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Judge tosses workers' asbestos lawsuit

S.D. employees can pursue their claims through state system

By Jeff McDonald

Early last year, just weeks before a jury was scheduled to decide whether the city of San Diego mishandled a high-profile real estate deal, a Superior Court judge dismissed the last claims from the lawsuit on the grounds that there was not enough evidence to move forward.

Now a different judge has tossed out of court another lawsuit challenging the city's response to possible asbestos exposures inside another leased downtown office tower just before the case was headed to trial.

Judge Kenneth J. Medel on Tuesday dismissed the lawsuit filed by dozens of San Diego city workers who said they were exposed to asbestos during a renovation to their workspaces at 1010 Second Ave., a high-rise known as the Executive Complex.

The judge said the plaintiffs failed to show that city officials wrongly required them to work inside the building while knowing that the cancer-causing agent was being disturbed.

If they want to proceed with a claim against their employer, they are free to use the state workers' compensation system to secure benefits or damages related to any injuries, the judge ruled.

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San Diego council approves marshland proposal

State, federal agencies could still dismantle Mission Bay revamp

By David Garrick

San Diego City Council members unanimously approved an ambitious plan Tuesday to transform much of northeastern Mission Bay into climate-friendly marshland that can fight sea-level rise and pull carbon from the air.

Supporters said the plan, which follows seven years of community debate, is a fair compromise between environmentalists and advocates for camping and other recreation like tennis, softball and water skiing.

But environmentalists said the plan caters too much to those interests, contending that more of the 505-acre area should become marshland because climate change is accelerating.

Golf supporters also criticized the plan because it would slightly shrink the footprint of Mission Bay Golf Course, possibly requiring a reconfiguration that could make the course ineligible to host high school events.

Campers grudgingly supported the compromise, out of fear it could be worse. But they also complained that space

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Migrants at a shelter in Villahermosa, Mexico, listen to a staff member on April 26. In response to pressure from the Biden administration to curb migration flows, Mexico is busing thousands of migrants away from the U.S. border. **LUIS ANTONIO ROJAS / NYT**

Mexican program busing migrants away from border

Thousands of people being sent to towns, shelters about 1,000 miles south of U.S.

By Simon Romero & Paulina Villegas

VILLAHERMOSA, Mexico — The buses rumble into town day and night, dumping migrants in a city many didn't even know existed.

But instead of landing closer to the U.S. border, they are being hauled roughly 1,000 miles in the opposite direction — deep into southern Mexico in a shadowy program meant to appease

the Biden administration and ship migrants far from the United States.

Mexican authorities rarely publicly acknowledge the busing program, making it much less contentious than the efforts by Republican governors to transport migrants to blue states that have become political theater in the United States.

Yet the busing program is exposing the chasm between the Mexican government's rhet-

oric promoting a humanitarian approach to migration and the country's role as a heavy-handed enforcer of U.S. border objectives, leaving many migrant families stranded to fend for themselves.

"I asked the agents, 'How can you treat us like dirt?'" said Rosa Guaman, 29, from Ecuador.

She was detained with her husband and two children by migration agents in April near the border city of Piedras Negras. Nobody told them they were being

taken to Villahermosa, an oil hub in southeastern Mexico, until they were well on their way.

At an overcrowded shelter in Villahermosa, she described the ride as the most dispiriting part of a monthslong journey that included trekking across swaths of jungle, threats of sexual assault and bribing Mexican officials with the hope of getting to New Jersey.

"We're starting over from zero," Guaman said.

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Volunteers deliver boxes containing approximately 31,000 signatures in an effort to replace SDG&E with a municipal utility Tuesday at the county registrar of voters office. **NELVIN C. CEPEDA / U-T**

Utility measure won't be on ballot

Initiative to create San Diego-only electricity agency falls short of goal

By Rob Nikolewski

Power San Diego, the initiative that wants to oust San Diego Gas & Electric by creating a municipal electric utility within the city limits of San Diego, has fallen short of its goal of collecting 80,000 verified signatures to put the proposition on the ballot this fall.

But the group turned in about 31,000 signatures to the county registrar of voters office on Tuesday, which it says would be enough to put the question before the San Diego City Council instead.

