

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
the City of Fresno and the City)
of Clovis for Review of Water)
Quality Staff Determinations)

Order No. WQG 74-8

BY BOARD VICE CHAIRMAN ROBIE AND MEMBER MAUGHAN:

By letters dated respectively December 10 and December 12, 1973, the City of Fresno (Fresno) and the City of Clovis (Clovis), hereafter sometimes jointly referred to as Petitioners, requested the State Water Resources Control Board (State Board) to review certain determinations of the staff of the Division of Water Quality (Staff).

A hearing in this matter was held by the State Board on April 10, 1974.

SUMMARY OF PROJECT PROPOSED AND STAFF
DETERMINATIONS RELATED THERETO

Fresno proposed a 1972-73 fiscal year project, commonly referred to as the Fresno-Clovis Interceptor Project. This project involved proposed construction of an interceptor which would transport certain wastewaters from areas in the vicinity of Fresno to the Fresno treatment plant. The interceptor is generally routed from the Fresno treatment plant to the Pinedale area and thence to Clovis. The project is designed to accomplish two distinct objectives. The portion of the interceptor running from the treatment plant

to the Pinedale vicinity, hereafter referred to as the Fresno-Pinedale portion of the project, will permit elimination of two obsolete treatment plants operated by Pinedale County Water District and Pinedale County Public Utility District. The primary purpose of the remainder of the interceptor running from the Pinedale vicinity to Clovis, hereafter referred to as the Pinedale-Clovis portion of the project, is to provide additional transportation capacity to Clovis and its environs. Because of the distinct objectives involved, different considerations apply to grant funding of the two portions of the overall project.

Staff determined that the Pinedale-Clovis portion of the project was not eligible for grant assistance as a 1972-73 fiscal year project for the following reasons:

(1) This portion of the project did not fulfill the requirements for classification as a Class A interceptor set forth in the applicable grant regulations, but was a Class B interceptor.¹

(2) Even if this portion of the project was deemed to fulfill the requirements of a Class A interceptor, it could not be funded by grant because the project did not fall within a fundable priority class as required by applicable grant regulations.²

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1. Current grant regulations adopted on August 16, 1973, do not generally apply to 1972-73 projects. The applicable regulations referred to above are Section 2102(h) and 2120(d)(1) of the grant regulations adopted February 17, 1972, and Section 2122 of the grant regulations adopted January 4, 1973.
 2. The applicable regulation is Section 2122 of the grant regulations adopted on January 4, 1973, which sets forth the priority of funding for 1972-73 projects.

(3) Transportation capacity to the Fresno plant available to Clovis in an existing interceptor already exceeded the fundable capacity permitted under Section 2144³ of the grant regulations, and this section precluded the funding of any further interceptors or interceptor capacity for Clovis.

With respect to the Fresno-Pinedale portion of the project, Staff determined that the capacity of this portion of the project which was eligible for grant funding was considerably less than the capacity proposed by Fresno. This determination basically rested upon two conclusions. First, the capacity proposed included capacity for Clovis, which was not fundable for the reasons already expressed. Second, excluding consideration of Clovis capacity, the capacity proposed far exceeded that capacity reasonably required for the remainder of the service area.

THE POSITION OF FRESNO ON THE FRESNO-PINEDALE PORTION OF THE PROJECT

At the hearing held on April 10, 1974, it appeared that Staff and Fresno had resolved their differences on the fundable capacity of the Fresno-Pinedale portion of the project. Excluding consideration of any capacity for Clovis, Staff was agreeable to

3. The applicable regulation is Section 2144 as amended on February 15, 1973.

fixing fundable capacity of this portion of the project on a basis satisfactory to Fresno,⁴ subject to the following conditions:

1. At least 50 percent of the population in the unsewered communities to be served by the interceptor must be connected to the system at the time the interceptor is completed.
2. No contracts for construction of the interceptor will be awarded by Fresno prior to award of contracts for construction of the sewer systems necessary to satisfy condition 1.
3. Fresno must furnish a sewerage "hook-up" schedule assuring that 80 percent of the population on which capacity was based will connect to the system within 5 years after completion of the project.
4. Fresno and the unsewered communities involved must adopt ordinances or other legal mechanisms which insure that the required connections will be made in accordance with condition 3.

