

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of  
Aliso Water Management Agency  
for Review of Water Quality Staff  
Determinations

Order No. WQG 74-18

BY BOARD VICE CHAIRMAN ROBIE AND MEMBER MAUGHAN:

By letter dated July 1, 1974, Aliso Water Management Agency (petitioner) 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 July 23, 1974.

SUMMARY OF PROPOSED PROJECT, STAFF  
DETERMINATIONS, AND CONTENTIONS OF PETITIONER

Petitioner proposes a 1973-74 fiscal year project generally involving regionalization of facilities within the proposed service area of petitioner. Petitioner's constituent agencies include the City of Laguna Beach, El Toro Water District, Emerald Bay Service District, Irvine Ranch Water District, Los Alisos Water District, Moulton-Niguel Water District and South Laguna Sanitary District. The project proposed by the petitioner includes construction of interceptors, treatment

plant expansion at the South Laguna treatment plant, and construction of an ocean outfall line from the South Laguna treatment plant.

Included within the proposed project is construction of an interceptor running generally from the Los Alisos Water District to the South Laguna treatment plant. In addition to other flows, it is contemplated that this interceptor will serve Los Alisos Water District and an area known as Rossmoor. Sewage flows at Rossmoor are presently treated and disposed of by Rossmoor Sanitation, Inc., a private corporation.

Insofar as relevant to this proceeding, Staff made the following determinations:

1. Appropriate population estimates and projections for the service area are as follows:

<u>Service Area</u>	<u>1970</u>	<u>1973</u>	<u>1985</u>	<u>1995</u>	Percent of Total <u>District</u>
Los Alisos Water District	1,700	2,140	4,000	5,100	3.65
Rossmoor Sanitation, Inc.	16,800	21,170	38,400	51,000	36.13
Moulton-Niguel 1A	5,200	6,540	11,900	15,700	11.19
Moulton-Niguel 2A	2,500	3,110	5,700	7,500	5.37
South Laguna San. Dist.	4,800	6,040	11,000	14,500	10.31
City of Laguna Beach	<u>15,500</u>	<u>19,500</u>	<u>35,500</u>	<u>47,200</u>	<u>33.35</u>
Total	46,500	58,500	106,500	141,000	100.00

2. Average daily flows in the service area should be allocated as follows:

<u>Service Area</u>	ADF in MGD			
	<u>1970</u>	<u>1973</u>	<u>1985</u>	<u>1995</u>
Los Alisos Water District	0.14	0.18	0.35	0.45
Rossmoor Sanitation, Inc.	1.47	1.85	3.36	4.50
Moulton-Niguel 1A	0.45	0.57	1.04	1.37
Moulton-Niguel 2A	0.22	0.27	0.50	0.66
South Laguna San. Dist.	0.42	0.53	0.96 <sup>a/</sup>	1.26 <sup>b/</sup>
City of Laguna Beach	<u>1.35</u>	<u>1.70</u>	<u>3.10</u> <sup>c/</sup>	<u>4.12</u> <sup>d/</sup>
Total	4.05	5.10	9.31	12.36

<sup>a/</sup> Add 0.33 MGD for seasonal flow

<sup>b/</sup> Add 0.41 MGD for seasonal flow

<sup>c/</sup> Add 1.63 MGD for seasonal flow

<sup>d/</sup> Add 2.16 MGD for seasonal flow

3. No capacity would be provided for service to Los Alisos Water District.

4. No capacity would be provided for the service to the Rossmoor area.

Petitioner has questioned all of these Staff determinations. Specifically, petitioner has contended:

1. The population projections made by Staff are incorrect.

2. Allowances for seasonal flows are inadequate.

3. Allocation of population within various service areas is inappropriate.

4. Per capita flows allowed are inadequate.

5. Capacity for Los Alisos Water District and the Rossmoor area should be grant eligible.

Consideration of each of these contentions follows.

## CAPACITY FOR LOS ALISOS WATER DISTRICT

As previously indicated, a portion of this project involves a proposed interceptor which would transport sewage from the Los Alisos Water District to an enlarged South Laguna treatment plant. The District already has treatment and disposal facilities. As a part of a 1970-71 grant project, the treatment plant capacity of the District was enlarged from 0.5 mgd to 1.0 mgd. Petitioner does not intend to eliminate the existing treatment facilities of the District as a result of the project. Staff determined that, under these circumstances, no capacity could be provided for the District in any part of the project.

