
Memorandum

To: Environmental Community Activists

Fr: Marco Gonzalez, Coast Law Group LLP
Attorneys for Surfrider, San Diego Chapter and San Diego Coastkeeper

Date: January 29, 2009

Re: Cooperative Agreement with City of San Diego for Non-Opposition to CWA
301(h) Waiver

Both the San Diego Chapter of the Surfrider Foundation and San Diego Coastkeeper have received numerous inquiries regarding the San Diego environmental community's decision not to oppose EPA's tentative order to grant a CWA section 301(h) waiver for discharges from the Point Loma Wastewater Treatment Plant in San Diego.

Below you will find relevant information providing both a historical perspective of the San Diego situation, and the environmental, legal, and practical reasoning that has led to our decision not to oppose the waiver.

Please note, the public comment period on the tentative order granting the waiver ended at 5:00 p.m. on January 28, 2009.

1. History/Background

The federal Clean Water Act (CWA) requires discharges of sewage to the ocean to be treated to "secondary" level. Section 301(h) of the CWA allows the United States Environmental Protection Agency (US EPA) and individual states to issue permits for discharges not achieving full secondary treatment so long as certain criteria are met. In simple terms, the discharger must show that its less-than-secondary discharge is not violating state or federal water quality standards, or negatively affecting species diversity and abundance in receiving waters and sediments. These "waivers" were originally given to a number of municipalities and sewage agencies throughout the country, but now, only San Diego has a waiver for any significant amount of discharge.

(Note: three of the remaining waivers – two in Hawaii and one in Guam – were recently denied renewal by US EPA. The last large waiver holder other than San Diego – Orange County Sanitation District – agreed in 2002 to construct secondary treatment for its entire discharge by 2012.)

A PowerPoint presentation (available: http://docs.sandiego.gov/reportstocouncil_attach/2006/06-103att.1.pdf) prepared by the City in 2006-2007 summarizes the history of the 301(h) waiver in San Diego, including passage of the Ocean Pollution Reduction Act (OPRA) which established CWA section 301(j) requirements specific to San Diego. The history of waivers in San Diego, and the legal framework surrounding them, is not like any other jurisdiction in the US. Therefore, because our decisions are driven in part by our experiences and the politics

of our region, likening our situation to that in Orange County, Morro Bay, or Hawaii may not be appropriate. Please consider this as you read the rest of this memorandum.

This PowerPoint presentation also includes relevant information from the most recent round of litigation between the environmental groups and the City, some of which will be expanded upon further, below.

The last waiver was issued to San Diego in 2001, and resulted in lawsuits by San Diego Coastkeeper and the San Diego Chapter of the Surfrider Foundation. The San Diego Chapter of Sierra Club eventually joined in the challenges as well. The EPA decision was challenged in the Environmental Appeals Board in Washington DC, and the Regional Board's approval was challenged in state court in San Diego.

The strongest arguments available to us at that time included: (a) issuance of the waiver in the proposed form violated federal CWA anti-degradation and anti-backsliding regulations; (b) failure by the City to achieve 45 million gallons per day (MGD) of sewage reclamation was a violation of OPRA, and that merely constructing reclamation capacity without implementing beneficial reuse was insufficient; and (c) the plume outfall monitoring program was not sufficient to accurately characterize plume migration and impacts (i.e. "we don't know what we don't know"). The City filed an appeal challenging the Regional Board's imposition of an annual declining suspended solids emissions requirement as purportedly required by OPRA.

After the complaints and answers were filed, the City and environmentalists (including Bruce Reznik for Coastkeeper, Ed Kimura and Bob Simmons for Sierra Club, Lori Saldana before being elected to the California Assembly, and Marco Gonzalez for Surfrider and Coastkeeper) began a process of facilitated discussion and negotiation to determine whether settlement was possible. Due to the lack of information available on the City's infrastructure, cost estimates, and treatment options, the first six months of weekly and bi-monthly negotiations were predominantly information dumps and brainstorming sessions. At numerous meetings City staff and experts presented information on the extent of infrastructure development and CIP planning, capital projects financing, and various technical issues associated with settlement components and options.

