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April 8, 2013

Via Email Only

lhonma@waterboards.ca.gov

Lisa Honma
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: **Comments - Tentative Resolution No. R9-2013-0003**
**Amending The Water Quality Control Plan For the San Diego Basin (9) to
Incorporate Total Maximum Daily Loads for Toxic Pollutants in Sediment at
the Mouths of Paleta, Chollas, and Switzer Creeks in San Diego Bay**

Dear Ms. Honma:

The San Diego Unified Port District (District) submits the following comments to the San Diego Regional Water Quality Control Board (Regional Board) on Tentative Resolution No. R9-2013-0003 Basin Plan Amendment to Incorporate Total Maximum Daily Loads for Toxic Pollutants in Sediment at the Mouths of Paleta, Chollas, and Switzer Creeks in San Diego Bay (TMDL), dated February 19, 2013. The Regional Board identifies the District as a responsible party for discharges to Switzer Creek and Chollas Creek and assigns Waste Load Allocations (WLAs) to the District for toxic pollutants at both creek mouths.

The District is separately submitting additional comments and we concur with these comments. The District would like to separately address several issues in the current TMDL. The District continues to support the objectives of the TMDL and welcomes any opportunity to work with the Regional Board to improve the TMDL.

1. **The District should not be assigned a WLA for Chollas Creek**

The Regional Board names the District as a "responsible Municipal Discharger" for the Chollas Creek watershed, based on the San Diego County Phase I Municipal Separate Storm Sewer Systems (MS4s) permit. However, the District believes that it is not responsible for the discharges identified by the Draft Technical Report (DTR) into the Chollas Creek, either from

direct runoff from land within its jurisdiction or discharges from MS4s that may be located within its jurisdictional boundaries and drain into the Chollas Creek.

a. Discharges from the District's Jurisdiction

The DTR appears to allocate WLAs to the District for Chollas Creek based on the percentage of land area under the District's jurisdiction within the Chollas Creek watershed. (Section 8.1.1) The DTR identified a small portion of the tidelands outside the NASSCO major leasehold as under the District's jurisdiction that may contribute pollutants to the Chollas Creek watershed. NASSCO operates and maintains an employee parking lot on this property. NASSCO is regulated under waste discharge requirements (WDRs) issued as Order No. R9-2009-0099, which does not allow for storm water discharge into Chollas Creek. As such, the employee parking lot should be NASSCO's responsibility, not the District's, for purposes of allocating TMDL responsibility.

As the DTR acknowledges, the storm water runoff from the employee parking lot that discharges into Chollas Creek is considered "negligible" for TMDL allocation. (Section 8.1.1) Further, if the storm water runoff from the employee parking lot was not considered negligible, it would likely be in the form of sheet flow directly into Chollas Creek, which would constitute a non-point source. Rather than a WLA, a non-point source should receive load allocations. (*See* 40 CFR § 130.2(g)). These discharges would not be included in WLAs.

As this parking lot is the only land identified in the DTR under the District's jurisdiction that is within the Chollas Creek watershed and the storm water runoff is negligible for TMDL purposes, it is inappropriate to name the District as a responsible Municipal Discharger for TMDL allocation. Assigning the District with a WLA for a source that contributes negligible loads to Chollas Creek would subject the District to potential liability for discharges that do not contribute to the TMDL calculation and cannot effectively be controlled or reduced. The District would be unable to meet its WLA as there is no measurable pollutant load to reduce.

Accordingly, the District requests that the Regional Board remove the District from the TMDL requirements for Chollas Creek.

b. Discharges from the MS4

It would also be inappropriate to name the District as a responsible Municipal Discharger and assign WLAs based on discharges from any MS4 outfalls within the Chollas Creek watershed. An MS4 outfall has been identified within the NASSCO leasehold that may have historically discharged into Chollas Creek. However, regardless of whether this MS4 is currently discharging into the watershed, the DTR has not identified any MS4 outfalls that are owned or operated by the District.

The District was established in 1962 by the state of California to effectively develop the harbors and port facilities for multiple purpose use for the benefit of the people. Through the Port Act, the District was provided the authority to manage the lands that overlay the city

boundaries of the Cities of Chula Vista, Coronado, Imperial Beach, National City and San Diego. However, during the course of establishing the District, several parcels and/or utilities remained under the authority of the respective underlying city through grants by the District to the respective cities. These grants enabled the cities to maintain ownership of such areas and indemnified the District for claims or damages arising from their use. These grants have been documented in historic records shown as easements, dedicated streets, and other deeded rights. As such, it can be the case that some of the streets and storm drains shown to be within the District's jurisdictional boundary are actually owned, operated, and maintained by another agency. To assist the Regional Board in better understanding how this correlates with the proposed TMDLs, the District is performing a more detailed analysis of the District's jurisdictional authority within the boundary of District tidelands, and reserves the right to provide further information to the Regional Board at a future date.

The MS4 outfall (SW9) that may have historically discharged into Chollas Creek is owned and operated by the City of San Diego. The City of San Diego and the Regional Board have both acknowledged this fact. (See Exhibit 1, attached) Under the Clean Water Act, a "copermittee" on an MS4 permit is defined as "a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge *for which it is operator.*" (40 C.F.R. §122.26(b)(1) [emphasis added].) The Regional Board has not specifically identified *any* MS4 outfalls as a source of pollutants in Chollas Creek or even identified any MS4 outfalls that are allegedly owned or operated by the District. As discussed, the only known MS4 outfall that may discharge into Chollas Creek (SW9) is owned and operated by the City, and the District is not aware of any MS4 outfalls in the Chollas Creek watershed that are owned or operated by the District. Should it become necessary, the District is prepared to present sufficient evidence showing that the District does not own or operate SW9 or any other MS4 outfall that discharges into Chollas Creek.

Because the District does not own or operate the SW9 and the Regional Board has not identified any District MS4 outfalls that discharge into Chollas Creek, the District should not be named as a responsible party on this basis. This position is consistent with the decision in *NRDC, Inc. v. County of Los Angeles* (9th Cir. 2012) 673 F.3d 880, which held that, in order to establish a NPDES violation, the source of the pollutant resulting in an exceedance must be specified. (*Id.* at 901.) The TMDL may be in violation of the Clean Water Act, 33 U.S.C. § 1313(d)(1)(c). Recently, in *Virginia Department of Transportation v. U.S. Environmental Protection Agency, et al.*, No. 1:12-CV-775 (E.D. Va. Jan. 3, 2013), the court held that the EPA could not issue a TMDL for storm water flow, a non-pollutant, as a surrogate for sediment, which is a "pollutant". Here, by using estimated storm water runoff and land use models to assign WLAs, the Regional Board is essentially treating storm water as a surrogate for the identified pollutants and develops WLAs only on assumptions regarding the volume and pollutant loads of the storm water, rather than actual pollutants discharged into Chollas Creek.