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4. It appears that no actual fundable flow capacity in gallons had been definitively agreed upon. However, it appears that Staff had agreed to accept flow capacity measured on an agreed per capita gallonage, based upon existing population within the service area, plus additional appropriate capacity for anticipated flows from St. Agnes Hospital and Fort Washington High School, both of which are expected to be completed before completion of the interceptor. Anticipated flows from the Hospital and the School had not been fixed. Fresno proposed an allowance of 582,000 gpd for the Hospital and 112,500 gpd for the School. A peaking factor of 2 had been agreed upon.

After discussion, Fresno indicated at the hearing that it agreed with the resolution proposed and accepted the conditions indicated. As a part of the hearing discussions, it was indicated that the Federal grant offer must be made not later than June 30, 1974, and that construction on the interceptor must commence not later than 1 year thereafter. In effect, the discussions indicated that contracts to construct the interceptor must be awarded sometime prior to June 30, 1975, in order to meet these time limitations.

On the basis of the understanding reached, the Fresno petition was dismissed. Subsequently, near the close of hearing, Fresno indicated that, upon further consideration, given the time constraints involved, it appeared that Fresno would have difficulty in meeting the condition that contracts to construct the necessary connecting sewer systems be awarded prior to award of contracts to construct the interceptor. Accordingly, the matter was reopened and evidence received on this point.

THE POSITION OF PETITIONERS ON THE
PINEDALE-CLOVIS PORTION OF THE PROJECT

While Petitioners contest certain of the Staff conclusions on this portion of the project, they do not question the Staff conclusion that applicable grant regulations deny grant funding for this portion of the project. Specifically, Petitioners admit that Section 2144, as construed by the State Board in prior grant matters,⁵ would preclude funding of the Pinedale-Clovis portion of the project and any capacity for Clovis in the Fresno-Pinedale portion of the project.

5. See Order No. WQG 73-27.

On the other hand, Petitioners contend that the State Board has inherent power to waive its own regulations and that the circumstances in this case are so unique that the State Board, in its discretion, should waive those regulations which would preclude funding of capacity for Clovis on some reasonable basis because of equitable considerations and, as they put it, the dictates of "common sense".

The arguments of Petitioners may be summarized as follows:

1. They contend that Clovis is entitled to special consideration by the State Board, because Clovis has been forced into the Fresno system. In effect, they contend that the determination to regionalize facilities in the Fresno area has precluded Clovis from the opportunity to pursue any alternative for treatment of its sewage other than transportation to the Fresno plant for treatment. ⁶ By virtue of the regional concept imposed, and the location of Clovis relative to the Fresno treatment plant, they contend that Clovis must bear an unusually heavy expense for transportation of its wastes to the treatment plant.

2. They contend that Clovis has experienced unusually heavy growth in recent years and that present interceptor capacity available to Clovis is limited. They further contend that additional transportation capacity for Clovis will be required

6. Such a result is neither unusual nor necessarily undesirable. Under current federal grant regulations, the most cost effective project to meet water quality objectives will not always be the project preferred by a particular municipality, but it is the cost effective project which is eligible for funding.

by 1981 and that, unless capacity is provided for Clovis in the project now proposed, Clovis will not be financially able to pay for the cost of necessary interceptors to provide for future Clovis capacity.

Implicit within the contentions of Clovis is the concept that provision for capacity for Clovis in the Clovis-Herndon interceptor is, under the peculiar circumstances of this case, the only solution which is reasonably cost effective.