"Unfortunately this campaign has not collected the 80,000

signatures needed to qualify for the ballot but this does not mean that we've lost — far from it," said Emma Rodriguez, campaign coordinator for the SanDiego350 environmental organization and one of the groups supporting the initiative.

Power San Diego cited a provision in the San Diego City Charter that the nine members of the City Council have the power to place the question of creating a municipal utility up for a popular vote if the city clerk verifies at least 24,000 signatures are valid.

About 30 Power San Diego representatives dropped off 15 boxes of petitions at the regis-

trar's office Tuesday afternoon. It's expected to take several weeks to determine if the number of verified signatures is sufficient.

"I'm fairly confident" that at least 24,000 valid signatures have been collected, said Bill Powers, chair of the Power San Diego ballot measure. "I think the validation effort has been top-notch, first class."

As for the failure to collect 80,000 signatures, Powers blamed his group's lack of resources.

"Let me be clear — money," he said. "In order to hire coordinators and consultants, it takes

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Gloria's updated budget plan rolls back cuts

Mayor's revised \$2.15B proposal would protect essential city services

By David Garrick

San Diego Mayor Todd Gloria is canceling some budget cuts he proposed last month that would have fallen especially hard on low-income neighborhoods, communities of color and homeless people.

Gloria's retreat on those proposed cuts — which would have affected eviction protections, a popular anti-gang program and other initiatives — comes in response to criticism from City Council members and community leaders.

They said the proposed cuts affecting vulnerable residents, which totaled nearly \$40 million, would roll back recent progress on social equity and erode morale in affected areas.

The mayor announced the changes Tuesday. They are part of the May revision to his proposed \$2.15 billion spending plan for the fiscal year that begins July 1.

"The final proposed budget released today is a fiscally prudent strategy that protects essential city services and

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Bill Powers, campaign chair of Power San Diego, submits approximately 31,000 signatures to the San Diego County registrar of voters office Tuesday. **NELVIN C. CEPEDA / U-T**

UTILITIES

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money. It also takes volunteers and we did it primarily with volunteers.”

Power San Diego already has gone to City Hall twice, seeking an endorsement of its initiative, but was turned down each time.

In September, all four members of the City Council's Environment Committee listened to a presentation by Powers but declined to endorse his proposal to put it before voters.

“We must get much more detailed data in terms of costs, expenses, liability (and) revenue projections,” said Councilmember Jennifer Campbell, adding that “it is way too premature” to go on the 2024 ballot.

Powers returned last month, appearing before the Rules Committee, but members dismissed the Power San Diego resolution without taking a vote.

“I have no love for corporate monopolies reaching into the pockets of everyday working people,” said Council President Sean Elo-Rivera, “but this is a very complex and important issue and I don't think this is baked enough to go to the voters.”

What makes backers of the initiative think the council will be any more receptive now?

“There is a lot of public interest in switching out SDG&E,” Powers said. “This is the grassroots saying (to the) city political infrastructure, this is a big deal. A lot of people are very interested in seeing a change.”

Under the Power San

Diego proposal, the municipal utility would handle the electricity distribution responsibilities for customers within the city limits of San Diego — not in other municipalities in the county.

Backers say making the change will result in San Diego customers seeing about a 20 percent reduction in their electricity bills, citing how municipal utilities such as the Sacramento Municipal Utility District and the Los Angeles Department of Water and Power offer customers lower rates than California's investor-owned utilities — SDG&E, Pacific Gas & Electric and Southern California Edison.

Power San Diego has estimated it would cost \$3.5 billion to get a municipal power company up and running.

But SDG&E in March released an assessment from an energy consulting firm that predicts the costs will come to much more than that — from \$11.31 billion to \$13.23 billion — and contends when the costs of financing a municipal utility from scratch are factored in, the total grows even higher.

“It's clear that this (signature drive) has come short of its stated goals,” said Matt Awbrey, spokesman for Responsible Energy San Diego, a political action committee formed by groups opposed to the initiative, including SDG&E. “This is a bad idea today, this was a bad idea a month ago when the City Council committee declined to put this on the ballot themselves and it'll be a bad idea as the registrar counts these signatures.”