As the TMDL is currently drafted, the District would be potentially liable for a violation by assumption without identifying the source of the pollutants that cause an exceedance, which is not permitted by the applicable regulations or court decisions. Therefore, the District cannot be

named as a responsible party for TMDL requirements based on discharges from MS4s in the Chollas Creek watershed.

c. Provide clarity on basis of MS4-related TMDL responsibility

The DTR does not appear to allocate TMDL responsibility based on whether a party owns or operates a facility within the MS4 or the amount of storm water or pollutants that are actually contributed by or within each party's MS4 jurisdiction. The DTR assigns TMDL responsibility based on the nonpoint source contributions *into* the MS4 that are ultimately discharged into each watershed from the "end of the pipe", as calculated by percentage of each party's jurisdiction or right-of-way. (Section 8.1.1) This method of allocation is particularly confusing as the federal regulations require that TMDLs identify and enumerate the individual sources for each load allocation (LA) and WLA. (See section 8; 40 C.F.R. § 130.7) The DTR does not appear to identify or enumerate each individual source for the LAs or WLAs. This would also result in potential enforcement situations in conflict with the ruling in *NRDC, Inc. v. County of Los Angeles*, as discussed above.

Accordingly, the District requests that the Regional Board revise the DTR to make clear that the District does not have MS4-related TMDL responsibility.

2. NASSCO should be named as a responsible party for the TMDL requirements

The DTR identifies NASSCO as a historical and current source of pollutants discharged into Chollas Creek. (Section 5.4.4) The Regional Board also acknowledges that NASSCO is a responsible party for sediment remediation of Chollas Creek mouth sediment and contemplates issuing an investigative order requiring NASSCO to conduct certain monitoring studies. (Section 9.3 fn. 21, Section 10.4) However, NASSCO is not named as a responsible party for the TMDL requirements or assigned a WLA, even though NASSCO is identified as a source of point source discharges and will be required to remediate the Chollas Creek sediment. (Section 9.3)

If the Regional Board determines that discharges from the NASSCO leasehold, including but not limited to discharges from the employee parking lot, contribute a significant load of pollutants to Chollas Creek, NASSCO should be named as a responsible party for purposes of the TMDL load reduction requirements and should be assigned a WLA.

3. The Sediment Remediation provisions should be removed from the DTR

The DTR includes provisions that address the remediation of sediment within the three watersheds. (See, e.g., Sections 10.1, 10.5). However, pursuant to the Clean Water Act, TMDLs are designed to gather information in advance of an implementation or remediation plan. It is not meant to be an implementation plan itself. (See U.S.C. § 1313(d); 40 CFR § 130.7; *Pronsolino v. Nastri*, 291 F.3d 1123, 1140 (9th Cir. 2002) ("[T]here is no pertinent statutory provision otherwise requiring implementation of § 303 plans or providing for their enforcement."); *City of Arcadia v. U.S. EPA*, 411 F.3d 1103, 1105 (9th Cir. 2005) ("[A] TMDL is not self-enforcing, but serves as an informational tool or goal for the establishment of further pollution controls.")).

TMDLs do not create an enforceable implementation scheme for remediation of polluted water bodies, nor are they designed for this purpose. Rather, sediment remediation must be conducted pursuant to the requirements of separate cleanup and abatement orders. (See Cal. Water Code § 13304). As such, the DTR's sediment remediation provisions should not be included as part of the TMDL.

Further, the inclusion of sediment remediation provisions in the DTR is particularly inappropriate without NASSCO being a named party with TMDL responsibility for Chollas Creek. NASSCO is required to remediate contaminated bay sediments within the NASSCO Shipyard Sediment Site. (See Cleanup and Abatement Order No. R9-2012-0024 (CAO)) However, the polygon (NA22) within the Chollas Creek TMDL project area and the NASSCO Shipyard Sediment Site was specifically excluded from the CAO, and from NASSCO's remediation responsibilities, so that it could be included in a cleanup and abatement order issued for the mouth of Chollas Creek as part of the implementation plan for the Chollas Creek TMDL. NASSCO must be included in the DTR so that any requirements imposed by the implementation plan also apply to NASSCO. Without NASSCO's inclusion, the TMDL implementation plan is contrary to the intended purpose of excluding NA22 from the CAO. In addition to NASSCO, there may be additional parties responsible for the contamination and should be involved in the remediation that is not part of the TMDL process. It would be inappropriate to expect TMDL parties to develop an implementation plan for the remediation of sediments which may be the responsibility of other parties.

Because the primary objective of a TMDL is to limit the future, ongoing loading into an impaired waterway, TMDL compliance should not be dependent on the status or success of the cleanup of historically contaminated sediments. As a TMDL is not the appropriate regulatory means, the District requests that the sediment remediation provisions of the TMDL implementation plan be removed from the DTR. Instead, the District requests that the sediment cleanup requirements are met through the appropriate regulatory tool, such as a cleanup and abatement order.

4. The DTR should be revised to provide clarity regarding MS4 terminology

The Regional Board makes numerous references to the municipal MS4s and parties that have TMDL responsibilities based on the MS4s. However, the terminology used when describing the MS4s and the MS4 responsible parties is not consistent. For example, responsible parties are referred to as "responsible Municipal Dischargers" (Section 5.2.1), "MS4 dischargers" (Section 5.3.2), "MS4s" (Section 8.1.1), "Phase I MS4s" (Section 9.3), and "Municipal MS4s" (Section 10.2). The MS4 facilities are alternatively labeled throughout the DTR as "MS4s", "Phase I MS4s", and "MS4 conveyance system".

The inconsistent references make the DTR unclear as to what parties and what MS4 facilities are actually being referred to. The District recommends that the Regional Board standardize the terms used to describe the municipal MS4s (as described in Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of

San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, Order No. R9-2007-0001) and the parties that have TDML responsibilities based on these MS4 facilities. The consistent application of these terms in the DTR would provide much needed clarity for the potentially responsible parties.

