

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
UNION OIL COMPANY OF CALIFORNIA ) ORDER NO. WQ 90-2  
For Review of Cleanup and Abatement )  
Order No. 89-51 of the California )  
Regional Water Quality Control Board, )  
San Diego Region. Our File No. A-635.)

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BY THE BOARD:

On May 19, 1989, the California Regional Water Quality Control Board, San Diego Region (Regional Board), issued Cleanup and Abatement Order No. 89-51 (Cleanup and Abatement Order) to Golden West Hotel and Unocal Corporation<sup>1</sup> requiring a subsurface investigation and actions to clean up a plume of petroleum hydrocarbon contamination in ground water beneath downtown San Diego. On July 10, the Regional Board held a hearing, ratifying the Cleanup and Abatement Order. On August 9, 1989, Union timely filed a petition for review of the Cleanup and Abatement Order with the State Water Resources Control Board (State Board).

I. BACKGROUND

The Centre City Development Corporation, Inc. (CCDC) is a nonprofit corporation established by the City of San Diego to administer downtown redevelopment projects. In 1987, in

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<sup>1</sup> "Union Oil Company of California" and "Unocal Corporation" are used interchangeably throughout the record. Both will be referred to as "Union" in this Order.

preparation for the Marina Redevelopment Project, CCDC discovered a subsurface hydrocarbon plume near the intersection of Market Street and First Avenue. Following discovery of the plume of contaminated ground water, the Regional Board instituted a number of enforcement actions and requests for information from persons it determined were potentially responsible parties. These included owners and operators of sites which currently or formerly contained underground storage tanks for petroleum products and pipelines for transport of petroleum products.

One of the sites which the Regional Board determined may be a potential source of the petroleum hydrocarbon contamination was a paved parking lot at 235 Market Street.<sup>2</sup> The lot is currently owned by Golden West Hotel but was operated as a service station from approximately 1942 until 1975. From 1946 until the station ceased operating, Union leased the station from a series of landowners and subleased it to various dealers. Union installed the underground storage tanks in 1946, which were to be purchased by the current landowner. In 1947, Union purchased various pieces of equipment at the station, including the tanks and owned them until 1962, when they were sold to the landowner. In 1979, after the property was sold to Golden West Hotel, approximately eleven underground tanks for the storage of gasoline were removed. A final tank, used for storage of waste oil, was removed in 1989.

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<sup>2</sup> Market Street was called Martin Luther King Way for several years and some references in the record are to that name.

In 1987, following receipt of a report from CCDC investigating the extent of the plume,<sup>3</sup> the Regional Board began inquiring into the history of the site of the former Union station. The foci of the Regional Board's inquiry were Golden West Hotel (the current landowner) and Union. In December 1988, the Regional Board wrote to both Golden West Hotel and Union Company requesting a subsurface investigation of the site. Golden West agreed to perform an investigation and submitted a report in April 1989, but Union denied responsibility and refused to perform an investigation. The Regional Board Executive Officer issued the instant Cleanup and Abatement Order to Union and to Golden West on May 19, and the Order was ratified at a Regional Board meeting held July 10.

A petition was filed only by Union, although Golden West did file comments supporting Union's arguments. In its petition, Union requested both a hearing before this Board and a stay of the Cleanup and Abatement Order. As will be explained herein, this matter will be remanded to the Regional Board, so that a hearing before this Board is not necessary. Also as explained, a stay is not appropriate.

## II. CONTENTIONS AND FINDINGS

Contentions: Union raises a number of contentions in its petition. These can be roughly divided into factual and

3 Final Report, Subsurface Hydrocarbon Plume Investigation Near Martin Luther King Way and First Avenue, Applied Hydrogeologic Consultants, May 1987.

legal contentions. The factual arguments by Union generally claim that the Regional Board did not have substantial evidence that the petroleum hydrocarbon plume was caused by leakage from the gasoline station. In support of this contention, Union points to alleged deficiencies in some of the subsurface investigation reports submitted to the Regional Board, claims that the levels of soil contamination are not consistent with the extent of ground water pollution found below the site, and argues that the Regional Board has failed adequately to investigate other likely sources of pollution.

