

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
the City of San Juan Capistrano and
South East Regional Reclamation Au-
thority for Review of Water Quality
Staff Determinations, Grants Section

Order No. WQG 73-28

BY BOARD MEMBER DODSON:

By letter of June 25, 1973, the City of San Juan Capistrano (City) and the South East Regional Reclamation Authority (SERRA), hereafter sometimes jointly referred to as Petitioners, requested the State Water Resources Control Board (State Board) to review certain determinations of the staff of the Division of Water Quality of the State Board (Staff). The determinations complained of involve a finding by Staff that treatment works proposed by the City do not qualify for fiscal year 1972-73 funding under the Clean Water Grant Program.

A hearing in this matter was held by the State Board on September 24, 1973.

SUMMARY OF PROPOSED PROJECT AND FACTUAL BACKGROUND

Due to the complexity and lengthy history associated with this matter some background discussion is necessary.

The City originally applied for state and federal grant funds for a fiscal year 1970-71 project. This project involved an enlargement of capacity at the City's treatment plant from 1 mgd to 6 mgd. It was contemplated that the enlarged facilities would serve

as a regional facility. Various of the grant application documents so indicated. For example, the Environmental Assessment provided for the proposed project stated:

"This project will expand the capacity of the existing City of San Juan Capistrano sewage treatment facilities from 1.0 to 6.0 mgd to provide adequate treatment for the present and future regional needs of four agencies -- City of San Juan Capistrano, Moulton-Niguel Water District, Santa Margarita Water District, and the Dana Point Sanitary District."

A grant contract for enlargement of the treatment facilities was eventually executed. In accordance with the concept that the expanded plant would serve as a regional facility, the grant contract contained a condition which required the City to develop and operate the facility as a coordinated regional system and to provide service to existing and future participating agencies on a fair and equitable basis.

The City, Moulton-Niguel Water District, and Santa Margarita Water District appear thereafter to have worked in good faith toward operation of the expanded facilities for a regional purpose. SERRA, which was formed by a joint powers agreement between these three agencies and other local agencies, evolved from the regional approach. Evidence at the hearing supports a conclusion that the City, Moulton-Niguel Water District and Santa Margarita Water District made continuing attempts to arrive at an appropriate arrangement with Dana Point Sanitary District for participation by this agency in the regional program.

In December of 1971, after execution of the state grant contract and certification of the 1970-71 project to the Environmental Protection Agency (EPA), the City reevaluated its capacity

needs and proposed an additional expansion of its treatment facilities. In substance, the City proposed to increase the capacity of its facilities by an additional 3 mgd, resulting in facilities with a total capacity of 9 mgd. In this regard, the City proposed two alternatives:

1. Additional expansion by 3 mgd under existing contracts through a process of approved change order; or, in the alternative,
2. If expansion by change order was impossible, the proposed 3 mgd plant expansion be considered for funding as a 1972-73 fiscal year project.

Staff was apparently amenable to appropriate increase of capacity through change order, and on March 2, 1972, Staff advised the City by letter that it concurred in concept with this approach, subject, however, to submission and evaluation of a revised project report and favorable recommendation thereon. EPA, however, determined that it would not permit the 1970-71 project to be expanded through change order, and that the proposed additional expansion would have to be considered as a new and different project.

Accordingly, the project for additional expansion of the treatment facilities by 3 mgd was submitted as a proposed 1972-73 project. In substance, it was proposed to increase capacity of the facilities by 3 mgd, with this increased capacity to be allocated as follows:

| | |
|--------------------------------|--------|
| Dana Point Sanitary District | 1 mgd |
| Moulton-Niguel Water District | .5 mgd |
| Santa Margarita Water District | .5 mgd |
| City of San Juan Capistrano | 1 mgd |

The proposed project was assigned to Priority Group B, and a project report was submitted by the City and reviewed by Staff. As a result of its review process, Staff concluded that the proposed

project did not qualify for 1972-73 funding for the following reasons:

1. The proposed expansion included elimination of the Dana Point Sanitary District plant and treatment of flows from the Dana Point service area by the treatment facilities of the City. The elimination of the Dana Point plant and transfer of flows from its service area to the City's plant was proposed by the City as a part of the 1970-71 project, and capacity to provide for this result has already been funded as a part of the 1970-71 project.

2. In order to meet the criteria for Priority Group B, there must be non-compliance with existing waste discharge requirements or a need for funding in fiscal year 1972-73 in order to meet applicable time schedules. There was no showing by Petitioners that the proposed project meets this criteria.

3. Section 2144 of the grant regulations would limit capacity funding eligibility in the service area to 5.88 mgd. The present treatment plant of the City already has this capacity, and a grant for plant enlargement is prohibited under Section 2144.¹

FINDINGS AND CONCLUSIONS

Our review indicates that there is considerable justification for the conclusion of Staff that elimination of the Dana Point plant was encompassed in the 1970-71 project. The intent to accomplish this objective was reflected not only in the Environmental Assessment already mentioned but also in a number of other supporting documents, including the preliminary design report, applicable waste discharge requirements, and construction documents.

