

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the)
CITY OF SAN FRANCISCO)
for Review of Determinations of the)
Division of Clean Water Grants,)
State Water Resources Control Board,)
Regarding Additional Grant Funding)
Related to Construction of the)
San Francisco Southeast Water Pollution)
Control Plant. Our File No. G-84.)

ORDER NO. CWG 86- 7

BY THE BOARD:

The City of San Francisco, hereafter City, seeks a commitment of additional grant funding in connection with construction of the Southeast Community Center. More specifically, the City seeks 87-1/2 percent funding of about \$1.2 million of costs incurred by the City for relocation of former occupants of the land on which the Community Center is being constructed. Essentially, the City is seeking additional state and federal grant funding of about \$1,050,000 ($\$1,200,000 \times 87\frac{1}{2}\%$) for relocation costs associated with the Community Center. For reasons hereafter indicated, we have concluded that the maximum cost limit of \$15 million imposed in previous State Board Order No. WQG 81-1 should not be increased, and that, pursuant to Order No. WQG 81-1, a maximum of \$13,125,000 in state/federal grant funding will be supplied toward the cost of construction of the Community Center.

I. BACKGROUND

When the City proposed construction of its Southeast Treatment Plant Project in the Bayview-Hunter's Point area of the City, the City's proposal generated a tremendous amount of local opposition. One of the primary reasons

for local objection to the Treatment Plant Project was a perception by the local people of Bayview-Hunter's Point that the City systematically, whenever and wherever possible, located its undesirable projects in the Bayview-Hunter's Point area to the detriment of that area and to the advantage of and for the benefit of other more affluent, more influential, sections of the City.

Eventually, the City determined that some sort of mitigation project should be done in conjunction with construction of the Southeast Treatment Plant to at least partially offset the adverse consequences which would be associated with construction of the Treatment Plant Project. The mitigation measure decided upon involved construction of a community recreational playfield for the Bayview-Hunter's Point area. At that point, the estimated cost of construction of the necessary supporting structures, access facilities, perimeter fencing and playfield surface amounted to about \$11 million. This concept, construction of a community playfield, was presented to the State Board in 1976 and eventually resulted in adoption of State Board Order No. WQG 76-6.

Prior to adoption of Order No. WQG 76-6, the State Board held a hearing and received comments from both City representatives and other concerned people, primarily local citizens of the Bayview-Hunter's Point area, regarding local concerns and objections to the Treatment Plant Project, the reasons for local objection, the need for mitigation, and the desired mitigation project. After the hearing, State Board members indicated that they had arrived at a number of conclusions which can be summarized as follows:

1. Overall, the circumstances were such that construction of an appropriate mitigation project as part of construction of the City's Southeast Treatment Plant was reasonable and necessary;

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2. Complaints of the people of Bayview-Hunter's Point regarding other City conduct relative to the Bayview-Hunter's Point area and its citizens had some merit;

3. While local objection was focusing on the Treatment Plant Project, a significant portion of the local opposition being expressed was not really related to that Project but to other independent, unrelated actions and conduct of the City relative to Bayview-Hunter's Point and its people.

Because of the latter conclusion, Board members indicated that they believed that the City should undertake a greater degree of responsibility for the necessary mitigation project and attendant costs thereof than would ordinarily be the case in the Clean Water Construction Grants Program.

Order No. WQG 76-6 was thereafter adopted. That Order, of course, approves limited grant funding for the proposed community playfield mitigation project. Essentially, that Order approves grant funding for necessary support structures, reasonable access facilities, and reasonable perimeter fencing. It also indicates that grant funding for the playfield surface and amenities will be limited to funding of costs not exceeding \$2 million, with the City being totally responsible for any such costs above the \$2 million limit.

After adoption of Order WQG 76-6, the concept of what would be an appropriate mitigation measure was reevaluated for a variety of reasons, including expressions of local sentiments that the community playfield was not really responsive to either the problems or needs of the people of Bayview-Hunter's Point. The City worked closely with the people of Bayview-Hunter's Point to study various types of projects which might provide a better mitigation alternative than the community playfield. Out of this study effort

came the concept of the Southeast Community Center, basically the concept now under construction by the City. Essentially, the Community Center, when completed, will combine a commercial greenhouse operation with a jobs-skill training, vocational training center.

