

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of  
Santee County Water District and the  
Department of Fish and Game for  
Review of Addendum No. 4 to  
Resolution No. 60-R23 Adopted by  
the California Regional Water Quality  
Control Board, San Diego Region

Order No. WQ 74-2

In the Matter of the Petition of  
Santee County Water District for  
Review of Order No. 73-18 of the  
California Regional Water Quality  
Control Board, San Diego Region

BY THE BOARD:

On May 23, 1973 the Santee County Water District (Santee) and the California Department of Fish and Game (Fish and Game) submitted petitions to the State Water Resources Control Board (State Board) requesting review of the action of the California Regional Water Quality Control Board, San Diego Region (Regional Board) in adopting Addendum No. 4 to Resolution No. 60-R23. Addendum No. 4, adopted by the Regional Board on April 23, 1973, amends requirements 9 and 13 of Resolution 60-R23 to provide:

- "9. After January 1, 1974 there shall be no bypassing or direct discharge of treated or untreated sewage or sewage sludge to the San Diego River or tributaries thereto or beyond the limits of lands specifically designated for waste handling or disposal. Discharge of wastes to runoff impounding facilities is hereby prohibited after January 1, 1974.

"13. [Prior to January 1974] The discharge shall not cause in the San Diego River or tributaries thereto, odors, septicity, mosquitos or other vectors, weed growth, or other nuisance conditions."

On June 19, 1973 Santee submitted a petition to the State Board requesting the State Board to review the action of the Regional Board in adopting Cease and Desist Order No. 73-18. Order 73-18 was adopted by the Regional Board on May 21, 1973 after finding that Santee was violating and threatening to continue violation of the following requirements prescribed by Resolution 60-R23, as amended:

- "2. The five-day 20° C biochemical oxygen demand of the effluent shall not exceed 20 parts per million.
- "3. Suspended solids concentration of the effluent shall not exceed 20 parts per million, except when a pond effluent conforming to Requirement No. 2 of these requirements is being discharged.
- "10. Odors associated with sewage or sewage treatment shall be strictly confined to the sewage treatment plant site.
- "12. Annual mean increase in concentration above those concentrations concurrently found in the public water supply serving the Santee County Water District of the following constituents in effluent (or reclaimed water) discharged at any point in the system shall not exceed the limits set forth below:

total dissolved solids	400 ppm
chlorides	100 ppm
sulfates	50 ppm
sodium	100 ppm

(percent sodium shall not exceed 60 percent).

"13. [Prior to January 1974] The discharge shall not cause in the San Diego River or tributaries thereto, odors, septicity, mosquitos or other vectors, weed growth, or other nuisance conditions."

In addition, the Regional Board found that Santee was violating and threatening to continue violation of the following provisions of Addendum No. 2 to Resolution 60-R23:

- "1. Waste discharge requirements, including the additions and modifications contained in this addendum, shall be applicable to a discharge not exceeding 4.0 million gallons per day, average daily flow, to the surface and ground waters of Sycamore Canyon Creek at points of discharge existing at this time and at points of discharge in the immediate vicinity of the proposed new sewage treatment plant as described herein.

Order No. 73-18 provides, in part, that:

- "1. The Santee County Water District cease and desist from violating and/or threatening to violate requirements No. 2, 3, 10, 12, and 13 of Resolution 60-R23 and Addenda 2 and 4 thereto.
- "2. Compliance with the Board's discharge requirements shall be completed in accordance with the following time schedule:
  - (A) Requirements 2, 3, 10, 12 and 13: Forthwith.
  - (B) Termination of discharge to the San Diego River or tributaries thereto: January 1, 1974.
- "3. Additional discharges to the sewer system by dischargers who did not discharge into the system prior to the issuance of this order are prohibited.
- "4. The prohibition of additional discharges into the Santee County Water District's sewerage system shall continue until such time as completely adequate facilities to treat additional flow to the degree necessary to assure compliance with the waste discharge requirements are constructed and operable or a connection has been made to a regional sewerage facility operating in compliance with waste discharge requirements of the Regional Board, and a finding has been made to that effect by this Regional Board...."

On August 16, 1973 the State Board by Order WQ 73-20 ordered these petitions consolidated for review.

