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

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

9 D. The City is a California municipal corporation and possesses NPDES Permit No.  
10 CA0107409 to discharge treated effluent from the Point Loma Metropolitan Wastewater  
11 Treatment Plant. The City owns and operates a publicly owned treatment works as defined in  
12 33 U.S.C. § 1292 and 40 C.F.R. § 403.3.

#### 13 **IV. DEFINITIONS**

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

18 "Acute Defect" means a defect that substantially increases the probability of a material  
19 SSO, and includes conditions leading to imminent structural collapse or that would create  
20 repeated blockages.

21 "Administrative Order" means the Finding of Violation and Order, Docket No.  
22 CWA-309-9-02-17 that EPA issued to the City on April 5, 2002, pursuant to Sections 308(a) and  
23 309(a) of the CWA.

24 "Canyon Economic and Environmental Analysis" means an analysis of the feasibility of  
25 relocating sewer lines out of each canyon.

26 "Capital Improvement Program" ("CIP") means the City's ten (10) year "rolling" sewer  
27



1 repair, rehabilitation and replacement planning document.

2 "Collection System" means all pipes, manholes, sewer lines, pump stations, and  
3 appurtenances thereto under ownership of the City that are intended to convey domestic or  
4 industrial wastewater to the City's wastewater treatment plants.

5 "Contractor" as used in this Partial Consent Decree, means the City's contractor(s) and  
6 subcontractor(s), agents, assigns, successors, and duly authorized representatives of City  
7 contractors.

8 "Director" means the Director of the EPA Region 9 Water Division.

9 "Final Consent Decree" means a consent decree entered into by the United States and the  
10 City that extends until at least 2012 and requires the City to perform long-term operation and  
11 maintenance requirements and complete capital improvement projects relating to the City's  
12 Collection System; and

13 "Lamping" means an inspection method in which a light source is put into a manhole and  
14 a visual device, such as a mirror, is placed in an adjacent manhole to try to detect blockages in  
15 the pipe.

16 "Large Diameter Pipes" means pipes in the City of San Diego's wastewater collection  
17 system that are greater than fifteen (15) inches in diameter.

18 "Plan for Accelerated Cleaning Program" means the plan the City submitted to EPA on  
19 September 27, 2002.

20 "Plan for Root Control Program" means the plan the City submitted to EPA on  
21 September 27, 2002.

22 "Plan for Sewer Overflow Response and Tracking" means the plan the City submitted to  
23 EPA dated October, 2003.

24 "Plan for Sewer Pipe Inspection and Condition Assessment" means the plan the City  
25 submitted to EPA on September 27, 2002.

26 "Plan for Sewer Repair, Rehabilitation, and Replacement" means the plan the City  
27  
28

1 submitted to EPA on September 27, 2002.

2 "Plan for Fats, Oils & Grease ("FOG") Blockage Control" means the plan the City  
3 submitted to EPA on September 27, 2002.

4 "Plan for Canyon Area Spill Elimination" means the plan the City submitted to EPA on  
5 September 27, 2002.

6 "Plan for Pump Station and Force Main Spill Reduction Action" means the plan the City  
7 submitted to EPA on September 27, 2002.

8 "Plan to Address Other Sanitary Sewer Overflows" means the plan the City submitted to  
9 EPA on September 27, 2002.

10 "Plan for Capacity Assurance" means the plan the City submitted to EPA on September  
11 27, 2002.

12 "Plan for System-wide Cleaning Program" means the plan the City submitted to EPA on  
13 January 29, 2004.

14 "Sanitary Sewer Backup" or "SSB" is a wastewater backup into a building or solely onto  
15 private property from a private lateral that is caused by a blockage or other malfunction in the  
16 Collection System.

17 "Sanitary Sewer Overflow" or "SSO" means an overflow, spill, or release of wastewater  
18 from the Collection System at any point upstream of the sewage treatment plant. For purposes of  
19 this Partial Consent Decree only, an SSB is an SSO.

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

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

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

## 24 **V. OBJECTIVES**

25 A. In entering into this Partial Consent Decree, the Parties intend to further the  
26 objectives set forth in Section 101 of the CWA, 33 U.S.C. § 1251, and to achieve expeditious

1 compliance with this Partial Consent Decree for such purposes as eliminating spills to the extent  
2 feasible.

3 B. The Administrative Order is hereby withdrawn by EPA upon entry of this Partial  
4 Consent Decree.

#### 5 **VI. BINDING EFFECT**

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

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

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

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

18 2. each engineering, consulting, and contracting firm already retained for  
19 such purpose.

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

#### 24 **VII. COMPLIANCE ACTIONS**

25 A. The City has completed the plans listed below for the operation and maintenance  
26 of its Collection System. The City shall use best efforts to implement the plans identified below  
27

1 for the operation and maintenance of the Collection System. The City may subsequently modify  
2 these Paragraph A plans to incorporate new information and to make maintenance of the  
3 collection system more efficient or to make other changes that the City deems appropriate that  
4 are not inconsistent with the objectives of this Partial Consent Decree. The City's obligation to  
5 implement these Paragraph A plans shall not be subject to enforcement under this Partial Consent  
6 Decree.

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

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

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

22 B. SSO RESPONSE AND TRACKING

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

- 1 a. the name of the trunk sewer (for SSOs relating to trunk sewers);  
2 b. the name of the canyon (for SSOs relating to canyons);  
3 c. the total SSO volume (excluding SSBs), the volume returned to  
4 the system, and the volume not captured; and  
5 d. the total SSB volume.

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

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

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

17 5. The City shall operate and maintain a flow metering alarm system that  
18 covers at least ninety percent (90%) of the flow weighted length of the City's three hundred forty  
19 (340) miles of trunk sewers, including all canyon trunk sewers. The system must be capable of  
20 detecting and notifying City staff within ninety (90) minutes of reductions in flow of twenty-five  
21 percent (25%) or more of the average dry weather flow during dry weather conditions.

