

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petitions )  
to Review State Board )  
Resolution No. 72-45, Water )  
Quality Control Plan for )  
Ocean Waters of California )

Order No. 72-24

On July 6, 1972, the State Water Resources Control Board (hereafter State Board) adopted a "Water Quality Control Plan for Ocean Waters of California" (hereafter Ocean Plan) by Resolution No. 72-45. Since adoption of the Ocean Plan, various municipalities, sanitation districts, and other public entities (hereafter petitioners) have requested reconsideration, modification or other relief in connection with the Ocean Plan and its implementation. The petitioners include the following entities:

- County of Orange
- City of Costa Mesa
- City of Irvine
- City of La Palma
- City of Morro Bay
- City of Newport Beach
- City of Orange
- City of Seal Beach
- City of Stanton
- Orange County Division League of California Cities
- County Sanitation Districts of Los Angeles County
- County Sanitation District No. 2 of Los Angeles County
- County Sanitation Districts of Orange County
- Orange County Sanitation Districts Nos. 1, 2, 3, 5, 6, 7 and 11
- Ventura Regional County Sanitation District
- Garden Grove Sanitary District
- Summerland Sanitary District
- South San Luis Obispo County Sanitation District



The actual relief requested varies from petitioner to petitioner, but the general nature of the relief sought can be summarized as involving requests by the petitioners that the effect of the Ocean Plan be stayed, that an environmental impact statement be prepared, that additional public hearings be held, and that the Ocean Plan be reconsidered and modified.

Before reviewing the petitioners' specific objections and allegations relative to the Ocean Plan, some comment on the procedural aspects relative to this review is necessary. The Ocean Plan is a water quality control plan adopted pursuant to Water Code Section 13170, a portion of the Porter-Cologne Water Quality Control Act (hereafter Porter-Cologne Act). While the Porter-Cologne Act does not specifically provide for reconsideration of any water quality control plan within the context of the present petitions, it does provide in Section 13170 that plans adopted by the State Board shall be in accordance with Sections 13240 to 13244, inclusive. Section 13240 provides that plans shall be periodically reviewed and may be revised. We deem these provisions to be broad enough in scope to permit a review of the provisions of the Ocean Plan, if the petitions involved convince the Board that the circumstances are such that a review is necessary and advisable at this time. For the reasons hereafter expressed, after consideration of all of the petitions, we have determined that neither review nor revision of the Ocean Plan is appropriate at this time.

- A. The petitioners' specific objections and contentions relative to the Ocean Plan fall generally into two categories, objections to validity of the Ocean Plan and contentions that the State

Board should reconsider the Ocean Plan on a variety of grounds. It would be unduly repetitive to specify the specific contentions of each of the petitioners. Basically, the contentions that the Ocean Plan is invalid rest on the following propositions:

- (1) The Environmental Quality Act of 1970 applies to the action of the State Board in adopting the Ocean Plan and consequently an environmental impact statement must be prepared prior to adoption of the Ocean Plan.
- (2) The Ocean Plan must disclose on its face the economic considerations of the State Board relative to the Ocean Plan, the evidentiary support relied upon by the State Board in setting specific parameters contained in the Ocean Plan, and a discussion of available alternatives.
- (3) In adopting the Ocean Plan, the State Board did not consider the factors required by Water Code Section 13241.
- (4) The requirements of the Ocean Plan and the consequent costs are unrelated to any necessary protection of waters and their beneficial uses.

With respect to the contention of petitioners that the State Board should review and/or revise the Ocean Plan, the general grounds for this request can be summarized as follows:

- (1) A water quality control plan may be adopted only after notice and public hearing.

- (2) Public hearings in this case were inadequate because the requirements of the Ocean Plan, as finally adopted, were more stringent than those proposed in prior drafts, and additional hearings should be held to consider additional evidence relative to the more restrictive requirements.
- (3) Further hearings should be held after the report of the Southern California Coastal Waters Research Project Authority is available to consider the contents of that report.
- (4) The dischargers affected by the Ocean Plan are not prepared financially or from a standpoint of personnel to meet the requirements of the Ocean Plan.
- (5) Implementation of the requirements of the Ocean Plan will require vast expenditure of public funds.
- (6) Enforcement of the requirements of the Ocean Plan will require vast expenditure of private funds, having an adverse economic effect on industries discharging directly or indirectly to the ocean and on communities within which these industries are situated.