During this time, all parties agreed to suspend their formal challenges. Slowly but surely over the next approximately 3 years, we worked with the goal of achieving a resolution that would provide for eventual construction of secondary treatment in addition to sewage reclamation and recycling benefits to the region.

Elimination of the waiver was always considered a foregone conclusion, including by the City representatives. But, after experiences in Orange County and Goleta, we all knew that design, construction, and permitting of the upgrade at Point Loma would require between 8 and 12 years, depending on a number of technical, economic, and physical space constraint issues.

Also during this period, Surfrider's San Diego Chapter and Coastkeeper were working on our large lawsuit over the City's failures to maintain and upgrade its sewage conveyance infrastructure (average of one sewage spill per day, and 3,000 beach closure days at SD beaches in five years preceding suit). The result of that lawsuit was a consent decree requiring the City to increase sewer fees so that it could spend upwards of \$1 billion

between 2003 and 2013 on capital improvements (new pipes and pumps) to reduce sewer spills. Though work began immediately (and spills were reduced in just a couple of years by more than 80%), finalizing that settlement was stalled due to Securities and Exchange Commission's (SEC) investigations into the City's failure to disclose pension liabilities when it sold municipal bonds. This effectively precluded the City for three additional years from being able to commit to the full suite of consent decree obligations through the term of the settlement.

Importantly, as a result of both our involvement in the protracted infrastructure suit negotiations (which also included US EPA), we were intimately aware of the impact our conveyance system lawsuit would have on the City's finances and Metropolitan Waste Water Department ratepayers through 2013. (The City was "locked out of the bond market" due to the SEC investigation, and was forced to explore various private financing options).

We understood that despite our best efforts to secure federal and state assistance, money wasn't going to be growing on trees, and it would not be reasonable to saddle the City (meaning, us ratepayers) immediately with the additional costs of upgrading the Point Loma Wastewater Treatment Plant. While it is always possible to point at ways government can change its practices to find money for more important matters, we had already investigated with a fine toothed comb the ways in which the City was spending its sewer fees on all of its infrastructure, and we weren't about to say "go ahead and delay a pipe replacement because we want you to get started on building at Point Loma." It just wouldn't make sense if our goal was to protect water quality.

After vetting this information over many months, our discussions typically conceded a likelihood of two to three additional 5-year waiver periods before full secondary would be achieved, even if the City agreed to a consent decree. The US Department of Justice attorneys working on our conveyance system case were the same ones who negotiated the Orange County 301(h) 10 year consent decree, and we frequently discussed our situation with them to see if the federal attorneys agreed with our positions. This isn't to say we were willing to sign off on more waivers for nothing, but rather, that we realized nothing could be built overnight and we were going to leverage this fact into our negotiations.

As negotiations continued to address a number of issue and fronts, we worked out three separate agreements. These were all done at separate times over the years, but collectively resolved our litigation efforts:

A. Secondary Technology Study: The City consistently claims lack of space as one of the most difficult barriers to construction of secondary treatment at Point Loma. Pretty much everyone agrees the physical location of the Point Loma Wastewater Treatment Plant at the end of the regional pipe is about as bad as could have been planned.

Nonetheless, in recent years, technological advancements within the sewage treatment industry have resulted in opportunities to achieve secondary treatment at the Point Loma capacity (240mgd) on a much smaller footprint. And while the existing plant does not contain the space necessary for even these new technologies, we knew the Navy had some land adjacent to the plant and figured we could work with them given the importance of the situation to all of San Diego.

Our expert recommended and the City agreed to conduct a pilot study of one of the more promising technologies - called Biologically Aerated Filtration (BAF) – to see if it could achieve secondary standards given the quality of Point Loma's sewage influent and flow demands. The City Council-approved \$900,000 pilot plant was constructed and study completed over many months. The results of this BAF study were positive – the City could achieve secondary treatment with that technology, and do so at a fraction of the cost previously estimated. This was important because throughout the years prior, we were constantly fighting unverifiable cost figures ranging from \$1-6 billion for the upgrade, and this study effectively parsed out the technical issues and costs relevant to a viable technology for achieving secondary treatment without significant system overhaul. Unfortunately, due to increases in construction materials during and immediately following the study, coupled with the Navy's eventual refusal to consider a land transfer for plant upgrades, the cost to achieve secondary treatment at Point Loma remains somewhere between \$1–1.5 billion.

