

Office of
The City Attorney
City of San Diego

MEMORANDUM

533-5800

DATE: January 22, 2009
TO: Ben Hueso, City Council President
FROM: Tom Zeleny, Deputy City Attorney
SUBJECT: Request for supplemental docketing for January 27, 2009

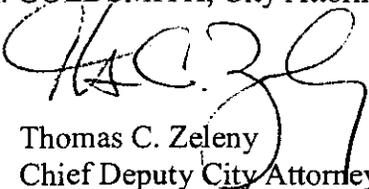
We are requesting the matter of the Cooperative Agreement with San Diego Coastkeeper and the San Diego Chapter of Surfrider Foundation be added as a supplemental docket item for January 27, 2009. Under the terms of the proposed Cooperative Agreement, Coastkeeper and Surfrider would not object to the tentative decision of the U.S. Environmental Protection Agency granting a waiver from secondary treatment requirements at the Point Loma Wastewater Treatment Plant. The City, Coastkeeper and Surfrider were only just recently able to agree on the terms of the proposed agreement.

The deadline to file written objections to the EPA's tentative decision is January 28, 2009. If we do not present the proposed Cooperative Agreement to City Council for consideration prior to this deadline, the proposal may become moot and Coastkeeper and Surfrider may be forced to submit objections to preserve their position. We therefore respectfully request this item be docketed for City Council consideration on January 27, 2009.

Sincerely,

JAN I. GOLDSMITH, City Attorney

By


Thomas C. Zeleny
Chief Deputy City Attorney



DATE: December 1, 2008

TO: MAYOR JERRY SANDERS

FROM: BRUCE REZNIK, SAN DIEGO COASTKEEPER
MARCO GONZALEZ, COAST LAW GROUP (REPRESENTING SURFRIDER
FOUNDATION, SAN DIEGO CHAPTER AND SAN DIEGO COASTKEEPER)

RE: STUDY TO DECENTRALIZE SD SEWAGE SYSTEM AND MAXIMIZE RECYCLED
WATER

Overview

In order to resolve expected conflicts between the environmental community and the City of San Diego over the City's application for a Clean Water Act (CWA) §301(h) waiver from secondary sewage treatment standards for the Point Loma Wastewater Treatment Facility (the "Waiver"), and with the desire to avoid litigation or other adversarial tactics experienced between the parties in the past, San Diego Coastkeeper and Surfrider Foundation, San Diego Chapter propose the following:

- The City of San Diego commit to prepare an independent assessment of its entire sewage collection and treatment infrastructure to identify opportunities to maximize recycling and reclamation of wastewater for potable and non-potable uses and to minimize (or eliminate) the discharge of wastewater to the ocean.
- Coastkeeper and Surfrider will agree not oppose issuance of the Waiver and associated approvals by the United States Environmental Protection Agency, San Diego Regional Water Quality Control Board, California State Water Resources Control Board, and California Coastal Commission. Coastkeeper and Surfrider will seek the same commitment from other interested environmental organizations in San Diego (Bay Council) and throughout California.

Study Objectives

The goal of the 2005 Water Reuse Study was to explore various ways to maximize water reuse with respect to the City of San Diego's *existing* reclamation facilities (North City and South Bay). In light of the successes associated with that study, coupled with advancements in water reclamation projects and a worsening drought condition statewide, Coastkeeper and Surfrider believe the City and its residents will benefit from a more complete assessment of the reclamation and recycling possibilities in light of the entire collection and treatment systems owned and operated by the City. Coastkeeper and Surfrider believe a holistic approach which considers decentralized water collection, treatment and reuse could prove more protective of our environment and public health,

while enhancing local water supplies and reducing reliability on dwindling imported water supplies.

Therefore, Coastkeeper and Surfrider propose a scope of work be developed for the study that would result in a study which:

- Explores the technical considerations associated with upgrading all or portions of San Diego's wastewater collection and treatment system to maximize reclamation and reuse of wastewater for potable and non-potable uses, while at the same time minimizing (or eliminating) the discharge of treated wastewater to the ocean. (Maximization of reuse is hereinafter referred to as the "Goal");
- Considers the economic and public health issues associated with decentralization and optimization of the City's regional collection and treatment systems to achieve the Goal;
- Assess the environmental, energy and public health impacts, cost and regulatory requirements to achieve the Goal; and,
- Develops specific recommendations and timelines that could be adopted should the City desire to proceed with upgrading its sewage infrastructure to achieve the Goal.

Process

While the general study objectives are outlined above, the specific study parameters and scope of work would be developed by a team of technical experts, with input from the City and Coastkeeper/Surfrider.

