CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT (Permit) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (CITY), and the COUNTY OF SAN DIEGO AIR WING, a California municipal corporation (PERMITTEE), to be effective as of the date of execution by CITY when signed by the parties and approved by the San Diego City Attorney (Effective Date), as follows:

RECITALS

A. CITY is the owner of certain real property known as El Capitan Reservoir consisting of approximately 1,700 acres located in San Diego County, California, referred to herein as the (Permit Area), and as shown in **EXHIBIT A: Permit Area**, attached hereto.

B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of water rescue training operations. The area used will be approximately three to four water acres in the area of the boat launch ramp and approximately one acre of land near the parking area..

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the Permit Area for the purposes of periodic water rescue training operations and for no other purpose whatsoever. PERMITTEE shall notify CITY a minimum of eight (8) weeks in advance of each training event. PERMITTEE understands and agrees that CITY, as owner of the Permit Area, has priority of use of the Permit Area and retains the right to reject PERMITTEE's proposed date(s) for training events if any of CITY's agencies have previously scheduled the use of the Permit Area for those date(s).

2. Use of Permit Area. PERMITTEE shall obtain all other required permits, City, County, and State, and comply with all applicable environmental laws, rules, and regulations related to the Permit Use. PERMITTEE shall comply with USFS Operational Guidelines as shown in **EXHIBIT B: Non-Emergency Aircraft Operations at City Reservoirs and Non-Emergency Watercraft Operations at City Reservoirs**, attached hereto.

3. Permit Fee. The Permit Fee is waived as the water rescue training operation benefits the CITY.

4. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall not extend beyond three years in term.

5. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a

result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.

6. Restoration. After each training operation, PERMITTEE shall promptly remove any and all of its personal property and improvements staged in, on, under, or above the Permit Area. If PERMITTEE'S use of the Permit Area damages or results in any change to the Permit Area, PERMITTEE shall restore the Permit Area to CITY'S reasonable satisfaction, all at PERMITTE'S sole cost and expense.

7. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee (Mayor), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

8. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, department or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, lease agreements, sales agreements, option to lease or purchase agreements, exclusive negotiating agreements, or any other governmental agency approvals or agreements which may be required for the PERMITTEE'S access to and use of the Permit Area.

9. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease.

   a. Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

   b. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

c. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall immediately notify CITY. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area as a result of PERMITTEE'S access to or use of the Permit Area, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area as a result of PERMITTEE'S use of the Permit Area and such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY of any notice of violation received or initiation of environmental actions or private suits related to PERMITTEE'S use of the Permit Area.

d. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area (PERMITTEE'S Operations), resulted in any hazardous substance being released on or beneath the Permit Area, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

10. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEE shall use such access routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY.

11. Property Damage. PERMITTEE shall promptly pay for all damage to CITY'S personal property and the personal property of third parties resulting from PERMITTEE'S use of the Permit Area.

12. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, agents, contractor's, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, and all expenses of investigating and defending against same, including without

limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents, and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification.

13. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the Permit Area as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.

14. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

15. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

16. PERMITTEE'S Risk. PERMITTEE recognizes that the CITY reservoir and ancillary improvements are part of essential public infrastructure, and that PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

17. Insurance. PERMITTEE represents and warrants that it carries a primary layer of Municipal Liability comprised of a Self Retained limit and Pooled Insurance for public liability and property damage claims in an amount not less than Two Million Dollars ($2,000,000) and Civil Aircraft Insurance of not less than $10,000,000 single limit. Prior to PERMITTEE'S occupancy of the Permit Area, PERMITTEE shall deliver to CITY evidence of such insurability in form and content reasonably satisfactory to CITY, and shall also provide CITY with evidence of Workers' Compensation insurance as required by the California Labor Code and Employer's Liability insurance with minimum limits of One Million Dollars ($1,000,000) per accident and One Million Dollars ($1,000,000) per employee.

18. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S Operations on the Permit Area.

19. Maintenance of the Permit Area. During the periodic water rescue training operations, PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.

20. Grading. PERMITTEE represents and warrants there will be no grading or compaction done.

21. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.

22. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

23. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

24. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.

25. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.

26. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: James F. Barwick, Director
1200 Third Avenue, Suite 1700
San Diego, California 92101

PERMITTEE: THE COUNTY OF SAN DIEGO
County of San Diego Air Wing
Attention: Todd Richardson, Lieutenant
1745 North Marshall Avenue
El Cajon, CA 92020

27. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of

such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: May 24, 2011

THE COUNTY OF SAN DIEGO, a California municipal corporation

BY: Todd Richardson

Name: TODD RICHARDSON

Title: SHERIFF'S LIEUTENANT

Date: 5/24/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: David Sandoval

Name: **David A. Sandoval, CCIM**

Title: **Deputy Director, Real Estate Assets**

ENVIRONMENTAL CLEARANCE:

The activity for which this Right of Entry Permit is to be used is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section §15301, Class 1, Existing Facilities.