Staff's determination was based on a premise that a project funded in 1971-72 should not be refunded after only two years of operation. In addition, staff concluded that petitioner's project was placed in a fundable priority class in 1973-74 because of violations of waste discharge requirements by certain of the constituent agencies of petitioner. However, Staff also concluded that fundable priority should not be extended to those portions of the project which did not involve violation of requirements. Since there was no evidence of violation of requirements by the District, Staff determined that the portion of the project related to the District should not be funded.

Petitioner took the position that the 1971-72 project was only an interim project pending regionalization of

facilities in the area, that regionalization had now been made possible, and that retention of the District's facilities would add safety and flexibility to the entire regional system. Petitioner's program is to utilize the District's facilities in those portions of the year, primarily during the dry months, when the facilities are adequate to handle the flows involved, and to transport any and all excess flows to the South Laguna plant for treatment and disposal. It appears from evidence generated at the hearing that approximately .5 mgd of wastewater can be effectively handled on a year-round basis by the District's existing facilities. Petitioner contends that this program will allow use of the District's facilities primarily for reclamation in those times of the year when reclamation is possible.

Staff's position that a project funded as a 1971-72 project should not be refunded as a 1973-74 project is well taken. However, this is not the situation in this case. The 1971-72 project involved the District as grantee for a project to enlarge treatment plant capacity for the District. The 1973-74 project involves petitioner as grantee for a project involving transportation capacity for the petitioner. More importantly, the 1973-74 project involves regionalization of facilities for an entire area. The District encompasses only a part of the entire area involved in the regional program. One of the primary purposes of this regional program is to provide necessary facilities for the entire region

involved. On the record before us, we must assume that regionalization of facilities in the entire service area of petitioner is a desirable objective and one which should be promoted. If such is the case, refusal to fund necessary portions of the regional facilities involved because some segments of the region had received prior grant funds for other facilities would in many cases be counter-productive. It appears to us that such would be the case in this matter.

With respect to the second issue, violation of waste discharge requirements, a representative of the Regional Water Quality Control Board, Santa Ana Region (Regional Board) testified that there had been violations of requirements at the District's plant, and that, in the absence of the proposed project, further violations were to be anticipated.<sup>1/</sup>

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<sup>1/</sup> Again, we generally agree with Staff that the fact that a portion of a project falls within a fundable priority class does not necessarily mean that the entire project should be funded. The problem is specifically covered by our grant regulations. Section 2108(e), Subchapter 7, Chapter 3, Title 23 of the California Administrative Code. Ordinarily, the project will be elevated to the highest priority class applicable to any portion thereof, although in appropriate cases lower priority portions may not be funded. Given the violation of requirements involved and the regional type program proposed, there appears to be no reason to lower the priority of that portion of the project related to Los Alisos Water District. We should also point out that, even if the entire project does fall within a fundable priority class, staged construction may be required of a grant applicant. Section 2138, Subchapter 7, Chapter 3, Title 23 of California Administrative Code. The facts of this case, however, do not appear conducive to a requirement of project staging.

Accordingly, it appears to us that the staff determination denying grant eligibility for capacity for Los Alisos Water District is inappropriate and should not be confirmed.

#### CAPACITY FOR THE ROSSMOOR AREA

The same interceptor which would serve Los Alisos Water District would also provide service to the Rossmoor area. Rossmoor appears to be a relatively separate and independent unit within the service area of petitioner. Wastes within this area are collected, and treated and disposed of by Rossmoor Sanitation, Inc., a private corporation. The corporation apparently operates waste treatment and disposal facilities. It is not presently intended that these treatment and disposal facilities should be eliminated as a result of this project.

Staff's determination that no capacity for this area could be funded was based upon the conclusion that the Rossmoor area was a separate and distinct unit and that funding for this area was precluded by Section 2133(f)(4) of our grant regulations. Insofar as relevant, Section 2133(f)(4) generally eliminates funding of capacity for a separate unit independent from the grantee, on the premise that capacity for such an area should be the responsibility of the developer.<sup>2/</sup>

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<sup>2/</sup> Section 2133(f)(4), Subchapter 7, Chapter 3, Title 23 of California Administrative Code. The section provides: "No allowance shall be made for capacity necessary to serve new independent and undeveloped areas, or to serve areas which were or are designed primarily as a separate unit independent from the already existing community, unless the division finds that such allowance is necessary for the protection of water quality. Provision for the capacity to serve such areas shall be the responsibility of the developer of such area."

In addition, Staff concluded that funding of capacity for the Rossmoor area would involve a subsidy for a privately owned treatment facility.<sup>3/</sup> Finally, like the approach used in consideration of Los Alisos Water District, Staff concluded that, in the absence of evidence of violation of waste discharge requirements, the portion of the project related to the Rossmoor area was not of sufficient priority to be grant eligible.