22 C. CONTROL OF NON-CAPACITY RELATED SSOS

23 1. SYSTEM-WIDE GRAVITY COLLECTION SYSTEM CLEANING  
24 PROGRAM

25 a. By March 31, 2004, with the exception noted below, the City shall  
26 complete at least one (1) cleaning of each sewer pipe in the City's two thousand eight hundred  
27

1 nineteen (2,819) mile gravity municipal collection system. However, the City may decide not to  
2 clean up to thirty (30) miles of pipe located in environmentally sensitive areas and/or in non-  
3 right-of-way areas if the CCTV inspection demonstrates the pipe is clear, or for which permits  
4 cannot be obtained by the City to allow for the cleaning prior to March 31, 2004. The City will  
5 make all reasonable efforts to obtain such permits in a timely manner. In the event the CCTV  
6 inspection demonstrates that the pipe requires cleaning, the City shall continue with the  
7 permitting process for sewer pipe cleaning and complete the required cleaning activities within  
8 six (6) months of completing the cleaning permit process.

9           b.       Starting April 1, 2004, the City shall clean each sewer pipe in the  
10 City's two thousand five hundred thirty-eight (2,538) mile small diameter gravity collection  
11 system on a minimum five (5) year frequency. For each five (5) year cleaning cycle, the City  
12 may elect to exclude from cleaning up to thirty (30) miles in environmentally sensitive non-right  
13 of way areas if the CCTV inspection demonstrates the pipe is clear. Starting April 1, 2004, the  
14 City shall clean each sewer pipe in the City's two hundred eighty-one (281) mile large diameter  
15 gravity system on a minimum five (5) year frequency unless the City can demonstrate the pipe is  
16 adequately clean through a cleaning needs assessment consisting of CCTV and hydraulic  
17 investigation, manhole inspection, and/or personnel entry into the sewer pipe. All miles cleaned  
18 under this Paragraph may be included in the one thousand five hundred (1,500) miles of annual  
19 cleaning required in Section VII (Compliance Actions) Paragraph C 2a.

20           c.       By March 1st of each calendar year and pursuant to Section VII  
21 (Compliance Actions) Paragraph G of this Partial Consent Decree, the City shall submit an  
22 annual report to EPA for review pursuant to Section VIII (Plan and Report Review and  
23 Approval) that documents which sewers and how many miles of pipe were cleaned as part of the  
24 system-wide cleaning program during the previous calendar year. The report shall distinguish  
25 between sewer pipes in canyon and non-canyon areas. The annual report shall describe the status  
26 of any pipes included in the thirty (30) miles described in Paragraphs a. and b. above, specify

1 which miles were included in the thirty (30) miles, and explain the basis for not cleaning any  
 2 Large Diameter Pipes.

3 2. ACCELERATED PREVENTIVE MAINTENANCE (ACCELERATED  
 4 PM) CLEANING PROGRAM

5 a. The City shall clean a minimum of one thousand five-hundred  
 6 (1,500) miles of pipe per year. Calculation of the 1,500 miles may include problem pipe  
 7 segments that are cleaned more frequently than annually.

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

12 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.

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

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

22 (i) Method 1: Software Algorithm Recommendations

23

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	A One-Step Frequency Decrease to a time interval of 24 or 60 months.

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Cleaning Frequency Decreases:		
Category	Findings	Frequency Step Change
	cycles	
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, or replaced shall be made in Regular Sanitary Sewer Overflow Report Tracking ("SSORT") or other appropriate meetings held by City staff. Corrective actions and appropriate frequency adjustments shall be made based upon SSO/ blockage relief cleaning findings, historical cleaning data, and if available, CCTV data.

e. By March 1st of each year, and pursuant to Section VII



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

12 3. ROOT CONTROL PROGRAM

13 a. The City shall utilize mechanical root control to clean at least three  
14 hundred fifty (350) miles of pipe each year. The 350 miles of pipe mechanically cleaned under  
15 this Paragraph may be included in the cleaning miles required in Section VII (Compliance  
16 Actions) Paragraph C 2a.  
17

18 b. The City shall utilize chemical root control to treat at least one  
19 hundred fifty (150) miles of pipe each year. Mileage chemically-treated under this Paragraph  
20 may be included in the cleaning miles required in Section VII (Compliance Actions) Paragraph C  
21 2a., if the chemical treatment is independent from the mechanical root cleaning miles counted in  
22 Section VII (Compliance Actions) Paragraph C 3a.  
23

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

8 4. SEWER PIPE INSPECTION AND CONDITION ASSESSMENT

9  
10 a. The City shall inspect each sewer pipe that experiences a blockage  
11 leading to an SSO using CCTV or other appropriate inspection methods as soon as is practicable  
12 but no later than one (1) week following the SSO. Lamping may not be used for purposes of  
13 satisfying the obligations of this Paragraph 4.

14 b. Having completed CCTV inspection of one thousand two-hundred  
15 (1,200) miles of its pipelines, including all but two miles of pipeline in all forty-two (42)  
16 canyons, all pipe installed prior to 1965, all trunk sewers prior to 1991, and all high maintenance  
17 sites by June 2004, the City shall complete CCTV inspection of at least forty (40) miles of its  
18 pipelines each year, focusing on pipelines in high-maintenance areas and ensuring that all pipe  
19 over forty (40) years old is inspected by CCTV. The calculation of the 40 miles requirement may  
20 not include CCTV inspections done pursuant to Paragraph a. above or Section VII (Compliance  
21 Actions) Paragraph C 1.

22 c. The City shall inspect all manholes in its collection system every  
23 five (5) years, starting from the date this Partial Consent Decree is entered.  
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1                   d.     The City shall prepare condition assessment reports following  
2 CCTV inspections that, at a minimum, document the following:  
3                   (i)     defects that materially threaten the structural integrity of the  
4 pipe or structure;  
5                   (ii)    material defects that allow infiltration, inflow, or  
6 exfiltration;  
7                   (iii)  material pipe defects, including but not limited to, cracks,  
8 holes, corrosion, misaligned joints, root intrusion, sags, improper lateral taps, or other defects  
9 that make the pipe or structure prone to grease, root, or debris blockages;  
10                  (iv)   a rank or score of the condition of each inspected pipe or  
11 structure on a sliding scale that indicates the severity of any defects found;  
12                  (v)    whether the pipe or structure requires either short or long-  
13 term repair under Paragraph 5 below;  
14                  (vi)   changes to cleaning frequency as a result of the assessment;  
15 and  
16                  (vii)  an estimate of the expected remaining life of the pipe or  
17 structure.  
18

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

3  
4 5. SEWER REPAIR, REHABILITATION, AND REPLACEMENT

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

9  
10 b. Between January 1, 2002 and December 31, 2005, the City shall  
11 replace, rehabilitate, or permanently repair one hundred seventy (170) miles of pipeline.  
12 Permanent repair means the correction of a structural defect in a manhole to manhole pipe  
13 segment such that the repaired segment has the same life expectancy as a rehabilitated pipe  
14 segment. The City shall maintain a log listing each sewer pipe and structure project completed  
15 during the previous year and the date the project was completed.