5. The District should not be named as a responsible party for MS4 discharges to Switzer Creek

The District requests that the Regional Board revise the DTR to clarify that the District is not named as a responsible party based on the MS4. The District should only be identified in the TMDL requirements for Switzer Creek, if at all, as an Industrial Permit holder for the Tenth Avenue Marine Terminal. There are no other sources of contributing pollutants from land under the District's jurisdiction

The DTR is inconsistent as to the basis for the District being named in the TMDL. In the Phase I Municipal Separate Storm Sewer Systems (MS4s) section, the District is not identified as a "responsible Municipal Discharger" for Switzer Creek. (Section 5.2.1.1) However, the DTR later states that the MS4 owned by the District is a known source of organic pollutants in the Switzer Creek watershed. (Section 5.5.2). It also identifies the District as a Phase I MS4 responsible party for point source discharges in Switzer Creek. (Section 9.3)

However, the only discharges to Switzer Creek from the District's jurisdiction are from the Tenth Avenue Marine Terminal (TAMT). The only MS4 outfalls that may discharge into Switzer Creek from TAMT are regulated under the District's Industrial Storm Water General Permit (Order No. 97-03-DWQ). (Section 5.5.3)

The District requests that the DTR be revised to remove reference to TMDL responsibility for the District based on the Phase I MS4 and to clarify that the District is only named in Switzer Creek as a result of TAMT.

We again emphasize that the District is dedicated to the protection and enhancement of water quality and that the District strongly supports the objectives of the TMDL. We welcome the opportunity to work with the Regional Board in order to achieve our mutual goals. Please contact us if you have any questions or would like any clarification of the District's position.

Very truly yours,



Scott E. Patterson

SEP/BPS/jd

cc: William D. McMinn, Esq.

EXHIBIT 1

PROPERTY FILE RECORD

LE No. 89-127

ROUTE TO:

PROJECT W 2 ENG. *JS*
RETURN AS SOON AS POSSIBLE

SAN DIEGO UNIFIED PORT DISTRICT

Document No. 18104

Filed _____
Office of the Clerk

EASEMENT AND QUITCLAIM DEED

SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, herein-after called "Grantor," for valuable consideration, receipt of which is hereby acknowledged hereby grants to the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "Grantee," a drainage easement. Said easement shall be for the purposes of construction, operation, maintenance, repair, replacement and inspection of a storm drain placed below the level of the surface of the ground and necessary above ground fixtures and appurtenances as approved by District within that portion of Grantor's land situated in the County of San Diego, State of California, and more particularly described on Exhibit "A" and delineated on City of San Diego Drawing No. 15878-1-B dated March 8, 1984, and Drawing No. 15878-2-B dated March 8, 1984. Said exhibit and drawings are attached hereto and by this reference made a part hereof.

1. Grantee shall have ingress and egress to and along the land described above via practical routes across adjacent land of Grantor, said routes to be determined by Grantor from time to time.
2. In the event Grantee disturbs the surface of the easement area during the installation, construction, maintenance and/or repair of the necessary facilities, Grantee shall do so in such a manner as will cause the least injury to the surface of the ground and any improvements thereon. Grantee shall restore the ground and any improvements thereon to substantially the same conditions as existed immediately prior to any such disturbance.
3. Grantor expressly reserves the right to grant easement in, upon, over and across the easement granted herein for any purpose whatever not inconsistent or incompatible with the rights and privileges granted by said easement. Nothing herein contained shall be construed as limiting the powers of Grantor to convey or otherwise transfer or encumber during the term of this easement the lands described herein for any purposes subject to the rights and privileges granted herein. The easement granted herein shall be subject to all existing rights of leases and encumbrances, recorded and unrecorded, affecting said land.
4. It is understood and agreed that in the event all or a part of the above described facilities should interfere with Grantor's

future use, redevelopment, construction, or improvements on said property, at Grantor's request, all or a part of said facilities will be relocated to a position on Grantor-owned property which may, but shall not necessarily be, the above described property; provided, however, the Grantor will not request the relocation of any one part of said facility more than one time. Grantor shall not be unreasonable in specifying new locations for said facilities. Said relocations shall be made at no expense to said Grantee; and Grantor further agrees to grant easements to Grantee for the permanent relocated portions at no expense to Grantee.

5. No construction or major repairs of any facilities shall commence without prior approval of the plans and specifications by Grantor, except for necessary emergency repairs. In the case of emergency repairs, Grantee will give Grantor written notification within 10 days from the commencement of the emergency repair and will obtain Grantor's approval within 90 days from the commencement of the emergency repair. Facilities installed pursuant to this agreement shall be constructed in a careful and workmanlike manner and shall conform to all applicable laws and regulations.

6. Grantee shall at all times indemnify and save harmless Grantor against and pay in full any and all loss, damage, or expense that Grantor may sustain, incur, or become liable for, resulting in any manner from the construction, maintenance, state of repair or presence of Grantee's facilities and all fixtures and equipment used in connection therewith, including any such loss, damage, or expense arising out of (a) loss of or damage to property, and (b) injury to or death of persons, excepting any loss, damage, or expense and claims for loss, damage, or expense resulting in any manner from the negligent act or acts of the Grantor, its contractors, officers, agents, or employees.

7. This easement may result in a taxable possessory interest and be subject to the payment of property taxes. Grantee agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Grantee for franchises, licenses or permits for any use or activities of Grantee upon the above described easement.

8. In the event said easement is no longer required or if said easement is not used for the purposes intended for a period of one year, whichever is sooner, all rights herein granted shall revert to Grantor, its successors or assigns, automatically and without the necessity of reentry or notice. Grantee shall furnish Grantor on demand a good and sufficient Quitclaim Deed of all its rights, title and interest in the above described real property.

9. The terms, covenants and conditions of this easement shall be binding upon and inure to the benefit of all heirs, executors,

administrators, permittees, licensees, agents, assigns or successors of any kind of both Grantor and Grantee.

10. Effective January 1, 1985, Grantee hereby exchanges, releases, surrenders and quitclaims any and all interests in portions of that certain easement reserved by the Grantee, in the Conveyance from the City of San Diego to the San Diego Unified Port District, which Conveyance was filed on February 15, 1963, in the San Diego Unified Port District Clerk's Office bearing Document No. 75 and which was also recorded on February 15, 1963, File/Page No. 28389 in the Office of the San Diego County Recorder. The real property covered by said easement being exchanged to the Grantor and quitclaimed by the Grantee is delineated on City of San Diego Drawing No. 15878-1-B, dated March 8, 1984, and Drawing No. 15878-2-B dated March 8, 1984, attached hereto, and by this reference made a part hereof and more particularly described as follows:

Portions of a drainage easement in the City of San Diego, County of San Diego, State of California being 15 feet in width, recorded as File/Page No. 28389, Official Records, on February 15, 1963 in the Office of the County Recorder and as shown on Engineering Drawing No. 9920-3-B entitled "Drainage Easement Southwesterly of Sampson Street Below the Mean High Tide Line" Sheet 3 of 19 filed in the Office of the City Clerk, City of San Diego, as Document No. 724665, on June 28, 1968; more particularly described in two parts as follows:

The north-south portion of said easement, lying 5 feet easterly and 10 feet westerly from the following described line:

BEGINNING at a point on the United States Bulkhead Line as it is shown on the map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426," approved by the Secretary of the Army, April 29, 1963 which bears north 56° 20' 08" west along said United States Bulkhead Line, 419.10 feet from station number 468 of said United States Bulkhead Line; thence north 7° 13' 35" east 503.87 feet to Point "A"; thence continuing north 7° 13' 35" east 31.05 feet to the POINT OF TERMINATION of the north-south portion of the herein described quitclaim.

