

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street

San Francisco, California 94105

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PUBLIC HEARING

ON

CONSTRUCTION GRANTS REGULATIONS

Conference Rooms A-D

June 28, 1978

10:00 a. m.

7:30 p. m.

Reported by:

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HEARING PANEL

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Chairman

ROBERT GERVAIS
Chief, Program Support Branch
Water Division
Region IX

DON ANDERSON
Construction Grants Coordinator
Water Division
Region IX

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1 WEDNESDAY, JUNE 28, 1978

10:00 O'CLOCK A.M.

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3 CHAIRMAN WALKER: Good morning, ladies
4 and gentlemen. We will call this meeting to order.

5 This is a meeting called by the United
6 States Environmental Protection Agency to consider
7 regulations on grants for the construction of waste-
8 water treatment works.

9 With me on the panel today here are, on
10 my right, Mr. Bob Gervais, who is Chief of the
11 Program Support Branch, Water Division, EPA Region
12 IX; on my left, Don Anderson, Construction Grants
13 Coordinator of the Water Division, EPA Region IX.

14 This is one of a series of meetings and
15 conferences on the subject of revisions of regula-
16 tions for grants for construction of wastewater
17 treatment works under the Clean Water Act of 1977.
18 That act requires regulations to implement
19 amendments to Sections 201 (g), 201 (i), 202 (a),
20 203 (e) and 304 (d).

21 These regulations involve innovative and
22 alternative technologies, recreation on open space
23 uses, and EPA assistance on contracts. They also
24 deal with incentives to pretreatment of industrial
25 waste.

1 Regulations on this subject were
2 published on the 25th of April, 1978, Volume 43 of
3 the Federal Register. One part was published as
4 proposed rule making at Page 17690, one part as
5 interim final regulations at Page 17697, and state
6 management assistance grant program was implemented
7 with interim final regulations at Page 17716.

8 On the 2nd of June, 1978, technical amend-
9 ments to other regulations and 40 CFR, Page 35,
10 Subpart E on this subject were published in Volume
11 43 of the Federal Register at Page 24248.

12 The Agency intends to republish all of
13 the amendments as final rule making probably in
14 September of 1978. This meeting is primarily
15 concerned with the purpose of receiving comments
16 on the regulations published on the 25th of April,
17 1978. However, comments on the proposed technical
18 amendments that are offered here today will be
19 fully considered.

20 A number of conferences and meetings have
21 been held on this subject, including a conference
22 scheduled with the cooperation of several
23 environmental and special interest groups on the 9th
24 of June, 1978 at the Sheraton Palace Hotel here in
25 San Francisco.

1 Prior to publication of the regulations
2 on the 25th of April, 1978, numerous meetings were
3 held to solicit public input as described in that
4 publication at 43 Federal Register 17690. Notice
5 of this meeting was given in Volume 43 of the Federal
6 Register at 24713 on the 7th of June, 1978. Notice
7 was also given by publication in the Arizona
8 Republic published in Phoenix, Arizona, on the 29th
9 of May, 1978; in the Honolulu Star-Bulletin in
10 Honolulu, Hawaii, on the same day; and the Los
11 Angeles Times in Los Angeles, California on the
12 same day; in the San Francisco Chronicle in San
13 Francisco, California, on the same day; and in the
14 Las Vegas Review-Journal in Las Vegas, Nevada, on
15 the same day.

16 A copy of the Federal Register publication
17 of 25 April, 1978 will be marked for the purposes
18 of this record as Exhibit 1.

19 (Whereupon, Hearing Exhibit
20 No. 1, Federal Register,
21 Tuesday, April 25, 1978,
Part III, was incorporated
into the record.)

22 CHAIRMAN WALKER: A copy of the Federal
23 Register publication of the 2nd of June, 1978 will,
24 for the purposes of this record, be marked Exhibit 2.

(Whereupon, Hearing Exhibit No. 2, Federal Register, Friday, June 2, 1978, Part VI, was incorporated into the record.)

CHAIRMAN WALKER: A copy of the publication in the Federal Register on the 7th of June, 1978 will be marked Exhibit 3.

(Whereupon, Hearing Exhibit No. 3, two-page excerpt from Federal Register, Volume 43, No. 110, Wednesday, June 7, 1978, was incorporated into the record.)

CHAIRMAN WALKER: A copy of the Notice of Public Hearing that was published will be marked Exhibit 4.

(Whereupon, Hearing Exhibit No 4, two-page document entitled "Notice of Public Hearing," was incorporated into the record.)

CHAIRMAN WALKER: A copy of the Affidavit of Publication in the Arizona Republic, No. 5, and the Honolulu Star-Bulletin, No. 6, and the L.A. Times, No. 7, and the San Francisco Chronicle, No. 8, and the Las Vegas Review-Journal, No. 9.

(Whereupon, Hearing Exhibit No. 5, Affidavit of Publication, The Arizona Republic, was incorporated into the record.)

1 (Whereupon, Hearing Exhibit
2 No. 6, Affidavit of
3 Publication, Honolulu Star-
Bulletin, was incorporated
into the record.)

4 (Whereupon, Hearing Exhibit
5 No. 7, Affidavit of
6 Publication, Los Angeles
Times, was incorporated
into the record.)

7 (Whereupon, Hearing Exhibit
8 No. 8, Affidavit of
9 Publication, San Francisco
Chronicle, was incorporated
into the record.)

10 (Whereupon, Hearing Exhibit
11 No. 9, Affidavit of
12 Publication, Las Vegas
Review-Journal, was
13 incorporated into the
record.)

14 CHAIRMAN WALKER: This meeting is being
15 recorded in shorthand by Mr. Richard S. Adams of
16 the firm of Smythe & Wilson. A copy of the
17 transcription will be available at the Public
18 Information Reference Unit, EPA Headquarters, Room
19 2922, Waterside Mall, 401 M Street SW,
20 Washington, D.C., between 8:00 a.m. and 4:30 p.m.
21 as soon it is transcribed and sent to them.