While we will not detail the evidence presented, Petitioners did produce evidence in support of their contentions, including substantial evidence on the economic impacts to the Clovis area if this area were forced to provide for all costs of transportation of sewage to the Fresno treatment plant and the cost effectiveness of providing for capacity for Clovis in the proposed project.

FINDINGS AND CONCLUSIONS

Having considered all contentions of Petitioners, and the evidence produced as a result of the hearing, we find and conclude as follows:

(1) The Fresno-Pinedale portion of the project, insofar as reasonably required to eliminate the treatment plants of Pinedale County Water District and Pinedale County Public Utility District involves a Class A interceptor and is eligible for grant funding as a 1972-73 fiscal year project. In this connection, however, any extension of the interceptor beyond that point required to

eliminate these treatment plants does not meet the requirements for classification as a Class A interceptor and shall not be eligible for grant participation.

(2) Staff was correct in their approach to the Pinedale-Clovis portion of the project. This portion of the project is not entitled to grant assistance for each and all of the reasons specified by Staff. Specifically, we find:

- (a) This portion of the project does not meet the requirements for classification as a Class A interceptor.
- (b) Even if this portion of the project involved a Class A interceptor, it does not meet the priority criteria necessary to elevate it to a fundable category for fiscal year 1972-73.
- (c) Section 2144 precludes funding of this portion of the project. Existing population projections for the Clovis service area under Section 2144, and the terms of Section 2144, would if literally applied, preclude the funding of any capacity for Clovis in the Fresno-Pinedale portion of the project.

This portion of the project is not eligible for grant funding as a 1972-73 fiscal year project, and, on the basis of the facts before us, there is no justification for relaxation or waiver of applicable grant regulations which affect this portion of the project.

(3) There is an existing interceptor from the Fresno treatment plant to Clovis, commonly referred to as the Peach Avenue Interceptor, with a capacity for 3 mgd. Present flows from Clovis amount to approximately 1.96 mgd. However, there has been a population increase in the Clovis area which has far exceeded the population projection provided for by application of Section 2144. The interceptor capacity available for Clovis will be utilized nearly a decade earlier than anticipated when the Peach Avenue Interceptor was constructed.

(4) Regionalization of treatment facilities in the Fresno area has been encouraged, and, at present, should continue to be encouraged if cost effective.

(5) On the basis of presently known facts, additional interceptor capacity for Clovis will be required to meet 1981 needs in Clovis. Assuming that the Fresno-Pinedale interceptor is constructed, it would be cost effective to include in this interceptor some reserve capacity for Clovis to meet these future needs. Failure to provide such reserve capacity in this interceptor, if it is constructed, would probably require substantially increased public expenditures at a future date or substantially adversely effect regionalization of facilities in the Fresno area.

(6) Given the unique circumstances of this case, it is reasonable to relax the generally applicable restrictions of Section 2144 for the Fresno-Pinedale portion of the project. The reasons which justify such action include, but are not necessarily limited to, the following considerations:

- (a) A determination that the Fresno-Pinedale portion of the project should be allowed to proceed at the present time.
- (b) The location of Clovis at the end of the conveyance system.
- (c) The demonstrable cost effectiveness of providing reserve capacity in the Fresno-Pinedale interceptor at the present time.
- (d) Economic and fiscal considerations.
- (e) The appropriateness of continuing regionalization in the Fresno area.
- (f) The demonstrable population increases in the Clovis area and the expected revision of population projections for this area.

(7) Disregarding considerations of capacity for Clovis, the Staff approach to capacity determination for the Fresno-Pinedale portion of the project is appropriate and should be confirmed.

There are some comments we wish to make in addition to the foregoing findings. The disposition made in this matter is based on the unique circumstances of this case and is not intended to constitute any statewide precedent. Specifically, it is not the State Board's intent to waive or relax any grant regulation which might apply to a proposed future project in the Fresno area known as the East Fresno Interceptor.

