

Cleanup ordered for Children's Pool

Seal colony could be temporarily displaced

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A Superior Court judge yesterday ordered San Diego to reduce bacterial contamination at Children's Pool in La Jolla by narrowing a sandy beach that has been taken over by harbor seals.

The excavation or dredging project, which may improve water quality and circulation, would at least temporarily displace a colony of more than 100 seals that has used the cove as a birthing rookery and resting place for more than a decade.

Previous estimates placed the cost of dredging at up to \$500,000.

Judge William C. Pate ordered the city to complete the project within six months. Debbie Smith, a deputy city attorney, said it would be "virtually impossible" to meet the deadline.

Before any sand could be removed, San Diego must complete an environmental impact study and obtain permits from federal and state agencies, including the California Coastal Commission. Those hurdles are expected to take at least a year, city officials said.

Michelle Zetwo, a federal marine mammal enforcement agent, said the city must get an incidental harassment permit under the Marine Mammal Protection Act. No dredging or construction activity could occur at the cove during the seals' pupping season from January through April, she said.

At yesterday's hearing, Pate denied the city's request for more time. Donald McGrath, executive assistant city attorney, said the City Council won't have a chance to consider its legal options until it meets in closed session Sept. 9.

Pate said the city has "studied it to death and taken no affirmative steps to do anything." Pate's ruling resembles an appraisal of the situation by federal Administrative Law Judge Parlen McKenna. In an April ruling, McKenna scolded the City Council for "hanging its citizenry out to dry . . . by failing to resolve this festering dispute."

San Diego Councilman Scott Peters, whose district includes the disputed cove, said: "Once a court rules, we have to follow the law. I'm sure we will."

In his 31-page ruling, Pate found that San Diego has failed to comply with a 1931 tidelands grant that transferred ownership of the one-acre cove from California to San Diego.

Under the terms of the grant, the city is required to "manage and maintain" the cove as a safe swimming area for children, the judge said.

However, when waste from the seals began polluting the cove in 1997, making it unsuitable for swimming, the city failed to undertake "any meaningful steps to return Children's Pool to an unpolluted, safe and usable state," the ruling states.

It continues: "Because of the unhealthy condition of the sand and water, the Children's Pool area is not suitable for use as a public park, bathing pool for children or a recreation area."

In addition, Pate contends that city officials improperly deterred the public from using the beach by erecting warning signs and a rope barrier to separate seals from people.

The rope barrier, which was put up in 1999 to keep people a safe distance from the seals, was ordered removed in 2004 by the City Council. At that time, the council adopted a "joint use" policy granting people and seals equal access to the cove.

Pate's decision is the result of a lawsuit filed by La Jolla attorney Paul Kennerson on behalf of Valerie O'Sullivan, a member of the La Jolla Cove Swim Club who successfully swam the English Channel.

O'Sullivan was cited in 2003 for violating the Marine Mammal Protection Act. She had joined a demonstration in which several swimmers swam into Children's Pool, causing some harbor seals to flee into the water. Her citation was eventually dismissed. A \$1,000 fine levied against another swimmer was upheld by a federal judge.

Attorney Tom Sauer, who defended one of the swimmers cited for frightening the seals, praised Pate for interpreting the 1931 tidelands grant in favor of the public.

"The point the judge is making is this is supposed to be a public swimming beach, not a haul-out site for seals," Sauer said. "You

can't take a beach away from the public. . . . The city got sucked into falling in love with harbor seals."

Sherilyn Sarb, manager of the Coastal Commission's office in San Diego, said the agency will review the city's dredging plan for compliance with the Coastal Act, which protects public access, water quality, marine life and habitat.

"We'll look at different ways it can be done and choose an alternative that is the least environmentally damaging," she said.

Serge Dedina, director of Wildcoast, an Imperial Beach environmental group, said the judge's ruling means "they will have to destroy the beach in order to save it."

Dedina added: "To say the city must spend hundreds of thousands of dollars to dredge a beach used by marine mammals is just crazy."

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