these participating agencies. It has always been very apparent that the Metro JPA, the coalition of municipalities and special districts sharing in the use of the City of San Diego's regional wastewater facilities, has a unique and dedicated interest in decisions that affect the operation of the Metro system that protect the public health and environmental and our coastal water..

IEA would like to express our complete support for and concurrence with the decision to approve a 301(h) variance from the federal secondary treatment standards for San Diego's Point Loma Wastewater Treatment Plant. We feel strongly that the combination of chemically assisted primary treatment, the deep ocean outfall (located 320 feet deep and 4.5 miles from the shoreline) and the City of San Diego's exemplary record of compliance with the State Ocean Plan during the last 15 years have proven to be protective of the public health and environment in the local area. In addition, comprehensive ocean monitoring over the past 15 years, along with scientific analysis, have not indicated any harmful impacts to the ocean environment. IEA supports the U. S. Environmental Protection Agency's Approval Decision, as well as the local



Regional Water Quality Board's unanimous decision to approve the modified permit because this decision continues to protect the environment while being fiscally prudent with public resources.

We believe that with the compelling scientific evidence this activity is in compliance with the California Coastal Management Program and that the plant will continue to be conducted in a manner consistent with this program. IEA urges that the California Coastal Commission make this finding at the earliest possible date.

Sincerely,

Patti Krebs

Patti Krebs
Executive Director