However, we are not convinced that documentary statements involved clearly reflect the actual situation which prevailed at the time. When the 1970-71 project was being considered, the grant program was in its infancy. It was apparently concluded by Staff and by the San Diego Regional Water Quality Control Board that a regional program should be undertaken in the area involved, and that the City's plant should be utilized as the regional facility. The actual area to be served by the regional facility was, however, not definitively established. As a matter of fact, at the hearing, Staff freely admitted that other documents in support of the 1970-71 project were not at all clear as to what ultimate disposition was to be made in connection with Dana Point Sanitary District.

It was obviously hoped that the enlarged City plant would serve the Dana Point service area as well as the three agencies now comprising SERRA. At the same time, there appears to have been a concept that the City's plant might also serve Santa Ana Mountains County Water District, the City of San Clemente, and Capistrano Beach Sanitary District.

Considering the evidence involved in its actual context we cannot conclude that there was a firm and fixed commitment on the part of the City, or the other participants in the 1970-71 project, that the Dana Point plant was to be eliminated as a part of the 1970-71 project. Nor are we able to conclude that elimination of the Dana Point plant was intended to be imposed upon the participants in the 1970-71 project as an absolute condition of funding of that project.

The same type of considerations, however, do not apply to the actual participants in the 1970-71 project -- the City of San Juan Capistrano, Moulton-Niguel Water District, and Santa Margarita Water District. It is absolutely clear that the 1970-71 project was intended to serve the present and anticipated future needs of these three agencies. There is no question that these three agencies were intended to be and are in fact within the service area of the enlarged facilities of the City.

We conclude that the proposed 1972-73 project encompasses two different projects. The first project will provide capacity suitable to extension of treatment services by the City's plant to the Dana Point service area. This project will provide for elimination of the Dana Point plant and also will implement the regionalization of facilities in the area. The second project involves a proposed additional increase of capacity for the three agencies whose present and anticipated future capacity were funded as a part of the 1970-71 project.

With respect to that portion of the 1972-73 project involving Dana Point, there was substantial evidence that the present Dana Point plant cannot provide adequate treatment, that flows exceed its capacity, and that it is violating waste discharge requirements. A similar situation does not exist with respect to that portion of the 1972-73 project involving the City of San Juan Capistrano, Moulton-Niguel Water District or Santa Margarita Water District.

With respect to capacity limits for the proposed 1972-73 project, Section 2144, as amended on February 15, 1973, does apply. As we have previously determined on other petitions, Section 2144 was intended to and does apply to all 1972-73 projects.

We should make two other comments. First, petitioners contend that grant regulations in 1970-71 were such that they could have received funding for a plant expansion of 8 mgd as a part of 1970-71 project, which would have given them a present capacity of 9 mgd. Consequently, they contend that they are only requesting now what they could have and should have received as a part of the 1970-71 project. We point out, however, that Petitioners evaluated their needs as a part of the 1970-71 project, made their own determination that a 5 mgd expansion would meet their present and anticipated future needs, and applied for and received grants for that expansion. We are compelled to conclude that the 1970-71 project is a closed matter, and that the presently proposed expansion of an additional 3 mgd must be considered on its own merits as a 1972-73 project.

Secondly, we should point out that, because of limitation of funds, a great number of necessary and worthwhile projects must be deferred to later years. In 1970-71, we did in fact fund treatment facilities of appropriate capacity for the City, Moulton-Niguel Water District, and Santa Margarita Water District. It seems clear to us that to fund enlarged capacity for these same three agencies as a part of a 1972-73 project, while other municipalities who desire to construct necessary treatment works and who have not as yet received any grant funds continue to have their projects deferred, would be inequitable.

IT IS HEREBY ORDERED as follows:

1. That portion of the proposed 1972-73 project of the City pertaining to enlargement of the treatment facilities of the City to provide capacity for the Dana Point Sanitary District service area fulfills the criteria for a Priority Group B project and is eligible for funding as a fiscal year 1972-73 project. Capacity

of this portion of the project eligible for funding shall be subject to the limitations of Section 2144 of the grant regulations as amended on February 15, 1973.

2. Any grant contract for construction of the portion of the proposed 1972-73 project specified in Paragraph 1 above shall be conditioned upon execution of an agreement between the City and Dana Point Sanitary District containing appropriate terms and conditions, specifically including but not limited to appropriate allocation of capacity to Dana Point Sanitary District and elimination of the present Dana Point Sanitary District treatment plant.

3. The remaining portion of the proposed 1972-73 project, other than that portion specified in Paragraph 1 above, does not fulfill the criteria for a Group B project for fiscal year 1972-73 and shall not be funded.

Dated: **DEC 6 1973**

We Concur:

Roy E. Dodson
Roy E. Dodson, Member

W. W. Adams
W. W. Adams, Chairman

Ronald B. Robie
Ronald B. Robie, Vice Chairman

Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member

W. Don Maughan
W. Don Maughan, Member