The east-west portion of said easement, lying 7.5 feet on each side of the following described line:

BEGINNING at said point "A" thence south 55° 51' 40" east 197.99 feet to the POINT OF TERMINATION of the east-west portion of the herein described easement quitclaim.

11. SIGNATURE OF PARTIES: It is an express condition of this Easement that said Easement shall not be complete nor effective until signed by all parties.

DATED: April 24, 1985

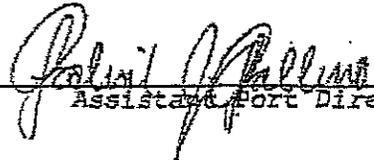
APPROVED:

As to Form and Legality.

SAN DIEGO UNIFIED PORT DISTRICT



JOSEPH E. PATELLO



Assistant Port Director

As to Engineering and Legal Description.

THE CITY OF SAN DIEGO



JOHN E. B. WILBUR
Chief Engineer

BY 

Title: ASSISTANT TO THE CITY MANAGER

IN WITNESS WHEREOF, The City of San Diego has caused this deed to be executed by its Mayor and City Clerk pursuant to resolution of the Council authorizing such execution this 11th day of March, 1985.

THE CITY OF SAN DIEGO

BY 

Mayor of said City
Roger Hedgecock

ATTEST:



City Clerk of said City
Charles G. Abdelnour

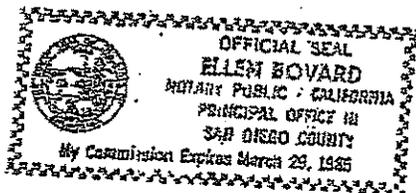
R- 262683

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO }

55.

On this 29th day of March 1985,
before me, the undersigned, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn,
personally appeared ROGER HEDGECOCK, known to me to be the Mayor,
and CHARLES G. ABDELNOUR, known to me to be the City Clerk of
The City of San Diego, the municipal corporation that executed
the within instrument, and known to me to be the persons who
executed the within instrument on behalf of the municipal
corporation therein named, and acknowledged to me that such
municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal in the County of San Diego, State of California, the day
and year in this certificate first above written.



Ellen Bovard
Notary Public in and for the County
of San Diego, State of California

STATE OF CALIFORNIA,)
) SS.
COUNTY OF SAN DIEGO.)

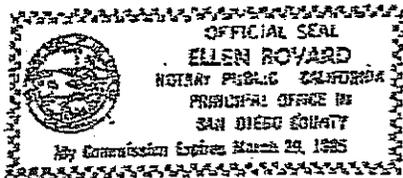
On 29th of March, 1955, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ANNE RAST, known to me to be the Assistant to the _____ City Manager of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

Ellen Royard

(Insert Notary Stamp below)

Notary Public in and for said San Diego County, State of California.



STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this _____ day of _____, 198____, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____, known to me to be the Mayor, and _____, known to me to be the Clerk of the City of San Diego, the municipal corporation that executed the within instrument, and known to me to be persons who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County of San Diego, State of California, the day and year in this certificate first above written.

Notary Public in and for the
County of San Diego, State of
California

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

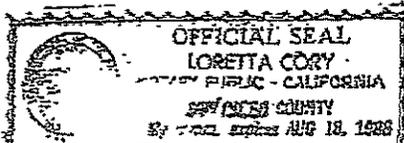
On this 27th day of April, 1985, before me,
LORETTA CORY
the undersigned Notary Public, personally appeared _____

GABRIEL J. GALLINA
_____ personally known to me
_____ proved to me on the basis of satisfactory
evidence

to be the person who executed this instrument as Asst.
Port Director
of the San Diego Unified Port District, a public corporation, and
acknowledged to me that the public corporation executed it.

WITNESS my hand and official seal.

Loretta Cory



DRAINAGE EASEMENT LEGAL DESCRIPTION

In the City of San Diego, County of San Diego, State of California, a strip of land having a uniform width of 20.00 feet over a portion of Parcel 1-A as shown on Miscellaneous Map No. 564 per series 4 Book 1963, File/Page 28389 of Official Records of the County of San Diego, more particularly described as follows:

Commencing at Station No. 468 on the United States Bulkhead Line as it is shown on the map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426", approved by the Secretary of the Army, April 29, 1963, from which point Station No. 82+00 on the "Williams Base Line" bears north 49° 44' 05" east 651.45 feet; thence from said point of beginning north 56° 20' 08" west along said U.S. Bulkhead Line a distance of 242.69 feet to the TRUE POINT OF BEGINNING, from which point the intersection of said U.S. Bulkhead Line with the easterly line of a drainage easement 15 feet in width as shown on Engineering Drawing No. 9220-3-B, Sheet 3 of 19, filed in the Office of the City Clerk as Document No. 724665 on June 28, 1968 and filed in the Office of the San Diego Unified Port District Clerk as Document No. 3383 on June 28, 1968, bears north 56° 20' 08" west 170.83 feet; thence from said TRUE POINT OF BEGINNING north 33° 39' 52" east 82.00 feet; thence north 56° 20' 08" west 89.38 feet to the beginning of a tangent curve concave easterly; thence northerly along the arc of said curve having a radius of 1250 feet and a central angle of 90° 00' 00" a distance of 19.63 feet; thence north 33° 39' 52" east 294.50 feet; thence north 56° 20' 08" west 100.60 feet; thence north 33° 23' 28" east 80.97 feet to a point from which the intersection of the easterly line of the herein described easement with the northerly line of a drainage easement 15 feet in width located in Belt Street, as shown on said Engineering Drawing No. 9220-3-B, bears south 33° 23' 28" west 12.93 feet; thence north 56° 36' 32" west 20.00 feet; thence south 33° 23' 28" west 14.88 feet; thence north 50° 32' 21" west 147.20 feet to the beginning of a tangent curve concave northeasterly; thence northwesterly along the arc of said curve having a radius of 80.00 feet and a central angle of 22° 21' 02", a distance of 31.21 feet to a point on a non-tangent line, through which point a radial line bears south 61° 48' 41" west; thence north 08° 01' 22" east 6.84 feet to a point from which the intersection of the northerly line of the herein described easement with the easterly line of a drainage easement 15 feet in width crossing Belt Street, as shown on said Engineering Drawing No. 9220-3-B, bears north 81° 58' 38" west 9.10 feet; thence north 81° 58' 38" west 20.00 feet; thence south 08° 01' 22" west 12.99 feet to the beginning of a non-tangent curve, concave northeasterly through which point a radial line bears south 65° 44' 44" west; thence southeasterly along the arc of said curve having a radius of 100.00 feet and a central angle of 26° 17' 05", a distance of 45.88 feet; thence south 50° 32' 21" east 149.33 feet; thence south 33° 23' 28" west 65.88 feet; thence south 56° 20' 08" east 100.51 feet; thence south 33° 39' 52" west 274.50 feet to the beginning of a tangent curve concave easterly; thence southeasterly along the arc of said curve having a radius of 32.50 feet and a central angle of 90° 00' 00" a distance of 51.05 feet; thence south 56° 20' 08" east 69.38 feet; thence south 33° 39' 52" west 62.00 feet to a point on said U.S. Bulkhead Line; thence along said U.S. Bulkhead Line south 56° 20' 08" east 20.00 feet to the TRUE POINT OF BEGINNING of the herein described easement.

