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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the)
County of San Diego for Review of the)
Final Decision of the Division of Water)
Quality Regarding Grant Eligibility of)
Flood Control Facilities, Project No.)
C-06-1097.)
_____)

Order No. WQG 80-18

BY THE BOARD:

On March 10, 1980, the County of San Diego (County) petitioned the State Water Resources Control Board (State Board) to review a final decision of our Division of Water Quality (Division) concerning eligibility of certain costs involved in the County's Clean Water Grant project. The determination of the Division, which the County seeks to overturn, denied eligibility of approximately two-thirds of the costs of a flood control channel to be installed by the County in an unnamed stream flowing past the County's existing San Elijo wastewater treatment plant.

Since the petitioner's representative, Mr. Tom Erpelding, informed our Legal staff that the Division's files contained all the information which petitioner wished to have the State Board review, no hearing was held in this matter. An informal meeting between Division staff, petitioner, and Board Member Leo Mitchell was held on June 11, 1980.

BACKGROUND

The existing San Elijo wastewater treatment plant was not grant funded. The proposed flood control facilities are planned as part of a grant funded project to upgrade and expand the existing

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treatment plant. The treatment plant project is currently scheduled to receive a Step III construction grant in Fiscal Year 1982-83.

The development permit issued by the San Diego Coastal Regional Commission for the project requires the County to reduce silt transport from the drainage area above the treatment plant site. The condition imposing this requirement reads as follows:

"....the applicant agrees that prior to the start of any construction authorized by the issuance of this permit, there shall be developed a plan for reducing the amount of silt moving into the San Elijo Lagoon through the flood control channel which is a part of this development project. The required silt control program can take the form of an on-site siltation basin, the control of erosion and runoff in the upstream drainage area contributing runoff to the channel, or some combination of both techniques."

The permit also requires the County to replace and improve the box culvert bridge structure under Manchester Avenue, the road adjacent to the County's property.

The flood control facilities which are the subject of this appeal are designed to satisfy the Regional Coastal Commission's permit conditions. They include a concrete lined channel approximately 2000 feet long, a desilting basin above the treatment plant, and an energy dissipation structure and the highway crossing at Manchester Avenue, below the treatment plant site. The Division determined that only the 1000 feet of the concrete lined channel, the part in front of the treatment plant site, was grant eligible. It also determined that an upstream diversion to direct flows into the channel and the energy dissipation structure were eligible.

CONTENTIONS AND FINDINGS

1. Contention: The County contends that all of the proposed flood control facilities, including the desilting basin and the Manchester Avenue improvements, are required as a condition of construction of its treatment works expansion and, therefore, that grant funds must be provided for the entire cost of the facilities.

Finding: There is no doubt that the County must act to satisfy the requirements of the Regional Coastal Commission. Before it can begin construction of any treatment plant improvements within the coastal zone, it must obtain the approval of the Commission. Our review of the record, however, indicates that siltation is an existing problem which is not being caused by this or any previous Clean Water Grant project. The silt that the Commission requires the County to remove has its source in areas outside the County's property, apparently far upstream of the treatment plant site.

Manchester Avenue is a County Highway subject to flooding from the stream channel crossing the County's property. On inspection, the Division discovered that the box culvert structure beneath Manchester Avenue was both poorly maintained and underdesigned. It is very likely that flood waters could be dammed by this inadequate crossing and that County property, including part of the treatment plant access road could be partially flooded. County personnel reported that occasionally flood waters do flow over Manchester Avenue and plant access is restricted but not entirely prevented.

The Division's policy with regard to the funding of facilities required by permits from other governmental agencies is that funding will be allowed only when the requirements are imposed to mitigate impacts created specifically by a Clean Water Grant project. We believe that this policy is sound.

2. Contention: The County also contends that the facilities found eligible by the Division are not adequate to protect the treatment plant from a 100-year flood.

Finding: EPA regulations and the County's NPDES permit state that 100-year flood protection must be provided for the proposed treatment plant improvements. The Division has a policy of providing funds to protect grant eligible treatment works from a 100-year flood. The September 26, 1979 plans and specifications approval letter and subsequent letters accomodating comments by the County, described the facilities that the Division found necessary for the mandated flood protection. The County never provided technical data to demonstrate that additional facilities are required for that purpose.

3. Contention: The County finally contends that since the Regional Coastal Commission's requirement was referred to in Division's concept approval, and since the cost of flood control facilities were accepted as 100 percent eligible, funding for the proposed improvements cannot be denied as part of the Division's Step II process.

Funding: The function of a concept approval letter is to

identify the general items that will be eligible for grant funding. Since EPA regulations require that all grant eligible wastewater projects include protection against a 100-year flood, it was essential to include the flood control facilities in the list of grant eligible treatment works. Because of the limited amount of detailed technical information available during the planning process, it is impossible to specifically define what the eligible design criteria or exact eligible costs of a project will be. Refinement of eligible criteria and costs is one of the fundamental purposes of the Step II process of the Clean Water Grant Program. If this were not so, grantees could expect to proceed directly from planning to construction without the benefit of plans and specifications review.

It is important to note that the Division listed compliance with the permit requirements as a condition for funding, and not as an eligible item. It was not until the Step II process that the Division was able to determine that the County's original estimate of eligible costs for flood control included costs of complying with the Regional Coastal Commission's permit requirements. It clearly was assumed in the concept approval letter that all of the proposed improvements were for flood protection, when in fact they were not.

CONCLUSIONS

Having considered the contentions of the County and the record before us, we conclude that the Division acted properly in determining the eligibility of the proposed flood control facilities. We agree that

the Division can only fund mitigation measures which are necessary because of impacts caused by grant funded projects. Because the petitioner has not supplied technical information to rebut the Division's conclusions concerning which facilities are necessary for 100-year flood protection, we concur with the Division's determination. Finally, the procedure followed by the Division in awarding concept approval and in defining during the Step II process the exact eligibility of proposed facilities is correct.

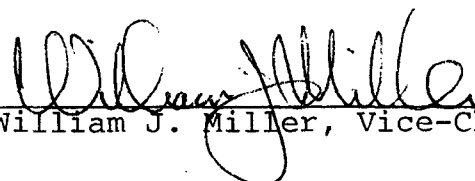
ORDER

IT IS HEREBY ORDERED that the County's petition to revise the Division of Water Quality's determination of eligibility for grant funding is denied.

Dated: October 16, 1980



Carla M. Bard, Chairwoman



William J. Miller, Vice-Chairman



L. L. Mitchell, Member



Jill B. Dunlap, Member

ABSENT

F. K. Aljibury, Member