Union has advanced a variety of legal arguments to support its claim that it should not be named in the Cleanup and Abatement Order. First, Union argues that as a lessee who did not operate the service station, it could not be named as a discharger within the meaning of the statute authorizing the Cleanup and Abatement Order.<sup>4</sup> Second, Union points out that under Water Code Section 13304(f) persons who ceased discharging prior to 1981 are not to be held strictly liable for discharges unless their actions constituted a violation of laws existing at the time of the actions. Otherwise, a finding of intentional or negligent conduct is required. Union disputes the Regional Board's finding that it acted negligently and that leaks from the tanks violated existing law at the time they allegedly occurred.

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<sup>4</sup> Water Code Section 13304. The State Board has issued a number of orders holding such lessees responsible. See, e.g., State Board Order No. WQ 86-15.

Union also advances the argument that, since the Regional Board's order stated that the ground water in which the petroleum hydrocarbons were found has no beneficial uses, a condition of pollution does not exist. Finally, Union advances equitable arguments that it was unfairly singled out to clean up a large hydrocarbon plume which must have resulted from numerous dischargers, that other potential dischargers have not been ordered to perform cleanup, and that the Regional Board is improperly collaborating with CCDC for improper reasons to require Union to perform the cleanup.

Findings: The petroleum hydrocarbon plume in downtown San Diego is extensive. It has been estimated that up to 450,000 gallons of free product--gasoline and diesel fuel--are present in the ground water. In reviewing the record before us, it is apparent that there were at least several potential sources for the hydrocarbon plume. Attachments A and B display the known and probable tank locations and the results from permanent monitoring wells. From a review of these two documents, it appears that numerous underground tanks in the location of the plume may have contributed to the contamination. In addition, there are two pipelines which were used for the transport of fuel oil (both in the same location), which traverse the area of heaviest contamination, and are shown in Attachment C.

Given the number of potential sources of contamination, we asked the Regional Board to augment the record in this matter to show what steps it had taken to obtain reports and cleanup

from other potentially responsible persons. From the documents we received, we are convinced that the Regional Board is attempting to treat all potential sources fairly and to obtain remedial actions from all persons, including Union, who likely contributed to the contamination. In brief, following discovery of the petroleum hydrocarbons in the ground water (as a result of dewatering activities), CCDC submitted a subsurface investigation report in 1987 and later submitted a remediation plan, which was approved by the Regional Board in October 1989. The Regional Board also signed an agreement with CCDC in which CCDC agreed to perform the cleanup, and the Regional Board agreed that it would seek to hold other potentially responsible persons jointly liable for the investigation and cleanup.<sup>5</sup>

The Regional Board's subsequent actions included determining all property owners in the area of the plume, contacting those persons for site histories, and requesting subsurface investigations from the persons potentially responsible for releases from underground tanks and pipelines in the area. For those persons who complied with all Regional Board requests, activities have been accomplished simply by letters

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<sup>5</sup> Union submitted this agreement in an effort to show that the Regional Board was improperly working with CCDC. However, we see nothing improper in this agreement. Rather, we find it encouraging that the Regional Board was able to obtain agreement by one potentially responsible party--one who purchased property after the time of the original leaks and who does not own all of the property which apparently was the source of the leaks--to perform cleanup in return for the Regional Board's assistance in naming other responsible persons.

from the Regional Board staff. For those persons, such as Union, who the Regional Board determined were probable sources, it issued cleanup and abatement orders. In addition, as more information came to light from submitted reports, additional potentially responsible persons were added to these procedures. At the present time, the Regional Board has issued four cleanup and abatement orders to six persons. It has submitted a notice of violation to another person. Thus, while not all potentially responsible persons are at the same point in enforcement activities, the Regional Board proceeded in a generally straightforward manner to investigate a variety of potential sources, a task made more difficult by the fact that most of the businesses which had probably contributed to the plume were no longer operating.

In pursuing its investigation of the ground water plume, the Regional Board requested information concerning a fuel pipeline which had been operated by San Diego Gas & Electric (SDG&E). After receiving information from the utility and conducting an on-site inspection, the Regional Board determined that the pipeline was not a source. However, as a result of information in that report, the Regional Board discovered a second pipeline owned by Union. The Regional Board requested a subsurface investigation of the pipeline and submitted to us a staff report of the investigation and laboratory results. The initial investigation by the Regional Board has indicated that only fuel oil was transported in this pipeline.