16  
17 c. The City shall maintain a rolling ten (10) year CIP.

18 d. By March 1st of each year, the City shall submit an annual report  
19 pursuant to Section VII (Compliance Actions) Paragraph G, to EPA for review pursuant to  
20 Section VIII (Plan and Report Review and Approval) which describes all Acute Defect and long-  
21 term projects completed in the previous year pursuant to this Paragraph, distinguishes between  
22 canyon and non-canyon projects, documents all projects referred to programs under other  
23 Paragraphs of this Section, and includes copies of the Acute Defect logs for the previous year.  
24 Upon request by EPA, the City shall provide EPA with a copy of its full CIP within thirty (30)  
25  
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1 days. Nothing in this Paragraph 5 shall require the City to implement any of the projects listed in  
2 the CIP not otherwise required hereunder.

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

4 a. For at least the duration of this Partial Consent Decree, the City  
5 shall implement a Residential Grease Outreach and Education Program consisting of the  
6 following elements.

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

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

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

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

16 (v) The City shall attend the annual Apartment and  
17 Condominium Owner's Association convention to publicize its FOG program.

18 b. The City shall implement a program for timely enforcement and  
19 inspection follow-up at Food Service Establishments ("FSE"). At a minimum, the City shall:

20 (i) inspect each FSE at least once every two (2) years.  
21 Inspection of FSEs maintaining full compliance shall continue on a biannual frequency. Any

1 FSE found to be in violation shall be inspected at least every ninety (90) days until full  
2 compliance is demonstrated for a minimum of two (2) ninety (90) day inspection cycles;

3 (ii) issue a formal Notice of Violation to an FSE within two (2)  
4 weeks of discovering a violation;

5 (iii) hold administrative hearings within ninety (90) days of the  
6 NOV if the FSE fails to comply with the NOV or has had two NOVs within the last year or for  
7 the same compliance issue and, if non-compliance continues, hold a Permit Revocation hearing  
8 within ninety (90) days of the administrative hearing and, if necessary, terminate water service;

9 (iv) issue compliance schedules, assess fees or penalties, and  
10 revoke permits as necessary to ensure compliance;

11 (v) inspect each new and substantially remodeled FSE within  
12 four (4) months of the FSE's start up; and

13 (vi) assure adequate budget and staffing to meet the above  
14 requirements.

15 c. By March 1st of each year, the City shall submit an annual report  
16 pursuant to Section VII (Compliance Actions) Paragraph G of this Partial Consent Decree, to  
17 EPA for review pursuant to Section VIII (Plan and Report Review and Approval) documenting  
18 the activities carried out under the FOG Blockage Control Program during the previous year.

19 The report shall: (i) include copies of the FSE inspection and enforcement log for the previous  
20 year, and (ii) discuss budget and staffing levels for the previous and current years.  
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- 1 · Tecolote
- 2 · East Tecolote (East Clairemont)
- 3 ·
- 4 · Stevenson
- 5 · Van Nuys
- 6 · San Clemente
- 7 · Upper Rose
- 8 · Middle Rose
- 9 ·
- 10 · Lower Rose
- 11 · Dakota
- 12 · Manning
- 13 · Acuña
- 14 ·
- 15 · Park Mesa
- 16 · Bounty & Waring
- 17 · Mission Center Road
- 18 · Lake Murray
- 19 ·
- 20 · Adobe Falls
- 21 · Mission Gorge (Junipero Serra)
- 22 · Chollas Creek
- 23 · Chocolate (Home Avenue)
- 24 ·
- 25 · Switzer
- 26 · Carroll (Rock Quarry)



- 1 · Alvarado
- 2 · Sorrento/Flintkote
- 3 · Roselle/Sonico
- 4 · Lopez
- 5 · Peñasquitos
- 6 · Peñasquitos Bluffs
- 7 · Rose Creek East of I-805
- 8 · Mesa College and I-805 (Onalaska)
- 9 · Black Mountain
- 10 · Shawn
- 11 · Shepherd (Santo Road)
- 12 · Woodman
- 13 · Lexington
- 14 · Washington Creek
- 15 · Highway 163 Corridor
- 16 · El Camino Real/San Dieguito Road
- 17 · Florida
- 18 · Sevan Court
- 19 · Skylark
- 20 · Rancho Mission
- 21 · 45th & Boston

1 If more than six (6) Canyon Economic and Environmental Analyses are completed in one  
2 (1) year, the City may hold these analyses in reserve to be applied, if needed, against the  
3 requirement to complete six (6) analyses per year in any future year.  
4

5 c. The City shall implement the following minimum measures:

6 (i) The City shall conduct an annual visual exterior inspection  
7 of each canyon area trunk sewer, including examination of each maintenance hole structure for  
8 structural integrity, examination of any exposed sewer pipes, and observation of any condition in  
9 the canyon area that could pose a threat to pipes or maintenance hole structures. The City shall  
10 assess the environmental and other external physical factors that may lead to a structural failure.  
11 Annual inspections shall include such factors as erosion, landslides, flooding, excessive plant  
12 growth, and any circumstances that could affect pipe or maintenance hole structural integrity.  
13

14 (ii) During each annual inspection of canyon trunk sewers  
15 required by Subparagraph (i) above, the City shall identify all potentially vulnerable sections of  
16 canyon pipelines.  
17

18 (iii) The City shall visually inspect all potentially vulnerable  
19 sections of canyon pipelines within one (1) week of every significant rainfall (over .5" within a  
20 twenty-four (24) hour period).  
21

22 (iv) The City shall conduct cleaning and annual maintenance of  
23 each canyon area sewer pipe and maintenance hole structure, including, but not limited to,  
24 control of erosion that may undermine sewer pipes or maintenance hole structures, diversion of  
25 channels when necessary to protect the infrastructure, rebuilding of deteriorated maintenance  
26

1 hole structures, and the securing of maintenance hole covers to prevent vandalism as specified in  
2 Section VII (Compliance Actions) Paragraph C 9b.

