

April 3, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
U.S.A. V. CITY OF SAN DIEGO, Case No. 88-1101

As you know, the Memorandum Decision of Judge Brewster in this case was hand delivered to each of your offices when rendered last Thursday, March 28, 1991. The provisions and implications of this ruling will be further discussed with you in Closed Session after this legislative recess.

Immediately following that trial and extending over the next five (5) trial days, Judge Brewster was presented evidence on whether the 28 million dollar disinfection (chlorination/dechlorination) facility previously committed to in the Partial Consent Decree at Paragraph IV should be excused in light of the City's commitment to extend the existing ocean outfall. While both disinfection and outfall extension are means of California State Ocean Plan compliance, the City urged the court to consider the superior alternative of outfall extension and delete the disinfection facility in light of the substantial costs.

I am pleased to report that Judge Brewster ruled from the bench today that the 28 million dollar disinfection facility could be deleted on the following conditions:

Notices informing the public of potential risks associated with diving in areas with elevated coliform levels must be published County-wide and posted in areas where divers using the kelp bed will see them.

While at present there is only a 10 percent level of exceedence of State Ocean Plan bacteriological standards, if that level increases to 25 percent, the kelp beds will be quarantined for recreational (but not commercial) uses. This quarantine would continue until levels have returned to less

than 10 percent for a period of 60 days.

The outfall extension will be completed and in operation no later than June 15, 1994, with stipulated

penalties for missing interim compliance dates set at \$2,000/day for the first 30 days, \$5,000/day for the next 30 days, and \$10,000/day for every day thereafter. These penalties will be imposed, but will be suspended if the final compliance date is met.

At Judge Brewster's request, my office is preparing a final order embodying the above provisions. A further hearing date of May 21, 1991 has been set on other matters which will be reviewed with you in Closed Session.

James J. Dragna, David S. Poole, Special Counsels, and Chief Deputy Ted Bromfield represented the City in this matter and throughout the entire eight (8) week trial.

Respectfully submitted,
JOHN W. WITT
City Attorney

TB:mb:452.1.1(043.1)
RC-91-17