22 Anyone wishing a copy for their own
23 purposes or use should make individual arrangements
24 with the reporter here today.

25 This meeting is called for the purpose of

1 receiving public comment on the proposed regulations.
2 This is not intended to be a debating forum. The
3 panel may be able to answer some questions, and
4 they in turn may wish to ask some questions of
5 the speakers for purposes of clarification.

6 Please feel free to make any comment or
7 ask any questions that you wish. However, answers
8 or responses will be included in the final rule
9 making, which is expected in September of 1978. We
10 may not be able to answer all of your questions
11 today.

12 We have a procedure for allotting the
13 time among the numerous people who wish to address
14 the panel. You may have seen a copy of that
15 procedure at the registration desk. We do ask the
16 people who come to register on these cards that are
17 available at the table at the entrance to the room,
18 If you wish to make a statement, please check the
19 box which says so, and hand it to the hearing clerk,
20 and a time will be put on the card. We will rotate
21 the time among the various people who address us.

22 It will not be necessary to go into all
23 of the complications and nuances of our regular
24 procedure, because so far I only have three requests
25 of people to make presentations, and they will be

1 taken in the order in which they were received.

2 I must further announce that comments
3 on these proposed regulations of April 25th, 1978
4 that are not given to us today must be received
5 by the close of business, Friday the 30th of June,
6 at EPA headquarters in Washington. The address
7 there -- and you will probably have to send it by
8 Express Mail, if you have any second thoughts --
9 is to Mr. Alexander J. Greene, Director, Grants
10 Administration Division, Attention: PM-216-P
11 "Construction Proposed," Environmental Protection
12 Agency, 401 M Street, SW, Washington, D.C., 20460.
13 That address is in the publication in the Federal
14 Register if you did not memorize it as I gave it
15 to you.

16 We will ask that the people who speak
17 come forward and use the podium, and give us their
18 name, and if they are here in a representative
19 capacity, to tell us what it is.

20 Do you have any comments?

21 MR. ANDERSON: No.

22 MR. GERVAIS: No.

23 CHAIRMAN WALKER: Thank you.

24 We will now hear from the first speaker,
25 Judith Kunofsky.

1 MS. KUNOFSKY: Thank you. My name is
2 Judith Kunofsky. I am the Growth Policy Specialist
3 on the staff of the National Sierra Club, and I am
4 here representing the Sierra Club today.

5 The Sierra Club is presenting statements
6 at a number of these hearings around the country
7 and submitting detailed written comments on a
8 large number of the proposed or interim regulations,
9 and I will be dealing today only with a very brief
10 part of that, namely, the proposals by the
11 Environmental Protection Agency on the preparation
12 and use of population projections.

13 For those of you who might not have paid that
14 much attention to this part of the regulations,
15 they are in very small print beginning on Page 17713,
16 and they continue to the middle of 17714. I have
17 additional copies of my statement here with me today,
18 and would be happy to answer any questions you
19 might have.

20 I would like to express the Sierra
21 Club's strong support for the portion of the
22 interim/final Construction Grants regulations deal-
23 ing with the preparation and use of population
24 projections. These proposals are well thought out
25 and a significant improvement over the current ad hoc

1 situation. Their implementation would provide
2 substantial benefits in terms of environmental
3 quality, fiscal responsibility, and the enhancement
4 of various public policy goals of states and
5 localities. We believe these guidelines should be
6 implemented as written and as quickly as possible.

7 Each Construction Grants project allows
8 for construction of a certain amount of reserve
9 capacity to ensure that a facility is not found
10 to be too small shortly after its completion. An
11 essential component of the determination of the
12 allowable capacity is the population projection
13 used. Congress has appropriated a fixed amount of
14 money annually for the Construction Grants Program,
15 and to the extent that reserve capacity is provided
16 in excess a smaller proportion of the money can be
17 used to treat current water pollution problems.
18 The solving of current water quality problems is,
19 of course, the basic Congressional and environmental
20 mandate.

21 The current situation, in which each
22 community independently develops a population
23 projection and for which EPA needs to develop an
24 individual response involves lack of uniformity
25 within and among states regarding how the projections

1 are prepared and the extent to which overprojecting
2 is taking place. In particular, the lack of
3 reasonable agreement between the total of state
4 projections and a national population projection
5 clearly indicates that federal action is needed
6 to ensure greater consistency and hence more rational
7 use of public funds. The current situation merely
8 encourages competition among communities for the
9 same pool of money, and can lead to serious
10 overprojecting with the attendant environmental
11 consequences.

12 The second basic environmental benefit
13 of controls on overprojecting arises from the
14 nature of the secondary effects of the construction
15 of a wastewater treatment facility. As you are
16 well aware, these include the aggravation of air
17 quality problems by the facilitation of growth
18 in areas dependent on the automobile; the hastening
19 of the conversion of agricultural land to urban
20 uses; the diversion of people and investment out of
21 center cities where the environmental effects of
22 growth are smaller; and in general the almost
23 arbitrary subsidy of growth in some places to the
24 detriment of others. Sewage treatment facilities,
25 far more than zoning in many cases, influence the

1 timing and location of development within a region.
2 Once the facility is in place, growth is likely
3 because the capacity is available; moreover growth
4 must be induced to pay the non-federal share of the
5 costs. It is therefore in the public interest,
6 and more specifically in EPA's, to minimize the
7 secondary effects. One way to accomplish this is
8 to more seriously control the excess capacity.
9 Your proposed regulations satisfy this consideration
10 in a way that provides for current needs, plans to
11 accommodate unavoidable national population growth,
12 but nevertheless minimizes adverse environmental
13 impacts.

