

## MEMORANDUM

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**To:** Mayor Jerry Sanders  
**From:** Patton Boggs LLP  
**Date:** November 6, 2007  
**Subject:** Potential for federal funding of Pt. Loma Wastewater Treatment Plant upgrade to secondary standards

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Per your request, this memorandum reports on the prospects for direct federal funding to the City of San Diego to pay for possible upgrade of the Point Loma Wastewater Treatment plant to secondary treatment standards.

This funding assessment considered opportunities and precedent for annual appropriations line-items, grants, program authorizations, and other mechanisms for possible federal assistance, building on detailed reviews previously provided on federal water infrastructure funding via EPA, the Army Corps of Engineers, and the Bureau of Reclamation.

Overall, the analysis reaffirmed that the City should not make plans based on an expectation of receiving any significant direct, targeted federal funding for an upgrade of the Point Loma facility. At best, federal assistance could marginally supplement local and State funding sources.

Although an aggressive strategy for pursuing federal assistance can be outlined that offers at least some potential for success, even an optimal execution of that strategy would require several years to achieve, with the most likely result that the City might recover at best less than 5% of total construction costs. Other legislative options that could offer greater funding are too speculative to estimate possible returns.

### **Summary Analysis of Primary Options for Potential Funding**

#### Competitive Grant Programs

No existing federal competitive grant opportunities are available to pay for secondary treatment conversions.

Historically, beginning in 1971 and ending in 1990, the EPA Construction Grant program provided more than \$60 billion in direct grants for construction of public wastewater treatment projects,

including wastewater treatment plant upgrades, which financed the transition to secondary treatment standards in many localities. This grant program was authorized under the Federal Water Pollution Control Act, Title II, with federal project share at 75% for the first 13 years and reduced to 55% for the remainder. *33 U.S.C. 1282(a)(1)*.

The program was deauthorized and phased out in favor of capitalizing the Clean Water State Revolving Fund (CWSRF), shifting the method of municipal financial assistance from grants to loans. That emphasis on loans remains the preferred policy direction in Congress and the Administration.

### Annual Appropriations

Upgrades to achieve secondary treatment standards qualify for project-based “earmarks” in annual federal appropriations, but the potential amounts are almost inconsequential compared to the cost of the Pt. Loma transition.

The appropriations process is increasingly competitive, and the maximum amount that can be secured for any single project is limited. In the pending FY2008 appropriations cycle, the largest water infrastructure earmark totaled \$1.6 million, with the vast majority at \$500,000 or less. In the Senate, California received five earmarked projects at about \$1 million each (with Sen. Feinstein chairing the relevant appropriations subcommittee; in the House, California received twelve earmarks averaging \$500,000 each.

For comparison, in seeking earmarks for its own ongoing transition to secondary treatment, the Orange County Sanitation District received a total of \$1.8 million over the past five years.

To secure a 50% project contribution from the federal government through the appropriations process, San Diego would need to get the entire nationwide earmarked budget for five to ten years.

### Army Corps of Engineers

In certain circumstances, the Army Corps can be authorized and funded to help design and construct wastewater treatment projects if sufficiently linked to a purpose within its principal mission, including environmental protection and restoration (Section 219 Authority). These projects may advance on an expedited basis, without having to go through the typical extended procedures of conducting a reconnaissance study and feasibility study, and drafting a Chief's Report.

Projects using Section 219 authority must be specifically authorized by Congress through a Water Resources Development Act (WRDA), with new WRDA bills scheduled to be enacted every two years. However, the most recent WRDA bill has languished for seven years and only is likely to be enacted this week with override of a Presidential veto. Although committee leaders expressed intent to advance another WRDA bill next year in order to restore the regular timing, the combination of an election and recent difficulties moving this legislation suggest that it will take another two or three years before a new authorization is possible.

While there technically is no statutory dollar cap on Section 219 authority, projects typically total well below \$50 million, averaging \$10 - \$20 million.

In addition, project inclusion in WRDA does not guarantee any federal funding, but only allows recipients to seek annual appropriations at substantially higher levels than could be secured through earmarks. The current backlog of ongoing Corps construction projects requires at least \$38 billion in future appropriations to complete, and the new WRDA authorizes more than 900 new projects totaling \$28 billion in additional authorization.

Although the San Diego delegation is well-positioned on committees of jurisdiction that would be helpful to this effort, the uncertainty of both timing and appropriations prospects require that the City not make plans that rely on success.

#### Future Possibilities

Congress is beginning to focus on the need for major investment in water quality and wastewater infrastructure, and legislation to provide additional assistance is likely to advance over the next two or three years.

For example, H.R. 720, the Water Quality Financing Act, which authorizes potential appropriations of \$14 billion over four years for the Clean Water State Revolving Fund, passed the House and should be taken up by the Senate Environment and Public Works Committee soon. In addition, the House passed H.R. 569, the Water Quality Investment Act, which authorizes \$1.7 billion in federal grants over five years to address combined sewers and sanitary sewers overflows.

More comprehensive proposals for innovative financing also may be debated, such as S. 1926, the National Infrastructure Bank Act, creating an independent bank to underwrite projects over \$75 million and with substantial regional and national significance, qualifying highways, transit, and housing, as well as water projects.

This environment may create an opportunity for a legislative strategy to enact new, targeted funding mechanisms that support conversion projects like Point Loma. For example, a coalition of the remaining publicly owned treatment plants that still operate under Section 301(h) waivers and/or must move to secondary standards could be formed to pursue creation of a new upgrade grant program. Several of those facilities are located in States whose Congressional delegations include key members of relevant appropriations and authorizing committees. As the largest impacted jurisdiction with greatest capacity, San Diego leadership would be required to organize and execute a multi-year effort. Similarly, if San Diego sought to utilize innovative alternative technologies for secondary treatment, some small demonstration grant might be established (or reauthorized as a subset within the lapsed EPA Construction Grants) based on the scientific merits.

However, because these legislative opportunities require action in an unpredictable political environment and are much more speculative than pursuing routes like existing Corps Section 219 authority, the City should not plan based on an assumption that such funding options will be available.