3 (v) The City shall obtain short and long-term access to each  
4 canyon area sewer pipe sufficient to allow for the cleaning and annual inspection of such pipes as  
5 required by this Partial Consent Decree.  
6

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

17 8. PUMP STATION AND FORCE MAIN SSO REDUCTION ACTION

18 PROGRAM

19 a. The City shall complete the following projects by the dates  
20 specified below:  
21  
22  
23  
24  
25  
26  
27  
28

PUMP STATIONS WITH IMPROVEMENTS UNDER DESIGN AND CONSTRUCTION:

Pump Station No.	Construction Completion Date	Description of Work
77A	July 2005	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
28, 29, 45	June 2005	Build a new PS 45 that accommodates flows from PS's 28, 29 & 45, then demolish old PS's
19	Apr 2005	Build a new PS to code (properly sized wetwell, odor control, on-site generator, SCADA controls and alarms, and dual force mains) then demolish old one
50	May 2005	Mechanical & electrical upgrades <sup>(a)</sup> ; add dual force mains, low flow diversion valves and related SCADA controls
27	Jun 2005	Add dual force mains, storage tank <sup>(b)</sup> and SCADA controls
49	Oct 2005	Add new wetwell, dual force mains, odor control and SCADA controls; repair existing wetwell to be used as a storage tank <sup>(b)</sup> ; mechanical & electrical upgrades <sup>(a)</sup>
39	Oct 2005	Mechanical & electrical upgrades <sup>(a)</sup> ; add storage tank <sup>(b)</sup> , dual force mains, on-site generator, odor control and SCADA controls
(a) Mechanical and Electrical Upgrades may include one or more of the following: replace pumps and motors, upgrade or add ventilation systems, add alarms, upgrade or add a sump pump, add remote control ability for certain functions (i.e., the on-site generator), and all related electrical work for the new mechanical work.		
(b) All storage tanks have a minimum of two (2) hours capacity during peak wet weather flow conditions.		

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

1 progress in the projects during the previous year.

2 9. PROGRAM TO ADDRESS OTHER CAUSES OF SSOS

3  
4 a. Upon entry of this Partial Consent Decree, the City shall require all  
5 Contractors working under a new construction contract to have an approved SSO response plan  
6 prior to initiating work if the construction work is to occur within a public right-of-way or sewer  
7 easement. All City construction contracts must contain provisions that allow the City to impose  
8 penalties and/or cleanup costs on any Contractor whose activities, or failure to act, result in an  
9 SSO or other violation of this Partial Consent Decree.

10  
11 b. The City shall secure at least six hundred (600) manhole covers in remote  
12 areas each year with all five thousand eight hundred (5,800) +/- covers to be secured prior to  
13 termination of this Partial Consent Decree. If more than 600 manhole covers in remote areas are  
14 secured in one (1) year, the City may hold these secured covers in reserve to be applied, if  
15 needed, against the requirement to secure 600 manhole covers per year in any future year.

16  
17 c. The City shall conduct a Public Outreach Program to educate the public  
18 about vandalism.

19  
20 d. By March 1st of each year the City shall submit an annual report pursuant  
21 to Section VII (Compliance Actions) Paragraph G of this Partial Consent Decree, to EPA for  
22 review pursuant to Section VIII (Plan and Report Review and Approval), documenting the  
23 activities carried out under this program, summarizing the SSOs caused by Contractors or  
24 vandalism, and distinguishing between SSOs in canyon and non-canyon areas.

1 D. COLLECTION SYSTEM CAPACITY ASSESSMENT AND ASSURANCE

2 1. Capacity Assessment

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

22  
23  
24  
25  
26 b. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.



1 the City shall submit an annual progress report to EPA, with copies to Baykeeper and Surfrider.

2 This report (or parts thereof) shall be reviewed and, where so provided, approved or disapproved  
3 following the process in Section VIII (Plan and Report Review and Approval) Paragraphs A - D  
4 of this Partial Consent Decree.  
5

6 2. The report shall:

7 a. include the specific annual reporting requirements set forth in  
8 Paragraphs B through D above;

9 b. provide other details relevant to the City's implementation of, and  
10 compliance with, this Partial Consent Decree during the preceding year, including any program  
11 modifications during the prior calendar year;

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

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

15 e. report the volume, number, and location of SSOs, with the  
16 exception of SSBs reported under Subparagraph d. above, and compare the volume, number, and  
17 location of the SSOs reported under this Subparagraph to SSOs occurring since 1997; and  
18

19 f. propose new or modified plans in any area where the City has  
20 materially failed to comply with the requirements of this Partial Consent Decree. The plan shall  
21 identify the material impact of the proposed changes on other obligations in this Section VII  
22 (Compliance Actions) of this Partial Consent Decree. Nothing in this Paragraph shall require the  
23  
24  
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1 City to perform any work not otherwise required in Section VII (Compliance Actions).

2 3. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

3  
4 H. QUARTERLY SSO REPORTS

5 On the first day of February, May, August, and November in each calendar year in  
6 which activities are conducted pursuant to this Partial Consent Decree, the City shall submit a  
7 summary of all SSOs occurring during the previous calendar quarter to EPA, with copies to  
8 Baykeeper and Surfrider, along with the primary factors contributing to the SSOs if known. The  
9 reports shall:

- 11 1. indicate which SSOs occurred in canyons;
- 12 2. indicate whether SSOs entered waters of the United States and, if so,  
13 whether they entered via storm drains or other man-made conveyances; and
- 14 3. differentiate between SSBs and all other SSOs.

15  
16 I. OTHER REPORTS

17  
18 Upon the request of a Plaintiff, the City shall provide any information required by  
19 this Partial Consent Decree or relevant to implementation or compliance with any provision of  
20 this Partial Consent Decree.

21  
22 J. PACIFIC BEACH POINT STUDY

23 By a date to be agreed upon in a separate Memorandum of Understanding  
24 (“MOU”) among the City, Baykeeper and Surfrider, the City will complete a study of Pacific  
25 Beach Point to:

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

7  
8                           **VIII. PLAN AND REPORT REVIEW AND APPROVAL**

9           A.       The submittal of any plan or report required by this Partial Consent Decree shall  
10 be subject to EPA's review and/or approval as specified in Section VII (Compliance Actions) and  
11 Paragraphs B - D below. Copies of all such plans and reports and follow-up correspondence  
12 shall be provided simultaneously to Citizen Plaintiffs. The City shall respond to reasonable  
13 requests for additional documentation by Citizen Plaintiffs.  
14

15           B.       For new or modified plans submitted under Section VII (Compliance Actions)  
16 Paragraph G 2f.:

- 17           1.       EPA shall:
- 18                   a.       approve the submission or request in whole or in part;
  - 19                   b.       approve the submission or request with specified conditions;
  - 20                   c.       modify the submission or request to cure any deficiency;
  - 21                   d.       disapprove the submission or request in whole or in part, directing  
22                   the City to correct any deficiency; or
  - 23                   e.       any combination of the above.
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1 If, upon review, EPA determines that the City is failing to comply with Section VII (Compliance  
2 Actions) Paragraphs B - D of this Partial Consent Decree, EPA shall notify the City to submit a  
3 plan to address the deficiencies, following the process described in Paragraph B above. Nothing  
4 in this Paragraph shall require the City to perform any work not otherwise required in Section VII  
5 (Compliance Actions).  
6

7 D. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

8  
9 E. Upon EPA's approval of the submissions, any changes that supercede existing  
10 requirements in Section VII (Compliance Actions) Paragraphs B - D of this Partial Consent  
11 Decree shall be incorporated by reference as enforceable parts of this Partial Consent Decree.  
12

13 **IX. DISPUTE RESOLUTION**

14 A. Unless otherwise expressly provided for in this Partial Consent Decree, the  
15 dispute resolution procedures of this Section shall be the exclusive mechanism to resolve  
16 disputes arising under or with respect to this Partial Consent Decree. However, the procedures  
17 set forth in this Section shall not apply to:  
18

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

21 2. any disputes concerning the issuance, modification, revocation, or  
22 reissuance of NPDES permits.

23 3. THIS PARAGRAPH IS RESERVED FOR FUTURE USE.

24 B. A dispute shall be considered to have arisen when one (1) party sends the other  
25  
26  
27

1 party a written Notice of Dispute. As used in this Paragraph, parties shall refer to the Chief,  
2 CWA Compliance Office, Water Division, EPA Region 9, for the United States, the Director of  
3 the Metropolitan Wastewater Department for the City, and the attorneys for Citizen Plaintiffs.

4  
5 Any dispute that arises under or with respect to this Partial Consent Decree shall in the first  
6 instance be the subject of informal negotiations between the parties to the dispute. During the  
7 informal negotiations the EPA shall identify the reasons for the non-approval. The period for  
8 informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it  
9 is modified by written agreement of the parties.  
10

11 C. 1. In the event that the Parties cannot resolve a dispute by informal  
12 negotiations under the preceding Paragraph B, the City or Citizen Plaintiffs may invoke formal  
13 dispute resolution procedures by providing the Director with a written statement of position on  
14 the matter in dispute, including, but not limited to, any factual data, analysis or opinion  
15 supporting that position and any supporting documentation relied upon by the City or Citizen  
16 Plaintiffs. Such statement of position shall be provided within thirty (30) days of the end of  
17 informal negotiations. If the City or Citizen Plaintiffs do not invoke formal dispute resolution  
18 within thirty (30) days, EPA's position shall be binding on the City and Citizen Plaintiffs.  
19  
20

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

11           3.       In proceedings on any dispute governed by this Section, the moving party  
12 shall have the burden by a preponderance of the evidence to prevail in the dispute regarding  
13 EPA's decision; provided, however, the City shall be considered the moving party with respect to  
14 Section VII (Compliance Actions); Section VIII (Plan and Report Review and Approval);  
15 Section XI (Stipulated Penalties); and Section XXIV (Termination).  
16

17           D.       The invocation of formal dispute resolution procedures under this Section shall  
18 not extend, postpone, or affect in any way any obligation of the City under this Partial Consent  
19 Decree, not directly in dispute unless and until final resolution of the dispute so provides.  
20 Stipulated penalties with respect to the disputed matter shall continue to accrue; provided,  
21 however, that the City may argue to the Court that stipulated penalties should not run after the  
22 matter has been fully briefed and submitted to the Court and provided that Plaintiffs may argue  
23 the contrary. Payment shall be stayed pending resolution of the dispute. Except as provided  
24 above, stipulated penalties shall accrue from the first day of non-compliance with any applicable  
25  
26  
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1 provision of this Partial Consent Decree. In the event that the City does not prevail on the  
2 disputed issue, stipulated penalties may be assessed as provided in Section XI (Stipulated  
3 Penalties) of this Partial Consent Decree.  
4

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

7 1. Citizen Plaintiffs may challenge an EPA action approving a major  
8 modification of the activities required in Section VII (Compliance Actions). The Citizen  
9 Plaintiffs retain the right to dispute what constitutes a major modification. For purposes of  
10 establishing what constitutes a major modification under this Subparagraph, Citizen Plaintiffs  
11 shall have the burden of establishing the same based upon the arbitrary and capricious standard  
12 of proof.  
13

14 2. Citizen Plaintiffs may challenge an EPA action terminating the Partial  
15 Consent Decree pursuant to Section XXIV (Termination).  
16

17 3. With respect to any motion under this Section, the Citizen Plaintiffs shall  
18 be considered the moving party.  
19

## 20 **X. FORCE MAJEURE**

21 A. "Force majeure," for purposes of this Partial Consent Decree, is defined as any  
22 event arising from causes beyond the control of the City, of any entity controlled by the City, or  
23 of the Contractors, that delays or prevents the performance of any obligation under this Partial  
24 Consent Decree, despite the City's best efforts to fulfill the obligation. The requirement that the  
25 City exercise "best efforts to fulfill the obligation" includes using reasonable efforts to anticipate  
26  
27

1 any potential force majeure event and best efforts to address the effects of any potential force  
2 majeure event as it is occurring and following the potential force majeure event, such that the  
3 delay is minimized to the greatest extent possible. "Force Majeure" shall not, in any event,  
4 include unanticipated or increased costs associated with implementation of this Partial Consent  
5 Decree, changed financial circumstances, or other financial or budgetary issues.  
6

7       B.     If any event occurs or has occurred that may delay the completion of any  
8 requirement of this Partial Consent Decree, whether or not caused by a force majeure event, the  
9 City shall notify EPA in writing, with copies to Baykeeper and Surfrider, within thirty (30) days  
10 of when the City first knew, or in the exercise of reasonable diligence under the circumstances,  
11 should have known of such event. The notice shall indicate whether the City claims that the  
12 delay should be excused as a force majeure event. The notice shall describe in detail the basis for  
13 the City's contention that it experienced a force majeure delay; the anticipated duration of the  
14 delay; the precise cause or causes of the delay; all actions taken or to be taken to prevent or  
15 minimize the delay; and a schedule for implementation of any measures to be taken to prevent or  
16 mitigate the delay or the effect of the delay. The City shall adopt all reasonable measures to  
17 avoid and minimize such delays. Failure to comply with the above requirements shall preclude  
18 the City from asserting any claim of force majeure. The City shall be deemed to know of any  
19 circumstance of which the City, any entity controlled by the City, or the Contractors knew or  
20 should have known.  
21  
22  
23

24       C.     If EPA agrees that the delay or anticipated delay is attributable to a force majeure  
25 event, the time for performance of the obligations under this Partial Consent Decree that are  
26  
27  
28



1 affected by the force majeure event will be extended by EPA in writing for such time as is  
2 necessary to complete those obligations and stipulated penalties shall not be due for such period.  
3 If EPA does not agree that the delay or anticipated delay has been or will be caused by a force  
4 majeure event, EPA will notify the City in writing of its decision. If the City elects to invoke the  
5 Dispute Resolution procedures set forth in Section IX (Dispute Resolution) of this Partial  
6 Consent Decree, it shall do so no later than thirty (30) days after receipt of EPA's notice. In any  
7 such proceeding, the City shall have the burden of demonstrating by a preponderance of the  
8 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,  
9 and that the duration of the delay or the extension sought was or will be warranted under the  
10 circumstances. Copies of all documents under this Subparagraph shall be provided to Baykeeper  
11 and Surfrider.  
12  
13

14  
15 D. An extension of the time for performance of the obligations the City contends are  
16 affected by the force majeure event shall not, of itself, extend the time for performance of any  
17 other obligation. The City must make an individual showing of proof regarding each delayed  
18 incremental step or other requirement for which an extension is sought.  
19

## 20 **XI. STIPULATED PENALTIES**

21 A. The City shall pay the stipulated penalties listed below upon written demand by  
22 the United States. Pursuant to its non-reviewable enforcement discretion, the United States may  
23 waive or reduce stipulated penalties. EPA need not provide a Notice of Violation prior to  
24 assessing stipulated penalties. A copy of the demand shall be provided to Baykeeper and  
25 Surfrider.  
26  
27



1 the overflow, spill, or release. Successive SSOs refer to the same part or reach of sewer line  
2 (from manhole to manhole or from manhole to pump station), the same manhole, or the same  
3 pump station under similar circumstances. The City shall provide notice of the SSO to EPA:  
4

- 5 a. when required by law to be reported to the Board and/or EPA; and
- 6 b. when required by the reports under Section VII (Compliance

7 Actions) of this Partial Consent Decree.  
8

9 2. EPA may assess penalties as provided below:

10 a. Over one thousand (1000) and up to ten thousand (10,000) gallons

- 11 (i) First successive SSO \$ 2,000
- 12 (i) Second successive SSO \$ 5,000
- 13 (iii) Third successive SSO \$ 7,500
- 14 (iv) Fourth and subsequent  
15 successive SSOs \$10,000

16 b. More than 10,000 gallons

- 17 (i) First successive SSO \$ 4,000
- 18 (ii) Second successive SSO \$10,000
- 19 (iii) Third successive SSO \$15,000
- 20 (iv) Fourth and subsequent  
21 successive SSOs \$20,000

22 If the City does not reasonably estimate the size of a SSO, the SSO will be presumed to  
23  
24  
25

1 be more than ten thousand (10,000) gallons for the purpose of determining stipulated penalties.

2 E. OTHER PROVISIONS:

3  
4 1. The City shall not be liable for stipulated penalties under Paragraph D  
5 above if the City demonstrates that it has complied with both the response and reporting  
6 requirements in Section VII (Compliance Actions) Paragraphs B 1 - 4, and Paragraphs C 1b.; C  
7 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.

8  
9 2. The City shall not be liable for stipulated penalties under Paragraph D  
10 above if the City demonstrates that the SSO was caused by an Act of God, vandalism, a non-City  
11 Contractor, or any act of a third party not working directly or indirectly on behalf of the City.

12  
13 3. The City shall not be liable for stipulated penalties under Paragraph D  
14 above for any SSO downstream of the Marine Corps Air Station Miramar that was caused by the  
15 Marine Corps Air Station Miramar; provided however, this exception applies only if the City  
16 utilizes best efforts to reach an agreement with Marine Corps Air Station Miramar to address the  
17 potential for SSOs.

18  
19 4. Payment of stipulated penalties as provided in this Section shall be in  
20 addition to any other rights or remedies, including statutory penalties, which may be available to  
21 the United States by reason of the City's failure to comply with this Partial Consent Decree and  
22 all applicable federal, state, or local laws, regulations, wastewater discharge permits, and all other  
23 applicable permits.

24  
25 5. The United States will credit the City for any stipulated penalty paid with  
26  
27



1 **XIII. RIGHT OF ENTRY**

2 A. EPA, their employees, and authorized agents (including contractors and  
3 subcontractors) upon presentation of valid credentials or other official authorization, shall have  
4 access to enter the City's publicly-owned treatment works for the purposes of monitoring,  
5 investigating, and/or verifying the City's compliance with all terms of this Partial Consent  
6 Decree. Where appropriate, EPA shall provide reasonable notice to the City.  
7

8 B. Nothing in this Section shall be construed to limit the right of the United States to  
9 enter the City's property, to require monitoring, or to obtain information pursuant to federal or  
10 state law or regulation.  
11

12 **XIV. NOT A PERMIT**

13  
14 This Partial Consent Decree is neither a permit nor a modification of existing permits  
15 under any federal, state, or local law and in no way relieves the City of its responsibilities to  
16 comply with all applicable federal, state, and local laws, and regulations.  
17

18 **XV. ONGOING COMPLIANCE RESPONSIBILITIES**

19 A. This Partial Consent Decree does not relieve the City of any obligation to apply  
20 for, obtain and comply with the requirements of any new or existing NPDES permit or its duty to  
21 comply with the CWA and any other applicable federal and state laws, regulations, and permits.  
22

23 B. The United States, by its consent to the entry of this Partial Consent Decree, does  
24 not warrant or aver in any manner that the City's compliance with this Partial Consent Decree  
25 will result in compliance with the provisions of the CWA or with any NPDES permit.  
26

1 C. Notwithstanding review or approval by the United States of any plans, reports,  
2 policies, or procedures formulated pursuant to this Partial Consent Decree, the City shall remain  
3 solely responsible for any non-compliance with the terms of this Partial Consent Decree, all  
4 applicable permits, the CWA, and regulations promulgated thereunder.  
5

6 **XVI. EFFECT OF SETTLEMENT**

7 A. This Partial Consent Decree resolves claims for civil penalties for spills occurring  
8 on or before October 1, 2004, unless any one of the following events occur:  
9

10 1. The Final Consent Decree is not lodged with the United States District  
11 Court by June 30, 2006; or

12 2. The District Court does not enter or declines to enter the Final Consent  
13 Decree; or  
14

15 3. The District Court lifts the stay of litigation in the instant case or otherwise  
16 allows litigation to proceed; or  
17

18 4. The City responds to the United States' Complaint in the instant litigation.

