

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the)
CITY OF COLTON)
For a Stay of Order No. 85-75 of the)
California Regional Water Quality)
Control Board, Santa Ana Region. Our)
File No. A-403.)
_____)

ORDER NO. WQ 86-1

BY THE BOARD:

On July 12, 1985 the California Regional Water Quality Control Board, Santa Ana Region, (Regional Board) adopted Order No. 85-75, NPDES Permit No. CA0105236. This order renewed and revised waste discharge requirements for the discharge of treated municipal wastewater by the City of Colton.

On August 12, 1985, the City of Colton (City) filed a petition for review of Order No. 85-75. On October 25, 1985, the City filed a request to stay the effect of the Regional Board's action pending review of the petition.

I. BACKGROUND

The City of Colton Municipal Wastewater Treatment Plant is located in San Bernardino County. The present design capacity of the treatment facility is 5.4 million gallons per day. The facility accepts waste from the City of Colton, the City of Grant Terrace and a portion of the unincorporated area of San Bernardino County. Approximately 3.6 million gallons per day of treated municipal wastewater is currently discharged to the Santa Ana River, Reach 4. The beneficial uses of the Santa Ana River, Reach 4 from the San Jacinto Fault in San Bernardino to Mission Boulevard in Riverside include: industrial.

process supply, water contact recreation, non-contact water recreation, and wildlife habitat. The surface flows in Reach 4 have been intermittent and some beneficial uses are seasonal. However, the Santa Ana River has flowed continuously since 1981 and is often comprised primarily of discharges from sewage treatment plants. Continuous surface flows in Reach 4 of the Santa Ana River can affect the beneficial uses of Reach 3, which include the following: agricultural supply, ground water recharge, water contact recreation, non-contact water recreation, warm fresh water habitat and wildlife.

Order No. 85-75 was adopted to address the problem of prevention of a continuous flow of inadequately treated wastewater through Reach 4 of the Santa Ana River. A report entitled "San Bernardino Valley Wastewater Management Facilities Plan" was reviewed by staff prior to adoption of the order. The report set forth feasible alternatives that would prevent the above-described problem:

(1) tertiary treatment for the waste water discharge or,

(2) sufficiently lowering the surrounding ground water to allow complete percolation of the river and wastewater discharge through Reach 4.

The waste discharge requirements and the effluent limitations set forth in Order No. 85-75, while not mandating that the City build a tertiary treatment facility, were adopted to insure that only adequately treated wastewater would flow through Reach 4 of the Santa Ana River.

II. CONTENTIONS AND FINDINGS

Petitioner requests a stay of the effect of Order No. 85-75 "requiring the City of Colton to proceed with the initiation of plans for the construction of a tertiary sewage treatment plant . . . pending a disposition of the City's Petition for Review." (Petition for Stay, p. 2.)

Water Code Section 13321 authorizes the State Board to stay the effect of Regional Board decisions. The State Board's administrative regulations, recognizing the extraordinary nature of a stay remedy, have placed a heavy burden on the seeker of a stay:

"(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of:

- (1) substantial harm to petitioner or to the public interest if a stay is not granted,
- (2) a lack of substantial harm to other interested persons and to the public if a stay is granted and,
- (3) substantial questions of fact or law regarding the disputed action.

A petition for a stay shall be supported by affidavit of a person or persons having knowledge of the facts alleged. Upon a documented showing by petitioner that he complies with prerequisites for a stay, the state board will hold a hearing. A request for a stay may be denied without a hearing. If a hearing is held, notice shall be given in such manner and to such persons, in addition to the petitioner, as the board deems appropriate.

(b) Nothing in subsection (a) shall preclude the state board from issuing a stay of the effect of an action of a regional board, after hearing, upon its own motion. The requirement of an affidavit may be waived by the board in case of an emergency." (23 California Administrative Code Section 2053)

1. Contention: Petitioner has not shown substantial harm to it or the public interest if the stay is denied.

Finding: Petitioner states that it will suffer substantial harm financially. "[T]he city simply cannot afford to construct the project (tertiary treatment plant)." Stay request, p. 3, lines 20-21.

In reviewing Order No. 85-75, no language was found that requires petitioner to construct a tertiary treatment plant. The order sets forth effluent limitations for discharge of wastes to the Santa Ana River where surface flows are continuous as well as non-continuous. It thus specifies the

quality of the discharge required, given the two river conditions possible. Among other things, the order states that the waste discharge is to be adequately disinfected, oxidized, coagulated, clarified, filtered wastewater during periods of continuous flow in the Santa Ana River.

Petitioner states that it will be required to expend \$15,000,000 for construction of a tertiary treatment plant. However, the most immediate expenditure would be \$25,000 for an Environmental Impact Report (EIR). Petitioner further states that if the aforementioned amount of money is expended on the EIR, it could prove to be a waste of funds if the order is modified so as not to require tertiary treatment.