B. Having considered all of the various contentions, objections and grounds for review advanced by each of the petitioners, we conclude that review of the Ocean Plan at this time is not warranted or necessary. In fairness to the petitioners, and by reason of what we believe to be the extreme importance of the Ocean Plan, some explanation of the basis for our conclusion seems appropriate.

Some of the petitioners have cited the recent California Supreme Court decision in the case of Friends of Mammoth v. Board of Supervisors of Mono County (Supreme Court No. 4637) to support their contentions that an environmental impact statement is required. Neither the issue presented in that case nor the holding of that case applies to the action of the State Board in adopting the Ocean Plan.

Petitioners do not, in essence, complain that environmental concerns are not adequately protected by the provisions of the Ocean Plan. Their real complaint is that the environmental considerations involved were exaggerated to their economic detriment. We are not inclined to give a tortuous construction to Public Resources Code Section 21100 to delay the enforcement of what we regard as minimal requirements on ocean discharges necessary to fulfill the express legislative intent stated in Sections 21000 and 21001 of the Public Resources Code.

Nor can we agree that the Ocean Plan must itself contain a recitation of the factors considered by the State Board in the adoption of the Ocean Plan, such as economic considerations, evidentiary support for specific parameters, and a discussion of alternatives. We consider that the Ocean Plan actually contains those elements which are statutorily required of a water quality control plan. (Water Code Sec. 13242.)

The remainder of the petitioners' contentions and objections are devoid of merit. The Ocean Plan was adopted only after public hearings had been held in November and December of 1971, and again in April of 1972. The hearings were noticed on a state-wide basis, were widely attended, and the information developed as a result of the hearings was both voluminous and enlightening.

In addition to notice by publication, and in an attempt to obtain the broadest spectrum of comment possible, notice and proposed drafts were mailed by the State Board to hundreds of interested persons and agencies. For example, prior to the public hearing in April of 1972, notice and proposed drafts were mailed to some 972 parties, including a great number of the present petitioners.

There seems to be a position, largely unexpressed, on the part of the petitioners that while public hearings were held as required by Water Code Section 13244, the hearing procedure was inadequate or improper because the final provisions of the Ocean Plan were modified after the final public hearing in April of 1972. No authority for this position is presented by petitioners. We regard the appropriate function of the hearing procedure under Water Code Section 13244 to be assistance in the development of relevant information and data pertaining to establishment of a water quality control plan, and we believe that the hearings in this case were sufficient to meet that purpose. It is true that as a result of the several public hearings, and as a result of the voluminous written comment received and our own staff work, the final provisions of the Ocean Plan were modified from those contained in prior drafts. Some provisions were made more stringent, and others were relaxed, as our review of the evidence appeared to warrant. Petitioners appear to argue that the function of the public hearing is to support an already fixed and determined control plan. This approach we feel does not correctly interpret the public hearing function.