“We are in a budget crisis

and we have so many other priorities to consider,” said Ellen Nash, chair of the San Diego Chapter of the Black American Political Association of California, one of the members of Responsible Energy San Diego.

According to the city's campaign finance disclosure portal, Responsible Energy San Diego has received at least \$398,000 in contributions from SDG&E this year alone.

The prospect of creating a municipal utility also has drawn vocal opposition from the labor union that represents roughly 1,500 SDG&E employees.

“This whole thing gambles with public safety and with our public union jobs,” said Monica Valadez, dispatcher and shop steward at IBEW Local 465. “It gambles with all of that with no plan and they never once consulted the actual worker who does this type of work.”

Power San Diego representatives promise union jobs would be protected should a switch be made. They also dispute the estimate that creating a municipal utility would cost \$11 billion and \$13 billion, saying the change could be funded by passing a bond to establish a standalone enterprise fund, with costs amortized over 30 years.

Power San Diego officials say the residential customer portion of the \$3.5 billion would work out to less than \$15 per month, arguing that residential customers already pay that much or more under the current system and predict there would be no incremental cost exposure to city ratepayers.

“Every public electric

utility in the state has lower rates than SDG&E,” Powers said. “Every public electric utility in this state has more stable rates. Every public electric utility has local control. They're not under the Public Utilities Commission.”

The debate over whether to create a municipal utility comes as utility bills keep rising. SDG&E's rates have consistently been the highest in the state — and are often the most expensive in the U.S., according to the U.S. Bureau of Labor Statistics.

Officials at SDG&E have attributed the increases to a number of factors, including:

- Spending \$5 billion in ratepayer funds since the 2007 Witch Creek, Guejito and Rice wildfires destroyed more than 1,300 homes, killed two people, and injured 40 firefighters. SDG&E is considered the pacesetter when it comes to state-of-the-art wildfire prevention efforts.

- Programs to help California meet its clean energy goal, such as deriving 100 percent of the state's electricity from carbon-free sources of power by 2045.

SDG&E also has come under fire for the money it makes. The utility's parent company — San Diego-based Sempra — released its 2023 earnings earlier this year. According to filings submitted to the U.S. Securities and Exchange Commission, SDG&E made \$936 million last year. That's \$21 million higher than the utility's previous all-time high set in 2022.

rob.nikolewski@sduniontribune.com

BUDGET

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provides additional funding for programming at our libraries and parks, as well as homelessness prevention programs,” Gloria said in a news release.

Councilmember Joe LaCava, who had previously criticized the proposed cuts, praised the mayor's retreat.

“The community spoke, the council listened and the mayor responded by restoring programs that protect neighborhoods, prevent evictions and act on our homelessness crisis,” LaCava said. “We must continue to focus limited resources where they will do the most good and make difficult cuts where they will do the least harm.”

Crafting a final budget now shifts to the nine-member council, which is scheduled to finalize the new spending plan June 11.

Gloria used help from the state and the city's Housing Commission to cancel \$15 million in proposed cuts that would affect homelessness programs and the city's eviction prevention program.

The Housing Commission agreed to shift \$8 million of its budget toward city programs — \$7 million less than Gloria requested last month. Gloria proposes to close that gap by using \$7 million in state homelessness prevention money that he says he will be able to access.

That money would be used to restore the \$3 million eviction program, \$1 million for an outreach team, \$750,000 for

rental assistance, \$500,000 for a daytime homelessness center and some programs.

For other canceled cuts, the mayor did not disclose the sources of new funding he would use.

Those restored funds include \$1.1 million for the climate equity fund, which would be spent on stoplights in Barrio Logan and traffic-calming measures on 47th Street in Chollas View. Gloria still is proposing to cancel most of the city's annual contribution to that fund, cutting \$74 million.

The mayor also would fully fund the \$250,000 No Shots Fired Intervention and Prevention Program, which provides outreach and resources to known gang members and offers opportunities for them to exit gang culture and life.

Money also would be restored for the Come Play Outside youth recreation program and the SD Access 4 All digital literacy program.

