

July 13, 1992
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

JULY 10, 1992 COURT HEARING REGARDING CLEAN
WATER PROGRAM CONSUMERS' ALTERNATIVE

By your direction of May 26, 1992, the City Manager and City Attorney were directed to seek judicial approval of a modification of the Clean Water Program known as Consumers' Alternative.

To accomplish this, the modification was reviewed with the Justice Department, EPA and State representatives on June 11, 1992, but rejected by letter of June 22, 1992. Consequently, the City Attorney's office sought judicial relief from Judge Rudi M. Brewster on July 10, 1992. Judicial approval was sought for two (2) avenues of relief: 1) an interim order to allow issuance of bonds for the specific projects of the Consumers' Alternative; and, 2) a stay of all previously established milestones for the non-Consumers' Alternative projects for a period of nineteen (19) months. The stay was sought since the Point Loma Pilot Test has been extended to May 1993 and, depending on results, additional time would be needed to restart affected projects.

At the hearing on July 10, 1992, the court heard updates on the following Clean Water Program issues: the status of Municipal Sewer System projects, the City's Low-flush Toilet Rebate Program, the relocation of sludge processing facilities from Fiesta Island, the Point Loma Pilot Chemical Test Program, the attorneys' fees in U.S.A. v. City of San Diego, sought by the Sierra Club and the design of the Point Loma outfall extension. The court expressed its approval of the status of each of these programs and requested further briefing on attorneys' fees.

After five (5) City witnesses and argument were presented on the relief requested, the court issued two (2) interim orders:

1. To permit appropriate financing, the court ordered that the projects comprising the Consumers' Alternative, Phase I, be implemented according to the schedule included in the Consent Decree, and that new sludge drying facilities as well as all repairs and upgrades to the municipal wastewater collection system proceed as quickly as

- practicable; and,
2. The court accepted a nineteen (19) month stay on all remaining Consent Decree projects.

Finally, the court emphasized that the interim orders were not modifications to the Consent Decree since it remains un-entered as a judicial order. Rather, the court acknowledged the changed circumstances the City was operating under given the economic recession, the reduction of sewer flows, and the resultant decline in sewer revenues. The court therefore entered the interim orders in recognition of these changed circumstances, but said it would revisit these issues in May 1993 upon completion of the Point Loma pilot tests when the court can rule on modification of the Consent Decree in light of all available evidence.

The City Attorney's office is preparing the necessary orders to memorialize the court's ruling and will coordinate them with Financial Management and bond counsel to insure appropriate language. Chief Deputy City Attorney Ted Bromfield and Special Counsel James Dragna represented the City at the hearing and were accompanied at counsel table by Councilmembers Behr and Stallings.

Respectfully submitted,
JOHN W. WITT
City Attorney

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RC-92-47

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