I. CONTENTION AND FINDINGS ON ADDENDUM NO. 4

Regarding Addendum No. 4 to Resolution 60-R23, Santee and Fish and Game contend and the State Board finds as follows:

1. Contention: The Regional Board, in adopting Addendum No. 4 to Resolution 60-R23, failed to consider each of the factors set forth in California Water Code Section 13241. In particular, Santee contends that a prohibition on the discharge of sewage to the San Diego River will require Santee to abandon its existing plant, built in reliance on previous waste discharge requirements, and tie into the Metropolitan Sewer System, all at considerable cost to Santee, its customers and taxpayers, and that the action of the Regional Board in prohibiting this discharge without taking into account these economic considerations was inappropriate and unreasonable. Santee contends that the termination of the Santee discharge will seriously impair and eliminate the beneficial use of the San Diego River as a fish and wildlife resource and habitat and will threaten the continued existence of the Santee recreational lakes, and that the action of the Regional Board in prohibiting the discharge without considering these effects on beneficial uses and without considering other alternatives to protect water quality in the San Diego River was inappropriate and improper. Fish and Game contends that an appropriately treated discharge by Santee would protect the designated beneficial use of fish and wildlife and should be permitted provided the protection of public health and other beneficial uses is assured.

Findings: Addendum No. 4 to Resolution 60-R23 which prohibits discharge to the San Diego River or its tributaries recites two provisions of the applicable water quality control plan<sup>1</sup> as the basis for the prohibition. These provisions state:

"Discharge of treated or untreated sewage or industrial waste water, exclusive of cooling water or other waters which are chemically unchanged, to a watercourse for purposes of disposal is prohibited."

"Discharging of treated or untreated sewage or industrial waste in such manner or volume as to cause sustained surface flow or ponding on lands not owned or under the control of the discharger is prohibited." (Page 37. Emphasis supplied).

We do not regard the latter provision as being an appropriate basis for the prohibition imposed in this case. Properly construed, we believe that this provision was meant to apply to land disposal operations, such as percolation ponds, rather than to discharge into watercourses. In effect we construe this provision to require that sewage effluent and industrial waste disposed of in land operations be retained on site without overflow or ponding on adjacent land.

However, the former provision is an appropriate basis for the prohibition imposed in this case. The present Santee discharge is a discharge of treated sewage to a watercourse for the primary purpose of disposal. As such, it is clearly prohibited by the water quality control plan.

We have previously determined that each regional board must implement the objectives of applicable water quality

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1. The water quality control plan referred to herein is the Interim Water Quality Control Plan for the San Diego Basin, June 1971, as amended.

control plans.<sup>2</sup> In reaching this previous decision, we determined that:

"In adopting waste discharge requirements to implement the objectives contained in the plan the regional board need not determine anew the beneficial uses to be protected, the water quality objectives reasonably required for that purpose or make findings regarding the provisions of Section 13241."

The same principles apply with equal force in this case. The Regional Board was required to implement the prohibition contained in its interim plan. In so doing, the Regional Board was not required to redetermine beneficial uses to be protected or objectives necessary to protect beneficial uses. Nor was the Regional Board required to reconsider the economic impact of the prohibition set forth in its water quality control plan.

While we find that the prohibition imposed in this case was appropriate and proper, we feel that we should point out for the benefit of Santee and Fish and Game that the applicable prohibition in the water quality control plan does not absolutely prohibit all discharge of sewage into watercourses. The prohibition involved refers to discharge "to a watercourse for purposes of disposal." Had the Regional Board actually intended an absolute prohibition of all discharges regardless of the purpose involved, the prohibition would have simply stated that "discharge of treated or untreated sewage...to a water-course is prohibited." Obviously the insertion of the phrase

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2. See Order No. 73-4.

"for purposes of disposal" was meant to qualify the absolute prohibition which would otherwise have been imposed.

In our view, the prohibition means what it says. If the primary purpose of the discharge to a watercourse is disposal, the discharge is prohibited. However, it is also true that appropriately treated wastewater may be discharged for the actual purpose of protection and even enhancement of beneficial uses. Under the latter circumstance, the Regional Board does have jurisdiction to permit discharge to a watercourse subject to suitable requirements. This interpretation is supported by other provisions of the water quality control plan, including the following:

"The development of this water quality control plan is directed towards achieving the following goals...

1. Protect and enhance all basin waters, surface and underground, fresh and saline, for all present and anticipated beneficial uses including aquatic environmental values.