B. Monitoring: Section 301(h) places the burden on the discharger to prove no harm. The City's position has always been that its monitoring program is among the best in the world and shows that no harm to the environment occurs from its "advanced primary" treated sewage discharges. The environmental groups' position was that the monitoring program was insufficiently robust to capture the full range of potential impacts, especially with respect to endocrine disruptors (and other emerging contaminants of concern) and highly vagile species (such as marine mammals). We were also concerned that the cumulative impacts of the Point Loma Ocean Outfall (PLOO), the South Bay Ocean Outfall, and LA-5 (the Army Corps of Engineers contaminated dredge spoils deposit site just south of the PLOO) were not being sufficiently considered.

To settle the matter, the City and environmental group representatives collaborated on a scope of work for an independent team of technical experts from Scripps Institute of Oceanography (SIO), and our expert as a peer reviewer, to assess the City's monitoring program's effectiveness at answering all of the relevant 301(h) questions. SIO's study confirmed our prior assertions – there were significant gaps in information, both in terms of breadth and resolution (monitoring frequency and spatial distribution), and we therefore "didn't know what we didn't know". With emerging capabilities to monitor oceanographic conditions in "real time", recommendations were made to expand the monitoring program in a number of ways, including various special studies to address specific question raised. These recommendations are now being implemented, and have resulted in significantly better data.

Ed Kimura of the Sierra Club was our technical consultant on most of the monitoring issues, and he represented the whole Bay Council at numerous meetings with experts from SIO and the City.

C. Water Reclamation and Recycling: When in the 1980's the City originally missed its opportunity to apply for a waiver, it was allowed to do so after special legislation was passed containing a different set of requirements beyond those in section 301(h). This legislation, the Ocean Pollution Reduction Act (OPRA), contained in CWA section 301(j)(5)(B)(i) the requirement that the City "achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010." To comply with this requirement, the City built two plants – the North City Water Reclamation Plant (30mgd), and the South Bay Water Reclamation Plant (15mgd). All of the water

reclaimed at these facilities was to be treated to tertiary standards, and made available for landscape irrigation and, on occasion, industrial processing.

But, due to the lack of demand for recycled water for these uses, as well as the expense and difficulty of distribution throughout the region (via “purple pipe”), these plants' capacities have never been realized. In fact, the 30 mgd “capacity” of North City really means it can take in that much sewage, and after processing, produce about 24-26 mgd of reclaimed water. Of that, less than half is actually treated to tertiary standards and reclaimed. The remainder is treated to secondary and discharged back into the pipes where it comeslingles with raw sewage, only to be treated again downstream at the Point Loma plant.

As the North City WRP came online in the mid-1990's, the City also began pursuing a “Water Repurification Project,” which would have achieved indirect potable reuse of North City's full capacity through reservoir augmentation at the San Vicente reservoir. A pilot plant was constructed, permitting undertaken, and public relations work conducted. The State of California even deemed the project acceptable.

In the late 1990's, as the City was approaching the time to move forward with an actual project, politics and the specter of technological uncertainty got in the way. Some members of the public and politicians put forward the notion that the sewage being treated at North City was being primarily generated in the more wealthy and less ethnically diverse northern reaches of the City (Del Mar, Carmel Valley, La Jolla), and that the project would result in such treated sewage being pumped from the North City plant to the San Vicente reservoir, from which it would be treated and piped only to communities south of Interstate 8. Because these communities were more economically depressed and ethnically diverse, the entire matter became an environmental justice debacle.