14 EPA's proposed schematic process for
15 producing local "201" projections is also sound
16 public policy on other grounds:

17 It gives a role to states and communities
18 by allowing them to disaggregate projections.
19 This facilitates the incorporation of state and
20 local goals and programs, thus enhancing the
21 effectiveness of policy making at all levels.

22 The provision of a hearing if a state
23 requests use of a substantially higher projection
24 is essential when such a proposal is controversial.
25 The public must be able to be involved, as has been

1 too rarely true in the past.

2 The proposals help clarify the political
3 nature of the issues rather than continuing to
4 cloud the issues by pretending they are simple
5 calculations of nonpolitical technical staffs.
6 While those staffs will continue to be indispensable,
7 the growth policy debates will now be located
8 where they truly belong, in the political process.

9 It removes EPA from having to judge the
10 reasonableness of each community's population
11 projection independent of those of other communities.
12 Presumably EPA will nevertheless exercise strong
13 controls to mitigate any remaining secondary
14 impacts of projects and assess consistency with
15 other national environmental goals. Both the
16 Clean Water Act and the Clean Air Act in particular
17 require such consistency.

18 Appended to this letter is a copy of
19 testimony presented on behalf of the Sierra Club
20 before the Select Committee on Population in the
21 House of Representatives earlier this month. The
22 subject was the use of population projections. In
23 it I describe a number of programs in which projec-
24 tions are used including the Clean Water Act, and
25 discuss controversies and inadequacies that have

1 been revealed. I outline a number of principles
2 we believe should guide national policy on the use
3 of population projections, and conclude that EPA's
4 proposals satisfy virtually all these principles.

5 In conclusion, I would like to reiterate
6 the Sierra Club's strong support for the regulations
7 regarding the preparation and use of population
8 projections. They were originally proposed in
9 early 1977, although in somewhat different form,
10 and have therefore been open to discussion for a
11 sufficiently long time. The regulations should be
12 implemented as quickly and as comprehensively
13 as possible.

14 Thank you.

15 CHAIRMAN WALKER: Thank you, Miss
16 Kunofsky. Did you have a copy of your remarks
17 that you want submitted for the record?

18 MS. KUNOFSKY: Yes.

19 CHAIRMAN WALKER: Thank you.

20 I have a copy headed on the letterhead
21 of the Sierra Club, "The Use of Population Projec-
22 tions by the Federal Government for Programs at the
23 Local Level" by Dr. Judith Kunofsky, and a state-
24 ment before Select Committee on Population, June 8,
25 1978.

1 Do you want that in first or second?

2 MS. KUNOFSKY: Second.

3 CHAIRMAN WALKER: Second. That will be
4 marked as Exhibit 11.

5 A statement in the format of a letter
6 dated June 26, 1978, addressed to Mr. Alexander
7 J. Greene, Director, and signed Judith Kunofsky,
8 will be marked Exhibit 10.

9 (Whereupon, Hearing Exhibit
10 No. 10, two-page letter
11 dated June 26, 1978 from
12 Judith Kunofsky, Population
13 and Growth Policy
Specialist, to Mr. Alexander
J. Greene, Director, was
incorporated into the
record.)

14 (Whereupon, Hearing Exhibit
15 No. 11, 15-page document
16 entitled "The Use of
17 Population Projections by
the Federal Government for
Programs at the Local Level,"
was incorporated into the
record.)

18
19 CHAIRMAN WALKER: Thank you.

20 MS. KUNOFSKY: Thank you.

21 CHAIRMAN WALKER: Steve Pardieck?

22 MR. PARDIECK: My name is Steve Pardieck.

23 I am representing the California State Water
24 Resources Control Board. Written comments from the
25 State Water Resources Control Board were submitted

1 to Alex Greene on June 16th. That was under a
2 cover letter by John Bryson, Chairman of the State
3 Water Resources Control Board.

4 I have those same comments today to be
5 submitted into the record, and I also have
6 additional comments available for anyone else who
7 is interested.

8 My testimony this morning will consist
9 of a short statement briefly summarizing two of
10 the major issues that are of concern to the State.

11 The first issue is enforceable requirements.
12 Now, the definition of the term "enforceable
13 requirements," the State Water Resources Control
14 Board basically supports a broader definition of
15 the term consistent with what we feel and what the
16 legislative history, what the record shows is the
17 intent of Congress. The State Board simply suggests
18 a change, an addition, using Senator Muskie's
19 language, to the definition. This basically
20 references specific sections of the Act such as
21 201, 208, 301, 303, 402, 404, and so forth.

22 This addition, we feel, will help broaden
23 the definition and give the states a little more
24 flexibility in setting priorities.

25 The second issue concerns the state.

1 management assistance grant and the regulations
2 on those, specifically in the preamble to the
3 regulations under the topic of continuity, funding
4 continuity.

5 In California where a one and a half per-
6 cent grant probably won't be sufficient to fund an
7 ongoing program, especially if OMB reduces their
8 appropriations down from five billion nationwide
9 authorization down to \$4.2 billion, to California
10 this means a reduction of approximately \$1.3 million
11 in program operating revenues.

12 The policy of EPA seems to require states
13 to provide a cash reserve contingency for this
14 funding continuity in the event the allotments
15 are not released in a timely manner. If the fund-
16 ing continuity problem is put on the state in this
17 manner it would reduce the delegated program to
18 some degree in the State of California.

19 In the written material the state also
20 makes comments on the priority list, the transition
21 problem from the half percent grant processing fee
22 to the two percent state management assistance grant,
23 innovative and alternative systems, user charges,
24 industrial cost recovery, and the cost effectiveness
25 guidelines.

1 We hope these comments will be helpful
2 and will be considered. If you have any questions,
3 feel free to contact myself.

4 Thank you.

5 CHAIRMAN WALKER: Thank you, Mr. Pardieck.
6 Do you have a copy that you wish to submit for
7 inclusion in the record?

8 MR. PARDIECK: Yes.

9 CHAIRMAN WALKER: Thank you.

10 I have here a paper titled "Comments
11 Regarding Proposed and Interim Regulations
12 Implementing Clean Water Act of 1977, California
13 State Water Resources Control Board."

