

Proposed Interim Mayor & City Council Response to San Diego County Grand Jury Report:

Mission Valley Fuel Leakage and Contamination Abatement

Pursuant to California Penal Code Section §933 (c), the City of San Diego provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report. Background information and clarifications to some facts presented in the Grand Jury Report are included in this response.

The City of San Diego welcomes the investigation of the Mission Valley fuel spill by the Grand Jury. The City has long believed that the remediation of the Mission Valley aquifer, an important groundwater resource for our region, has not been addressed with suitable concern for the future of our residents. The Regional Water Quality Control Board (RWQCB) has jurisdiction over this cleanup and has overseen this remediation for more than twenty years. However, the results and the current state of the groundwater do not reflect the kind of progress the City believes should have been possible. Although the RWQCB has pursued the elimination of petroleum products from the groundwater, that process itself has created new problems for the long-term health of this precious water resource. This technical information has been documented by scientific analyses and reports submitted by the City to the RWQCB over the last ten years.

Responses to Findings and Recommendations

Finding 01: *It is not economically reasonable to relocate the MVT fuel storage and distribution facility to a more environmentally desirable site within the San Diego area.*

Response: The City partially disagrees with the finding.

We know of no study or analysis of the cost of any relocation of the MVT, so we are not prepared to either agree or disagree with this Finding. The MVT is a private facility, owned and operated by a private corporation, and the economic reasonableness of any proposed relocation would depend on a number of factors about which the City has no information. However, its location directly over an important groundwater aquifer, and the potential seismic liquefaction, landslide, flooding and wildfire threats would argue in favor of relocation from both the economic and public health and safety standpoint.

Finding 02: *The City does not have an adequate independent City-owned and operated monitoring capability in the impacted portions of Mission Valley in the areas within and surrounding Qualcomm Stadium that is separate and distinct from those monitoring wells controlled by the MVT owner.*

Response: The City agrees with the finding.

The City does not own and operate an independent monitoring well system within and around the Qualcomm Stadium property for the purpose of monitoring for contaminants and remediation. The operation of such a system is the sole responsibility of the party responsible for contamination and remediation, and overseen and regulated by the RWQCB. Therefore, an independent monitoring well system owned and operated by the City would be redundant and is not necessary. However, the City has installed test wells and monitoring wells in the aquifer for the purpose of field testing the aquifer to develop the groundwater for municipal supply. The City's wells were installed outside the perceived zone of contamination so as not to interfere with remedial operations.

The City does rely on scientific analyses from monitoring wells owned and operated by Kinder Morgan, the responsible party and owner of the MVT, but there has been no indication that the sampling results from that source were biased, and the analyses are all provided by state-certified laboratories. The City's experts have regularly analyzed and critiqued, in submittals to the RWQCB, the reports prepared by Kinder Morgan's experts on the remedial progress and associated issues. The City is not convinced of the utility of building, maintaining, sampling, and reporting on an independent network of monitoring wells - all of which would come at a cost to taxpayers and which might set a precedent regarding the many other contaminated sites within the City limits that are a responsibility of the dischargers.

Finding 03: *Results from the two City-operated monitoring wells located on the south side of the San Diego River indicate that the fuel plume is larger than prior data suggests.*

Response: The City agrees with the finding.

The City does not believe that the full scope and extent of the migrating chemicals have yet been determined. Further, based on sampling data, the City believes that the impacts of the contamination have spread, and continue to spread, farther than the owner of the MVT has reported to the RWQCB.

Finding 04: *The City of San Diego should continue to assert Pueblo Water Rights over the Mission valley aquifer.*

Response: The City agrees with the finding.

Water rights in California are critically important and have been since our City was founded. The California Supreme Court decreed in 1930 that the City has Pueblo Water Rights to all of the water (both surface and underground) of the San Diego River including its tributaries, from its source to its mouth. The City has always vigorously defended these rights, which are held in trust for its citizens.

Groundwater sources are being investigated and developed to expand the City's water portfolio as outlined in the Public Utilities Department 2012 Long Range Water Resources Plan (Plan). As outlined in the Plan, the Mission Valley Basin is one of four aquifers being considered for development to ensure long-range water sustainability for the citizens of San Diego.