In addition, a science advisory panel expressed caution as evidence evolved regarding the presence of endocrine disrupters and other emerging contaminants of concern in wastewater, and uncertainty existed regarding the ability of reverse osmosis membranes (as then designed and constructed) to adequately remove these new pollutants. Despite the San Diego Grand Jury's findings (available: <http://www.co.san-diego.ca.us/cnty/cntydepts/safety/grand/water.html>) that these claims were merely hypothetical and never before witnessed where indirect potable reuse was practiced for more than twenty years (Orange County and Alexandria, Virginia), the project was killed.

The City Council in 1999 passed a resolution suspending the IPR project. (“...the City Manager is directed not to spend any monies on water repurification.” See Resolution R-291210, available: http://docs.sandiego.gov/council_reso_ordinance/rao1999/R-291210.pdf). Despite spending millions of dollars and achieving significant regulatory and public support, the City Council declared IPR indefinitely excluded from San Diego's future. Though unhappy with the waste of money and time, City staff was forced to accept this decision. Before long, to even discuss “toilet to tap” was taboo. Some staff members working on the project were let go or reassigned, and all reclamation efforts shifted exclusively to purple pipe distribution of tertiary treated water. This led to some disagreement during waiver negotiations whether IPR could be part of our settlement.

As part of the information gleaned throughout the negotiations, we were able to learn that the environmental justice plumbing concerns with the repurification project were

untrue, and that in fact the advanced treated potable water created from San Vicente would be distributed indiscriminately throughout the City. We knew that reverse osmosis membrane technology had become more effective and affordable in recent years. We knew Orange County was doing IPR. And, we knew desalination was being pushed, despite being more environmentally destructive and energy intensive. We knew we had a persuasive argument in favor of IPR for San Diego.

Therefore, we demanded as a condition of our settlement that the ill-advised anti-IPR resolution be overturned, and a new Water Reuse Study conducted to consider and analyze all options for maximizing the capacity of the City to reclaim sewage at its two reclamation plants. Most importantly, Surfrider, SD Coastkeeper, and Sierra Club together required the City to again consider advanced treatment of its reclaimed water for comingling with imported water supplies in drinking water reservoirs.

That Surfrider, Coastkeeper, and the rest of the Bay Council were able to work with the City Council and gain agreement to spend \$1 million for the Water Reuse Study and to overturn the 1999 resolution was nothing short of monumental. (See 2004 resolution approving study, available: <http://www.sandiego.gov/water/waterreustudy/pdf/councilresolution.pdf>). The efforts of Bruce Reznik and his staff, in conjunction with Surfrider, to educate the Council proved formidable.

The Water Reuse Study included production of a draft report, and then an in-depth public stakeholder process to assess desired outcomes and make recommendations to the City Council and Mayor. It also included a technical committee to provide input during the stakeholder process and to conduct a peer review of the final report.

The Study found (a) IPR via reservoir augmentation is not only safe, but unanimously desired by the study participants; (b) IPR is the most cost effective means for achieving full reuse of existing capacity at the City's two water reclamation plants; (c) environmental justice concerns previously identified were no longer relevant. The stakeholders recommended City implementation of an alternative that included construction of an IPR project at North City and conveyance to the San Vicente Reservoir – pretty much exactly as was contemplated ten years prior.

If you are interested in reading the Water Reuse Study, see: <http://www.sandiego.gov/water/waterreustudy/involvement/fd2006.shtml>

The study was first presented to the City Council's Natural Resources and Culture Subcommittee chaired by Councilwoman Donna Frye. A special evening meeting was then conducted to allow technical experts to present information to the Council, and for Marco Gonzalez to have a debate with one of the primary opponents of the original Repurification Project. At the end of the meeting, Councilman Ben Hueso stated that the next time the matter was brought forward, he would appreciate it if someone could articulate any credible reason to oppose IPR, as none was brought up that night. No opposition has since come forward. In fact, with the exception of Mayor Sanders, pretty much the only person opposing toilet to tap was the Opinion Editor of the Union Tribune, Bob Kittle (which, as you can imagine, creates the perception that there is much more opposition out there).