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 1113

AN ORDINANCE GRANTING
AN EASEMENT TO CITY OF SAN DIEGO
AND ACCEPTING QUITCLAIM DEED

The Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The easement for drainage between the San Diego Unified Port District, a public corporation, and the City of San Diego, a municipal corporation, for the purpose of construction, operation, maintenance, repair, replacement and inspection of a storm drain placed below the level of the surface of the ground and necessary above-ground fixtures and appurtenances, together with the Quitclaim Deed from the City of San Diego to the San Diego Unified Port District, for real property located at Belt Street near the foot of Sampson in the City of San Diego, on file in the office of the District Clerk as Document No. 13184, is hereby approved and granted.

Section 2. The Port Director or his authorized representative is hereby directed to execute the said easement with the City of San Diego and to accept said Quitclaim Deed on behalf of the District.

Section 3. This ordinance shall take effect on the 31st day from its publication.

Presented By: DON L. NAY, Port Director

By: *Joseph D. Patello*
ASSISTANT PORT DIRECTOR

Approved: JOSEPH D. PATELLO, Port Attorney

Joseph D. Patello

San Diego Unified Port District

Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified Port District on April 23, 1985, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Ben Cohen	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Phil Creaser	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
W. Daniel Larsen	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Delton C. Reopelle	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
William B. Rick	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Daniel N. Spurck	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Louis N. Wolfsheimer	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

AUTHENTICATED BY:

Christine M. Stein
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN
Clerk of the San Diego Unified Port District

By: *Mary Sue Karsman*
Deputy Clerk

(Seal)

Resolution Number:

OR

Ordinance Number: 1113

Adopted: 4-23-85

(R-85-1485)

RESOLUTION NUMBER R- 262683

ADOPTED ON MAR 11 1985

WHEREAS, SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, has requested an exchange of drain easements; and
WHEREAS, the City Manager has certified that the values of the property rights to be exchanged are equal; and

WHEREAS, the easement to be acquired will serve the same use and purpose as the easement to be quitclaimed by the City; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

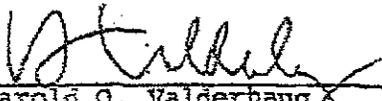
1. That the acceptance by the City Manager of that deed of SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, executed in favor of The City of San Diego, conveying to said City a drain easement in a portion of Parcel 1-A of Miscellaneous Map 564, as more particularly described in said deed, a copy of which is on file in the office of the City Clerk as Document No. RR- 262683 is hereby approved.

2. That the Mayor and City Clerk of said City be, and they are hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a quitclaim deed, a copy of which is on file in the office of the City Clerk as Document No. RR- 262683 quitclaiming to SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, all of the City's right, title and interest in the drain easement in a portion of Parcel 1-A of Miscellaneous Map 564, as more particularly described in said deed.

3. That the City Clerk is hereby authorized and directed to deliver both deeds, and a certified copy of this resolution, attested by him under seal, to the Property Department for further handling.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
02/13/85
Job:517426-C
15878-1 & 2-B
Or.Dept:Prop.
R-85-1485
Form=r.ex

Passed and adopted by the Council of The City of San Diego
on MAR 11 1985, by the following vote:

YEAS: Mitchell, Cleator, McColl, Jones, Struiksma, Gotch, Murphy,
Martinez, and Mayor Hedgecock.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By MAYDELL L. PONTECORVO, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R- 262683
passed and adopted by the Council of The City of San Diego,
California, on MAR 11 1985

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By Maydell L. Pontecorvo, Deputy.

PORT OF SAN DIEGO
P.O. Box 488
San Diego 12, Calif.

(9)
ORIGINAL

C O N V E Y A N C E

SAN DIEGO UNIFIED PORT DISTRICT

DOCUMENT NO. 75 1963
FILED FEB 15 1963
MICROFILMING 3
OFFICE OF THE CLERK

THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereby conveys, without warranty, to the SAN DIEGO UNIFIED PORT DISTRICT, a Public Corporation established pursuant to the provisions of the San Diego Unified Port District Act, all those lands situate within the City of San Diego, County of San Diego, State of California, which are more particularly described as follows:

PARCEL I:

All those lands lying between the line of mean high tide of San Diego Bay and the pierhead line of said bay, and between the prolongation into said bay to the pierhead line of the northerly line of the United States military reservation on Point Loma and the prolongation into said bay to the pierhead line of the southwesterly line of the United States Naval Training Center and reserving therefrom such roadways and easements as hereinafter described, such boundaries, roadways and easements being shown in detail upon engineering drawings Nos. 1, 2, 2a, 2b, 2c, 3, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 4, 4a, 4b, 4c, 4d, 4e, 4f, 5, 5a, 5b, 5c, 6a, 6b, 6c.