From our review of the record, it appears that the Regional Board has much more information now on potential sources of pollution, characterization of the plume, and necessary remedial actions than it did when it issued the Cleanup and Abatement Order. It is obvious that at some point all responsible persons will have to work in concert to complete study of the plume and to perform remediation activities: while there are several sources, all lead to the same plume (or a number of plumes in the same area) and cleanup must be performed in a coordinated fashion. Since a wealth of new information has been provided since adoption of the Order, including the possibility of Union's responsibility as the owner of the pipeline, separately from its relationship to the gasoline station, we do not believe that it is a reasonable use of our resources to address all of Union's legal and factual contentions at this point. Rather, it is appropriate at this time for the Regional Board to compile all of its various actions on the downtown plume and to issue either one order, or several orders with coordinated tasks and time schedules, to all persons it finds are legally responsible, requiring any further investigation and cleanup which is necessary.

While we consider all dischargers jointly and severally liable for discharges of waste, it is obviously not necessary for there to be duplication of effort in investigation and remediation.<sup>6</sup> We believe that issuance of either a consolidated

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<sup>6</sup> There may, of course, be tasks which are appropriately required only by the dischargers to an individual site. An example would be cleanup of contaminated soil below the site.



order or coordinated orders will clearly define the work left to be done for all dischargers, and will provide a roadmap for coordinated actions.<sup>7</sup> In this order, there will be an opportunity for named persons to question their inclusion in the order and also to dispute the exclusion of other persons.

We do not, by remanding this matter to the Regional Board, imply that the Cleanup and Abatement Order was inappropriate or improper. Rather, as we stated before, we applaud the Regional Board's efforts to coordinate a complicated situation. We simply believe that the process is at a point where a reassessment of the situation will be helpful. We are ordering a remand for two further reasons. First, proposed testimony and new documents have been submitted to the State Board. The Regional Board is in a far better position to hold a hearing to explore this evolving cleanup effort. Second, we note that the same remedial work would be required of Union if it is found to be responsible for discharges from either the gasoline station or the pipeline or both. Accordingly, it may not be necessary to determine Union's responsibility for the station if the Regional Board finds that the pipeline was a pollution source and if Union does not contest such a finding.

Given our decision to remand this matter to the Regional Board, we will not decide the issues raised in the petition. Rather, we will deny the petition without prejudice for Union to renew the petition following further action by the

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<sup>7</sup> At various points in the papers it has submitted, Union has implied that it is willing to perform remedial activities if other responsible persons are also required to perform these tasks.

Regional Board. We will, however, address the one issue which Union raised regarding the necessity of any cleanup. As Union points out, the Basin Plan for the San Diego Basin does not specifically establish beneficial uses for the ground water in the basin where the plume is situated. However, under the terms of the State Board's Policy on Sources of Drinking Water, which was incorporated into the Basin Plan, all water which is not specifically exempted by the Regional Board is considered to have the beneficial uses of municipal and domestic. Therefore, the entry of petroleum hydrocarbons into the ground water constitutes a pollution and a nuisance within the meaning of Water Code Section 13304. In addition, there is a potential for the contaminants to enter San Diego Bay. Therefore, we approve of the Regional Board's efforts to require cleanup of the polluted ground water.

### III. CONCLUSION

For the reasons stated above, the petition is denied without prejudice to be refiled, and the matter is remanded to the Regional Board for further proceedings consistent with this order.

IV. ORDER

The petition of Union Oil Company is denied without prejudice to be refiled and the matter is remanded to the San Diego Regional Water Quality Control Board.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 19, 1990.