Petitioner on the other hand, contends that persons living in the Rossmoor area should not be precluded from grant participation to any greater extent than any other person within the service area of petitioner. For a number of reasons, we concur with petitioner in this particular case.

The regional aspect of this project is again fundamental to our considerations. While Section 2133(f)(4) may have some application in regional projects, the application must, of necessity, be extremely limited. In this particular case, for example, since the "existing community" being considered for grant purposes is the entire regional area, it would be exceedingly difficult to conclude that Rossmoor, or any area within the service area, is "separate ...from the already existing community."

<sup>3/</sup> Staff's position on this issue rests upon the premise that grants are limited to "municipalities" as defined by the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251, et seq.).



Secondly, the regulations which apply to this project make it clear that it is the ordinary intent of the State Board to fund a municipality only once for expansion of capacity.<sup>4/</sup> If Rossmoor is within the service area of petitioner, and if capacity for that area is not provided at the present time, the people within this area may well be precluded from ever participating in grant funded facilities. Where regional facilities are involved, we cannot rationalize such a result, at least upon the facts in this case.

We do not believe that inclusion of capacity for Rossmoor involves any subsidy for a privately owned treatment facility. We are not actually funding the Rossmoor area or Rossmoor Sanitation, Inc. We are funding a regional public agency composed of a number of other public agencies for the purpose of providing adequate waste treatment facilities in order to achieve state and federal water quality objectives. We assume that the residents of the Rossmoor area, like any other residents within the regional service area, will pay their fair share of capital costs and treatment costs in connection with these facilities. Assuming that this will be the case, there is no greater subsidy for the Rossmoor area than for any other area encompassed within the regional service area.

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<sup>4/</sup> Section 2108(h), Subchapter 7, Chapter 3, Title 23 of California Administrative Code.

With respect to grant priority for any portion of the project related to Rossmoor, the situation is basically the same as detailed with respect to Los Alisos Water District. The Regional Board representative testified that there had indeed been violations of waste discharge requirements by the present facilities, and that further violations should be anticipated if the proposed project were not completed.<sup>5/</sup>

It should be noted that petitioner contemplates continued use of the existing Rossmoor facilities during those portions of the year when these facilities are adequate. Again, petitioner contends that this program will allow use of these facilities primarily for reclamation in those times of the year when reclamation is possible. The evidence indicates that these facilities should be capable of handling 1 mgd of wastewater on a year-round basis.

#### POPULATION PROJECTIONS

Voluminous testimony was presented on the issue of Staff population determinations. The dispute centers around the 1970 population estimates for the service area. For the purpose of population projections, Staff had determined a 1970 population of 46,500 persons. Petitioner claimed a 1970 population of 57,432 persons. The evidence also indicated that petitioner and its consultant, Boyle Engineering, in its original submittal on

<sup>5/</sup> See footnote 1. The concepts expressed therein apply also to Rossmoor situation.

population, had claimed a 1970 population of only 50,313 persons. At the outset, then, we are faced with three different population estimates for the same service area, including two substantially different ones furnished on behalf of petitioner.

The 1970 estimate of population is actually based upon 1970 census data. In this particular case, the basic problem arises because certain census tracts were split by the boundary lines of petitioner's service area, i.e., only portions of certain census tracts are located in petitioner's service area. Consequently, the census population within these tracts must be allocated between the agencies who will serve the area.

Our review of the evidence indicates that the problem centers around a limited number of census tracts. Data relevant to these tracts is as follows:

<u>Tract No.</u>	<u>Total 1970 Pop. (Census)</u>	<u>Petitioner's Share (Staff)</u>	<u>Original Claim by Petitioner</u>	<u>Present Claim by Petitioner</u>
626.03	4466	25	500	500
626.09	952	18	940	952
423.04	7287	2542 <sup>6/</sup>	1800	4800
320.01	2134	100	100	1600
320.02	2355	0	500	1000
320.03	5359	0	2000	2000
524.01	7835	800	800	2800

<sup>6/</sup>The original Staff allocation to petitioner for this tract was 1,800 persons, the same number of persons requested by the petitioner and its consultant. At the hearing, Staff conceded that subsequent review of the available data indicated that the petitioner should be allotted a 1970 population of 2,542 persons for this tract, an increase of 742 persons.

Before discussing these areas, we should point out that Staff has a good deal of expertise and experience in the area of population estimates and projections. In addition, in particular cases, Staff has accumulated knowledge and background data with associated projects which bear upon the project under consideration. This is not to say that staff determinations on population estimates or projections are mathematically correct. The difficulty and real purpose of population estimates and projections have been explored in detail in a prior order of the State Board.<sup>7/</sup> However, we do feel that in matters of a highly technical and complex nature, we should be guided by Staff determinations unless it is shown by clear and convincing evidence that Staff determinations are in error.