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4. Maximize the use of municipal and industrial waste waters as part of an integrated system of freshwater supplies to achieve maximum benefit of freshwater resources."

If Santee believes that it can in fact treat and reclaim the wastewater involved to such an extent that discharge of the effluent to the San Diego River or its tributaries would actually be for the purpose of protection and enhancement of

beneficial uses, Santee should file the necessary report of proposed discharge pursuant to Water Code Section 13376. Upon such action by Santee, the question of establishment of water reclamation criteria and requirements pursuant to Water Code, Division 7, Chapter 6, should be considered. From the record before us, it is apparent that reclamation requirements, in addition to other areas of concern, must be such that any discharge is compatible with public health requirements as well as water quality concerns.

We do not mean to indicate by the foregoing discussion that, under the circumstances involved in this case, appropriate reclamation criteria and requirements can be developed which will both protect and enhance beneficial uses and, at the same time, assure protection of public health. Such an accommodation may not be possible. Even if possible, the requirements may be such that compliance with requirements would be economically infeasible or impossible. Whether such criteria and requirements can be developed and practically implemented are matters to be initially determined by Santee and the Regional Board in conjunction with the State Department of Health, Fish and Game, and other concerned persons and agencies.

With respect to the specific contention by Santee that its present discharge was permitted by requirements prescribed by Resolution 60-R23, originally adopted in 1966 and subsequently amended, and that Santee built new facilities to comply with these requirements which it may now be forced to abandon, these circumstances do not preclude prohibition of the Santee



discharge. Water Code Section 13263(g) specifically provides:

"No discharge of waste into the waters of the state, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste into waters of the state are privileges, not rights."

## II. CONTENTIONS AND FINDINGS ON ORDER NO. 73-18

Order No. 73-18 basically involves a finding that Santee is violating and threatening to violate enumerated waste discharge requirements, an order that these violations be terminated, either forthwith, i.e., as soon as reasonably practical, or in accordance with a time schedule, and a prohibition of additional discharges to the sewer system until compliance with waste discharge requirements is assured. Santee contends that adoption of Order No. 73-18 was inappropriate and improper for numerous reasons. The contentions of Santee and our findings are as follows:

Contention: The Regional Board, in adopting Order 73-18 should have considered each of the factors set forth in California Water Code Section 13241 and should have prepared and considered an EIR.

Finding: These contentions are without merit. Section 13241 relates to factors which a regional board must consider in establishing water quality objectives in water quality control plans. A cease and desist hearing, however, is an enforcement proceeding authorized by Water Code Section 13301.

The pertinent issue in such a hearing is whether there are violations or threatened violations of waste discharge requirements or applicable prohibitions. Consideration of the factors set forth in Section 13241 is neither required nor proper.

Regulatory activities of a regional board, such as adoption of a cease and desist order, are necessary to assure protection of the environment and are categorically exempt from the provisions of the California Environmental Quality Act. The Regional Board was not required to prepare or consider an EIR prior to adoption of Order No. 73-18. (See Section 2714(d), Subchapter 17, Chapter 3, Title 23, California Administrative Code.)

Contention: The evidence introduced at the cease and desist hearing did not support a finding by the Regional Board that Santee's discharge exceeded 4.0 mgd in violation of Addendum 2 to Resolution 60-R23.

Finding: It is clear from the record that the Regional Board, when adopting Addendum 2 to Resolution No. 60-R23, understood that the discharge would include flows from the Santee Recreational Lakes. Under this circumstance, it was appropriate for the Regional Board to consider flows from these sources in determining whether quantity limits had been violated. It was also appropriate for the Regional Board not to make allowance for rainfall runoff in considering whether a violation had occurred.

Contention: The Regional Board's finding that the Santee discharge caused septicity, mosquitos and weed growth

in the San Diego River in violation of the requirements, adopted only one month prior to the cease and desist hearing, was not supported by substantial evidence and did not take into account more reasonable and economic alternatives to eliminate these problems.

Finding: The evidence supporting the finding of the Regional Board that the Santee discharge to the San Diego River was causing weed growth, mosquitos and septic conditions in violation of requirements was sufficient. The discharge of Santee to the San Diego River via Sycamore Canyon Creek contributes to standing water in the San Diego River which creates, in turn, breeding conditions for mosquitos. While as contended by Santee, the Santee discharge is not the sole cause for standing water in the San Diego River, it is a substantial contributing factor to standing water and consequently a substantial contributing cause of mosquitos. Furthermore, the nitrate content of the discharge is a substantial contributing factor in weed growth in the San Diego River. Such weed growth makes mosquito abatement difficult and sometimes impossible. In addition, the discharge contributes nitrogen and phosphates to the San Diego River which substantially contribute to algae growth whose death and bacterial decomposition deplete oxygen in the waters of the San Diego River causing septic conditions.