The mayor also is canceling proposed cuts to libraries, including \$250,000 for after-school programs and \$300,000 for a donation match program for books and other materials. The revise also includes \$382,000 to add some librarians focused on young users.

The revise also includes new funding for teen center programming in Council Districts 4, 8 and 9, youth swimming, a two-person firefighting crew in San Pasqual and construction planning for the new San Carlos Library.

david.garrick@sduniontribune.com

ASBESTOS

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“The policy to use the workers' compensation system is pretty strong,” Medel said in upholding a tentative ruling issued late Monday. “It would take evidence to show that it shouldn't be used here, and I don't think the requirements that would need to be met are met here.”

The decision closes a lawsuit that dates back five years, long before officials in the administration of former Mayor Kevin Faulconer moved hundreds of city employees into the asbestos-tainted office tower at 101 Ash St.

Forty San Diego city employees who were assigned workspaces inside the Executive Complex during a long-planned renovation that had begun in 2017 sued the city after the county Air Pollution Control District issued a notice of violation for asbestos in the 25-story building.

They were among 500 or more people working at their desks inside the office tower as it was undergoing a major renovation before city officials ordered the building evacuated immediately following the Jan. 25, 2018, violation.

Evidence presented in the case showed emails and photographs sent by a number of workers raising questions about whether it were safe to be working inside the building during renovations.

But lawyers defending the city said no evidence had been presented showing that city officials knew that employees were exposed to asbestos. Instead, attorney James Parker told Medel on Tuesday, city leaders moved workers out as soon as the asbestos was discovered.

“Was asbestos being removed? Yes. Does that mean anybody is being exposed to that? No,” Parker told the judge. “They never reported any excess asbestos in the air, period. They never did. The owners of the building never said anything to the city.”

The plaintiffs' attorney, Michael Aguirre, the former San Diego city attorney, argued that the case should be presented to a jury, in part because so many people had told their supervisors they were afraid they were being exposed to asbestos within weeks of the renovations beginning in summer 2017.

“The city knew that asbestos was being moved from the building,” he argued Tuesday. “The city intentionally did not tell employees that information. That should be enough” to proceed to trial, he said.

City workers had told

their bosses months before the violation that they were worried they may be being exposed to asbestos during the construction.

“This is the view from my cubicle,” one city worker emailed in September. “I can hear the crews tearing down the windows and they are all wearing respirators/protective masks because of the asbestos and other harmful chemicals being released during demolition.”

The employee said safety precautions did not appear to be working.

“This lack of sealing could be letting off all of that harmful material to drift into our offices,” he wrote. “Can we please (resolve) this situation ASAP?”

Other city workers outlined symptoms they said they and their coworkers had begun experiencing during the renovation, including difficulty breathing, bronchial issues, shortness of breath and a burning throat.

“The effects are also making the office staff very tired from the stress on the body it is causing where it is difficult sleeping at night,” another city employee wrote in an email.

Parker argued there was no proof submitted to the court that showed any San Diego employees had suffered from exposure.

He said if they ever do get sick, they are welcome to pursue workers' compensation claims.

“Nobody has offered any evidence that it happened before (Jan. 25, 2018),” the defense lawyer said.

Once the construction site was hit with an asbestos violation, the city moved out all of the workers assigned to the property.

But Aguirre argued that a number of those employees were later moved into 101 Ash St., the former Sempra Energy headquarters.

That building remains the subject of civil litigation filed by plaintiffs who say they were wrongly exposed to asbestos there. The city's deal to buy that tower also was the subject of civil and criminal investigations.

The civil case challenging the Ash Street acquisition was dismissed just before it was scheduled for trial. The criminal case ended with a guilty plea to a single misdemeanor charge after the city bought out the initial lease. The building still cannot be safely occupied.

But Medel said the Executive Complex plaintiffs had not shown that the workers' compensation system should be bypassed in favor of a jury trial in Superior Court.

“I'm going to stick with the tentative and wish everybody the best of luck,” he said.

jeff.mcdonald@sduniontribune.com

MARSHLAND

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for camping would shrink from 62 acres to 49 acres and from 970 campsites to roughly 500.

While council members praised the plan for making every group give a little and take a little, they expressed concerns that the hard-fought compromises might get dismantled by state and federal wildlife agencies.