14 This will be marked for the purposes of
15 this record as Exhibit 12.

16 (Whereupon, Hearing Exhibit
17 No. 12, 11-page document
18 entitled "Comments Regarding
19 Proposed and Interim
20 Regulations Implementing
 Clean Water Act of 1977,"
 was incorporated into the
 record.)

21 CHAIRMAN WALKER: Mr. J. Warren Nute?

22 MR. NUTE: I am J. Warren Nute, consulting
23 engineer, San Rafael, and also representing the
24 Marin Audubon Society.

25 We have submitted comments on the

1 regulations to Mr. Greene, but I will read them
2 here and would like to have them in the record
3 here, too.

4 We have three main concerns, that in
5 reviewing the proposed regulations as published
6 in the Register April 25th, we are concerned
7 that the regulations as written will severely
8 restrict proposals for the reclamation and reuse
9 of wastewater through innovative and alternative
10 systems, and very few projects will be built unless
11 they are built without grant funds.

12 Our first concern is with the proposals
13 that grants for projects incorporating innovative
14 and alternative processes or reclamation and reuse
15 opportunities will not apply retroactively to
16 projects on which facilities planning has already
17 begun, but will apply only where facilities planning
18 is initiated after September 30, 1978. As justifica-
19 tion for such limitation it is stated that it was
20 the intent of Congress not to delay ongoing projects.

21 It appears to us that under such
22 provisions there will be very few projects that
23 will qualify, since most municipalities and sewerage
24 agencies throughout the nation have already been
25 involved in facilities planning of one kind or

1 another over the years. Many ongoing projects
2 have proceeded through several steps of planning
3 and public hearings, but conclusions as to an
4 acceptable plan may not have been reached or the
5 project may have been delayed for financial or
6 other reasons.

7 During all stages of planning and design
8 of facilities, changes of direction as to types
9 of systems, alternatives or technologies are not
10 unusual and, in fact, may be required. Even after
11 construction is started there are provisions in all
12 contracts for making design changes, if necessary.
13 Depending on circumstances, a change in concept
14 of a project may not be the principal cause for
15 delays in ongoing projects. Under existing rules,
16 the engineer developing a facilities plan is
17 obligated to investigate alternative systems and
18 concepts. Also, in preparation of the EIS,
19 alternative systems must be analyzed. Even after
20 the facilities plans and EIS have been prepared and
21 submitted for public review and hearings, new
22 factors or concepts often come to light, making it
23 necessary to alter plans or change direction and
24 consider alternatives which may not have been
25 previously investigated.

1 Thus, to preclude consideration of
2 innovative alternative systems just because
3 facilities planning may have been initiated prior to
4 September 30, 1978 may well contribute to continuing
5 construction of costly conventional systems and
6 delay meeting the goals of the 1977 amendments for
7 many years into the future.

8 As a second concern, the regulations of
9 35.915 appear to preclude funding of reclamation and
10 reuse projects that are not needed for compliance
11 with "enforceable requirements." I think this was
12 brought out by the previous speaker. Since the
13 usual reclamation projects, at least in our area,
14 makes use of treated effluent, usually effluent
15 treated to the secondary level already meeting
16 water quality requirements of the NPDES permit,
17 these projects would not "satisfy enforceable
18 requirements."

19 Very often, one of the most costly parts
20 of a project is the disposal of effluent after it
21 is treated. This is particularly the case where
22 a long pipeline and effluent pumping facilities
23 are required from the plant to the point of
24 disposal or where a deep water outfall is required.
25 Whereas a reclamation or reuse project may provide

1 environmental benefits or improvement in the quality
2 of the effluent, the NPDES permit may have been
3 written before the alternative project was
4 developed, and thus the enforceable requirements
5 of the permit may have been satisfied upstream from
6 the reclamation or reuse project.

7 A third concern is the imposition of
8 costly and excessively restrictive monitoring
9 programs on reclamation, reuse and alternative
10 systems by regulatory or health agencies. This
11 problem apparently has not been addressed in the
12 proposed regulations. Monitoring is a continuing
13 cost to the local operating agency and can become
14 so burdensome as to make it economically unfeasible
15 to consider reclamation, reuse and alternative
16 projects.

17 In summary, we are left with the
18 impression that the proposed rules contain very
19 little incentive for planning or developing
20 reclamation and reuse projects or innovative and
21 alternative systems. We hope that these issues
22 can be clarified so that the intent of Congress to
23 encourage systems that will reduce the cost of
24 wastewater treatment and disposal facilities and
25 provide means for beneficial reuse of this valuable

1 resource will become feasible at an early date.

2 There is one other comment. The feeling
3 remains that the rules and regulations have become
4 so voluminous and formidable that very few
5 individuals or agencies will attempt to develop
6 projects to meet the objectives of the 1977 amend-
7 ments.

8 Thank you.

9 CHAIRMAN WALKER: Thank you, Mr. Nute.
10 May we have a copy for the record?

11 MR. NUTE: Yes.

12 CHAIRMAN WALKER: I think Mr. Anderson
13 had a question.

14 I will announce first that this will be
15 marked Exhibit 13.

16 (Whereupon, Hearing Exhibit
17 No. 13, three-page letter
18 dated June 23, 1978 from
19 J. Warren Nute to Alexander
J. Greene, was incorporated
into the record.)

20 MR. ANDERSON: Mr. Nute, I may be able
21 to relieve your concerns somewhat, at least on the
22 first point you made regarding the retroactivity,
23 perhaps, of the provisions for innovative and
24 alternative technology.

25 In the preamble to the first portion of the

1 April 25th proposed rules on Page 17691, there is
2 a discussion of a proposal to provide supplemental
3 ten percent grants to projects that are awarded a
4 Step 2, Step 3, or combined Step 2 or 3 grant,
5 after December 27th, 1977. They can be awarded
6 a 75 percent grant at this time and then a ten per-
7 cent supplemental grant can be awarded when fiscal
8 year '79 funds are available.

9 The proposed implementation of this would
10 be in Paragraph 35.908 (b) (3) on Page 17694.

11 MR. NUTE: I might have missed that. On
12 the other hand, on there there are several places
13 where it says facilities planning initiated after
14 September, 1978, and it will not be retroactive.
15 I don't know why they don't clear that up.

16 MR. ANDERSON: I believe the intent was
17 that all facilities planning initiated after
18 September 30th, '78 must give this consideration
19 to innovative alternative technologies, that projects
20 that are in the facilities planning stage or even
21 design stage at the present time, if they qualify
22 under the guidelines, would be eligible for the
23 85 percent grant.

24 MR. NUTE: That's great, but it certainly
25 is not clear.

1 CHAIRMAN WALKER: Your problems are noted
2 for the record. When the record is reviewed
3 possibly -- I cannot make a promise -- but possibly
4 the matter will be cleared up.

5 MR. NUTE: Thank you.

6 CHAIRMAN WALKER: Thank you.

7 Aaron Craig.

8 MR. CRAIG: I am probably sitting in the
9 wrong pew today. I belong in Region X, but I was
10 doing some other business and would like to take
11 this opportunity to ask a few questions instead
12 of submitting statements. I haven't studied what
13 you have here.

14 CHAIRMAN WALKER: We will be glad to
15 receive your comments. This is Region IX, but the
16 comments are all part of the same national record;
17 they will all go to the same place.

18 MR. CRAIG: Thank you.

19 We have a rather unique situation up
20 there, the town of Plains, Montana. It has a
21 population of about 1500. They applied for a grant
22 for a sewage system "X" number of years ago and is
23 in the process in Denver, I understand.

24 In the meantime -- also, I might make
25 clear that I am not a member of the City Council, but

1 I am here representing them. I am Treasurer of
2 the Sanders County Sportsman Association. With
3 both positions I have tried to get an EIR report
4 on this job up there as to what's happening. So
5 far I haven't been able to do this.

6 I have written the engineers, contacted
7 the City Council and so forth. For some reason
8 or another they're not granting us one.

9 Another problem that we have is that the
10 proposed site of the new treatment plant is going with-
11 in 200 feet of the old riverbed and 500 feet off
12 the present river. The Montana Fish and Game has
13 recommended that they find another location of this
14 plant, but I understand through the Sierra Club
15 and through the Montana Wilderness that they are
16 not entertaining thoughts of the Fish and Game.

17 I would like to know why this is, because
18 they need the plant, and I would like to see them
19 get it in, put it in right so they don't pollute
20 our river.

21 I haven't been able to come up with any
22 answers anywhere up there, including Denver. I
23 thought the job -- the size that they are talking
24 about is half a million dollars -- had to have an
25 EIR report.

1 So, being up in the remote area takes us
2 about three hours to get to an airport, so we are
3 kind of isolated up there. If the gentlemen here
4 or someone can give us the information on that I
5 think we will all appreciate it.

6 CHAIRMAN WALKER: Thank you, sir. I do
7 not think the people at the panel here can help
8 you because we are not familiar with your problems
9 in Montana; there may be people here who can.

10 I do recall that there was a short subject
11 on CBS 60 Minutes at one time about some other
12 community that seemed to have the same kind of
13 problems you did. My impression was that somehow
14 or other there was a communications problem with
15 that city -- but that isn't the way CBS put it --

16 (Laughter)

17 MR. CRAIG: I think this is very important
18 according to the Montana Wilderness Association and
19 Mr. Kundsén, Fish and Game, which the biologists
20 is having this treatment plant, they want it
21 relocated, and there is places for it, but the
22 city says it's going to cost us a lot of money to
23 relocate, which they're probably talking about
24 15 or \$20,000.

25 I would like to see it installed, I'd like

1 to have it in right. But we don't know where to go.

2 CHAIRMAN WALKER: I hope your problem
3 can be solved, but I think one of the things you
4 have to realize is that the agency leaving decisions
5 in the hands of local agencies, sometimes there
6 are results that everybody does not agree with.
7 That may be your problem. I do not know.

8 Mr. Gervais?

9 MR. GERVAIS: I just wanted to add that
10 I would be glad to talk to him afterwards. I could
11 give you some ideas on how to approach what appears
12 to be a recalcitrant region --

13 MR. CRAIG: I would appreciate that.

14 MR. GERVAIS: But I do not think it is
15 of general interest here.

16 MR. CRAIG: I mentioned this -- I just
17 came in the building, had just heard of the meeting.
18 I want to thank you.

19 CHAIRMAN WALKER: Evidently you were in
20 luck. Thank you, sir.

21 I have no more cards before me of people
22 who had requested to make a statement.

23 Is there anyone here who checked the box
24 and said they wanted to make a statement but I have
25 not heard from them?

1 Is there anyone here who has changed
2 their mind and would like to make a statement?

3 If you would please come forward, sir,
4 and tell us your name.

5 MR. GRIBKOFF: My name is George Gribkoff,
6 and I am an engineer for Raymond Vail and
7 Associates in Sacramento.

8 I would like to support Mr. Nute's
9 testimony on innovative systems on wastewater
10 reclamation, and particularly his concern with the
11 regulations as written and the voluminous regulations.
12 We also have concerns and we have had experience
13 with state and local agencies as well as the
14 federal agencies, that it is pretty hard to get
15 an innovative system going.

16 I would also like to say that I have
17 attended several EPA conferences on alternative
18 and innovative systems, and they seem to be heading
19 in the right direction in that they are encouraging
20 innovative systems, they have recognized the
21 fallacy of big conventional regional systems in
22 many places, and have openly admitted it.