With respect to the census tracts and 1970 population estimates in question, the evidence indicates the following:

1. Census tract 626.03 encompasses a total 1970 population of 4,466. Census data indicates 4,441 of those persons are located in the City of Newport Beach. The remaining 25 persons were properly allocated by Staff to petitioner. We are not convinced by any of the evidence that an additional 475 persons should be allocated to petitioner.

2. Census data on census tract 626.09 itself indicates a 1970 population of 18 persons. All of these persons were allocated by Staff to petitioner. Petitioner was offered an opportunity after hearing to obtain appropriate evidence that the census figures were incorrect. Petitioner, by letter of August 1, 1974, supplied additional information relative to the probable

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<sup>7/</sup>See Order No. W.Q.G. 74-8.

1970 population within this census tract, and has requested additional time to resolve the question with the Bureau of the Census. We believe this request should be granted.

3. Census tract 423.04 encompasses a 1970 population of 7,287 persons. Petitioner originally asked for and received an allocation of 1,800 persons. This census tract is split between petitioner and SERRA (South East Regional Reclamation Authority). In connection with a prior SERRA project, this area was evaluated and some 4,745 persons allocated to SERRA. Obviously, even though petitioner did not originally so request, the total number of persons remaining, 2,542, should be allocated to the petitioner. However, we find no sufficient basis for further increase to 4,800 persons as requested by petitioner.

4. Census tract 320.01 is another split census tract. Petitioner originally requested and received an allocation of 100 persons. We find no sufficient justification in the record for an increase to 1,600 persons. However, there appears to be no clear-cut basis for allocation between the segments of this census tract, and we believe that Staff should at least reconsider this census area to determine whether any additional allocation to petitioner would be appropriate.

5. Census tract 320.02, according to Staff, lies wholly within the boundaries of SERRA. This tract was evaluated in the SERRA project and no evidence has been presented which convinces us that any change is appropriate.

6. Census tract 320.03, except for an extremely small segment lies within the jurisdiction of SERRA, and the population in this area has been allocated to SERRA. The original map supplied

by petitioner supports the determination of Staff.<sup>8/</sup> No change is appropriate.

7. Census tract 524.01 had a total 1970 population of 7,835 persons. Petitioner originally asked for and received a total population of 800 persons. Petitioner now requests an allocation of 2,800 persons. The record contains no justification for such an increase. Again, however, there appears to be no clear-cut basis for allocation in this census tract, and we believe that Staff should reconsider this area to determine whether any additional allocation to petitioner is appropriate.

#### ALLOWANCE FOR SEASONAL FLOW

Prior to hearing, Staff had allowed seasonal flows for two segments of petitioner's service area. In the area of the City of Laguna Beach, Staff had allowed seasonal flows of 1.63 mgd by 1985 and 2.16 mgd by 1995. At hearing, Staff increased these allowances to 2.15 mgd and 2.76 mgd, respectively. With these changes, petitioner indicates that it has no further objection on seasonal flow determinations by Staff.

#### ALLOWANCE FOR PER CAPITA FLOWS

Staff allowed a per capita flow of 87.4 gpd in the service area of petitioner which Staff had determined to be eligible for grant assistance. On the record before us, we are not convinced that any modification is appropriate.

In those two additional areas which we have determined to be eligible for grant assistance, Los Alisos Water District and Rossmoor area, the evidence in the record indicates per capita

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<sup>8/</sup> See Staff Exhibit No. 4.

flow of 120 gpd and 84 gpd, respectively.<sup>9/</sup> Grant applicants are limited to 100 gallons per capita per day.<sup>10/</sup> Accordingly, per capita flow of 84 gpd for the Rossmoor area and 100 gpd for the District appear appropriate.

#### ALLOCATION OF POPULATION

One of the more difficult problems associated with this particular matter is the allocation of future populations within the service area of the petitioner. In the absence of any better evidence, Staff allocated the future population proportionate to the 1970 population within the service area. For example, if the City of Laguna Beach had 33 percent of the 1970 population within the region, Staff assumed that it would also have 33 percent of the 1985 and 1995 populations.

Petitioner objects to this approach, contending that uniform growth within this region is not to be anticipated, and in fact has not occurred since 1970. Petitioner points to the extraordinarily rapid growth which has occurred in the Los Alisos Water District area, contending that present population of this area already far exceeds the population projected for the year 1995.