The City came back to the State Board in 1981 with a proposal to modify the approved mitigation project from the playfield project to the Community Center concept. At that time, the City provided information to the State Board that estimated costs for construction of the Community Center would amount to about \$15 million. It is now undisputed that the \$15 million estimate provided by the City did not include any estimate of relocation costs associated with relocation of the occupants of the land on which the Community Center is being built. The City's explanation for failure to include relocation costs in the cost estimate furnished to the Board in 1981 is that the City understood that total relocation costs for the entire Southeast Treatment Plant would be considered at one time and that relocation costs should not be presented on a project segment basis.

In any event, Order 81-1 did approve change in the approved mitigation project from the community playfield project to the Community Center project. The Order also indicates that estimated costs of the Community Center amounts to \$15 million and that the \$15 million estimated cost of the Community Center, while somewhat higher than the original cost of the recreational playfield approved in Order No. WQG 76-6, is basically equivalent to the approved cost of the playfield if one considers inflation.

After adoption of Order No. WQG 81-1, EPA completely reversed its attitude on funding of the City's mitigation project, refusing to provide any federal funding at all for the Community Center. In due course, Congress

modified the Federal Clean Water Act, basically directing EPA to provide federal grant funding for the Community Center in the following language:

"Notwithstanding any other provisions of this title, the Administrator is authorized to make a grant from any funds otherwise allotted to the State of California under Section 205 of this Act to the project (and in the amount) specified in Order WQG 81-1 of the California State Water Resources Control Board." (Federal Clean Water Act, Section 201(m)(1).)

Eventually, the City completed design of the Community Center. When the project was bid and ready for award, State Board Staff (Staff) advised the City that Staff considered that the \$15 million figure indicated in Order No. WQG 81-1 represented the absolute maximum amount of costs associated with Community Center which would be accepted for grant funding, that the City would be totally responsible for all project costs over \$15 million, and that total federal/state grant funding would be limited to an amount not exceeding \$13,125,000. The City appeals this Staff decision.

At this point in terms, the total cost associated with construction of the Community Center is estimated at about \$20.5 million. That \$20.5 million figure is essentially composed of \$19.3 million for construction activities and \$1.2 million in relocation costs.

II. CONTENTIONS

The City, while apparently willing to accept the \$15 million amount indicated in Order No. WQG 81-1 as a "cap" on the amount of construction costs associated with the Community Center, believes that, in fairness and equity, additional grant funding should be provided with respect to their relocation costs. From their perspective, relocation costs and grant funding thereof were never considered by the prior Boards who adopted Orders Nos. WQG 76-6 and

WQG 81-1, the \$15 million figure was not intended as a "cap" on relocation costs, and this Board can and should agree to provide additional grant funding for the City's relocation costs.

Staff, as already indicated, believes that prior State Boards intended to impose absolute limits on the amount of fundable costs associated with the City's mitigation project, and that the \$15 million amount indicated in Order No. WQG 81-1 was intended to represent the maximum amount of cost associated with the City's Community Center which would receive grant funding.

IV. FINDINGS AND CONCLUSIONS

After review, we agree with the Staff interpretation. We find that:

1. When they adopted Orders Nos. WQG 76-6 and 81-1, prior State Boards believed that the City itself was responsible for a significant portion of local objection to the Southeast Treatment Plant Project due to independent, unrelated conduct of the City and that the City itself should contribute a significant portion of the cost of any mitigation project associated with the Southeast Treatment Plant Project;

2. At the time of adoption of Orders Nos. WQG 76-6 and 81-1, the State Boards adopting those Orders intended to impose limitations on the amount of grant funding that would be provided toward the costs associated with construction of the City's mitigation project;

3. Specifically, Order No. WQG 81-1 was intended to limit the amount of costs associated with the Southeast Community Center which would receive grant funding to an absolute maximum of \$15 million. It was intended that the city would itself pay all Community Center project costs above \$15 million.

We see no reason at this time to modify determinations of prior State Boards on the issue of the amount of grant funding to be provided toward construction of the Southeast Community Center. We therefore conclude that not more than \$15 million of costs associated with the City's Southeast Community Center, including relocation costs, should receive grant funding and that grant funding for this project, state and federal, should not exceed \$13,125,000. All City costs incurred in connection with the Community Center are subject to federal audit.

V. ORDER

IT IS THEREFORE ORDERED that the City's appeal requesting additional grant funding toward the cost of the Southeast Community Center 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 April 17, 1986.

AYE: E. H. Finster
Eliseo M. Samaniego
Danny Walsh

NO: Darlene E. Ruiz

ABSENT: None

ABSTAIN: None


Raymond Walsh
Interim Executive Director

