

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
Water Quality, State Water Resources
Control Board, Regarding Grant
Funding Related to Construction of
the San Francisco Southeast Water
Pollution Control Plant.

Order No. WQG 76-6

BY BOARD VICE CHAIRMAN MAUGHAN:

On March 24, 1976, the City of San Francisco (petitioner) petitioned the State Water Resources Control Board (State Board) for review of certain Division of Water Quality decisions related to grant funding of the San Francisco Southeast Water Pollution Control Plant (Southeast Plant). The plant is and will continue to be located in the Bayview-Hunter's Point community of San Francisco. The determinations involved generally relate to grant funding and eligibility of covers for the secondary clarifiers, supporting structures for these covers, and recreational facilities proposed to be constructed on top of these covers at the Southeast Plant.

On April 8, 1976, a hearing was held for the purpose of receiving evidence relative to the appropriateness and propriety of the determination of the Division of Water Quality.

I. BACKGROUND

The petitioner presently operates the Southeast Plant at Bayview-Hunter's Point. The plant provides primary wastewater

treatment for wastewaters from the southeast area. Upgrading and expansion of the existing Southeast Plant has been chosen as the most cost-effective project to provide secondary treatment for wastewaters from both the North Point area and the southeast area of San Francisco. The proposed treatment plant expansion presently involves an estimated cost of \$217 million. In the preparation of an environmental impact report (EIR) for the proposed Southeast Plant expansion, extensive opposition of local citizens was expressed to location of an expanded plant adjacent to the present site. In order to mitigate and minimize adverse social and environmental effects of the plant expansion, the petitioner proposed the construction of concrete covers over the secondary clarifiers and the location of a recreational field on top of the covers.

On July 21, 1975, the San Francisco Board of Supervisors adopted Resolution No. 551-75 (File No. 88-75-2) certifying that it had reviewed and considered the information contained in the EIR prepared for the Southeast Plant expansion. The resolution established a policy that the expanded and upgraded treatment plant be located adjacent to the present plant and further provided that:

- "2. The new and existing treatment plant shall include the necessary facilities to prevent odor.
3. An architect be engaged to develop the treatment plant site with the emphasis on esthetics and landscaping.
6. The plant shall be developed in a manner to provide approximately eight acres of recreation and park-type facilities, and the neighboring community shall be given the opportunity to offer input into the design of these facilities."

The petitioner requested that the secondary clarifiers for the proposed project be covered and that recreational facilities be constructed on these covers, with all costs of covers and recreational facilities to be determined to be eligible for grant funding. The Division of Water Quality, however, determined that the proposed recreational facilities were not eligible for grant funding. By letter of March 19, 1976, the Division of Water Quality advised petitioner:

"It is the determination of the staff of the State Water Resources Control Board that the concrete structure is eligible for grant participation but the recreational facilities are ineligible for grant participation.

"Construction of these recreation facilities are [sic] viewed as an essential element of the overall project which will be required to mitigate adverse social and environmental impacts. Accordingly, the grant contract will include a provision that the City construct the recreational facilities as an integral element of the proposed expansion of the southeast treatment plant."

The Environmental Protection Agency (EPA) Region IX, has also expressed concern that the mitigation of identified adverse impacts of the Southeast Plant expansion be achieved by the construction of recreational facilities. By letter of April 6, 1976, the Deputy Director, Construction Grants Program, EPA Region IX advised the State Board that:

"We are writing to comment on the eligibility for Federal funding under PL 92-500 of the playfield proposed as part of the Southeast Treatment Plant expansion for San Francisco. This letter is intended to provide input to the SWRCB hearing on this subject scheduled for April 8 and 16.

"EPA is now considering a staff proposal that EPA sign a Negative Declaration on the proposed Southeast Plant expansion. This Negative Declaration would be a statement under the National Environmental Policy Act of 1969

that the unmitigated impacts of the proposed project are either not significant or have been adequately evaluated in our 1974 Environmental Impact Statement on the San Francisco Wastewater Master Plan.

"In light of the great public controversy surrounding the proposed Southeast Plant expansion, we believe that extensive efforts must be made to mitigate the impacts of this project. The rationale for a Negative Declaration would rest in part on the understanding that recreational facilities will be provided to mitigate impacts by placing a playfield on top of the secondary clarifiers. Consequently, we concur with the stated intent of the State Board to require the construction of such facilities."

II. CONTENTIONS AND FINDINGS

Petitioner contends for a variety of reasons that the determination of the Division of Water Quality to deny grant funding of the proposed recreational field and facilities at the site of the expanded Southeast Plant is an error in judgment, and that funding of the recreational field and facilities is consistent with the language and intent of the California Clean Water Bond Laws of 1970 and 1974. (California Water Code, Division 7, Chapters 13 and 14) and also with the applicable provisions of the California Administrative Code (Title 23, Subchapter 7, California Administrative Code). Petitioner contends, in effect, that the proposed recreational field and facilities at the site of the expanded Southeast Plant are reasonable, necessary, and ordinary portions of the project and are eligible for grant funding.

In support of its contention, the petitioner generally relies upon the environmental effects, considerations and social impacts discussed in the EIR, and the requirement of appropriate mitigation measures by each of the public agencies which has

jurisdiction by law with respect to the project. The Division of Water Quality, on the other hand, contends that although it may deny, postpone or condition financial assistance for a project where necessary to minimize adverse environmental impacts (Title 23, Chapter 3, Subchapter 17, Section 2720, California Administrative Code), the costs of the mitigation measures proposed in this case are not reasonable, necessary and ordinary costs of construction of treatment works (Title 23, Chapter 3, Subchapter 7, Section 2139, California Administrative Code.)

