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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**SOUTHWEST CENTER FOR
BIOLOGICAL DIVERSITY, et al.,**

Plaintiffs,

vs.

JIM BARTEL, et al.,

Defendants,

and

**BUILDING INDUSTRY LEGAL
DEFENSE FOUNDATION, et al.,**

Intervening Defendants,

and related Counterclaim.

CASE NO. 98-CV-2234-B(WVG)

**AMENDED JUDGMENT AND
ORDER FOLLOWING REMAND
BY NINTH CIRCUIT COURT OF
APPEALS**

Pursuant to the memorandum decision of the Ninth Circuit Court of Appeals in the above-captioned matter (filed Jan. 18, 2011), the Court **vacates** the Injunction issued in this case (filed on Oct. 13, 2006 and amended on Dec.15, 2006). The Injunction is moot as to the City of San Diego’s Incidental Take Permit (“ITP”) (No. PRT-830421, dated July 18, 1997, and issued by the United States Fish and Wildlife Service (“FWS”)) pursuant to Section 10 of the Endangered Species Act, 16 U.S.C. § 1539, as to the seven vernal pool species involved in this litigation. Those seven vernal species are (1) San Diego fairy shrimp (*Branchinecta sandiegonensis*); (2) Riverside fairy shrimp (*Streptocephalus woottoni*), (3) Otay mesa mint (*Pogogyne nudiuscula*); (4) California Orcutt grass (*Orcuttia californica*);

1 (5) San Diego button celery (*Eryngium aristulatum* var. *parishii*); (6) San Diego mesa mint
2 (*Pogogyne abramsii*); and (7) spreading navarretia (*Navarretia fossalis*). On March 8, 2010,
3 the City of San Diego relinquished the portions of the ITP covering those seven vernal pool
4 species. On May 14, 2010, the FWS cancelled the portions of the ITP as it applied to the
5 seven vernal species. Therefore, that permit cannot be used or relied upon in any way with
6 respect to those endangered and threatened species.

7 The Court orders the City of San Diego to serve a copy of this Amended Judgment
8 and Order forthwith on all persons affected by the Ninth Circuit's decision (including those
9 who the received the City's original notice in December 2006.) See Doc. No. 276 (Ex. A).

10 The Clerk shall close this civil action.

11 IT IS SO ORDERED.

12 DATED: April 4, 2011

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14 Hon. Rudi M. Brewster
15 United States Senior District Judge
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