As mentioned above, the order does not state that construction of a tertiary treatment plant is required. Water Code Section 13360 prohibits the Regional Board from specifying the manner of compliance with its order:

"No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction or particular manner in which compliance may be had with that requirement, order or decree, and the person so ordered shall be permitted to comply therewith in any lawful manner"

Petitioner has been on notice since at least May 1983 when the Water Quality Control Plan was revised that it would have to meet the objectives set forth in said plan. Therefore, petitioner had ample opportunity to research, investigate or explore methods for addressing the problem identified in the subject order. In fact, petitioner has acknowledged in its stay request that the existing 5.4 mgd secondary plant is nearing its treatment capacity. (Declaration of Robert Krieger, page 1.) Since a new project of some sort will be forthcoming, the City will obviously be required in any event to prepare an EIR discussing various alternatives and their potential environmental impact.

2. Contention: Petitioner has not shown a lack of substantial harm to other interested persons or the public if the stay is granted.

Finding: The petitioner states at stay request, page 6, lines 14-16:

"[a]ny inconvenience to the public caused by granting of a stay would be minimal. The problem of wastewater treatment cannot be cured tomorrow; nor can it be cured in the thirty-two month period set by the Regional Board."

The petitioner fails to consider that continuous surface flows in Reach 4 of the Santa Ana River can affect the beneficial uses of Reach 3 which include: agricultural supply ground water recharge, water contact recreation, non-contact water recreation, warm freshwater habitat and wildlife. (Order No. 85-75, No. 10.)

Petitioner omitted any discussion regarding how the treated wastewater could affect water usages in Reach 4 of the Santa Ana River. Clearly since the flow is continuous or has the possibility of continuity, the issue of water usage by the public is of concern.

Petitioner failed to establish a lack of substantial harm to other interested person or if the stay had been granted.

The Water Quality Control Plan (Basin Plan) is appropriately to be considered when determining whether a stay would harm the public. In this regard, the following provisions of the Basin Plan are relevant:

"Body-contact recreation in the Santa Ana River: After public hearings on the subject and a great deal of discussion, the Regional Board decided in 1970 that the water quality of the Santa Ana River should be improved and maintained to allow REC-1 uses. Through stringent waste discharge requirements with time schedules, and financial assistance from the Clean Water Grant program, the direct dischargers to Reach 3 of the Santa Ana River either eliminated their dischargers (Jurupa Community Services District, Rubidoux Community Services District) or

installed tertiary treatment facilities (City of Riverside, Chino Basin Municipal Water District)*. While these changes were being made, extensive city and county parks were developed along the river which encouraged more recreation in and near the river. A substantial number of fishermen began frequenting the area immediately below Prado Dam.

During the preparation of this plan, the issue of the appropriateness of the existing REC-1 and WARM beneficial uses was raised, principally on economic grounds. It has become more difficult to get federal or other financial assistance for advanced wastewater treatment projects. Countering those comments, state and federal agencies and downstream users made it clear that the present beneficial uses must be maintained and protected." (Page 5-14)

Perennial flows in the Santa Ana River above Riverside Narrows: The computer model runs made for the 1975 Plan predicted that, because of increased sewage discharges to Reach 4 and to Reach 5 immediately upstream of the Bunker Hill Dike, perennial flow would begin in Reach 4 between 1980 and 1985. A series of wet years (1977-80) caused flows to persist well into the summer months in the late 1970's and early 1980's. The 1975 Plan recommended that the points of discharge be moved and the effluent managed to avoid generating perennial flows, but this was not done. It may now be necessary to provide tertiary treatment at San Bernadino, Colton and Rialto, to avoid degrading the quality of the river in Reaches 3 and 2. A Clean Water Grant-funded study of the problem was begun in 1977, but is not yet complete. Diversion of effluent flows from the River, lowering of the ground water table, reclaiming and/or percolating the effluent, and full or partial tertiary treatment are being considered to mitigate or prevent water quality impacts on downstream River reaches. The study is expected to recommend an alternative solution to the problem." (page 5-19)

City of Colton: The City operates an activated sludge wastewater treatment facility which takes Colton's flows, plus those from the City of Grant Terrace and from an unincorporated area of San Bernardino County. Present flows total 3.5 MGD; present capacity is 5.4 MGD. Treated effluent is discharged to Reach 4 of the Santa Ana River, which flows intermittently. The City of Colton will apparently have to add tertiary treatment or manage its discharge so as to avoid impacting the body-contact recreational uses of Reaches 3 and 2 of the river (see additional discussion on page 5-19).

III. CONCLUSION

The request for a stay should be denied because petitioner failed to establish that substantial harm would result to it if the stay is denied, nor

did petitioner establish a lack of substantial harm to others or the public if the stay was granted.

IV. ORDER

IT IT HEREBY ORDERED THAT petitioner's request for a stay is denied.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 23, 1986.

Aye: Raymond V. Stone
Darlene E. Ruiz
E. F. Finster
Eliseo M. Samaniego
Danny Walsh

No: None

Absent: None

Abstain: None

Raymond Walsh
Interim Executive Director