PARCEL II:

All those lands lying between the line of mean high tide of San Diego Bay and the pierhead line of said bay, and between an irregular westerly boundary being an irregular line beginning at Government Station 488 on the combined pierhead and bulkhead line and proceeding northerly; thence easterly; thence northerly; thence easterly; thence northeasterly along the boundary of the United States Marine Corps Base to the point where such boundary intersects the mean high tide line in the vicinity of Washington Street and Pacific Highway, and the northwesterly boundary lines of the United States Naval Station between the mean high tide line and the United States Pierhead Line being an irregular line, omitting therefrom the United States Coast Guard Base lying southerly of North Harbor Drive and in the vicinity of Lindbergh Field; and the Civic Center lying between North Harbor Drive and Pacific Highway and between Grape and Ash Streets; and the United States Naval Supply Center consisting of four parcels, (1) the block lying between Broadway and "E" Street and between North Harbor Drive and Pacific Highway, (2) the block lying between "B" and "F" Streets and between North Harbor Drive and Pacific Highway, (3) a portion of a block between "F" and Market Streets and North Harbor Drive and Pacific

Highway, (4) The United States Naval Pier at the foot of "E" Street; and adding portions of fractional blocks 18 and 19, New San Diego, according to the Map thereof No. 456, lying above the mean high tide line; such boundaries, roadways, easements and omissions being shown in detail upon engineering drawings Nos. 4, 5, 6, 6a, 6b, 6c, 7, 8, 8a, 8b, 9, 9a, 9b, 9c, 9d, 9e, 10, 10a, 10b, 10c, 10d, 10e, 10f, 10g, 10h, 11, 12, 12a, 13, 13a, 13b, 13c, 14a, 14b, 14c, 14d, 14e, 14f, 15c, 15d, 15e, 15f, 16a, 16f, 14g, 15g, 16c, 16d, 16g.

984

The City retains from the conveyance of Parcel II the right of control and possession of that block surrounded by Pacific Highway on the west, Kettner Boulevard on the east, Market Street on the north, and Harbor Drive on the south, for a Police Station and for so long as the City continues to use it for that purpose.

PARCELS III through XIV:

The following described uplands lying above the line of mean high tide of San Diego Bay:

(Parcel III):

Lot 8, Block 135, La Playa, Coutts Miscellaneous Map No. 37, lying above mean high tide line, and as shown on engineering drawing No. 2a.

(Parcel IV):

Portion Closed Street, Adjacent Lot 2, Block 154, La Playa, Coutts Miscellaneous Map No. 37, lying above mean high tide line, and as shown on engineering drawing No. 2b.

(Parcel V):

Portions of Right of Way Lots 73 and 74 of Middletown, according to Jackson's Map of Middletown, and as shown on engineering drawing No. 8a.

(Parcel VI):

Portion of Lot 6, Block 272 of Middletown, according to Jackson's Map of Middletown, and as shown on engineering drawing No. 8b.

(Parcel VII):

Lot E, Block 22, New San Diego, according to the Map thereof No. 456, lying above the mean high tide line.

(Parcel VIII):

Lot E, Block 23, New San Diego, according to the Map thereof No. 456, filed in the office of the County Recorder, said County of San Diego, excepting therefrom that portion, if any, lying below the mean high tide line of the Bay of San Diego, and excepting therefrom the Right of Way of the Atchison, Topeka and Santa Fe Railway Company.

(Parcel IX):

Portion of Lot F, Block 23, New San Diego, lying above the mean high tide line, and as shown on engineering drawing No. 10a.

(Parcel X):

All of Block 31, New San Diego, Map No. 488.

(Parcel XI):

Portion of Pueblo Lot 1164 northwesterly of Sampson Street, as shown on engineering drawing No. 12a.

(Parcel XII):

All of Block 45, Roseville, Map No. 155, lying above the mean high tide line.

(Parcel XIII):

Lot 6, Block 82 of Roseville, according to Map No. 165 of Roseville, lying above the mean high tide line, as shown on engineering drawing No. 13a.

(Parcel XIV):

The portions of Fractional Block 54 and the Un-numbered Fractional Block in San Diego Land and Town Company's Addition, according to record map thereof No. 379, lying between the mean high tide line of the Bay of San Diego, and the southerly right of way line of the Atchison, Topeka and Santa Fe Railroad, as shown on engineering drawing No. 13c.

ROADWAYS RESERVED

The City of San Diego specifically reserves easements for street purposes, as more particularly set forth hereinafter, including within such reservations the right to construct, maintain and operate all utilities and the right to grant franchises on such streets and to require franchise payments to The City of San Diego as authorized by the Charter of The City of San Diego:

PARCEL A: (Roads within Parcel I described above)

For San Antonio Avenue - an easement over that portion included between the mean high tide line and the prolongation of the easterly line of San Antonio Avenue as it now exists, as shown on engineering drawing No. 2.

For Talbot Street - an easement 70' in width extending from the mean high tide line to the south-easterly line of Anchorage Lane, as shown on engineering drawing No. 3f.

For Canyon Street - an easement 70' in width extending from the mean high tide line to the south-easterly line of the most southeasterly line of Anchorage Lane, as shown on engineering drawing No. 3g.

For Anchorage Lane - an easement 48' in width between the northeasterly line of Talbot Street and the southwesterly line of Canyon Street, and an easement 55' in width between the northeasterly line of Canyon Street and the southwesterly line of Byron Street, as shown on engineering drawings Nos. 3a and 3f.

For Byron Street - an easement 50' in width between the mean high tide line and the traffic circle at Byron Street and Yacht Harbor Drive, as shown on engineering drawings Nos. 3c, 3d.

For Yacht Harbor Drive - an easement of variable widths as shown on engineering drawings Nos. 2a, 2a, 2e, 4b.

For the traffic circle at Byron Street and Yacht Harbor Drive - easements of variable widths as shown on engineering drawing No. 2a.

For the traffic circle at the southwesterly end of Yacht Harbor Drive - easements of variable widths as shown on engineering drawing No. 2c.

For Garrison Street - an easement 70' in width extending from the mean high tide line to the northwesterly line of Scott Street, as shown on engineering drawing No. 3k.

For Scott Street - an easement 70' in width extending from the point where the mean high tide line intersects the southeasterly line of Scott Street to the southwesterly boundary of North Harbor Drive, the variable widths of such easement as shown on engineering drawing No. 3g.

For North Harbor Drive - an easement 182.5' in width extending easterly from the mean high tide line to the southwesterly line of the United States Naval Training Center, as shown on engineering drawing No. 4a.

For Lowell Street - an easement 73.5' in width extending southeasterly from the mean high tide line to the northerly line of North Harbor Drive, as shown on engineering drawing No. 4a.

PARCEL B: (Roads within Parcel II described above)

For 28th Street - an easement 126' in width extending from the mean high tide line to the northerly line of Harbor Drive, as shown on engineering drawing No. 13d.

For 8th Avenue - an easement 80' in width extending from the mean high tide line to the northeasterly line of Harbor Drive, as shown on engineering drawing No. 11.

For 5th Avenue - an easement 80' in width extending from the mean high tide line to the northeasterly line of Harbor Drive, as shown on engineering drawing No. 11.

For Kettner Boulevard - an easement 75' in width extending southerly from the mean high tide line to the northeasterly line of Harbor Drive, as shown on engineering drawing No. 10.

Broadway - an easement 125' in width extending from the westerly line of Pacific Highway to a line parallel to and 200' easterly from the United States bulkhead lines, as shown on engineering drawing No. 10a.