The following is a proposed process:

- The City agrees to allocate a sufficient amount of funds (up to \$2M) over a two-year period to develop the scope of work and prepare the study;
 - The agreement to conduct the study is negotiable, but would likely take the form of a settlement agreement. If, in the alternative, the City desires to pursue a unilateral action to effect the agreement, Coastkeeper/Surfrider would provide a separate "covenant not to oppose" document.
- City staff and contractors will prepare the study, with participation of an expert (likely Dr. Bruce Bell) appointed by Coastkeeper and Surfrider and funded by the City;
- The study design will be developed over the next three months by the City, its contractors, the environmental expert and representatives from Coastkeeper and Surfrider;
- Representatives from Coastkeeper and Surfrider will be regularly briefed by the City and provide input in the study;

- Once completed, a peer review panel comprised of 3-5 nationally recognized experts, chosen by the technical team (City and environmental expert) and funded by the City will review the study and provide an assessment; and,
- The City and environmental representatives will jointly release the study and pursue opportunities to implement recommendations developed as appropriate.

Timeline

- December 2008 – US EPA issues draft opinion on City’s waiver application; State Water Board holds workshop on waiver process; City and Coastkeeper/Surfrider reach an agreement in principle on proposed study and process/timeline;
- January 2009 - City and Coastkeeper/Surfrider reach a formal (enforceable) agreement on proposed study and process/timeline; City moves ahead with funding proposal for study; technical team selected and start meeting on study parameters and design; EPA and SWRCB hold initial hearings on waiver application;
- February-March 2009 – Study parameters and design finalized; funding commitment secured; EPA and SWRCB rule on waiver application; City initiates additional regulatory review process (e.g. Coastal Commission);
- April 2009-December 2010 – Study undertaken and completed; monthly briefings between City and Coastkeeper/Surfrider;
- January 2011-June 2011 – Peer review panel reviews study; releases its assessment;
- July 2011 – Study formally release by City and Coastkeeper/Surfrider; and,
- August 2011+ - City and Coastkeeper/Surfrider work together to implement recommendations of study.

Benefits

Coastkeeper and Surfrider believe this proposal offers tremendous benefits for the City, the environmental community and all San Diegans by:

- Eliminating the cost and uncertainty (for both sides) associated with pursuing litigation to resolve the City’s waiver application;
- Developing the framework to address the region’s need to enhance local water supplies in a cost-effective and environmentally and energy friendly way; and,
- Proactively establishing a plan of action that will be needed if/when San Diego is denied a waiver application (which could be as soon as 2013).

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) **S501**
01/27
3. DATE: **January 21, 2009**

TO: **CITY ATTORNEY** 2. FROM (ORIGINATING DEPARTMENT): **CITY ATTORNEY**

4. SUBJECT: **Cooperative Agreement with San Diego Coastkeeper and Surfrider Foundation**

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) **Tom Zeleny, x67728, MS59** 6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) **Jim Barrett, x37555, MS901** 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41509				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					Not to exceed \$2 million, available in Sewer Revenue Fund 41509.
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT.	<i>[Signature]</i>	1/22/09	8	DEPUTY CHIEF	<i>[Signature]</i>	1/23/09
2	E.O.C.			9	C.O.O.	<i>[Signature]</i>	1/22/09
3	E.A.S.			10	CITY ATTORNEY	<i>[Signature]</i>	1/22/09
4	C.F.O. / F.M.			11	ORIG. DEPT.	<i>[Signature]</i>	1/22/09
5	C.F.O. / AUDITOR			DOCKET COORD: _____ COUNCIL LIASON _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <i>[Signature]</i>	<input type="checkbox"/> SPOB	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> ADOPTION
7				<input type="checkbox"/> REFER TO: _____			COUNCIL DATE: 1/27/09

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the Mayor or his designee to negotiate and execute a Cooperative Agreement with San Diego Coastkeeper, the San Diego Chapter of Surfrider Foundation, and any other interested environmental groups, for the study of the feasibility of diverting wastewater from the Point Loma Wastewater Treatment Plant through increased wastewater recycling, in exchange for their support of the EPA's tentative decision and draft permit regarding the National Pollutant Discharge Elimination System permit for the Point Loma plant.

2. Authorizing the Mayor or his designee to negotiate and execute one or more agreements with consultants and experts as needed to meet the City's obligations under the Cooperative Agreement, in a cumulative amount not to exceed \$2 million from Sewer Fund 41509, provided the City Comptroller first certifies the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

11A. STAFF RECOMMENDATIONS:
Adopt the Resolution

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT: This activity is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15262.

ATTACHMENTS: Letter from San Diego Coastkeeper and the Surfrider Foundation dated December 1, 2008.

CITY CLERK INSTRUCTIONS: Please forward a copy of the signed resolution to Tom Zeleny, MS 59.