19 This Partial Consent Decree does not limit or resolve any civil claims relating to the  
20 United States' ability to seek injunctive relief.  
21

22 B. This Partial Consent Decree does not limit or affect the rights of Defendant or of  
23 the United States against any third parties, not party to this Partial Consent Decree, nor does it  
24 limit the rights of third parties, not parties to this Partial Consent Decree, against the City, except  
25 as otherwise provided by law. This Partial Consent Decree shall not be construed to create rights  
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28

1 in, or grant any cause of action to, any third parties not parties to this Partial Consent Decree.

2 C. The United States reserves all legal and equitable remedies available to enforce  
3 the provisions of this Partial Consent Decree, except as expressly stated herein. This Partial  
4 Consent Decree shall not be construed to limit the rights of the United States to obtain penalties  
5 or injunctive relief under the Act or the implementing regulations, or under other federal laws,  
6 regulations or permit conditions, except as expressly specified in Subparagraph A of this Section  
7 XVI (Effect of Settlement). The United States further reserves all legal and equitable remedies,  
8 including but not limited to injunctive relief, to address any imminent and substantial  
9 endangerment to the public health or welfare or the environment. The United States reserves the  
10 right to raise and the City reserves the right to contest the factual circumstances of past spills and  
11 the City's past and future operations relating to the Collection System in any future enforcement  
12 action for violations not addressed in this Partial Consent Decree.  
13  
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15

16 D. This Partial Consent Decree shall be considered "diligent prosecution" for  
17 purposes of Section 1319(G)(6) of the CWA.  
18

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

20 Baykeeper and Surfrider may submit comments to EPA regarding the City's annual report  
21 or the City's request for a major modification to this Partial Consent Decree. Comments must be  
22 submitted within thirty (30) days of EPA's receipt of the City's annual report or the City's  
23 request for a major modification of the Partial Consent Decree.  
24

25 **XVIII. NO ADMISSION OF LIABILITY**

26 Neither the execution of this Partial Consent Decree nor any action taken hereunder is an  
27



1 admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed  
2 in the Partial Consent Decree.

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

A. Any notice, report, certification, data presentation, or other document submitted by the City pursuant to this Partial Consent Decree, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning the City's compliance or non-compliance with any requirement(s) of this Partial Consent Decree, shall contain the following certification by the City, signed by a responsible City official:

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

\_\_\_\_\_  
Signature  
Title

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

1 **XX. FORM OF NOTICE**

2 A. Unless otherwise specified, or as may be changed from time to time, all reports,  
3 notices, or any other written communications required to be submitted under this Partial Consent  
4 Decree shall be sent to the respective Parties at the following addresses:  
5

6 As to the City:

7 City Attorney  
8 City of San Diego  
9 1200 Third Avenue, Suite 1100  
10 San Diego, California 92101

11 As to Surfrider and Baykeeper:

12 Executive Director  
13 Surfrider Foundation  
14 P.O. Box 6010  
15 San Clemente, California 92674-6010

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

20 San Diego Baykeeper  
21 2924 Emerson Street, Suite 220  
22 San Diego, California 92106

23 Rory Wicks  
24 Marco A. Gonzalez  
25 Coast Law Group LLP  
26 169 Saxony Road, Suite 201  
27 Encinitas, California 92024  
28

1 Daniel Cooper  
2 Lawyers for Clean Water  
3 1004 A O'Reilly Street  
4 San Francisco, California 94129

5 As to the United States  
6 Section Chief  
7 Environmental Enforcement Section  
8 Environment & Natural Resources Division  
9 United States Department of Justice  
10 P.O. Box 7611  
11 Washington, D.C. 20044-7611

12 Gail Cooper, RC-2  
13 Air, Toxics, Water, and General Law Group  
14 Office of Regional Counsel  
15 U.S. Environmental Protection Agency  
16 75 Hawthorne Street  
17 San Francisco, California 94105

18 Jo Ann Cola, WTR-7  
19 Water Management Division  
20 U.S. Environmental Protection Agency  
21 75 Hawthorne Street  
22 San Francisco, California 94105

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

## 26 **XXI. COSTS OF SUIT/COMPLIANCE MONITORING**

27 A. The City will pay Baykeeper and Surfrider \$10,000 for compliance oversight.  
28 Payment under this Section shall be made within thirty (30) days of receipt of a properly

1 documented invoice showing the nature of the oversight, time expended, and the charge per hour.  
2 Such payments shall not exceed the total listed herein during the period of this Partial Consent  
3 Decree.

4  
5 B. In the event Baykeeper or Surfrider prevail in demonstrating that the City is not in  
6 compliance with the Partial Consent Decree, Baykeeper or Surfrider may be entitled to recover  
7 fees consistent with Section 1365 of the CWA.

8  
9 C. Upon execution of a Final Consent Decree, Baykeeper and Surfrider may be  
10 eligible for reasonable attorneys' fees. So long as the Final Consent Decree is in substantially the  
11 same form as this Partial Consent Decree except for the addition of CIP projects as required and  
12 is lodged on or before June 30, 2006, Baykeeper and Surfrider agree that total attorneys' fees and  
13 costs shall not exceed a total of \$500,000.

14  
15 D. Within thirty (30) days of entry of this Partial Consent Decree, the City shall pay  
16 Baykeeper and Surfrider \$110,000 as an advanced payment of the total attorneys' fees and costs  
17 for which Baykeeper and Surfrider may be eligible. Any payment by the City of San Diego  
18 herein shall be a credit toward any subsequent award or agreement on fees and costs and shall be  
19 specifically included in the not to exceed amount in subparagraph C. above.

## 20 **XXII. MODIFICATION**

21  
22 This Partial Consent Decree contains the entire agreement of the Parties.