For Ash Street - an easement 80' in width extending from the westerly line of Pacific Highway to the easterly line of North Harbor Drive, as shown on engineering drawing No. 9a.

For Grape Street - an easement 80' in width extending from the westerly line of Pacific Highway to the easterly line of North Harbor Drive, as shown on engineering drawing No. 9b.

For Hawthorn Street - an easement 80' in width extending from the mean high tide line to the easterly line of Pacific Highway; an easement 80' in width extending from the northwesterly line of Pacific Highway to the northeasterly line of North Harbor Drive, as shown on engineering drawing No. 9.

For Ivy Street - an easement 80' in width extending from the mean high tide line to the easterly line of Pacific Highway, as shown on engineering drawing No. 9.

For Laurel Street - an easement 80' in width extending from the mean high tide line to the northeasterly line of Pacific Highway; an easement 80' in width extending from the southwestly line of Pacific Highway to the northerly line of North Harbor Drive with a variable width at the Harbor Drive end of said easement, as shown on engineering drawings Nos. 9b, 9c.

For Palm Street - an easement 80' in width extending from the mean high tide line to the northeasterly line of Pacific Highway, as shown on engineering drawing No. 8.

For Sassafras Street - an easement 80' in width extending from the mean high tide line to the northeasterly line of Pacific Highway, as shown on engineering drawing No. 8.

For Vine Street - an easement 80' in width extending from the mean high tide line to the northeasterly line of Pacific Highway, as shown on engineering drawing No. 8.

For North Harbor Drive - an easement 200' in width extending from the westerly boundary line of Parcel II to the easterly line of the United States Coast Guard Base; an easement 179' in width extending from the easterly line of the United States Coast Guard Base to the vicinity of the prolongation of Date Street; an easement 185' in width extending from the vicinity of the prolongation of Date Street to the southerly line of Ash Street, as shown on engineering drawings Nos. 4, 5, 6, 7, 9.

For Harbor Drive - an easement of variable widths extending from the easterly line of Pacific Highway to where said street intersects the mean high tide line in

the vicinity of the prolongation of 16th Street; an easement providing for a right of way 120' in width from the vicinity of Schley Street to the vicinity of the United States Naval Repair Base; the variable widths of such easements as shown on engineering drawings Nos. 10, 11, 13.

For Pacific Highway - an easement providing for a right of way of variable widths between that point where the mean high tide line intersects the south-westerly line of Pacific Highway in the vicinity of Washington Street and the southerly line of Harbor Drive, as shown on engineering drawings Nos. 8, 9, 10.

For all the above-mentioned streets - an easement of such width for intersection purposes at the intersection of any of the aforementioned streets with each other or with any other roadway and as shown on the appropriate engineering drawings in Exhibit "A."

OTHER EASEMENTS RESERVED

City reserves easements in Parcels I through XIV for all existing water, sewer and drainage facilities, known or unknown, the location of known existing utilities being designated by engineering drawings Nos. 14a - 14g; 15a - 15g; 16a - 16g; unknown easements shall be more specifically located by survey and location maps of such easements shall be prepared, which maps shall become a part of this conveyance as a subsequent exhibit when approved by District and City.

" QUITCLAIM

Parcel XV:

City quitclaims all its right, title and interest in all those submerged lands in the Bay of San Diego bayward of the pierhead line within the city limits of said city, excepting those lying easterly of the jetty and southerly of the peninsula of San Diego; and southerly of the common boundary of the City of San Diego and the City of National City as shown on engineering drawing No. 1.

EXHIBITS

All engineering drawing numbers referred to in this document under Parcels I through XIV; Roadways Parcels A and B; and Easements, by reference thereto are incorporated herein and attached hereto as Exhibit "A".

IN WITNESS WHEREOF, The City of San Diego has caused this conveyance to be executed by its Mayor and City Clerk, pursuant to resolution of the Council authorizing such execution, this 14th day of February, 1963.

THE CITY OF SAN DIEGO

By *Richard D. ...*
Mayor of said City

ATTEST:

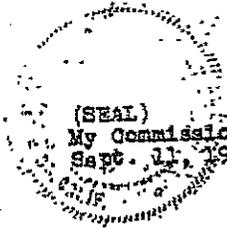
Lucy ...
City Clerk of said City

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

950

On this 14th day of February, 19 63,
before me, the undersigned, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn,
personally appeared CHARLES C. DAIL, known to me to be the
Mayor, and PHILLIP ACKER, known to me to be the City Clerk of
The City of San Diego, the municipal corporation that executed
the within instrument, and known to me to be the persons who
executed the within instrument on behalf of the municipal corpora-
tion therein named, and acknowledged to me that such municipal
corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal, in the County of San Diego, State of California, the day
and year in this certificate first above written.



Helen M. Willig
Notary Public in and for the County
of San Diego, State of California
HELEN M. WILLIG

FILE/PAGE NO. 28389
RECORDED REQUEST OF

Willig
Feb 15 11 42 AM '63

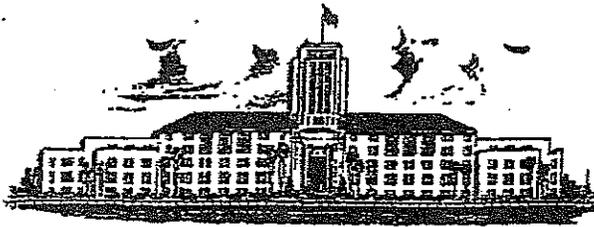
SERIES 4 BOOK 1963
OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
A. S. GRAY, RECORDER

NO FEB

40

174499 FEB 14 1963

75



THE CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

February 15, 1969

OFFICE OF
CITY CLERK
ROOM 358
CIVIC CENTER

REFERENCE
COPY

75

Don Nay
Attorney's Office
San Diego Unified Port District
San Diego, California

Dear Mr. Nay:

The Duplicates Originals of three agreements authorized by the City Council on February 14, 1969, covering the transfer of lands and assets, personnel, retirement, etc., are attached. The originals of these agreements are filed in our office under one Document Number which is No. 651832.

We are also enclosing the original copy of the CONVEYANCE of the lands from the City to the Port District and a certified copy of the Resolution authorizing the agreements and conveyance which is Resolution No. 174499.

Yours truly,

PHILLIP ACKER, City Clerk

By *LaVerne E. Miller*
La Verne E. Miller
Asst. City Clerk

In
Encl. (4)

cc: Carl Neupach
R. J. Curran

ORIGINAL

Gordon & Rees LLP
101 West Broadway
Suite 1600
San Diego, CA 92101

1 BRIAN M. LEDGER (SBN: 156942)
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5 JAN GOLDSMITH (SBN: 70988)
FREDERICK M. ORTLIEB (SBN: 131751)
6 DAVID J. KARLIN (SBN: 156178)
OFFICE OF THE CITY ATTORNEY
7 1200 Third Avenue, Suite 1100
San Diego, CA. 92101
8 Telephone: (619) 533-5800
Fax: (619) 533-5856

FILED
OCT 14 2009
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

9 Attorneys for CITY OF SAN DIEGO

10
11 UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 CITY OF SAN DIEGO

14 Plaintiff,

15 vs.