23 The other concern, and I am really
24 concerned about the regulations that are coming
25 out on monitoring in the proposals.

1 As you know, these toxic analyses cost
2 a great deal of money. I have had a great deal of
3 experience, being a chemist as well as an engineer,
4 in monitoring programs. My experience has been
5 that everybody overreacts. They want data. They
6 don't know why they want data, but they want data.

7 This I heard from EPA and I have heard --
8 it from the state -- everybody's screaming for
9 data. They want computers, they want data. What
10 do they do with it? What does it mean?

11 I have seen plants oversample themselves.
12 They take bicarbonates, sulphates, chlorides,
13 whatever they feel like, day after day. When you
14 ask the chemist, "Why are you doing it," he says,
15 "I don't know. They've been doing it years before."

16 So I think that as far as monitoring, it
17 has to be very well thought out, and as soon as
18 the background is established I see no reason for
19 all this idiotic sampling -- I mean, weeks after
20 weeks of needless expense on the people, the tax-
21 payers as well as the local entities.

22 That is all I have to say.

23 CHAIRMAN WALKER: Thank you, Mr. Gribkoff.

24 Mr. Nute? Please come forward and use
25 the microphone.

1 MR. NUTE: I appreciate the comments on
2 this monitoring again now. We are finding that
3 since Jarvis-Gann that this is one of the pieces
4 of fat that's going to have to be somehow taken
5 out of the program. Most of our, many of our
6 clients, districts, sewage agencies, are going to,
7 talking about, asking for relief from this excessive
8 monitoring program.

9 MR. ANDERSON: Is this specific requirement
10 in regard to innovative projects or --

11 MR. NUTE: No, it is a present requirement,
12 requirements for discharge into a stream or ocean
13 or bay. It's been just so burdensome, the costs --
14 it's one of the things that should really be looked
15 at.

16 CHAIRMAN WALKER: Thank you, sir. Is
17 there anyone else who has decided to make a state-
18 ment?

19 We have come to that time of the morning
20 where evidently we have heard from the public. Do
21 you have any more cards?

22 This meeting then will recess now until
23 7:30 tonight at this same place. It will not be
24 necessary to repeat this evening any comments that
25 were made here this morning. It is all part of the

1 same record; it will be part of one continuous
2 record as far as Region IX is concerned, and Region
3 IX's record will be accumulated with a record from
4 all of the other hearings throughout the country.

5 I thank all of you for coming. We
6 appreciate your attendance and your courtesy.

7 Have a good day.

8 (Whereupon, the hearing recessed at 11:00
9 o'clock a.m., to be reconvened on Wednesday, June
10 28, 1978 at 7:30 o'clock p.m.)

11 ---oOo---

1 WEDNESDAY, JUNE 28, 1978

7:30 O'CLOCK P.M.

2 ---o0o---

3 CHAIRMAN WALKER: Good evening. We will
4 open this evening's session of this public hearing.

5 This is a hearing called by the United
6 States Environmental Protection Agency to consider
7 regulations for grants for construction of waste-
8 water treatment works.

9 On the panel here this evening, on my
10 right is Mr. Bob Gervais, Chief of the Program
11 Support Branch, Water Division, of EPA, Region IX;
12 on my left is Donald Anderson, Construction Grants
13 Coordinator of the Water Division, EPA, Region IX.

14 This is one of a series of meetings and
15 conferences on the subject of revisions of the
16 regulations for grants for construction of waste--
17 water treatment plants under the Clean Water Act of
18 1977. That Act required regulations to implement
19 amendments to the Act. Such regulations were
20 proposed on the 25th of April, 1978 in the Federal
21 Register.

22 On the 2nd of June, 1978, technical
23 amendments to other regulations in the wastewater
24 construction grants program were promulgated, and it
25 is the agency intention to republish all of these

1 amendments as final rule making about September of
2 1978.

3 This meeting is primarily concerned with
4 receiving comments on the regulations published
5 on the 25th of April, 1978. However, comments on
6 the proposed technical amendments that are offered
7 will be considered.

8 A number of conferences and meetings have
9 been held on this subject including a conference
10 scheduled here in San Francisco at the Sheraton
11 Palace Hotel on the 9th of June of 1978. All of
12 this information will be considered in the final
13 rule making process.

14 Notice of this meeting was given in
15 the Federal Register publication on the 7th of June,
16 1978.

17 A notice was also given by publication
18 on the 29th of May, 1978 in the Arizona Republic,
19 published in Phoenix, Arizona; Honolulu Star-Bulletin,
20 published in Honolulu; the Los Angeles Times,
21 published in Los Angeles; the San Francisco
22 Chronicle, published in this city of San Francisco;
23 the Las Vegas Review-Journal, published in Las Vegas.

24 Certain exhibits were received at the
25 morning session of this hearing that was convened

1 at 10:30 this morning; and they will not be
2 repeated here.

3 I will add that a copy of the transcript
4 that is being made tonight will be made ultimately
5 available for public inspection in the Public
6 Information Reference Unit, EPA Headquarters. Any-
7 one who has a need for a copy of their own prior to
8 the availability of that should make individual
9 arrangements with the reporter.

10 This hearing is not called as an adversary
11 hearing. We are not here to debate the merits of
12 the proposed regulations. We are here to receive
13 public input from people who have something to say
14 about them. For this purpose we ask that people
15 come forward, use the microphone at the podium, give
16 us their name and, if they are appearing here in a
17 representative capacity, to tell us that as well.

18 Any questions or comments that you may
19 have to make will be received and carefully
20 considered. They may or may not be responded to this
21 evening. We do not present ourselves as the people
22 who have all of the answers.

23 The comment period for these proposed
24 regulations closes at the close of business the 30th
25 of June -- that is Friday of this week, the day

1 after tomorrow -- and comments should be sent to
2 Mr. Alexander J. Greene, Director, Grants
3 Administration Division, Attention: PM-216-P,
4 EPA, 401 M Street, SW, Washington, D.C. This zip
5 code is 20460.

6 That means that if you have second thoughts
7 after the hearing tonight you will have to use
8 Express Mail to get it there on time.

9 We have a procedure for spreading around
10 the pleasure of commenting to the panel, but since
11 I only have two cards here tonight, I will not need
12 to go into that procedure.

13 I will first then call upon Mr. Bill
14 Sukenik.

15 MR. SUKENIK: Gentlemen, I have copies of
16 two positions.

17 CHAIRMAN WALKER: Thank you.

18 MR. SUKENIK: My name is Bill Sukenik.
19 I represent the Aliso Water Management Agency in
20 Irvine, California.

21 The Aliso Water Management Agency, which
22 I will refer to as AWMA from here on out, requests
23 that the draft regulations on Section 35.905-8
24 entitled Industrial User, be amended to add the
25 following language to Subdivision (a):

1 "Where flows from individual discharges
2 are processed through a privately owned treatment
3 works before the flows reach a publicly owned treat-
4 ment works, and where the flows from such privately
5 owned treatment works exceed 25,000 gallons per
6 day of sanitary waste, such privately owned treat-
7 ment works shall not for the purpose of these
8 regulations be defined as an industrial user."

9 The reason for this request is that AWMA
10 has been advised by the staff of the California
11 State Water Resources Control Board that under
12 Section 35.905-8 defining industrial user, the
13 El Toro Water District, a member agency of AWMA,
14 would be considered an industrial user. The reason
15 for this staff interpretation is that presently
16 the flows from the El Toro Water District are
17 treated by the Laguna Hills Sanitation, Inc.,
18 formerly Rossmoor Sanitation, Inc., a private
19 corporation. However, all the flows into said
20 treatment works are from domestic users, plus a
21 minor portion of small commercial users. This
22 matter was previously the subject of concern by the
23 State Water Resources Control Board in September
24 of 1974. At that time the same factual condition
25 existed and the State Water Resources Control

1 Board did determine that the "Rossmoor portion of
2 the service area of Aliso Water Management Agency
3 was Grant Eligible."

4 Factually, the El Toro Water District
5 consists almost exclusively of residences, both
6 single-family residences and multiple family
7 residences located within the boundaries of the
8 Rossmoor Leisure World. The treatment plant
9 providing wastewater treatment within the El Toro
10 Water District service area is operated by the
11 Laguna Hills Sanitation, Inc., a privately owned
12 treatment plant, regulated by the State Public
13 Utilities Commission. The Commission regulates
14 its fees and its profits. The El Toro Water
15 District has already participated with Grant
16 Eligibility in the construction of the AWMA ocean
17 outfall and is participating in the design, again
18 with Grant Eligibility, of regional sludge treatment
19 works. It would be unfair and inequitable at this
20 time to consider discharges from the privately
21 owned Laguna Hills plant with flows in excess of
22 25,000 gallons per day of sanitary waste, as an
23 industrial user and subject to industrial cost
24 recovery requirements. Any additional expenses
25 are passed on to the actual users of the system,

1 i.e., the individual homeowners. They are tax-
2 payers and should be entitled to all the benefits
3 of the federally funded program, as other property
4 owners.

5 AWMA is not proposing that any privately
6 owned facilities be constructed. Any facilities
7 requested by AWMA to be government funded will be
8 in public ownership. All additional facilities
9 which are needed to transmit the effluent to the
10 ocean outfall and treat waste activated sludge will
11 be in public ownership.

12 We believe that the proposed amendment
13 to Section 35.905-8 would make it clear that a
14 privately owned treatment works with flows in
15 excess of 25,000 gallons per day of sanitary waste,
16 and serving residential/small commercial users
17 exclusively, would not be termed an industrial
18 user. Your consideration of this request would be
19 greatly appreciated. It is suggested that counsel
20 for the EPA could contact our counsel in the event
21 that revisions to the proposed language are
22 required.

23 That completes our statement.

24 CHAIRMAN WALKER: Thank you. Do you have
25 a question?

1 MR. GERVAIS: Who is your counsel?

2 MR. SUKENIK: Clayton Parker of Alexander
3 Bowie Law Corporation, Newport Beach.

4 MR. GERVAIS: Parker?

5 MR. SUKENIK: Clayton Parker.

6 MR. GERVAIS: I think there is going to
7 be some reevaluation of that determination by the
8 State Board.

9 MR. SUKENIK: I know there have been some
10 condescending opinions, EPA versus State Board,
11 and even some non-legal staff within the State
12 Board. But we are really concerned. We have had
13 the Chairman of the Board of Directors of El Toro
14 Water District put a moratorium on any funds to be
15 placed in the AWMA budget until this is concluded.

16 I also have a second position.

17 CHAIRMAN WALKER: Excuse me. I have a
18 questions about Statement 1.

19 The language that you have in the second
20 paragraph on the first page does not have anything
21 to say about its serving residential/small commercial
22 users exclusively.

23 Is that the fact, and if that condition
24 were put in this language, would that fill your
25 need?

1 MR. SUKENIK: It would, yes. This was
2 written by Clayton Parker, and he used individual
3 discharges, I guess, because of the regulations also
4 addressing the individual systems as far as
5 commercial users paying a share.

6 CHAIRMAN WALKER: I can envision a
7 situation where you might have a number of
8 individual discharges from industrial users in an
9 industrial park where you might have highly toxic
10 materials going in to the treatment plant. In such
11 a case, as a matter of policy, this would not be
12 very desirable. If all of them were residential it
13 would probably be a very desirable result. If we
14 have a mix of residential and commercial users,
15 we have a problem about who the commercial users
16 are and what are they putting in. If it really is
17 what most people understand sanitary waste to be,
18 I guess we would not have a problem. But if you
19 had a photo lab, processing lab, or a plating shop
20 or something like that, you could have a very serious
21 problem.

22 MR. SUKENIK: Yes, the wording, agreed,
23 is rough, and in no way verbatim do we want this
24 placed without very clear thought.

25 CHAIRMAN WALKER: I understand.

1 I will mark your first statement as
2 Exhibit 14 for the purposes of this record.

3 (Whereupon, Hearing Exhibit
4 No. 14, three-page document
5 entitled "Statement of
6 Aliso Water Management
7 Agency," was incorporated
8 into the record.)

9 CHAIRMAN WALKER: Please continue.

10 MR. SUKENIK: The Aliso Water Management
11 Agency, which, again, I will refer to as AWMA,
12 requests that the draft regulations on Section
13 35.935-13 entitled Submission and Approval of
14 User Charge Systems, be amended to delete the follow-
15 ing statements from Subdivision (b):

16 "The grantee must obtain approval of
17 its user charge system before July 1, 1979. The
18 Regional Administrator shall not make any payments
19 on these grants, may terminate or annul these
20 grants, and shall not award any new Step 3 grants
21 to the same grantee after June 30, 1978, if the
22 user charge system has not been approved."

23 In addition, the AWMA requests that the
24 statement below contained under Subdivision (d) of
25 the aforementioned section also be deleted.

"The user charge system must be approved
by the Regional Administrator prior to grant award."

1 Requiring an approved user charge system
2 prior to award of a Step 3 grant is premature. It
3 is more logical to prepare the user charge system
4 in final form when actual construction costs and
5 detailed operation and maintenance costs are
6 available instead of utilizing the engineers'
7 estimates prepared during the early design period.
8 The availability of these accurate costs only
9 occurs after the Step 3 grant and construction
10 contract have been awarded and the final operations
11 and maintenance manual has been prepared.

12 Unnecessary dollars will be expended
13 to revise the approved user charge system when the
14 "true" costs are available. In addition, the
15 regulatory agency will most likely conduct another
16 review once the system is revised. These
17 redundancies are unwarranted and costly.

18 We recommend that all Step 3 grants after
19 June 30, 1979 be subject to the regulations
20 promulgated on February 11, 1974 with regard to
21 submission and approval of user charge systems.

22 Thank you.

23 CHAIRMAN WALKER: Thank you. I will mark
24 the second statement as Exhibit 15 for the
25 purposes of this record.

(Whereupon, Hearing Exhibit No. 15, two-page document entitled "Statement of Aliso Water Management Agency," was incorporated into the record.)

CHAIRMAN WALKER: Mr. Fritz Stradling?

MR. STRADLING: Mr. Chairman and members of the Board, My name is Fritz Stradling. I am an attorney for the El Toro Water District, which is a member of the AWMA Agency.

We just learned of this proposed amendment as it might affect the El Toro Water District, and we are here in support of the AWMA position that was just given to you by Mr. Sukenik.

Mr. Sukenik has correctly stated that this will work a severe hardship on the El Toro Water District. We have been in this AWMA program for five or six years and have expended a considerable amount of money and incurred expenses by the issuance of bonds to pay our share of the program.

If this provision has the effect that the state thinks it may have, we could lose substantial money, approximately \$4 million.

The district, as was pointed out, is a residential, 90 percent developed residential with

1 some commercial in it. I do not think there are
2 any industrial plants in the district itself that
3 would be of any substantial nature.

4 The amendments that were suggested by
5 the Hearing Board would be agreeable to the El Toro
6 Water District. I think that would resolve the
7 question if this amendment is also given.

8 The result of this, however, if we had
9 to pay the share of the costs, the grant costs as
10 an industrial user, these monies would be passed
11 on to the Laguna Hills Sanitation Company. That
12 company would then go to the Public Utilities
13 Commission and put that additional cost in the
14 rates so that we would have a situation in the
15 district, within the AWMA Agency, where people living
16 across the street would be paying this cost and
17 on the other side of the street if they were in
18 another district, they were handling their own
19 processing, would not be paying the cost. It would
20 be discriminating between residents in the same
21 regional programs. So we believe that this provision
22 should be amended.

23 CHAIRMAN WALKER: Thank you, sir.

24 I now have no more cards before me of
25 people who have requested an opportunity to address

1 the panel. Is there anyone who has registered but
2 whose card has been mislaid? Is anyone here who
3 has changed his or her mind and wishes to speak
4 on the subject?

5 It then appears that we have reached
6 that time of the hearing where we will close this
7 part of the hearing subject to the submission of
8 written comments before the close of business on
9 June 30th at the address given in the notice. If
10 you have need of it, we will give you that address
11 again.

12 We thank you kindly for your courtesy and
13 your attention, and wish you a good journey home.

14 Good night.

15 (Whereupon, the hearing adjourned at the
16 hour of 8:00 o'clock p.m.)

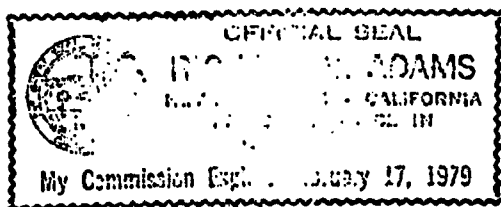
17 ---o0o---

STATE OF CALIFORNIA)
) ss.
City and County of San Francisco)

I, RICHARD S. ADAMS, hereby certify that the proceedings in the Public Hearing on Construction Grants Regulations, held at the offices of Region IX, U. S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, on June 28, 1978, were taken down in shorthand by me, a Qualified Shorthand Reporter and a disinterested person, at the time and place therein stated, and that the proceedings were thereafter reduced to typewriting under my supervision and direction.

I further certify that I am not of counsel or attorney for either or any of the parties to the said proceedings, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office this 1st day of
July, 1978.



Richard S. Adam
NOTARY PUBLIC in and for the
County of Marin,
State of California