On October 29, 2007, the Water Reuse Study was finally brought to the full City Council and approved with direction to the Mayor to implement its recommendation. The environmental groups achieved this majority vote by creating a previously unheard-of coalition that included such unlikely partners as the Chamber of Commerce, the San Diego Taxpayer's Association, BIOCOM (a powerful trade group for the SD biotech industry), the Building Industry Association, and others. Again, Bruce Reznik and Marco Gonzalez took the lead in drafting editorials, coordinating testimony, and lobbying the Council.

Despite the coalition and Council support, the Mayor vetoed the approval. For the first and only time since establishment of the "strong mayor" form of government, the City Council overturned the Mayor's veto, and ordered City staff to come back with a schedule for implementation of the first phase of the project – a pilot advanced treatment module at North City as required by the State Department of Public Health prior to implementation of any full scale IPR project.

It cannot be overemphasized as to the political statement this made, both in terms of the necessity for the project, and of its viability at the instigation of Surfrider, Coastkeeper, and Sierra Club.

Unsurprisingly, the Mayor refused to jump on board. He would not allocate funds for construction of the pilot project or to conduct the retention study for San Vicente (it has to be shown that advanced treated sewage will remain in the reservoir for at least a year before being extracted and treated for potable uses). There has been a lot of behind-the-scenes politics (not to mention elections) affecting the issue throughout the last ten months, and such discussion is beyond the scope of this memorandum.

But, outcomes tell us all we need to know – in November, 2008, the City Council agreed to raise sewer fees to provide for \$11.5 million needed to construct the pilot plant and conduct the San Vicente retention study.

Design and project implementation are now under way.

2. The City's Current Waiver and the Environmental Groups' Cooperative Agreement

Leading up to the City's filing of its most recent 301(h) waiver, Surfrider and Coastkeeper consistently sought to sit down with City management and the Mayor to devise a long term schedule for achieving secondary treatment at Point Loma. Difficulties in collaboration included: prior tensions as noted above, the person in charge of the wastewater department changed three times, and there were two Mayoral elections. City Council seats changed, as did a lot of other things.

Throughout the months leading up to the City applying for this waiver, Surfrider and Coastkeeper put on the table a position that if the Mayor were to agree to pursue an IPR project – the "holy grail" in our perspective – we would agree not to oppose two, and possibly even three more waivers. But remember, this was not really giving up much of anything because our engineers were telling us it would take at least that long to construct secondary treatment upgrades. We were also beginning to see the US EPA efforts in Hawaii take hold (discussed more, below), which meant that San Diego's waiver would be challenged by US EPA as well (eventually, and hopefully sooner rather than later).

So, prior to application submission, we were insisting not only on a commitment to the IPR project, but also to construction of secondary treatment by a specific date. We thought it would be reasonable to spread out sewer rate increases and construction obligations until after the 2013 termination of the conveyance system consent decree.

In the summer of 2007, the Mayor proactively commissioned SIO to provide a scientific assessment of the impact of the outfall, claiming that he would decide a course of action based on science. See October, 2007 SIO Report, available:

<http://www.sandiego.gov/mwwd/news/press/pdf/scientificreport.pdf>. Despite having concluded previously that the monitoring program was insufficient to answer all questions relative to 301(h), many of the same scientists nonetheless signed onto this new report finding "no evidence of significant adverse impacts" from the Point Loma Ocean Outfall.

We publicly disagreed with the conclusions of this report, reminding the City that you can't on the one hand say your monitoring program doesn't answer all the questions, and then say the discharge is ok because the data from that faulty monitoring program does not show significant adverse impact. We pointed out that the report ascribed certain impacts to LA-5 (the dredge spoils disposal site offshore) without providing credible justification for ruling out the Point Loma Ocean Outfall as the source of the impacts.

Surfrider and Coastkeeper consistently put forward the position that we were committed to challenging the waiver unless we got a date certain for coming up to secondary. We had two meetings with high level staff and one meeting with the Mayor to try to get them to put a firm date on the table. In the meantime, they did their work to obtain resolutions of support for the waiver from numerous cities, the County, trade groups, taxpayer's associations, etc.