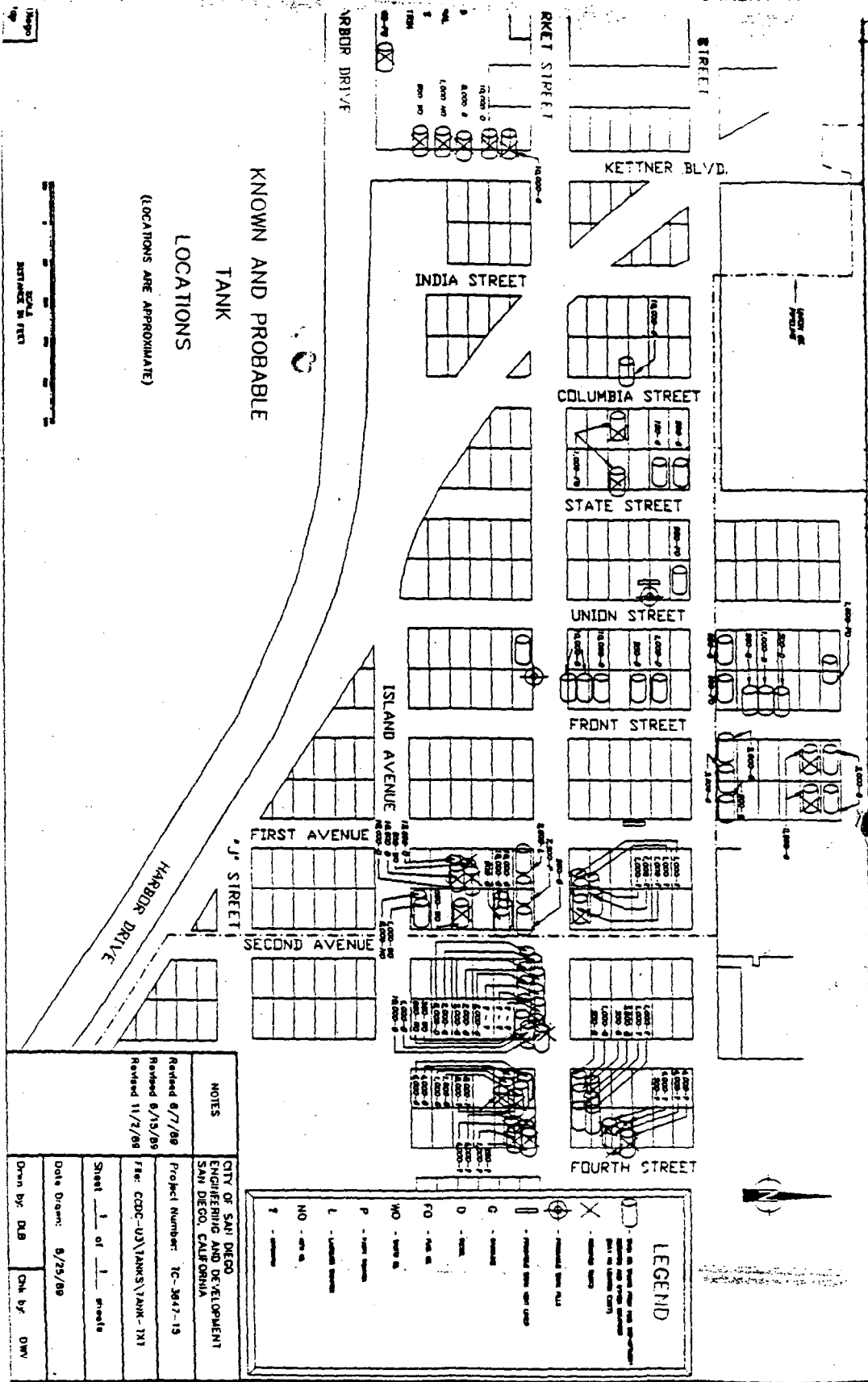
AYE:               W. Don Maughan  
                      Darlene E. Ruiz  
                      Edwin H. Finster  
                      Eliseo M. Samaniego  
                      John Caffrey

NO:                 None

ABSENT:           None

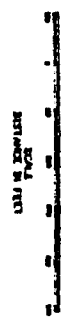
ABSTAIN:          None

  
Maureen Marché  
Administrative Assistant to the Board



**KNOWN AND PROBABLE TANK LOCATIONS**

(LOCATIONS ARE APPROXIMATE)



**LEGEND**

- - Proposed Tank #1
- - Proposed Tank #2
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**NOTES**

