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## REMEDIES

As stated above, the court will not order the City to modify its law enforcement activities at the Children's Pool or remove the surveillance camera located at the Pool. The City argues this court does not have the authority to order it to take any action in regard to the Pool, because such actions would be discretionary. If the Children's Pool were a "natural" beach, as argued by the City, such a position might have merit. This court probably would not order the City to clean up a dirty or contaminated "natural" beach where the City was not the direct cause of the contamination.

However, the Children's Pool is not a "natural" condition. It is a man-made, artificial condition, which was entrusted to the City for specific uses and purposes. The City has knowingly declined to remove sand from the Pool, even though the sand has reached the point where the Pool in reality cannot be used for its intended purpose. Although the City has approved requests to study the removal of the sand, even as recently as September of 2004, it has consistently failed to remove the sand that has been building-up for the last 70 years.

The presence of unhealthy levels of bacteria from seal feces in the pool water has been consistently left un-addressed by the City. The substantial increase in the number of seals using the Children's Pool seems to have some relationship to the actions or inactions of the City. The creation of the Reserve in close proximity to the Children's Pool and the release by Sea World of rehabilitated harbor seals in the kelp beds off-shore of the Pool, seem to have contributed to an increasing number of seals using portions of the Children's Pool in the mid-1990's. The City's decision to separate the seals from humans and then closing off the Pool to humans, likewise appears to have encouraged the seals to occupy more and more of the beach with ever increasing numbers.

The occupation of the Children's Pool does not seem to be a "natural" phenomenon. According to the evidence at trial, Children's Pool is the only public beach in California that has been taken over by seals. The City was

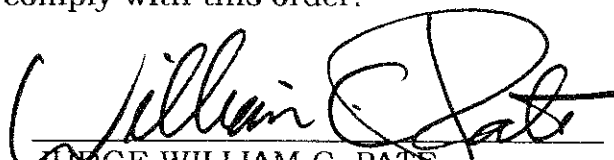
1 warned in 1997 that if it did not discourage the seals from hauling-out at the  
2 Children's Pool, the number of seals present at the Pool would greatly increase.  
3 In response to the situation, the City put up barriers to keep the public out of  
4 the Pool area. To date, the City has taken no steps to reduce the level of  
5 pollution at Children's Pool.

6 Therefore, in order to protect the rights of the people of California to the  
7 full use and enjoyment of a unique asset, the Children's Pool, the City, as  
8 trustee of the Children's Pool, is hereby ordered to employ all reasonable  
9 means to restore the Pool to its 1941 condition by removing the sand build-up  
10 and further to reduce the level of water contamination in the Pool to levels  
11 certified by the County of San Diego as being safe for humans.

12 Nothing contained in this order shall be construed as requiring the City  
13 to violate any law, rule or regulation of any federal, state or county government.  
14 The court will maintain jurisdiction to oversee compliance with this order. This  
15 order shall be fully complied with no later than six (6) months after the date  
16 this order is issued. The City is directed to file a report with this court, no later  
17 than sixty (60) days following entry of this order, setting forth what steps it has  
18 undertaken and intends to undertake to comply with this order.

19 IT IS SO ORDERED.

20 Dated: August 25, 2005

21   
22 JUDGE WILLIAM C. PATE  
23 Judge of the Superior Court  
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