Finding 05: *The San Diego public needs to be better informed of status of the Mission Valley watershed due to contamination from MVT petroleum product leakage and the effectiveness of the ongoing contamination abatement and clean-up efforts.*

Response: The City agrees with the finding.

The RWQCB has recently agreed to post technical reports authored by the City's consultants on its official "GeoTracker" website, where all the discharger's reports are posted, which will provide greater transparency. The City intends to make information available to the public on the status of the cleanup and efforts underway to develop a local water supply

Finding 06: *The City needs an up-to-date long-range plan for oversight of the MVT fuel containment control and stabilization efforts. This plan should identify ways to reduce the possibility of future fuel leakage from this facility. Development of this plan should not be delayed until future settlement of on-going litigation. The plan should take into account necessary actions based on either settlement outcome whether or not in the City's favor.*

Response: The City partially disagrees with the finding.

The City agrees that there must be a long-term plan for the oversight of the MVT facility – but that is the clear responsibility of Kinder Morgan, the owner of the facility, and not the City. Under State law, that clean-up will be overseen by the RWQCB, the State agency with jurisdiction over the clean-up. It is the owner of the facility that becomes, in the language of the Water Code, the discharger when fuel leaks from the bulk tankage or the associated pipes and equipment; and it is the discharger, not the public, who is fully responsible for both cleaning up a fuel spill and preventing the possibility of future fuel spills (Water Code, §13304(a)). The very location of the MVT creates issues that must be addressed by the facility's owner (as outlined in the response to finding 01), Kinder Morgan, and the cost of measures to address these issues should be a cost of doing business, and internalized by the company that is profiting from the operation of the facility.

As of the date of these comments, the MVT facility itself has not yet been remediated and remains a potential source of contamination. At the City's insistence, Kinder Morgan installed a "barrier" of wells so that a future spill could be intercepted prior to reaching

the Mission Valley aquifer. As the discharger, Kinder Morgan is responsible for cleaning up its own facility (as well as the public lands and waters it has polluted) and operating in a manner that will protect the public from the consequences of owning a bulk fuel terminal next to a public resource. The RWQCB is in a position to require that a long-term plan be devised and implemented, and the cost of such a plan should be borne by Kinder Morgan. The City intends to share the Grand Jury recommendations with the RWQCB in an effort to obtain cooperation on implementing them.

RECOMMENDATIONS

Recommendation 13-73: *Establish a City-owned and operated monitoring capability in the affected portions of Mission Valley within and surrounding Qualcomm Stadium. It would be separate and distinct from those monitoring wells controlled by the MVT owner associated contamination reports provided by the San Diego County RWQCB.*

Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

The costs to implement an independent monitoring system are disproportionate to the value of such a separate system. The City does not believe that the public should bear the cost of establishing an independent monitoring network separate from the monitoring effort maintained by the owner of the MVT. Please see the response to finding 02 for further information.

Recommendation 13-74: *Provide quarterly reports to the public concerning results obtained from City owned and operated monitors. The reports would include projected trends in the mitigation of soil, river water, and aquifer contamination resulting from the ongoing cleanup efforts now being performed by the MVT owner.*

Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

As stated in the response to Recommendation 13-73, the City does not believe in duplicating efforts or incurring the significant costs associated with establishing its own monitoring well system surrounding Qualcomm Stadium. We believe this is the sole responsibility of the owner of the MVT facility, Kinder Morgan.

However, as stated previously, the City intends to make information available to the public on the status of the cleanup and efforts underway to develop a local water supply. In addition, the City intends to continue to advocate that the RWQCB publish the City's expert reports on Geotracker to ensure transparency.

Recommendation 13-75: *Develop a long-range plan for oversight of the MVT fuel containment control and stabilization efforts serving to reduce the possibility of future fuel leakage from this facility.*

Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

The development of a long-range plan to contain the contamination on the MVT and prevent recontamination of the City's property and aquifer are the responsibility of Kinder Morgan, the owner of the MVT. The public should not be required to fund this effort. However, the City intends to pursue a long-range plan for control and stabilization of leaks from the MVT, to be funded and implemented by Kinder Morgan. The City also intends to continue its decade-plus efforts to oversee, analyze, comment and report on the progress of the clean-up (or lack thereof) and its impacts on the City's property and aquifer in order to ensure the protection of the aquifer and the Qualcomm property for the benefit of its citizens.