Date: 5-24-11

City of San Diego Public Utilities Department
Environmental Analysis Section

BY: Nicole A. McGinnis

Name: NICOLE A. MCGINNIS

Title: SENIOR PLANNER

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: Debra L. Bevier

Name: Debra L. Bevier

Title: DCA

DCM/cb
5-9-11
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such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: May 24, 2011

THE COUNTY OF SAN DIEGO, a California municipal corporation

ORIGINAL SIGNATURE

BY: Todd Richardson

Name: TODD RICHARDSON

Title: SHERIFF'S LIEUTENANT

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: _____

Title: _____

ENVIRONMENTAL CLEARANCE:

The activity for which this Right of Entry Permit is to be used is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section §15301, Class 1, Existing Facilities.

Date: _____

City of San Diego Public Utilities Department
Environmental Analysis Section

BY: _____

Name: _____

Title: _____

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: _____

Title: _____

DCM/cb
5-9-11
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EXHIBIT A: Permit Area

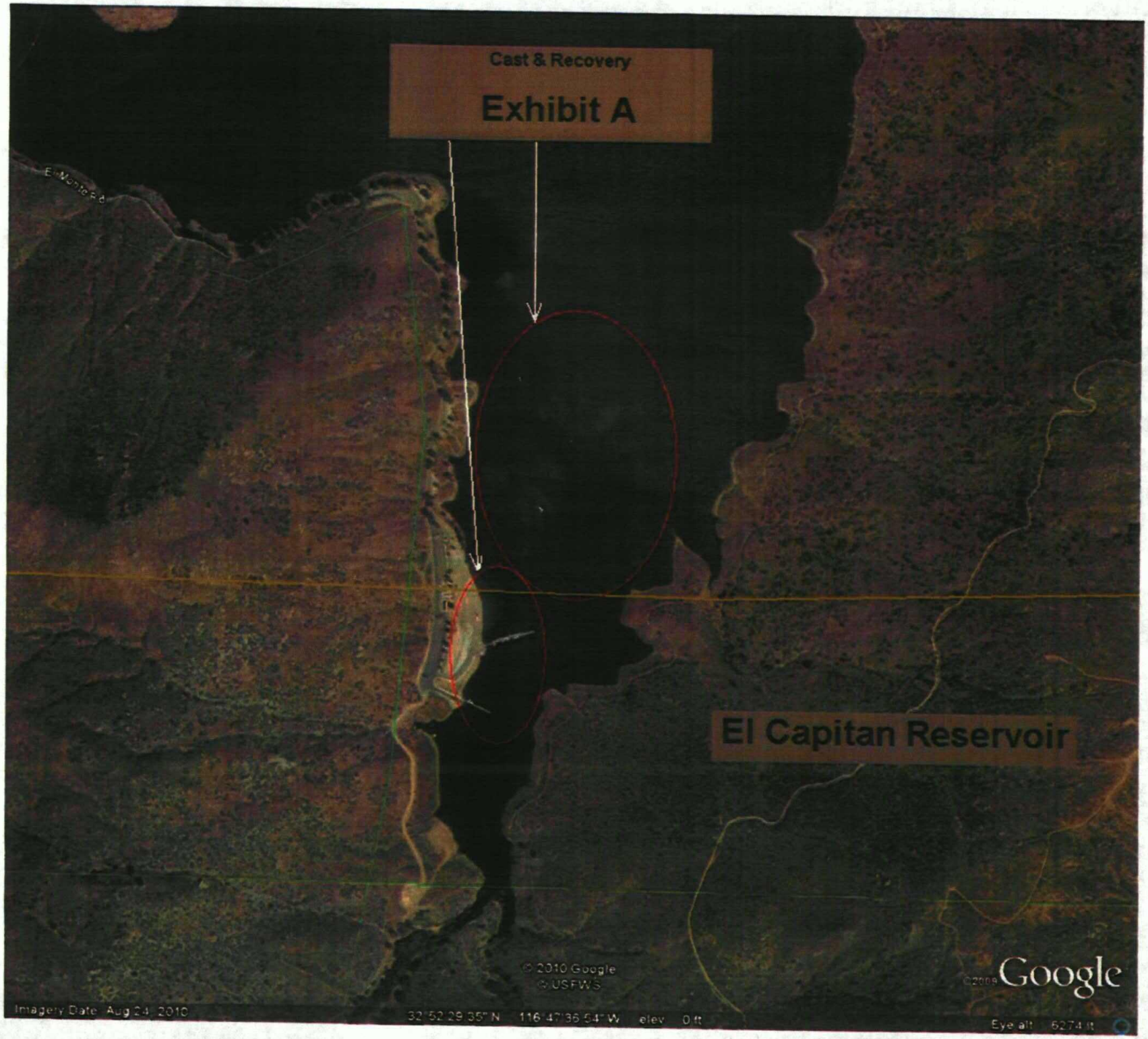
Cast & Recovery
Exhibit A
El Capitan Reservoir
© 2010 Google
© USFWS
Google
Imagery Date: Aug 24, 2010
32°52'29.35" N 116°47'36.54" W elev 0 ft
Eye alt 6274 ft