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: January 21, 2009 **REPORT NO.:**
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: City Attorney
SUBJECT: Cooperative Agreement with San Diego Coastkeeper and Surfrider Foundation
COUNCIL DISTRICT(S): All
STAFF CONTACT: Tom Zeleny, Deputy City Attorney

REQUESTED ACTION:

Adopt the resolution

STAFF RECOMMENDATION:

Adopt the resolution

EXECUTIVE SUMMARY:

The City operates the Point Loma Wastewater Treatment Plant under a National Pollutant Discharge Elimination System ("NPDES") Permit issued jointly by the United States Environmental Protection Agency ("EPA") and the local Regional Water Quality Control Board ("RWQCB"). The City's permit allows the plant to operate at "advanced primary" level, rather than the secondary level treatment requirement applicable to nearly all other sewage treatment plants. This is often referred to as the "Waiver" from secondary treatment requirements. The City's permit must be renewed every five years.

In December 2007, the City filed its application to renew the NPDES permit for the Point Loma plant, requesting to continue operating the plant at advanced primary level. On December 2, 2008, the EPA issued a tentative decision approving the application and granting the Waiver. On January 21, the EPA and the RWQCB held a joint hearing to take public testimony on the proposed decision. Written comments from the public are due by January 28. A second hearing for discussion of the comments and deliberation of the tentative decision and draft permit will be held in March, with a final permit expected by May or June.

The Waiver has been the subject of litigation for the last twenty years. Environmental groups are concerned that not treating sewage to secondary levels could be harming the environment. Some are threatening litigation challenging the Waiver. By letter dated December 1, 2008, San Diego Coastkeeper and the San Diego Chapter of Surfrider Foundation have offered not to oppose the Waiver in return for the City conducting a study of the feasibility of offloading the Point Loma plant through increased wastewater recycling. The cost of upgrading the Point Loma plant to secondary treatment is estimated to be between \$1 billion and \$1.5 billion.

This action requests authority for the Mayor or his designee to negotiate and execute a Cooperative Agreement with San Diego Coastkeeper, Surfrider Foundation, and any other interested environmental groups to coordinate in a study of the feasibility of reducing wastewater flow to the Point Loma plant through increased wastewater recycling. This action also requests authority to negotiate and execute any consultant agreements necessary to complete the study. The City's total cost associated with the study is not to exceed \$2 million. In return, Coastkeeper and Surfrider will not oppose the tentative decision and draft permit issued by the EPA granting the Waiver.

FISCAL CONSIDERATIONS:

Total cost not to exceed \$2 million is available in Sewer Revenue Fund 41509.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

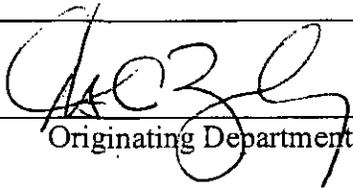
NR&C Committee on December 3, 2008, voted 3-0 to forward to full City Council as informational item and for review by Mayor's and City Attorney's Offices. Only the December 1, 2008 letter from Coastkeeper was available for consideration at that time. The matter is now being presented to the full City Council for action, rather than just as an informational item, due to the January 28 deadline to submit written objections to the EPA's tentative decision.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

N/A



Originating Department



Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING
NEGOTIATION AND EXECUTION OF A COOPERATIVE
AGREEMENT WITH SAN DIEGO COASTKEEPER AND THE
SAN DIEGO CHAPTER OF SURFRIDER FOUNDATION; AND
TAKING RELATED ACTIONS.

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee is authorized to negotiate and execute a Cooperative Agreement with San Diego Coastkeeper, the San Diego Chapter of Surfrider Foundation, and any other interested environmental groups, for the study of the feasibility of diverting wastewater from the Point Loma Wastewater Treatment Plant through increased wastewater recycling, in exchange for their support of the EPA's tentative decision regarding the National Pollutant Discharge Elimination System permit for the Point Loma plant.

BE IT FURTHER RESOLVED, that the Mayor or his designee is authorized to negotiate and execute one or more agreements with consultants and experts as needed to meet the City's obligations under the Cooperative Agreement, in a cumulative amount not to exceed \$2,000,000, provided the City Comptroller first certifies the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

BE IT FURTHER RESOLVED, that the City Comptroller is authorized to appropriate and expend an amount not to exceed \$2,000,000 from Sewer Fund 41509, solely and exclusively to hire consultants and experts needed to meet the City's obligations under the Cooperative Agreement.

BE IT FURTHER RESOLVED, that the City Comptroller is authorized to return excess budgeted funds, if any, to the appropriate reserves on advice of the administering department.

BE IT FURTHER RESOLVED, that the above activity is statutorily exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15262 as feasibility and planning studies.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Thomas C. Zeleny
Chief Deputy City Attorney

TCZ:
01/21/09
Cert.No:N/A
Or.Dept:CityAtty
R-2009-795

I hereby certify that the foregoing Resolution was passed by the Council of the City of Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor