

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION 91-152

RESOLUTION OF INTENT REQUESTING THE STATE WATER RESOURCES CONTROL BOARD TO ACCEPT A PLAN FOR WATER RECLAMATION AS FULFILLMENT OF ORDER WQ 90-5 REQUIREMENT FOR A 120 MILLION GALLON PER DAY DISCHARGE FLOW LIMIT

WHEREAS:

1. The State Water Resources Control Board (State Board) and the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), found that freshwater effluent from the San Jose/Santa Clara Water Pollution Control Plant was responsible for the loss and degradation of endangered species habitat.
2. On October 4, 1991, the State Board, in Order WQ 90-5, ordered that flows from the treatment plant should be limited as necessary to halt further loss and degradation of endangered species habitat. Order WQ 90-5 requires the Regional Board to amend the NPDES permit of the San Jose/Santa Clara Water Pollution Control Plant to limit discharge flows to 120 million galaverage dry weather flow (ADWF) or to levels that would not further adversely impact endangered species.
3. On January 16, 1991, the Regional Board considered a permit amendment to limit discharge flows to 120 million gallon per day ADWF, but continued the action at the request of the discharger.
4. On March 6, 1991, the City of San Jose submitted an "Action Plan" with a request that the "Action Plan" be accepted by the Board as fulfillment of the State Board requirement for a discharge flow limit. The portions of the "Action Plan" that are relevant to future habitat impacts include a 9 to 10 mgd non-potable reclamation project, participation in a 50 to 60 mgd potable reclamation project using San Jose/Santa Clara treatment plant effluent, and creation of a wetland "bank" in the event that additional habitat loss occurs. On October 1, 1991, the City submitted a revised "Action Plan", which contained additional conservation measures to keep flows at low levels, and additional details and deadlines associated with habitat mitigation.
5. The "Action Plan" cannot guarantee the success of potable reclamation, or of low flows during the time the non-potable project is developed, thus endangered species habitat is not guaranteed future protection. The wetland "bank" would provide mitigation for any acreage converted.
6. The "Action Plan" could be approved as fulfillment of the discharge flow limit if certain conditions were met. The City should maintain treatment plant discharge flows at or below 120 mgd ADWF, and should provide mitigation for any habitat value lost due to conversion of salt marsh to brackish marsh. The City's "Action Plan" proposes acquiring 380 acres of salt marsh as mitigation for all endangered species habitat lost or

degraded through 1985. State Board Order WQ 90-5 requires the discharger to:

"create 380 acres of salt marsh, with a habitat suitability index for salt marsh harvest mice of approximately 0.9 by the year 2004, or equivalent habitat. If San Jose/Santa Clara submits a mitigation proposal involving the creation or enhancement of wetlands, the proposal must be consistent with this requirement." (SWRCB Order WQ 90-5, page 100)

The precise number of acres that the discharger is required to provide to fulfill this requirement is not known at this time. Delays in implementing mitigation will result in longer times to develop the required habitat values, consequently increasing mitigation requirements. For any endangered species habitat lost or degraded during the construction and design of the reclamation projects, the discharger should provide mitigation consistent with the Habitat Evaluation Procedure, developed by the U.S. Fish and Wildlife Service, used to calculate the mitigation requirements for past endangered species habitat loss and degradation, and additional information as noted in the "Action Plan". The discharger's proposed wetland "bank", if implemented quickly, could reduce the total amount of acres required for mitigation by providing a more timely habitat restoration process than waiting for conversion to occur before beginning restoration.

7. Because this resolution does not constitute a "project" for the purposes of the California Environmental Quality Act, the Board's adoption of this Resolution complies with all requirements of that Act.
8. The "Action Plan" is predicated on certain costs and financing assumptions. If there are major changes in any of the assumptions that underlie the plan, the Regional Board will re-evaluate and consider alternatives to the plan.
9. The discharger and interested agencies and persons have been notified of the Board's intent to consider this resolution and have been provided with an opportunity for a public hearing and the opportunity to submit their written views and recommendations.
10. The Board, in a public meeting, heard and considered all comments pertaining to the resolution.

THEREFORE BE IT RESOLVED THAT:

- A. In the view of the Regional Board, San Jose's "Action Plan" (Attachment 1), fulfills the intent of State Board Order WQ 90-5's requirement to limit flows from the San Jose/Santa Clara Water Pollution Control Plant to a level that will halt any further loss or degradation of endangered species habitat.
- B. The Regional Board will hold a hearing to consider adopting a 120 mgd ADWF discharge flow limit if delays occur that threaten the timely completion or implementation of either the non-potable or potable reclamation projects, or if flows exceed 120 mgd ADWF. If delays or flows in excess of 120 mgd ADWF occur, the

Board will allow San Jose six months to propose an alternate solution to reduce flows as soon as possible to a level that does not cause further loss or degradation of endangered species habitat. If the City does not propose an alternate solution acceptable to the Board within the six-month period, and the Board finds that further loss or degradation of endangered species habitat is occurring due to plant flow, the Board shall amend the San Jose/Santa Clara permit, or adopt an enforcement order, to impose a 120 mgd ADWF discharge flow limit, or take such other action as may be necessary to halt the conversion of endangered species habitat. This resolution will not affect any legal rights or remedies that the City may have in the event of future Board action.

- C. The State Board is requested to revise its Order WQ 90-5 to allow the San Jose "Action Plan" (as conditioned) as an alternative to the 120 mgd discharge flow limit.
- D. This resolution does not constitute Regional Board approval of the proposed "Action Plan", but is intended to provide an alternative to the flow limit for Regional Board consideration at a future time.
- E. This resolution authorizes the Executive Officer to approve changes in the components of the City's Water Conservation Program as outlined in paragraphs A and B of the Water Conservation Program of the "Action Plan".

I, Steven R. Ritchie, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on October 16, 1991.


Steven R. Ritchie
Executive Officer

Attachment 1 - San Jose "Action Plan"