(Note: even those who had supported us in the IPR fight would not agree the expenditure of \$1.5 billion was justifiable for the expected gains to water quality from full secondary treatment).

Throughout this time, we contacted officials at US EPA in San Francisco regarding their perspectives on San Diego and efforts to eliminate the waivers in Honolulu and Guam. We pushed them to go after San Diego as aggressively as they were the others, but were told that (a) due to efforts elsewhere, resources were not available to mount a strong campaign against the waiver in San Diego at this time, and (b) San Diego's effluent is substantially better than that in the other jurisdictions.

Because San Diego was required to meet the heightened requirements of OPRA, and had recently begun disinfection of its advanced primary treated effluent, US EPA would be supporting issuance of another waiver. Because it became evident we weren't going to get US EPA on our side, we lobbied hard for what we thought we could get – as strong a statement as possible that US EPA supported our IPR efforts, and that the City should not expect to get another waiver after this one.

As we geared up for the fight, and were reviewing the data supporting the City's application, we were also fighting the Carlsbad desalination plant proposal. This served to educate us on the dire water supply needs of San Diego, and provided an interesting

understanding of the various political, economic, and energy consumption issues associated with our current water supply paradigm. Because water reclamation uses the same reverse osmosis technology as desalination, and together these options constitute the only readily available drought-proof local supplies of new water, there naturally emerged a sense of competition between the two for regulatory and public acceptance and for limited infrastructure financing.

While we'd hoped to have a plan in place for long term achievement of secondary treatment or greater capacity of IPR by the time its application was submitted, changes in City management and structure (notably the election of Jerry Sanders and conversion to "strong mayor-strong council" form of government) precluded movement on our concerns. But, as the Water Reuse project moved forward, we also came to understand better the large reservoir augmentation IPR project operating in Virginia for more than two decades without problem. Eventually the 75mgd groundwater replenishment project in Orange County came on line with much fanfare and little, if any, criticism.

And then the light bulb went off. The goal of the Clean Water Act is not simply to ensure compliance with water quality standards and to achieve the cleanest runoff mandated by federal or state laws. Rather, the structure and purpose of the CWA is geared toward minimizing and when possible eliminating discharges altogether. Given the value of water in San Diego (at the end of the Colorado River and State Water Project pipelines), the likelihood of continued drought, the technological gains in reverse osmosis, the relatively dirty source water entering our reservoirs, the political and public acceptance for desalination, and a host of other political, economic, and social factors, there is no way San Diego can sustain its current paradigm of pushing sewage down to Point Loma and off into the Pacific Ocean.

In other words, with or without the support of the environmental community, a water reclamation strategy that includes IPR will have to be in our future. The question became not "whether" we'd do it, but "when" and "how." And of course, we want it as soon as and at the greatest capacity possible.

Also relevant was the fact that we'd learned in our prior negotiations how the City came up with its cost figures for construction of secondary treatment at Point Loma, and why they tended to be so high. Always included in the calculations was the foregone benefit of previous expenditures to upgrade various elements of the conveyance and treatment train that would be rendered obsolete if Point Loma Outfall effluent was forced to achieve secondary treatment levels. When CIP projects are financed, the municipal bond debt is typically serviced over a 20+ year period. Thus, if the project is not utilized for at least that long, then the City would be paying for something with no benefit, and essentially wasting taxpayer's money. This was a consistent argument behind the scenes against upgrading portions of the system that were "fine as is." Therefore, when analyzing the costs and practical realities of eliminating the waiver, we came to realize that achieving secondary treatment at Point Loma would turn into the biggest argument against constructing new water recycling plants upstream until sufficient return on such secondary treatment investment was realized 20 years later. And because discharge of secondary treated sewage without a waiver would be perfectly legal at that point, we would lose a lot of the leverage we currently have to mandate IPR.

As environmentalists, we always lament the inability of government to plan for the long term. We see short-term thinking at every project approval, and know that typical sprawl

and pollution practices will prove unsustainable down the road. And yet, here we were, fighting the waiver in part for the sake of fighting the waiver, and failing to heed our own advice regarding long term vision. Looking at the current paradigm of water supply and sewage conveyance/treatment, the ONLY sustainable option is IPR. With this perspective, our goal became clear. We want to eliminate all discharges to the ocean and maximize IPR as soon as economically, technically, and politically feasible.

With this new goal overriding our previous perspective of “eliminate the waiver at all costs,” we were then able to take stock of what had been achieved with the prior litigation and settlement. We had created the foundation and secured the funding for the first phase of a project that would eventually lead to maximizing water reclamation at existing plants. But, given the full capacity of Point Loma (240 mgd), how could we argue for more? We know we can’t build a reclamation plant at the end of the pipe, and we know that it is incredibly energy intensive to move sewage around the City, up and down hills.

What makes sense is to assess the City’s existing infrastructure, including pipes of all sizes, pump stations, and treatment facilities, and to figure out how it can be changed to allow for decentralized water reclamation and IPR. Put another way, we need the City to consider a long term plan for collecting, treating, repurifying, and drinking sewage closer to where it is generated. Unfortunately, we don’t have these answers, and when you overlay the technical considerations with the economic and energy issues, you end up with a need for some serious expert analysis – i.e. a \$2 million study.

Hence, Surfrider and Coastkeeper proposed the plan in the Memorandum (available beginning page 2: http://docs.sandiego.gov/councildockets_attach/2009/January/01-27-2009_Item_S501.pdf) to Mayor Sanders. In exchange for not opposing the waiver, we requested a study of the City’s existing and planned sewage treatment and conveyance infrastructure to determine how to maximize water reclamation throughout the system. While the prior Water Reuse study sought to maximize reclamation at the two plants, this study would evaluate the entire system to consider maximizing reclamation as part of a long term planning goal.

Just as we succeeded with the Water Reuse Study, we will succeed in moving the City toward elimination of Point Loma discharges altogether. Further, we and the City have been told by US EPA that it does not intend to offer San Diego further waivers. With our proposed study underway, the City, EPA, and environmental community will be able to sit down in two or three years and be able to credibly estimate the range of reuse goals achievable in the next ten years.

And at some point, upgrading Point Loma to secondary will become entirely moot, or at least more easily achievable on an interim basis. The value of that treated sewage for potable purpose will surpass any rationale to waste energy and taxpayer funds to treat sewage and dump it in the ocean. We are confident that our efforts today will in the future be seen as enlightened and visionary.

3. Response to Activist Allegations

The following are responses to some of the questions and allegations posed by environmental activists opposed to the waiver and concerned with the San Diego groups’ position.

A. How do we assure other environmentalists that the Cooperation Agreement is a good thing?

Response: The best we can do is to educate other environmentalists that we are not “selling out” by choosing a longer term view of discharges from Point Loma. If we think two decades ahead, what would be the impact of eliminating the waiver today? Surfrider, Coastkeeper, and Sierra Club in San Diego believe the future of sewage treatment is IPR, and that we cannot sustainably use our oceans for the discharge of treated sewage, secondarily treated or otherwise.

B. How do we know the \$2 million study will be taken seriously by the Mayor and the City Council?

Response: Politics being what they are, there will always be some element of risk in this process. But, the City Council is behind IPR even if the Mayor is reluctant. As the pilot project is constructed and comes online, there will be more data from which to argue IPR is safe and appropriate. The Mayor has indicated he wants the pilot project data before he supports IPR. Ultimately, we have to look at our experience with the Water Reuse study, the significance of the drought, the success of other IPR projects (OC and Virginia), and the recent regional movements toward other IPR studies (Helix Water District, City of Escondido). IPR is coming, we’re just trying to speed it up and get ahead of the curve.

C. Will there be opportunity for citizen participation, either through public meetings or comments?

Response: The Cooperation Agreement contemplates production of a Scope of Work for the bigger study without significant public input. But, Surfrider and Coastkeeper have a seat at the table, and we have funding to have our expert (Dr. Bruce Bell of Carpenter Environmental – our expert on all things sewage) involved along the way. Once the study itself is conducted, the draft will be presented in a public forum and input will be broadly solicited.