Despite the alleged availability of alternatives, the adverse mosquito conditions in the San Diego River have existed for a substantial period of time and have caused a present and

substantial threat to public health. Under these circumstances, there was substantial justification for ordering Santee to forthwith cease and desist violation of requirement number 13, even though the requirement involved was prescribed only one month prior to the cease and desist hearing.

Contention: The violations of BOD, suspended solids, TDS, chloride, sulfates and sodium concentrations were not substantial and therefore the adoption of the cease and desist order was unduly harsh especially since Santee was and is undertaking substantial projects to correct these violations including the doubling of its irrigation ponds.

Finding: There is evidence of all of the violations found by the Regional Board. The violations involved are frequent, and with respect to at least chlorides, BOD, and suspended solids, substantial.

When considering a cease and desist order, it is appropriate for a regional board to adopt the cease and desist order for all violations of waste discharge requirements existing on the date of the cease and desist hearing even though there is some expectation that some of the violations may be shortly corrected. Although Santee, at the time of the cease and desist hearing was in the process of increasing the capacity of its oxidation ponds, the increased capacity will only affect violation of the BOD and suspended solids requirements. It will not alleviate the other violations.

Contention: The action of the Regional Board prohibiting the Santee discharge to the San Diego River in Order 73-18 was inappropriate for the same reasons given in challenging the appropriateness of such a prohibition in Addendum 4 to Resolution 60-~~R23~~.

Finding: This contention has already been adequately answered by our previous findings which uphold the Regional Board action in prohibiting the present Santee discharge.

Contention: The prohibition on additional discharges to the Santee sewer system adopted by the Regional Board in Order 73-18 was inappropriate because it fails to give consideration to the actions being taken by Santee to upgrade its sewage treatment and because the order, for all practical purposes, requires Santee to connect to the Metropolitan Sewer System without consideration as to whether that system will permit connection or has capacity to receive the additional sewage.

Finding: A prohibition on additional discharges to the Santee system is appropriate if the violations of requirements cannot be immediately corrected, and if additional discharges to the system would cause an increase in violations of requirements or increase the likelihood of violation. As already indicated, it appears from the record that all of the violations of requirements will not be corrected in the immediate future. It further appears that ~~additional discharges into the system~~ cannot help but aggravate the adverse conditions already existing in the San Diego River.

To relieve itself of the prohibition, a discharger must ordinarily demonstrate consistent compliance with requirements. If, as Santee alleges, the most practicable method to comply with requirements is to connect to the Metropolitan Sewer System and this cannot be accomplished because of the unavailability of capacity or because of the unwillingness of Metropolitan Sewer System to permit a connection, Santee will have to pursue other methods to comply with requirements. Other methods of compliance are available, and the ultimate choice as to the best method of compliance is left to Santee's determination.


### III. CONCLUSIONS AND ORDER

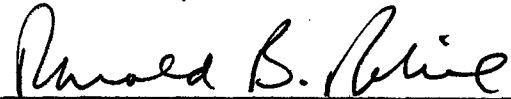
After review of the record, and consideration of the contentions of Santee and Fish and Game, the State Board concludes as follows:

1. The action of the Regional Board in adopting Addendum 4 to Resolution No. 60-R23 was appropriate and proper.
2. The action of the Regional Board in adopting Order No. 73-18 was appropriate and proper.

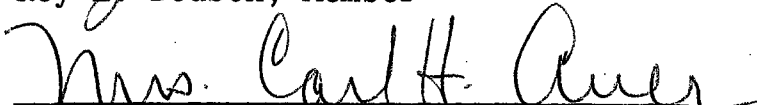
IT IS HEREBY ORDERED that the petitions of Santee and Fish and Game be, and they are, denied.

Dated: January 17, 1974

  
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W. W. Adams, Chairman

  
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Ronald B. Robie, Vice Chairman

  
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Roy E. Dodson, Member

  
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Mrs. Carl H. (Jean) Auer, Member

  
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W. Don Maughan, Member