

MEMORANDUM OF LAW

DATE: February 16, 1994

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Required State Status in U.S.A. v. City of San Diego, Case No. 88-1101-B

You asked for a brief review of what litigation status, if any, is required of the State of California by the Clean Water Act, 33 U.S.C. 1251 et seq. The State of California was named as a party plaintiff in the pending complaint in U.S.A. v. City, U.S. District Court Case No. 88-1101-B. Complaint, paragraph 4. Indeed the Clean Water Act provides that a state be a necessary party although not necessarily a plaintiff.

(e) State liability for judgments and expenses.

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

33 U.S.C. section 1319(e) emphasis added

That the state must be joined is obvious from the statute. However, there is no requirement that the state be a party plaintiff and, in fact, is subject to being named as a party defendant. See, United States v. Metropolitan St. Louis Sewer District, 952 F. 2d 1040 (8th Cir. 1992), in which the State of Missouri was named by the EPA as a defendant pursuant to Section 1319(e) and then during legal proceedings "re-aligned" itself as a plaintiff.

Given the precedence of U.S.A. v. Metro St. Louis, there appears to be precedence for states to "re-align" themselves as a matter of choice under Section 1319. Hence while a state must be a party, there is clearly precedence for the State of California

to choose its alignment in this litigation.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:452.1.1(x043.2)

ML-94-16

TOP

TOP