D. Were Marco Gonzalez, Bruce Reznik, and Ed Kimura authorized by Surfrider, Coastkeeper, and Sierra Club, respectively, to speak in favor of the waiver at the Regional Board hearing?

Response: We do not support the waiver. At the Regional Board hearing, we gave our conditional non-opposition pending City Council approval of the Cooperation Agreement. We had prepared opposition comments to submit in the event the City Council did not approve the Agreement.

The Executive Committee of the San Diego Chapter of Surfrider, as well as key personnel at Surfrider Headquarters, were made aware of the IPR-focused strategy well in advance of any public announcement of non-opposition to the waiver. The San Diego Coastkeeper Board of Directors was informed of Coastkeeper’s position, as was the leadership (Conservation and Executive Committee) of the San Diego Chapter of the Sierra Club. No one spoke without the full authority of the group he purported to represent.

E. Has the Surfrider Foundation changed its longstanding position of opposing CWA 301(h) sewage waivers?

Response: Surfrider does not support waivers. The decision not to file litigation in opposition to the current proposed waiver was made after careful consideration of a number of factors as detailed above. The notion that a decision made in furtherance of elimination of all sewage discharges in the future somehow indicates a trend toward acceptance of waivers is absurd and, frankly, doesn't even deserve this response. Activists who seek to discredit Surfrider, Coastkeeper, or Sierra Club's efforts in San Diego are encouraged to directly engage these groups, as we have always been willing to share our perspectives with activists who lack the benefit of our experiences here. Continued castigation of activists by those who are more intent upon fighting than reaching a well reasoned solution will be met with professionalism to the extent possible. Slander and threats of physical intimidation will result in retaliatory legal action.

F. The Point Loma Ocean Outfall discharges directly into the Cabrillo National Monument, the discharge results in humans swimming in sewage, and the discharge affects the Areas of Special Biological Significance off of San Diego.

Response: The PLOO discharges into water approximately 350 feet deep, 5 miles out to sea. At this depth, there is a persistent thermocline which precludes mixing of the plume with surface currents. Since extension of the outfall to this length and depth, discharge from the PLOO has never been shown to violate state Rec-1 water quality standards, and human contact cannot be presumed. The plume does not reach shore under any measurable condition. The plume does not reach the Cabrillo National Monument either. The San Diego and Scripps Areas of Special Biological Significance do not extend to far enough offshore, nor to a depth sufficient to plausibly expect contact with the PLOO plume. No evidence exists to suggest otherwise, and all of these issues were considered in depth by the environmental groups. If anyone has data to the contrary, or believes it is possible to prove any of these based on existing data, please contact us immediately, as we are always seeking such information.

G. Granting the waiver violates the Clean Water Act.

Response: Section 301(h) is in the Clean Water Act, and San Diego is legally entitled to a waiver if it can meet this section's requirements. Whether the effluent from Point Loma complies with section 301(h) is a highly technical consideration demanding expert review of data from San Diego's NPDES permit monitoring program.

H. Will the Coastal Commission be able to overturn the waiver?

Response: When the last waiver was issued, we were successful in convincing the Coastal Commission to disagree with the Regional Board and deny the waiver. Unfortunately, the Coastal Act does not permit the Commission to render decisions contrary to those of the primary agency charged with water quality protection – the State and Regional Water Boards. Therefore, the Commission's denial was summarily overturned and it is highly unlikely the Attorney General will permit such a disagreement between agencies this time around.

I. Endocrine disrupters and other emerging contaminants of concern will be eliminated if secondary treatment is achieved?

Response: Incorrect. (See Union Tribune article: http://www.signonsandiego.com/uniontrib/20080912/news_lz1e12schuber.html). There are no water quality standards for these emerging contaminants of concern. Our current drinking water supply contains these contaminants of concern. They are discharged in treated sewage from municipalities directly into our current sources of water. The ONLY way to eliminate these contaminants is through reverse osmosis, just as recommended by Surfrider, Coastkeeper, and Sierra Club as part of our IPR push.