

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 83-74

DIRECTING MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY TO OFFER SERVICE TO MARINA COUNTY WATER DISTRICT ON REASONABLE TERMS AND CONDITIONS AND DIRECTING THE AGENCIES TO NEGOTIATE TO REACH A MUTUALLY ACCEPTABLE AGREEMENT.

WHEREAS:

1. Marina County Water District (Marina) has filed a petition requesting that the State Water Resources Control Board (State Board) require Monterey Regional Water Pollution Control Agency (Regional Agency) to provide service to Marina on a fair and equitable basis.
2. The State Board held a workshop on June 30, 1983 to review the petition and to receive the comments and arguments of Marina and the Regional Agency on the issues.
3. It appears to this Board that:
 - (a) Marina's present discharge is to a zone of prohibition within Monterey Bay and it is in the public interest to eliminate this discharge;
 - (b) Marina is within the logical service area of the Regional Agency and the most feasible, perhaps the only feasible, means of eliminating Marina's discharge to the zone of prohibition is through use of regional facilities;
 - (c) The Regional Agency has received millions of dollars in grant funding for the purpose of planning and construction of regional wastewater treatment facilities, including Grant No. C-06-1066 for construction of a regional outfall;
 - (d) Grant funding under Grant No. C-06-1066 has been provided to the Regional Agency for construction of outfall capacity and the outfall under construction does have capacity for the reasonable needs of Marina;
 - (e) The Regional Agency's acceptance of grant funding constitutes a public trust under which the regional facilities shall be used for public benefit and in the public interest;

- (f) While there is considerable dispute over whether the Regional Agency can be compelled to provide service to Marina on the basis of "Fair and Equitable" clause of its grant contract and whether the "Fair and Equitable Guidelines" were intended to apply to a situation such as we have in this matter, there is no doubt in our minds that Monterey Regional has an obligation to offer outfall service to Marina on fair and reasonable terms;
- (g) The Regional Agency has authority to make appropriate adjustments to its fees and charges for service to reasonably treat incoming areas and agencies;
- (h) Marina has thus far refused to become a full participant in the Regional Agency and the cost-effective regional program;
- (i) If the Regional Agency and its members had not set aside their own preferences on waste treatment and disposal and shared and agreed to share the cost for regional facilities, there would be no regional outfall for Marina to participate in;
- (j) Marina should not be unfairly penalized for its refusal to become a full participant in the regional program nor is there any reason for it to receive more favorable treatment than existing member entities of the Regional Agency and other participants in the regional facilities.

THEREFORE, BE IT RESOLVED THAT:

1. The Regional Agency has an obligation to offer outfall service to Marina on reasonable terms and conditions and has an obligation to negotiate in good faith with Marina for the providing of such service.
2. Reasonable terms and conditions for service to Marina include costs and terms of payment to Marina which are commensurate, insofar as reasonably possible, to the costs borne by the existing member entities of the Regional Agency and other participants in regional facilities, giving due consideration to terms and conditions regarding ownership and control of Marina facilities and connection thereof to Regional Agency facilities.

3. Marina should agree to pay the cost of construction of an interceptor, and necessary appurtenances, to connect the Marina treatment plant to Regional Agency facilities to the extent that such cost is not grant funded.
4. The parties should negotiate in good faith on all issues necessary to arrive at a mutually acceptable agreement for service by the Regional Agency to Marina including, but not limited to, the following issues:
 - (a) Cost to Marina for services;
 - (b) Ownership and control of Marina facilities, including the possibility of sale thereof to the Regional Agency, sale and leaseback to Marina, retention by Marina, or such other arrangement as may be mutually satisfactory;
 - (c) Construction, ownership and control of connecting facilities from the Marina treatment plant to Regional Agency facilities, the point of connection, and which agency will apply for and administer any grant funds related to such construction;
 - (d) Ownership and control of any additional facilities presently necessary or reasonably foreseeable within Marina.
5. Marina and the Regional Agency should have 30 days within which to agree to negotiate on the basis of the principles enunciated herein. In the event of failure of the Regional Agency to so agree within said time, it is the intent of this Board to consider appropriate action, including such action as may be warranted with respect to grants made and to be made to the Regional Agency. In the event of failure of Marina to so agree within said time, it is the intent of this Board to consider elimination of any and all obligation of the Regional Agency to serve Marina.
6. Upon agreement of the parties to negotiate as provided herein, the parties shall have 120 days to negotiate a mutually acceptable agreement for service.
7. Staff should provide such reasonable assistance on this matter as either Marina or the Regional Agency may request. Both parties shall provide staff with the terms of proposals made and such other information as staff deems necessary and shall report on the progress of negotiations on at least a monthly basis.

8. In the event that Marina and the Regional Agency agree to negotiate as provided herein, but are thereafter unable to reach a mutually acceptable agreement for service to Marina, staff shall review the matter and report to the Board with recommendations for such further Board action as deemed appropriate.
9. The Board retains jurisdiction of the Marina petition for such further action as the Board deems appropriate.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a true and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 15, 1983.



Clint Whitney
Executive Director