It seems obvious that petitioner, in this particular case, is at least correct in asserting that uniform growth has not occurred since 1970. It also seems obvious that there is no way of exactly projecting the area of residence of future population within the service area of petitioner. Recent growth may have centered in the Los Alisos Water District area. Future growth may concentrate in other areas.

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<sup>9/</sup>See petitioner's Exhibit No. XIV.

<sup>10/</sup>Section 2133(f)(2), Subchapter 7, Chapter 3, Title 23 of California Administrative Code.

While no exact projection can be made in this field, there are, of course, a number of circumstances which would provide indications of probable trends, such as available space for development, local growth policies, and innumerable other factors. The vast majority of these factors will be best known to the grant applicant.

We do believe that grant decisions should be made on the best information available. Accordingly, it is our belief that allocations of future populations within service areas should be made on the basis of population locations at the time of the most recent census, unless the grant applicant demonstrates by substantial evidence that another allocation would more fairly and probably reflect future population locations within the service area.<sup>11/</sup>

In this particular case, we believe that the grant applicant has submitted a substantial showing that another allocation would more fairly reflect probable population projections.<sup>12/</sup>

#### FINDINGS AND CONCLUSIONS

Having considered the contentions of petitioner and the evidence presented, we find and conclude as follows:

1. Capacity for the Los Alisos Water District area is grant eligible.
2. Capacity for the Rossmoor area is grant eligible.
3. Unless revised pursuant to this order, the appropriate 1970 base population for the service area of petitioner is

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<sup>11/</sup>We are aware that some grant applicants may attempt to maximize the grant funds which they receive by improper assignment of future population to particular parts of the service area. If abuses do occur, we believe Staff can adequately control the situation.

<sup>12/</sup>See petitioner's Exhibit No. XIII.



47,197 persons which should be rounded to 47,200 persons. Staff shall reconsider census tracts 320.01 and 524.01 to determine whether there is any appropriate basis for increase of the number of persons allocated to petitioner in these census tracts. Staff determinations on the amount of any increase to be allotted to petitioner, if any, shall be conclusive on petitioner.

4. Petitioner shall have an additional period of not to exceed 30 days from the date of this order to provide Staff with any population change for census tract 626.09 agreed to in writing by the Bureau of the Census. In the event that the Bureau of the Census agrees to such change, the 1970 base population for the service area of the petitioner shall be revised to incorporate such change.

5. The final 1970 base population estimate prepared by Staff pursuant to this order shall be allocated to the various sections of the petitioner's service area as Staff determines to be appropriate.

6. Population projections for the various service areas of petitioner shall be allotted to various service areas as mutually agreed by Staff and petitioner. In the absence of mutual agreement, allotment shall be as follows:

- (a) 10.4% to Los Alisos Water District
- (b) 41.4% to the Rossmoor area
- (c) 10.1% to Moulton - Niguel 1A
- (d) 4.9% to Moulton - Niguel 2A
- (e) 11.6% to the South Laguna Sanitary District
- (f) 21.6% to the City of Laguna Beach<sup>13/</sup>

<sup>13/</sup> This allocation is made on the basis of petitioner's Exhibit No. XIII which, in part, indicates location of population in 1973.

The distribution of population projections is solely for the purpose of determining the maximum portion of conveyance facility capacity eligible for grant funding.

7. Per capita flow for all portions of the service area, other than Los Alisos Water District and the Rossmoor area, shall be as determined by Staff. Per capita flow for Los Alisos Water District and the Rossmoor area shall be 100 gpd and 84 gpd respectively.

8. Seasonal flows allowed for South Laguna Sanitary District shall be as determined by Staff. Seasonal flows allowed for Laguna Beach shall include 2.15 mgd by 1985, and 2.76 mgd by 1995.

9. Grant eligible capacity for the Los Alisos Water District portion of the service area shall be reduced by 0.5 mgd.

10. Grant eligible capacity for the Rossmoor portion of the service area shall be reduced by 1.0 mgd.

11. Nothing contained herein shall be deemed to preclude the imposition of appropriate grant conditions upon petitioner.

IT IS HEREBY ORDERED that the project of petitioner be reconsidered by Staff in accordance with this order.

Dated: SEP 19 1974

We Concur:

Ronald B. Robie  
Ronald B. Robie, Vice-Chairman

**ABSENT**  
W. Don Maughan, Member

W. W. Adams  
W. W. Adams, Chairman

Roy E. Dodson  
Roy E. Dodson, Member

Mrs. Carl H. Auer  
Mrs. Carl H. (Jean) Auer, Member