

May 8, 1989

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

Status Report: U.S.A. v. City
(Secondary Sewer Treatment)

Civil Action No. 88-1101-B (IEG)

The City of San Diego's motion to bifurcate the above case into separate and distinct remedy and penalty phases was argued on May 8, 1989 in Department 2 of the Southern District United States District Court before the Honorable Rudi M. Brewster. The City brought the bifurcation motion to focus the energies of both parties on a remedial order involving the appropriate construction schedule while deferring the issue of what penalty, if any, should be imposed for past noncompliance and alleged sewer spills.

The court granted the motion for bifurcation separating the case into two (2) phases consisting of 1) remedy and 2) penalty. The remedy phase will involve what secondary plant(s) as well as necessary infrastructure upgrades are to be built and the appropriate schedule by which they are to be accomplished. The penalty phase will involve the extent of liability as well as what damages, if any, are appropriate.

The court made clear it was approving of bifurcation at the request of the City, with an express acknowledgment that the Clean Water Act exists, that the Act contains secondary treatment standards, that the City currently does not meet those standards, and that no exemptions to the Act are currently claimed.

The ruling of the court permits the resources of the City to be focused on fashioning an appropriate solution to the Clean Water Act without being diverted by complicated discovery requests and summary judgment motions. Moreover, when settlement negotiations reconvene, the City will not be disadvantaged by an adverse finding of summary judgment.

Special Counsel James Dragna and Chief Deputy Ted Bromfield represented the City in its successful motion for bifurcation.

Respectfully submitted,

JOHN W. WITT

City Attorney

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cc Metropolitan

Sewer Task Force

RC-89-14