Revised 6/7/88  
 Revised 6/15/89  
 Revised 11/2/88

CITY OF SAN DIEGO  
 ENGINEERING AND DEVELOPMENT  
 SAN DIEGO, CALIFORNIA

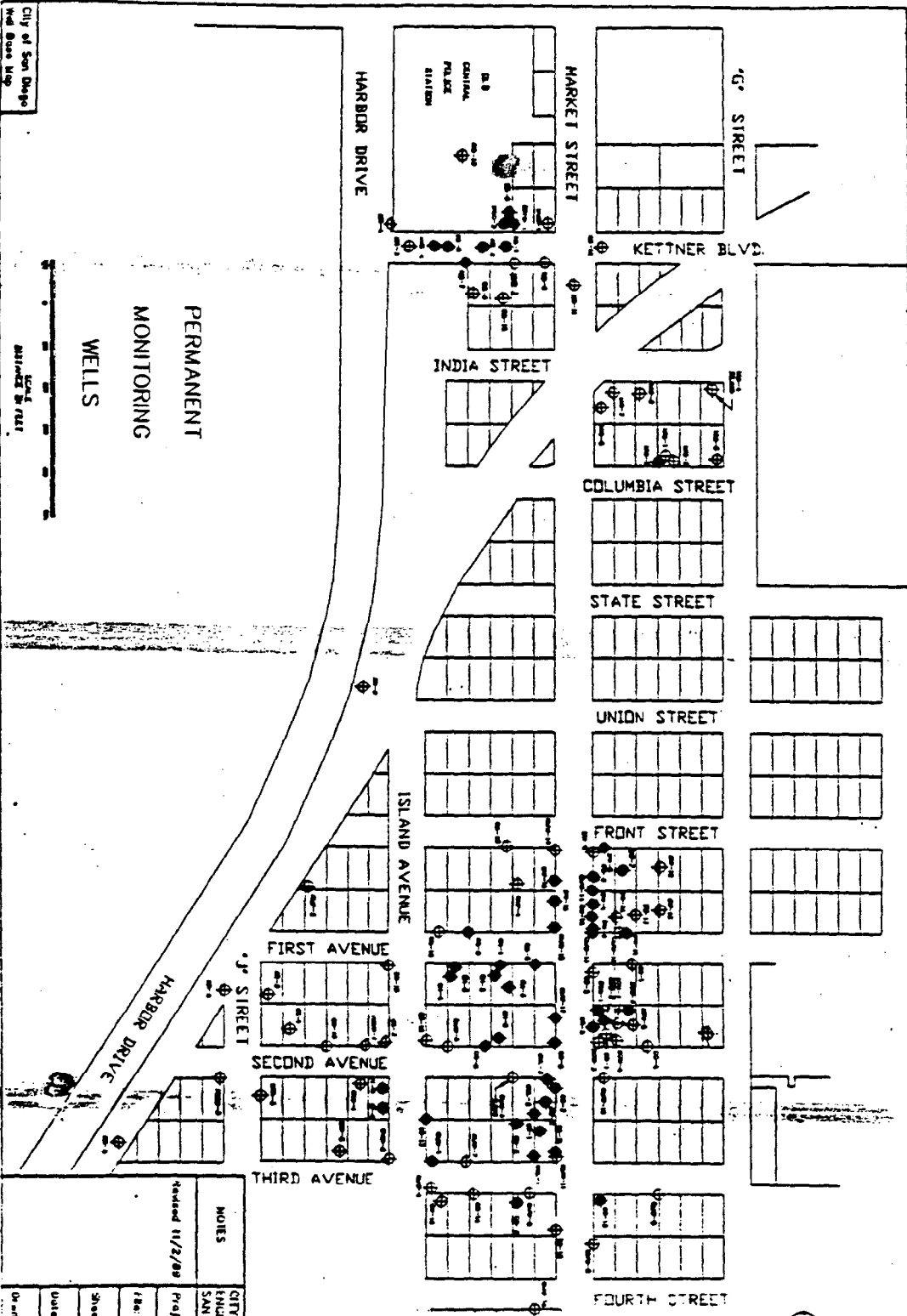
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File: CCDC-UJ\TANKS\TANK-1X1

Sheet 1 of 1 sheets

Date Drawn: 8/25/89

Drawn by: DLB      Chk by: DMV



City of San Diego  
 West Coast Water

Scale  
 1" = 100'

NOTES  
 Revised 11/2/99  
 CITY OF SAN DIEGO  
 ENGINEERING AND PLANNING  
 SAN DIEGO, CALIFORNIA  
 Project Number: 16-387  
 1801 CODE: 03A/V/115  
 Date Drawn: 9/11/99  
 Drawn by: DJR

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