

ARD '8

JANUARY

BERMANN

J. PUTMAN

E. TORGUSON

FROM: JESSE DIAZ

State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

Jim Winchell
O C C C WGT
4th Fl CC Bd.
Ex Dir
Hosp
Ding

April 30, 1987

RECEIVED

MAY 1 1987

EXECUTIVE OFFICE

Mr. W. Don Maughan, Chairman
State Water Resources Control Board
901 P Street
Sacramento, CA 95814

Dear Mr. Maughan:

Inasmuch as the State Water Resources Control Board is the state agency statutorily authorized by Water Code Section 13160 to exercise any powers delegated to the state by the federal Clean Water Act, I hereby delegate to the State Water Resources Control Board any authorities and powers conferred upon me as Governor under the federal Clean Water Act. This includes, but is not limited to, the powers and authorities conferred under Title VI, Water Pollution Control Revolving Loan Funds.

Most cordially,

George Deukmejian
George Deukmejian

sp

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



350 McALLISTER STREET, ROOM 6000
SAN FRANCISCO 94102
(415) 557-2544

May 3, 1989

(415) 557-0767

United States Environmental
Protection Agency
Region 9
215 Fremont Street
San Francisco, CA 94105

To whom it may concern:

AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD TO IMPLEMENT
A STATE REVOLVING FUND PURSUANT TO TITLE VI OF THE FEDERAL CLEAN
WATER ACT

I have been asked to review and certify the authority of the State Water Resources Control Board (State Board) to implement a State Revolving Fund Program in accordance with the provisions of Title VI of the federal Clean Water Act. More specifically, I have been asked to certify that the state law establishing the State Revolving Fund Program and the powers it confers are consistent with State law and that the State may legally bind itself to the terms of the capitalization grant agreement.

The federal Clean Water Act (33 U.S.C.A. § 1251 et seq.) was amended in 1987 to add Title VI thereto. (Id., §§ 1381 - 1387.) Title VI provides for federal funding of state-established revolving funds, any such fund being commonly referred to as a State Revolving Fund (SRF). (Id., § 1381.) The SRF is to provide perpetual loan funding and other types of financial assistance for construction of publicly owned wastewater treatment works. (Id.) The SRF may also fund implementation of nonpoint source management programs and development and implementation of estuarine conservation and management plans. (Id.) The SRF is eligible for substantial federal funding if certain federal conditions are met. Among these conditions are requirements that the state establish an SRF which complies with the requirements of Title IV of the federal Act (id., § 1383(a)), that there be a state instrumentality authorized to operate the SRF in accordance with the requirements and objectives of Title VI (id., § 1383(b)), and that the state shall enter into a capitalization grant agreement with the Administrator of EPA (id., § 1382(a)).

RECEIVED BY

MAY 12 1989

OFFICE OF THE
CHIEF COUNSEL
SWRCB

To Whom It May Concern
May 3, 1989
Page 2

With respect to establishment of a SRF in California and the authority of the State Board to operate the SRF in accordance with the requirements and objectives of Title VI of the federal Act, the State Legislature in 1987 adopted SB 1284, commonly called the Bergeson Bill. (Cal. Water Code §§ 13475-13485 (copy enclosed).) The statute was enacted expressly for the purpose of establishing state authorities consistent with the provisions and requirements of Title VI of the federal Act. (Cal. Water Code, § 13475(b).) Section 13475(a) provides as follows:

"The Legislature hereby finds and declares that since the federal Clean Water Act [citation omitted] provides for establishment of a perpetual water pollution control revolving loan fund, which will be partially capitalized by federal contributions, it is in the interest of people of the state, in order to ensure full participation by the state under the federal Clean Water Act, to enact this chapter to authorize the state to establish and implement a state/federal water pollution control revolving fund in accordance with federal provisions, requirements, and limitations."

At section 13575(b), the statutory language expressly notes that the "primary purpose" of the legislation "is to enact a statute consistent with the provisions and requirements of the federal Clean Water Act as those provisions, requirements, and limitations relate to establishment, management, and operation of a state/federal water pollution control revolving fund" and that "[i]t is the intent of the Legislature that the terms of this [statute] shall be liberally construed to achieve this purpose."

The statutory provisions of the Bergeson Bill essentially mirror the terms of Title VI. The statute creates a State Water Pollution Control Revolving Fund, and authorizes and directs the State Board to administer the Fund in accordance with the requirements and objectives of the federal Act. (Id., §§ 13477, 13479, 13480.) Moneys in the SRF are to be used only for purposes permitted by the federal Act. (Id., § 13480(a).)

State law specifically authorizes the State Board to enter into a capitalization grant agreement with the federal government and the Board may legally bind itself to the terms of such agreement. (Id., §§ 13478(a) and 13479(b)). Section 13478 generally authorizes the State Board to "[e]nter into agreements with the federal government for federal contributions to the fund." Section 13479 discusses agreements with the federal government

To Whom It May Concern
May 4, 1989
Page 3

for federal contributions to the fund. Subsection 13479(b) expressly provides that "[a]ny agreement between the board and the federal government shall contain those provision, terms, and conditions required by the federal act, and any implementing federal rules, regulations, guidelines, and policies." Accordingly, the State Board is authorized to bind itself to the terms of the capitalization grant agreement.

The Bergeson Bill constitutes the law of the State of California. We are not aware of any state law that is inconsistent with the provisions of the Bill. In the event the Bergeson Bill is challenged as being inconsistent with state law, according to our best judgment, the courts are more likely to uphold the validity of the Bill for several reasons. First, the Legislature has stated its intent that the state be authorized to establish and implement a SRF in accordance with federal law. (Cal. Water Code § 13475.) The Legislature has stated its intent that the terms of the Bill be "liberally construed to achieve this purpose." (Id., § 13475(b).) Second, the rules of statutory construction require the reviewing court to interpret statutes to avoid any inconsistency and to harmonize apparent inconsistencies. (See Fuentes v. Workers' Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7; Warne v. Harkness (1955) 60 Cal.2d 579, 588.) Third, in the event of an irreconcilable inconsistency, the courts will give precedence to the more specific statute over the more general statute. (See Assoc. Home Builders etc. Inc. v. City of Livermore (1976) 18 Cal.3d 582, 596; American Friends Service Comm. v. Proconier (1973) 33 Cal.App.3d 252, 263.) In that the Bergeson Bill is a detailed comprehensive statute which provides the specific authorities necessary to implement the SRF, the Bergeson Bill is most likely the more specific statute.

Based upon the foregoing, and after review of applicable requirements, I hereby certify that:

1. State law has established a water pollution control revolving fund which complies with the requirements of Title VI of the federal Clean Water Act, and the State Board is authorized to administer and operate that fund in accordance with the requirements and objectives of said Title VI.
2. State law specifically authorizes the State Board to enter into a capitalization grant agreement with the federal government and the Board may legally bind itself to the terms of such an agreement.

To Whom It May Concern
May 3, 1989
Page 4

3. The powers conferred by California Water Code sections 13475 through 13485 are consistent with state law.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

for Walter E. Wundrich

R. H. CONNETT
Assistant Attorney General