Case No. 09 CV 2275 W CAB
COMPLAINT FOR ENVIRONMENTAL
COST RECOVERY AND
CONTRIBUTION, INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
AND DAMAGES

Demand For Jury Trial

FAXED

17 NATIONAL STEEL & SHIPBUILDING
COMPANY; NATIONAL STEEL &
18 SHIPBUILDING CORPORATION;
NATIONAL IRON WORKS; MARTINOLICH
19 SHIP BUILDING COMPANY; SOUTHWEST
MARINE, INC.; BAE SYSTEMS SAN DIEGO
20 SHIP REPAIR, INC.; SAN DIEGO MARINE
CONSTRUCTION COMPANY; STAR AND
21 CRESCENT BOAT COMPANY, a division of
SAN DIEGO MARINE CONSTRUCTION
22 COMPANY; STAR AND CRESCENT BOAT
COMPANY; STAR AND CRESCENT
23 INVESTMENT COMPANY; STAR AND
CRESCENT FERRY COMPANY; SAN
24 DIEGO MARINE CONSTRUCTION
CORPORATION; MCCSD; CAMPBELL
25 INDUSTRIES; SAN DIEGO GAS &
ELECTRIC; UNITED STATES NAVY; SAN
26 DIEGO UNIFIED PORT DISTRICT; and
DOES 1-100, inclusive,

27
28 Defendants.

1 release or damages occurred. The releases of hazardous substances and damages occurred in San
2 Diego, California, which is in the Southern District of California.

3 **GENERAL ALLEGATIONS/ BACKGROUND**

4 **A. PLAINTIFF**

5 27. Plaintiff City of San Diego owns and operates a municipal storm water system
6 (MS4) through which it discharges urban runoff to San Diego Bay subject to the terms and
7 conditions of its National Pollution Discharge Elimination System ("NPDES") permit under
8 section 402 of the Clean Water Act.

9 28. From approximately 1914-1962, Plaintiff served as the designated public trustee,
10 via an Act of the Legislature of the State of California approved May 1, 1911, for the tidelands
11 property on which Defendants NASSCO and BAE SYSTEMS presently operate (the NAASCO
12 and BAE SYSTEMS leaseholds, respectively). From 1914-1962, Plaintiff did not conduct any
13 operations on the property at any time; Plaintiff did not discharge any hazardous substances from
14 these properties; nor did Plaintiff cause or permit any hazardous substances to be discharged
15 from these properties. The Regional Board did not find Plaintiff's past role of public trustee of
16 this property to be a basis for naming Plaintiff a "Discharger" or "Responsible Party" under its
17 Tentative Order.

18 **B. NASSCO**

19 29. Upon information and belief, from approximately 1945 to present, NASSCO
20 and/or its predecessors in interest have owned and operated a full service ship construction,
21 modification, repair, and maintenance facility located at 2798 Harbor Drive (28th Street and
22 Harbor Drive) in San Diego, California. Upon information and belief, NASSCO leases the land
23 on which its facility operates from the PORT DISTRICT, the designated public trustee of the
24 property since assuming that function from Plaintiff in 1962 ("the NAASCO Leasehold").

25 30. NASSCO's primary business has historically been ship repair, construction, and
26 maintenance for the NAVY and commercial customers. Current site features include offices,
27 shops, warehouses, concrete platens for steel fabrication, a floating dry dock, a graving dock,
28 two shipbuilding ways, and five piers, which provide 12 berthing spaces.

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City of San Diego

REPORT FOR THE INVESTIGATION OF EXCEEDANCES OF THE SEDIMENT QUALITY OBJECTIVES AT NATIONAL STEEL AND SHIPBUILDING COMPANY SHIPYARD

July 15, 2004



Storm Water Pollution Prevention Program
1970 B Street, MS 27A
San Diego, CA 92102

City's records do not contain all storm drain system information from the beginning of the twentieth century. The only historical map available is from 1942 (Attachment 4). The storm drain system is shown as a 4 x 3.5 foot reinforced concrete box along the southerly side of Belt Street in this drawing.

A current storm drain system map is enclosed for your reference as Attachment 5. This map indicates that the City storm drain system enters the NASSCO leasehold at the foot to 28th Street and terminates at the southeasterly corner and discharges into Chollas Creek. This storm drain outfall is referred to as SW9 in NASSCO sediment report map prepared by Exponent, a private company, dated September 23, 2003 (Attachment 6). Our research did not validate the Exponent report that storm drain SW3 is part of the City of San Diego storm drain conveyance system.

Scaled figures delineating tenant boundaries are enclosed as Attachment 7 and entitled NASSCO Shipyard Tenant Information Parcel Animation Supplement. The maps start at with the first tenant on record through 1962. There is a map for every year that a change in boundaries was recorded. Included with each map is a table providing information on the business name, parcel size, business code and lease start and end dates. The Shipyard Business Code spreadsheet (Attachment 8) was developed for color coding of parcel types for viewing of these maps on the enclosed CD (Attachment 9). This CD has instructions on how to open and view the maps in any ArcView program.

3. Monitoring Data Analysis

In order to link sediment to wet weather one should rely on multiple lines of evidence and one of those lines of evidence is to look at gradients to see if a strong gradient signal indicates that sediments are moving out from or into the river channel. The data collected offshore as dry weight concentrations do not provide evidence of this gradient. Second we would expect to see some correlation in the chemistry collected in the urban runoff program monitored samples (wet and dry weather sampling) and the contaminants observed in the sediments.

Historical urban runoff monitoring data both wet and dry seasons suggest signals of copper, zinc, and diazinon in Chollas Creek. Therefore, if there is a link between offshore contaminant of sediments and creek inputs one might reasonably expect to find a gradient of contamination of offshore sediments of these contaminants. Review of the historical sediment monitoring data collected at offshore station locations shows no evidence of a gradient of contamination.

Monitoring data from the Co-Permittee monitoring program was reviewed for this analysis and included sediment samples collected upstream in Chollas Creek and at the mouth of Chollas Creek in San Diego Bay from 1996 to 2000, wet weather data from the mass loading station in Chollas Creek from 1996 to 2004, dry weather data within the Chollas Creek watershed areas MS4 system from 2002 to 2003 (Table 1 and Table 2).