23 A. Any material modification to this Partial Consent Decree must be with the written  
24 agreement of the Parties and approval by the Court, except as provided herein.

25  
26 B. Notwithstanding Paragraph A above, EPA and the City can agree in writing and  
27 without Court approval to make non-material modifications to the requirements of this Partial

1 Consent Decree. Baykeeper and Surfrider shall receive copies of any such modifications.

2 C. Notwithstanding any provision of this Partial Consent Decree, the City may seek  
3 modification of this Partial Consent Decree pursuant to Rule 60(b) of the Federal Rules of Civil  
4 Procedure.  
5

6 **XXIII. CONTINUING JURISDICTION OF THE COURT**

7 The Court shall retain jurisdiction to enforce the terms and conditions of this Partial  
8 Consent Decree and to resolve disputes that may arise under this Partial Consent Decree to the  
9 extent that this Partial Consent Decree provides for resolution of disputes by the Court.  
10

11 **XXIV. TERMINATION**

12 A. This Partial Consent Decree shall terminate on June 30, 2006, provided that the  
13 City has certified to EPA with appropriate documentation that the City has complied with all of  
14 its obligations under this Partial Consent Decree and paid any penalties, fees and interest due  
15 under Section XI (Stipulated Penalties). To the extent this Partial Consent Decree includes a task  
16 or requirement that extends beyond June 30, 2006, that task or requirement shall be prorated or  
17 apportioned on a monthly basis.  
18

19 B. **THIS PARAGRAPH IS RESERVED FOR FUTURE USE.**

20 C. **THIS PARAGRAPH IS RESERVED FOR FUTURE USE.**

21 D. The Partial Consent Decree shall not terminate: 1) if the City has not filed the  
22 certification described in Paragraph A, or 2) if EPA, Baykeeper or Surfrider object in writing to  
23 the City's certification within three (3) months of the City's certification. Such objections shall  
24 set forth the specific components of the certification alleged not to be complete. If any party  
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27

1 objects in writing to the City's certification, such dispute shall be resolved pursuant to Section IX  
2 (Dispute Resolution). This Partial Consent Decree shall remain in effect pending resolution of  
3 the dispute, provided however, the City shall not be obligated to perform any obligation not  
4 expressly contested pursuant to this Paragraph.  
5

6 **XXV. SIGNATORIES**

7 A. The signatories for the Parties certify that they are fully authorized to enter into  
8 the terms and conditions of this Partial Consent Decree and to execute and legally bind such  
9 Parties to this document.  
10

11 B. The Parties shall identify on the attached signature pages the name, address,  
12 telephone number, and fax number of one (1) agent who is authorized to accept service by mail  
13 on the Party's behalf with respect to all matters arising under or related to this Partial Consent  
14 Decree.  
15

16 **XXVI. COUNTERPARTS**

17 This Partial Consent Decree may be executed in any number of counterpart originals,  
18 each of which shall be deemed to constitute an original agreement, and all of which shall  
19 constitute one (1) agreement. The execution of one counterpart by any party shall have the same  
20 force and effect as if that party had signed all other counterparts.  
21

22 **XXVII. PUBLIC COMMENT**

23 The United States consents to the entry of this Partial Consent Decree subject to the  
24 publication of notice of this Partial Consent Decree pursuant to 28 C.F.R. 50.7. The United  
25 States reserve its rights to withdraw or withhold consent to this Partial Consent Decree if public  
26 comments disclose facts or considerations indicating this Partial Consent Decree is inappropriate,  
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1 improper, or inadequate. The City agrees to entry of this Partial Consent Decree without further  
2 notice.

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4  
5  
6 IT IS SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2005.

7  
8  
9 \_\_\_\_\_  
10 HON. RUDI M. BREWSTER  
11 UNITED STATES DISTRICT COURT JUDGE  
12 SOUTHERN DISTRICT OF CALIFORNIA  
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1 THE UNDERSIGNED PARTY enters into this Partial Consent Decree in the matter of United  
2 States, et al. v. City of San Diego.

3  
4 FOR THE UNITED STATES OF AMERICA:

5  
6  
7  
8 Kelly A. Johnson  
9 KELLY A. JOHNSON  
10 Acting Assistant Attorney General  
11 Environment and Natural Resources  
12 Division  
13 United States Department of Justice  
14 Washington, DC 20530

4/25/05  
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 Partial Consent Decree in the matter of United  
2 States, et al. v. City of San Diego.

3  
4 FOR THE ENVIRONMENTAL PROTECTION AGENCY:  
5

6  
7  
8  
9 \_\_\_\_\_  
10 WAYNE NASTRI  
11 Regional Administrator  
12 U.S. Environmental Protection Agency  
13 Region IX  
14 75 Hawthorne Street  
15 San Francisco, California 94105

\_\_\_\_\_ Dated

16 \_\_\_\_\_  
17 THOMAS SKINNER  
18 Acting Assistant Administrator  
19 for Enforcement & Compliance Assurance  
20 U.S. Environmental Protection Agency  
21 1200 Pennsylvania Avenue, NW  
22 Washington, DC 20460-0001

\_\_\_\_\_ Dated

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

\_\_\_\_\_ Dated

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

3  
4 FOR SAN DIEGO BAYKEEPER:

5  
6  
7  
8  
9 \_\_\_\_\_  
BRUCE REZNICK

\_\_\_\_\_ Dated

10  
11  
12  
13  
14  
15 \_\_\_\_\_  
MARCO GONZALEZ

\_\_\_\_\_ Dated

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

3  
4 FOR SURFRIDER FOUNDATION:

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6  
7  
8  
9 \_\_\_\_\_  
CHRIS EVANS  
Executive Director

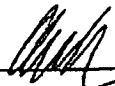
\_\_\_\_\_ Dated

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MARCO GONZALEZ

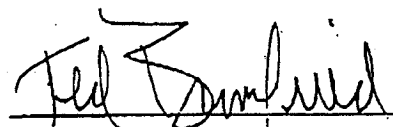
\_\_\_\_\_ Dated

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

3  
4 FOR THE CITY OF SAN DIEGO:

5  
6  
7  
8   
9 RICHARD MENDES  
10 Deputy City Manager  
11 202 C Street  
12 San Diego, California 92101

8   
9 Dated

12  
13   
14 TED BROMFIELD  
15 Office of the San Diego City Attorney  
16 1200 3<sup>rd</sup> Avenue, Suite 1100  
17 San Diego, California 90012-4112

13   
14 Dated