

DATE: September 30, 1987

TO: Armand V. Campillo, Water Utilities Director
FROM: City Attorney
SUBJECT: Secondary Treatment Facilities Plan Financing
Issues

You have requested exploration of several financing issues for purposes of preliminary review of possible financing approaches for secondary treatment facilities. Recognizing that further research will have to be done in concert with bond counsel, we offer these preliminary guidelines.

1. In light of the financing restrictions of San Diego City Charter section 90.2, would it be possible to utilize general law provisions?

Both from an historical and literal review of San Diego City Charter section 90.2, we believe the section is a permissive rather than exclusive means of sewer bond financing. First placed on the ballot as Proposition C in 1956, subdivision (1)(a) of 90.2 read:

(a) The limitations upon bonded indebtedness of The City of San Diego contained in Sections 76 and 90 of this charter or in any other section or provision thereof shall not apply to revenue bonds issued under any provisions of this charter where such revenue bonds are payable exclusively from a special fund derived from revenues obtained from any public utility or improvement of the City and are not payable from taxes levied by the City and such revenue bonds shall not be deemed indebtedness of the City within the meaning of the debt limitation provisions contained in sections 76 and 90 of this charter or in any other section thereof.

When next amended as Proposition A in 1960, subdivision (1)(a) was changed to read:

Subdivision C. The limitations upon bonded indebtedness of The City of San Diego contained in Sections 76 and 90 of this charter or in any other section or provision thereof shall not apply to revenue bonds issued under this section or under any provisions of this charter or under any general law of the State of California where

such revenue bonds are payable exclusively from a special fund derived from revenues obtained from any public utility or improvement of the city and are not payable from taxes levied by the city and such revenue bonds shall not be deemed indebtedness of the city within the meaning of the debt limitation provisions contained in Sections 76 and 90 of this charter or in any other section thereof.

While the language has consistently read to exempt such revenue bonds from the "limitations" imposed by Charter section 76 (limitation on tax levy) and Charter section 90 (bonded indebtedness), adding the reference that such limitations shall similarly not apply to revenue bonds issued "under any general law of the State of California" clearly shows Section 90.2 was not contemplated as being exclusive. Rather adding the reference to "general law of the State of California" provided the flexibility and option to pursue financing under the auspices of Section 90.2 or general state law pertaining to revenue bonds.

As for general law options that are revenue bonds, we note the availability of California Health and Safety Code sections 4950 et seq. (Revenue Bond Law of 1933) and California Government Code sections 54300 et seq. (Revenue Bond Law of 1941). The former sections permit issuance of revenue bonds by the governing body without a vote unless there is a fifteen (15) percent protest. Health and Safety Code section 4975. The latter sections referenced generally require a majority vote for issuance. Government Code section 54307.1.

2. Should a bond election fail, would it still be necessary to build a secondary treatment plant and could bonds be issued contrary to the will of the voters?

The requirements imposed on publicly owned treatment works (POTW's) flow from the Clean Water Act, 33 U.S.C. 1251 et seq.,

which does not excuse compliance based on election results. As to the issuance of bonds, our prior discussion points out generally revenue bonds under the 1933 Revenue Bond Law do not require a public vote absent a fifteen percent protest. See, discussion at p. 2. Moreover, the Revenue Bond Law of 1941 has provisions for excusing an election if the facilities are compelled under a cease and desist order.

(b) If compliance with a water quality control plan, adopted pursuant to Division 7 (commencing with Section 1300) of the Water Code, requires the construction of facilities for the collection, treatment, or disposal of

sewage, waste, or storm water, and if the appropriate regional water quality control board, in a cease and desist order or by other action of the board, finds or determines that immediate action for the planning and construction of such facilities is urgently needed for the compliance with such plan and the prevention of pollution, the election procedures of Article 3 (commencing with Section 54380) of this chapter shall not be applicable, but undertaking the improvement shall be subject to referendum on the issuance of bonds. The resolution of the local agency or entity authorizing the issuance of bonds pursuant to this chapter shall be subject to referendum within the combined territory of all the agencies which, pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, have created such local agency or entity. Referendum procedures shall, as nearly as practicable, be those specified in Section 6547.2.

Calif. Govt. Code section 54307.1(b)

Emphasis added.

The City of San Diego is currently under Cease and Desist Order No. 87-113 issued by the Regional Water Quality Control Board on July 27, 1987. As this Cease and Desist Order has an eleven (11) year construction schedule for achieving secondary treatment, the order should still be in effect when and if bonds are proposed under the Revenue Bond Law of 1941. This then provides a vehicle for an exemption from an election to authorize the bonds, although, the legislative decision to issue the bonds is subject to referendum.

Since there are explicit bases for election avoidance, the issue of a failed election may never arise. We must reserve our final advice until the precise factual situation is known and bond counsel has been consulted. The ultimate validity of bonds, of course, rests with bond counsel.

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By

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