IT IS HEREBY ORDERED as follows:

1. Staff shall determine the appropriate capacity for the Fresno-Pinedale portion of the project in accordance with this order and in the manner agreed upon with Petitioners and shall also determine Staff allowable flows for St. Agnes Hospital and Fort Washington High School. Staff determinations so made shall be final and conclusive.

2. In addition to the capacity determined pursuant to Paragraph 1 above, fundable capacity for the Fresno-Pinedale portion of the project shall include reserve capacity for an additional 2 mgd, which additional capacity shall be reserved for Clovis in accordance with this order.

3. Upon submission of appropriate plans and specifications by Fresno, together with all other required supporting documents, Staff shall certify the construction of the Fresno-Pinedale portion of the project to EPA, and shall tender a state grant contract to Fresno for construction of this portion of the project. Certification to EPA and the state grant contract shall be conditioned as follows:

- (a) At least fifty percent of the population in the area to be served by this portion of the project, exclusive of the Clovis area, must be connected to the interceptor not later than 30 days after completion of construction of the interceptor.
- (b) No contract for construction of the interceptor shall be awarded by Fresno prior to award of contracts

for construction of sewer systems necessary to satisfy the foregoing condition.⁷

- (c) Fresno must furnish a sewerage "hook-up" schedule assuring that 80 percent of the population on which capacity for this portion of the project was based, other than capacity for the Clovis area, will connect to the interceptor within 5 years after completion of construction.
- (d) Fresno and the unsewered communities referred to above must adopt ordinances, or take other appropriate action, to insure that the connections required by the foregoing conditions are effected.
- (e) Fresno shall reserve the capacity set forth in Paragraph 2 above for Clovis for a reasonable period of time, which shall not be less than 10 years after completion of construction, and such capacity shall be made available to Clovis within such time on a fair and equitable basis.

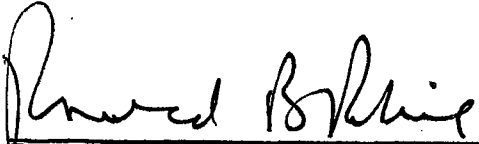
7. We are sympathetic to the time problems indicated by Fresno. At the same time, we concur in the Staff position that interceptor capacity should not be funded unless there is reasonable assurance of necessary connections and use. EPA may extend the time constraints on commencement of construction, and, assuming that Fresno proceeds expeditiously, but still cannot fulfill this condition, we will, upon request of Fresno, make reasonable efforts to gain EPA concurrence in extension of the commencement date. Failure of EPA to extend the time for commencement shall not, however, negate this condition.

4. In the event that the project, as finally proposed by Fresno shall exceed the capacity limits determined in accordance with Paragraphs 1 and 2 above, grant funding shall be on a pro rata basis, except that the minimum eligible cost of the project shall not be less than the cost of facilities necessary to serve total existing needs.

5. The Pinedale-Clovis portion of the project, and any extension of the Fresno-Pinedale portion of the project beyond that necessary to eliminate the treatment plants referred to in this order, are not eligible for grant funding and shall not be certified to EPA.

Dated: May 1, 1974

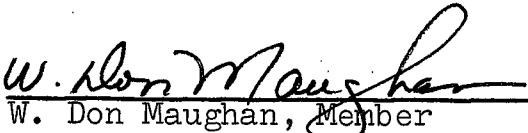
We Concur:



Ronald B. Robie
Vice Chairman

ABSENT

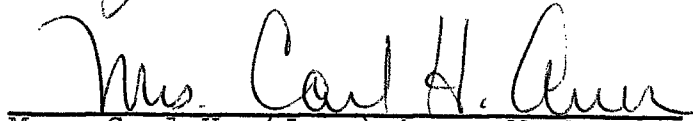
W. W. Adams, Chairman



W. Don Maughan, Member



Roy E. Dodson, Member



Mrs. Carl H. (Jean) Auer, Member