Substantial evidence on both sides of the issues involved was presented at the hearing on April 8, 1976, and we have carefully reviewed this evidence. We find that, in this particular case, the proposed recreational field should be declared to be grant eligible for the reasons and subject to the limitations hereafter set forth.

There is no question that in order to be grant eligible under the California grant program the cost involved must be "reasonable, necessary and ordinary." There is also no question that the Environmental Quality Act of 1970 (CEQA) (Public Resources Code, Division 13, commencing with Section 21000) contemplates and requires that all public agencies in making determinations on projects will consider the total environmental consequences of their actions, including human and social impacts which may be involved.

CEQA, in fact specifically provides:

"The Legislature further finds and declares that it is the policy of the state to:

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations." (Public Resources Code Section 21001(e). Emphasis supplied.)

The State EIR Guidelines (California Administrative Code, Title 14, Division 6, Chapter 3) likewise make it clear that adverse environmental consequences include social impacts, that these impacts should be minimized, and that alternatives to mitigate adverse social impacts must be considered even if the mitigation measures render the project more costly than it would otherwise be. (State EIR Guidelines Section 15143).

We recognize the fact that there are no absolute and universal criteria for determination of whether proposed mitigation measures and the cost thereof are "reasonable, necessary and ordinary." We also appreciate that while CEQA seeks to avoid and/or mitigate adverse environmental impacts, including adverse social impacts, the grant fundability of the cost of the mitigation measures chosen is not necessarily the burden of grant funding under the Clean Water Bond Laws of 1970 and 1974. Each case must be examined on its own merits and within the context of the circumstances which surround it. Whether a proposed project cost is "reasonable and necessary" so as to be eligible for grant funding at all is, at least initially, a determination to be made by the staff of the Division of Water Quality. Even if eligible, the extent to which such a cost should be grant funded, if at all, is discretionary with the State Board. [California Administrative Code, Title 23, Chapter 3, Subchapter 7, Section 2110(b)].

Having examined the particular facts and circumstances of this case, we find that the proposed covers are grant eligible as appropriate assurance of odor control for a plant which is to be expanded and which is sited in an established and concentrated residential area. In addition, necessary supporting structures and the cost of construction of a recreational field are also grant eligible, subject to the limitations hereafter set forth. Our finding related to the cost of construction of supporting structures and the recreational field are based upon a number of circumstances which are, in our estimation, somewhat unique, and which include but are not limited to the following:

1. There is an extraordinary scarcity of land in the area involved sufficient to support the plant expansion necessary for construction and vital for the protection of water quality in the San Francisco area.
2. The expanded plant will be located in an established residential area and the circumstances are such that some latitude in the allowance of otherwise eligible project costs would be appropriate.
3. The EIR process has identified substantial social impacts associated with the project which should be mitigated to the extent reasonably possible.
4. The construction of certain recreational facilities proposed by the petitioner is an appropriate means of mitigation, with the reasonableness thereof demonstrated by the fact that the Division of Water Quality has determined that recreational facilities are an "essential" element of the project and that any grant would be conditioned upon construction of such facilities.

5. EPA has taken the position that the recreational facilities are, under the particular circumstances of this case, eligible for federal grant funding and has recommended that "extensive efforts must be made to mitigate the impacts of this project." (Emphasis supplied.)

6. The project proposed, even with additional costs allowed for construction of recreational facilities will remain the most cost-effective project within the range of permissible alternatives.

III. CONCLUSIONS

After review of the entire record, we conclude as follows:

1. The proposed covers for the secondary clarifiers at the Southeast Plant, together with appropriate supporting structures are grant eligible and shall be certified to EPA as a part of the eligible project.

2. The construction of a recreational playfield overlying the covers is a reasonable, necessary and appropriate means of mitigation of adverse social impacts associated with the proposed Southeast Plant expansion, the cost thereof is grant eligible, and such proposed construction shall be certified to EPA as a part of the eligible project, subject to the following condition:

(a) That portion of the project related to recreational facilities which is grant eligible and which shall be certified to EPA shall be limited to the cost of construction of the field surface for

recreational activities, reasonable facilities necessary to permit free public access, and reasonable protective structures necessary to prevent injury due to elevation of the facilities. No other portions of the recreational facilities installed shall be deemed grant eligible or certified to EPA, and specifically all playground and/or sporting equipment or facilities are excluded from grant eligibility.

(b) In no event shall the total grant eligible project cost associated with recreational facilities exceed a total of \$2,000,000, and participation of clean water bond funds shall not exceed 12½ percent of \$2,000,000.

(c) Petitioner shall execute an appropriate indemnity agreement against damage or injury arising out of or connected with use of the recreational facilities, which agreement shall be satisfactory to the State Board.

(d) Petitioner shall, as a grant condition, be required to implement a program for installation of those additional facilities and/or equipment necessary to assure initial completion of reasonable playground and recreational facilities. The program shall be subject to approval by the State Board.

IT IS HEREBY ORDERED that this matter is hereby remanded to the Division of Water Quality for processing of the

application of the petitioner relative to the proposed South-east Plant expansion in a manner consistent with this order.

Dated: April 15, 1976

We Concur:

/s/ W. Don Maughan
W. Don Maughan
Vice Chairman

/s/ W. W. Adams
W. W. Adams, Chairman

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Jean Auer
Jean Auer, Member