EXHIBIT B

Non-Emergency Aircraft Operations at City Reservoirs

and

Non-Emergency Watercraft Operations at City Reservoirs

NON-EMERGENCY AIRCRAFT OPERATIONS AT CITY RESERVIORS

These policies were developed using USFS operational and technical guidelines for fire operations to help avoid the spread of quagga mussels. For more information and references go to (http://www.fs.fed.us/r4/resources/aquatic/guidelines/index.shtml).

As of November 2010, quagga mussels have been found in five of the City's nine reservoirs. The following is the current status of the City's reservoirs:

Infested Reservoirs

El Capitan

Miramar

Murray

Otay

San Vicente

Non-Infested Reservoirs

Barrett

Hodges

Morena

Sutherland

Procedures for aircraft operations at **Infested Reservoirs:**

1) Do not suck organic and bottom materials into water intakes when drafting from the reservoir. Use screens.
2) Do not transfer water from the reservoir to any other body of water. Dump all water so it returns to the same reservoir.
3) When the operation is completed at the reservoir and before operating in another water body the following must be done:
   a) The **exterior** of all tanks, hoses, and related equipment must be cleaned by power washing with water greater than or equal to 140 degrees F (at the point of contact).

b) The **interior** of all tanks, hoses, and related equipment must be drained and completely dry for at least 14 days. Or, the **interior** of all tanks, hoses, and related equipment must be decontaminated with 5% Quat 128 or 3% Sparquat solutions as detailed in the USFS guidelines.

Procedures for aircraft operations at **Non-Infested Reservoirs:**

1) If the equipment being used has been exposed to infested water or it is unknown whether or not the equipment has been exposed, then the following must be done **before** operations begin:
   a) The **exterior** of all tanks, hoses, and related equipment must be cleaned by power washing with water greater than or equal to 140 degrees F (at the point of contact).
   b) The **interior** of all tanks, hoses, and related equipment must be drained and completely dry for at least 14 days. Or, the **interior** of all tanks, hoses, and related equipment must be decontaminated with 5% Quat 128 or 3% Sparquat solutions as detailed in the USFS guidelines.

NON-EMERGENCY WATERCRAFT OPERATIONS AT CITY RESERVIORS

These policies were developed using the Recommended Uniform Minimum Protocols and Standards for Watercraft Interception Programs for Dreissenid Mussels in the Western United States. For more information go to (http://www.100thmeridian.org/Recommended-Protocols-and-Standards-for-Watercraft-Interception-Programs-for-Dreissenid-Mussels-in-the-Western-United-States.pdf).
As of November 2010, quagga mussels have been found in five of the City's nine reservoirs. The following is the current status of the City's reservoirs:

Infested Reservoirs

El Capitan

Miramar

Murray

Otay

San Vicente

Non-Infested Reservoirs

Barrett

Hodges

Morena

Sutherland

Procedures for watercraft operations at **Infested Reservoirs**:

1) Do not transfer water from the reservoir to any other body of water. Dump all water so it returns to the same reservoir.
2) When the operation is completed and **before** leaving the reservoir the following must be done:
   a) Empty and dry any buckets or containers holding reservoir water.
   b) Drain any water through the vessel's hull plug and ensure the area is dry.
   c) Drain all water from ballast tanks.
   d) Drain and dry all water from lower outboard unit.
   e) Clean and dry any live-wells aboard the vessel.

Procedures for watercraft operations at **Non-Infested Reservoirs**:

1) If the vessel and equipment being used has been exposed to infested water or it is unknown whether or not the vessel and equipment has been exposed, then the following must be done **before** operations begin:
   a) All areas of the watercraft (inside and out) including engine, bilge, ballast tanks, livewells, and trailer must be cleaned by power washing or flushing with water greater than or equal to 140 degrees F (at the point of contact).
   b) Or, all areas of the watercraft (inside and out) including engine, bilge, ballast tanks, livewells, and trailer must be clean, drained, and completely dry for at least 14 days.