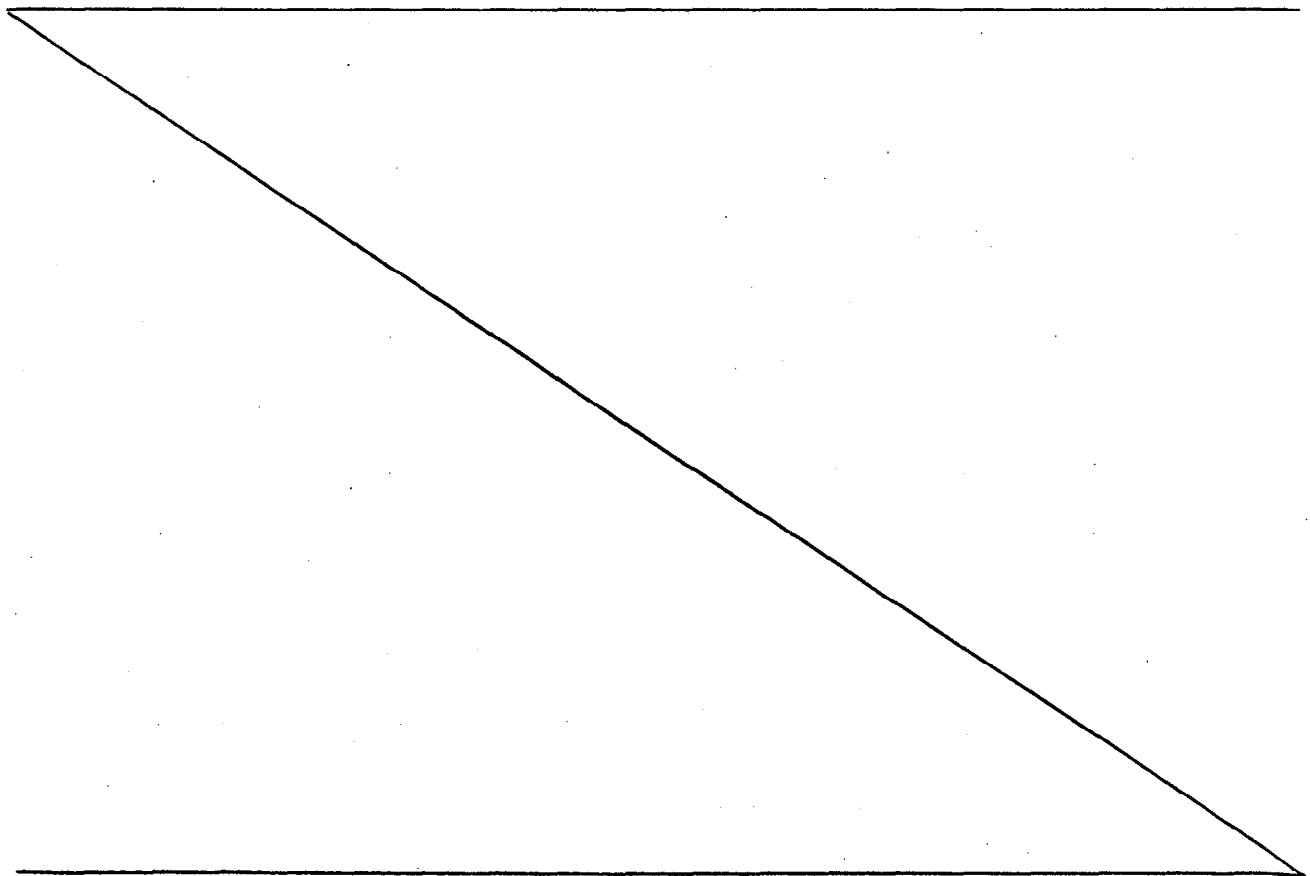
In the course of development of the Ocean Plan, the factors set forth in Water Code Section 13241 were weighed and considered. We were aware when the Ocean Plan was adopted, and we are aware now, that implementation of the Ocean Plan will require substantial expenditures of public and private funds. The Ocean Plan itself reflects our concern in this area. (See Ocean Plan, Chapter VI, Part F.) Municipal and industry funds are not all that are involved. In fact, the major burden will undoubtedly fall on federal and state grant funds.

Economic concerns are, however, only one part of the problem which we are obligated by law to consider. We are required to consider the total spectrum of values involved, beneficial and detrimental, social and economic, tangible and intangible. We are required to regulate those activities which affect the quality of waters to attain the highest water quality which is reasonable. (Water Code Sec. 13000.) We are required to protect all beneficial uses of the waters of this state. (Water Code Secs. 13241 and 13050(f).) After months of staff work, study, public hearings, and review of comments by private parties, dischargers, and public agencies, the Ocean Plan reflects our determinations of what is reasonably necessary to fulfill the legislative mandate imposed upon us.

C. Having considered all of the contentions of the petitioners we find:

- (1) That the requirements of the Ocean Plan are reasonably necessary to protect the beneficial uses of waters for which water quality standards are required by the Federal Water Pollution Control Act.

- (2) That the requirements of the Ocean Plan have been approved by the United States Environmental Protection Agency as provided for by federal law.
- (3) That the Ocean Plan was adopted in accordance with the provisions of Water Code Section 13170, and Sections 13240 to 13244, including public hearings.
- (4) That the Ocean Plan is not a report or a project within the purview of Public Resources Code Section 21100, and that an environmental impact statement is not required.
- (5) That the effect of the Ocean Plan should not be stayed, and that the petitions do not state appropriate grounds for review or revision of the Ocean Plan at this time.





IT IS HEREBY ORDERED that the petitions referred to herein are denied.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: November 2, 1972

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

RONALD B. ROBIE  
Ronald B. Robie, Vice Chairman

E. F. DIBBLE \*  
E. F. Dibble, Member

ABSENT  
Roy E. Dodson, Member

MRS. CARL H. AUER  
Mrs. Carl H. (Jean) Auer, Member

\*With the exception that I do not concur with finding (1) of the Order.