

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
LAWSUIT AGAINST POTENTIALLY RESPONSIBLE PARTIES OF PETROLEUM
POLLUTION

Petroleum pollution (also referred to as a hydrocarbon plume) was discovered in 1986 in the Marina Redevelopment Project Area. The Redevelopment Agency of The City of San Diego (the "Agency") directed the Centre City Development Corporation ("CCDC") to take the lead in analyzing the extent of the pollution and finding ways to remediate the situation. At the City Attorney's and CCDC's recommendation, the Agency put out a Request for Proposals for special environmental counsel. In August of 1989, the Agency hired the law firm of Morrison & Foerster ("Special Counsel").

In the beginning of February, Special Counsel recommended to CCDC's Board of Directors, the Redevelopment Agency and the City Council that a lawsuit be filed by all three entities by February 9, 1990, against potentially responsible parties ("PRP"s) and other possible sources of the petroleum pollution. The purpose of filing the lawsuit was to preserve certain legal rights under the Statute of Limitations and bring all the parties to the table and come up with an equitable solution to clean-up and sharing of costs. Special Council filed the lawsuit on February 9 following authorization by the Agency and City Council.

Special Counsel only has a retention agreement with the Agency. It is my recommendation that the City of San Diego also enter into a retention agreement with Special Counsel to clarify the scope of work and compensation. While the agreement is attached, several points should be brought to your attention:

1. The Scope of Services is limited to representing the City in the lawsuit filed against PRPs and other potential sources of the pollution. This would include discussions with the PRPs, the Regional Water Quality Control Board, and other governmental and regulatory bodies which would be involved in any settlement of the lawsuit.
2. All legal costs associated with the lawsuit would be paid by the Agency.

In addition to the Retention Agreement, it is recommended the City sign a Waiver of Conflict of Interest. As the Agency is a property owner in the area where petroleum pollution has been

discovered, it is a PRP pursuant to the Porter-Cologne Water Quality Control Act (California Water Code section 13000 et seq.). It is conceivable that other named PRPs and defendants in the lawsuit could name the Agency as a cross-defendant as PRPs are legally responsible for clean-up and remediation of "waste in the water." See Water Code section 13304(a).

The purpose of signing the Waiver of Conflict is to acknowledge that the City and Agency have knowledge of the potential conflict and to the extent legally possible, will not bring legal action against the other. It specifically leaves open the possibility for the City to represent itself or retain another law firm to represent it should a conflict arise.

Respectfully submitted,

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