An aide to Mayor Todd Gloria said the agencies — the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife — have told city officials they support the environmentalists' calls for additional marshland.

The aide, policy adviser Randy Wilde, said those agencies have the power to demand significant changes in the plan when it gets presented to the Coastal Commission for approval later this year or next.

Councilmember Raul Campillo said he was frustrated the city doesn't have final say on land-use decisions for one of the most beloved spots in all of San Diego.

In addition to the golf course, the area includes De Anza Cove, Campland on the Bay, Kendall-Frost Marsh Reserve, Rose Creek, several sports fields, a tennis complex, parking lots, beaches and more.

“We want to control our own destiny in Mission Bay,” said Campillo, urging city staffers and his council colleagues to stand up to state and federal officials during any future negotiations.

The plan could also get blocked or delayed by litigation. Environmental groups have suggested during the years of compromise that a plan with inadequate marshland could prompt them to sue.

Despite the possibility the plan will get changed or blocked, Mayor Gloria said it was an important milestone to get so many competing groups to agree to a compromise that the council approved unanimously.

“This plan will not only restore vital wetland habitats, but also ensure that De Anza Cove remains a vibrant space for recreation, low-cost visitor accommodations and environmental education for generations to come,” the mayor said.

Community leaders echoed those comments.

“The city's plan is the only one on the table that remotely strikes a balance between environmental stewardship and recreational access,” said Sarah Mattinson, a member of the Mission Beach Town Council and owner of Olive Cafe.

Marcella Bothwell, chair of the city's Parks and Recreation Board, said the compromises in the plan came after thousands of hours of hearings and negotiations.

“Compromise is hard,” she said. “It's not perfect.”

Environmentalists said the plan is essentially a false compromise based on the mistaken idea that existing recreation uses in Mission Bay Park's northeast corner must remain there.

They say the 4,000-acre park has plenty of recreation space when looked at as a whole, contending

it makes sense for marshland to dominate the northeast corner instead of being weighed against recreation.

The city's adopted plan would actually increase recreation space in the park's northeast corner from 60 to 66 acres, allowing two more courts for tennis and pickleball and enlarging some playing fields to regulation size.

While the plan would triple marshland, wetlands and dunes in the area from 82 acres to 262 acres, a large coalition of environmental groups prefer a plan that calls for 315 acres.

“The City Council needs to take an aggressive stand today,” said Andrew Meyer, conservation director for the local chapter of the Audubon Society. “This plan, if improved, can be the first cornerstone of meeting our climate action goals and being resilient to sea-level rise.”

The revised Climate Action Plan that the council approved in 2022 calls for creating 700 acres of marshland across the city. The plan adopted Tuesday would create 180 acres, just over a quarter of that total.

New marsh areas — sometimes called wetlands — serve the dual purpose of removing greenhouse gases like carbon dioxide from the air and fighting sea-level rise by acting as a coastal sponge.

The plan adopted Tuesday would take many millions, possibly more than \$1 billion, to fully develop. City officials said it almost certainly would be done in phases over many years.

Meyer said there is more than \$3 billion in state and

federal grants available for coastal resiliency projects.

The plan adopted Tuesday is a high-level master plan.

The specifics of how the area would be reconfigured won't be decided until city planners, with feedback from the public, create a general development plan.

No existing activities would be forced to move until those decisions get made, city officials said.

The fight over Mission Bay's northeast corner began more than seven years ago, when the closure of the De Anza Cove mobile home park prompted San Diego to explore how to revamp the entire area.

City officials decided in the 1990s that the 50-acre Campland on the Bay site would eventually become marshland so it could be joined with the existing Kendall-Frost Marsh Reserve north of Crown Point.

Kendall-Frost has the only remaining marshland in Mission Bay Park, which was essentially all marshland before it was aggressively dredged after World War II to create what city officials call the world's largest aquatic park.

Because Campland would become marsh, camping would be relocated to De Anza Point, where the mobile home park used to be, and get less space.

New features in the plan include a nature center, a small boating area on the beach of De Anza Cove and an extensive network of multi-use waterfront trails.

david.garrick@sduniontribune.com