

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
Clyde E. Kuhn and Beth A. Jersey)
for Review of Order No. 6-77-115)
of the California Regional Water)
Quality Control Board, Lahontan)
Region. Our File No. A-185.)

Order No. WQ 79-13

BY THE BOARD:

On November 28, 1977, a petition for review of Order No. 6-77-115 of the California Regional Water Quality Control Board, Lahontan Region, was received from Clyde E. Kuhn and Beth A. Jersey. Order No. 6-77-115 was adopted on October 13, 1977, and contains waste discharge requirements for a geothermal exploratory well proposed by Magma Energy, Inc., to be drilled in the general area of Casa Diablo Hot Springs to a depth of approximately 9,000 feet.^{1/}

I. BACKGROUND

A report of waste discharge for the proposed well was submitted dated September 22, 1976. On October 8, 1977, just before the October 13, 1977, meeting of the Lahontan Regional Board, Petitioners Kuhn and Jersey submitted for the Board's consideration

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1. The petition was submitted in accordance with the time schedule provided in William R. Attwater's letter of November 8, 1977, to Petitioner, extending the time for filing a petition for review in this matter.

a written objection^{2/} to the tentative waste discharge requirements for the geothermal exploratory well, identified as "Magma Energy/Mammoth #1", proposed by Magma Energy, Inc. Petitioners objected to the tentative requirements as inadequate to protect from degradation certain cultural, historical and archaeological resources described as adjacent to the proposed well site, asserting that the Regional Board's responsibilities pursuant to the California Environmental Quality Act included the protection of these resources. Petitioners requested that the Lahontan Regional Board adopt the proposed order only after steps had been taken to mitigate the potential adverse effects of the project on this "cultural environment". The petition seeks review of Order No. 6-77-115 with respect to the Regional Board compliance with the requirements of the California Environmental Quality Act of 1970, as amended.

Lahontan Regional Board Order No. 6-77-115 contains the following findings, among others, which are relevant to this review:

"9. The County of Mono has prepared a negative declaration in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the State Guidelines.

"10. The Regional Board has reviewed the negative declaration and determined there will be no substantial adverse changes in the environment as a result of the project.

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2. The written objection consists of a three-page statement by Petitioners; a copy of a letter dated September 22, 1977, from Petitioners to Edmund G. Brown, Jr., Governor; and a copy of a letter dated July 5, 1977, from Petitioners to Herbert Rhodes, Director, Department of Parks and Recreation. Although the written objection asserts that the tentative requirements are inadequate to protect water quality, this issue is not raised by the petition.

"11. The Board, in a public meeting, heard and considered all comments pertaining to the discharge."

The provisions of the subject order prohibit the discharge of wastes to surface waters but permit the injection of geothermal brines into the aquifer underlying the project site. Finding No. 4 provides a description of wastewaters from the project and the proposed magnitude of the project:

"4. Wastes produced from the drilling and testing of the proposed well will consist of drilling muds, water from the well clean out operation and geothermal brines. The designated discharge site for the drilling muds and water from the well clean out operation will be a clay-lined evaporation pond adjacent to the well. The designated discharge sites for geothermal brines generated by flow tests will be a series of steel tanks. The brines in the tanks will be injected into nearby wells named Endogenous #1 and Endogenous #6 which also are designated disposal sites. No geothermal brines will be discharged to the evaporation pond. It is estimated that less than 1.5 million gallons (5.68 ml) of brine will be pumped from the well during the flow tests which will last about eight hours."

The petition requests that the State Board hold a hearing to receive additional evidence concerning the cultural, archaeological and scientific resources to be found in the general area of the proposed test well, which could be affected by compliance with the requirements of Order No. 6-77-115. On December 28, 1978, a letter was sent to Petitioners indicating that a hearing would not be held and that any additional arguments and evidence which the Board would be requested to consider in this matter be submitted within 20 days of the date of the letter. No communication has been received from the Petitioners.

II. CONTENTIONS AND FINDINGS

Petitioners complain that the Lahontan Regional Board failed to mitigate the potential adverse environmental effects of

the project governed by Order No. 6-77-115 and therefore did not comply with the requirements and the express legislative policy of the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, commencing with Section 21000). In our opinion, this contention is without merit.^{3/}

In 1977, when the subject order was adopted by the Lahontan Regional Board, the CEQA required that no public agency approve or carry out a project for which an environmental impact report had been prepared identifying adverse environmental effects without making certain findings and pursuing mitigation measures (Public Resources Code Section 21080, as effective in 1977). However, the determination of whether to prepare an environmental impact statement for a project was the responsibility of the "lead agency"^{4/} for the project. Except under special circumstances not relevant here, only one such document was to be prepared and it was to be considered by every public agency prior to approval or

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3. Petitioners do not describe (and did not to the Regional Board) with any specificity the adverse effects which they allege are likely to result from the project, nor any mitigation measures for protecting scientific and cultural resources alleged to be located within the general area of the geothermal test well site. Absent some substantial evidence of adverse environmental effects, a negative declaration need not be abandoned and preparation of an environmental impact statement commenced by the lead agency. However, since the Lahontan Regional Board was acting as a responsible agency and had limited review duties with respect to the Magma test well, we need not reach this issue.
 4. Public Resources Code Section 21067 defines "lead agency" as the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

disapproval of the project.^{5/} It must be kept in mind that the Regional Board was only functioning as a "responsible agency"^{6/} with respect to this project while the County of Mono was the "lead agency".

Petitioners herein contend that despite the negative declaration prepared and adopted by the County of Mono concerning the Magma Energy test well described in Order No. 6-77-115, there are significant effects of the project which should have been mitigated by the Regional Board. As indicated above (see page 2 herein), the Regional Board found that there were no significant adverse effects of the project, and its review of the project was properly based upon consideration of the negative declaration prepared by the County. Since no adverse effects were identified, no findings or mitigation measures were required, assuming that compliance with the requirements of Order No. 6-77-115 would adequately protect water quality. In adopting Order No. 6-77-115, the Regional Board acted in compliance with the CEQA as then in effect.

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5. Public Resources Code Section 21061 defining "environmental impact report" provided in part "[a]n environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project". See Section 21165 indicating that the lead agency for a project determines whether a project has a significant effect and then sees to the preparation of any necessary environmental impact report.
 6. Public Resources Code Section 21069 defines "responsible agency" as "a public agency, other than the lead agency, which has responsibility for carrying out or approving a project".

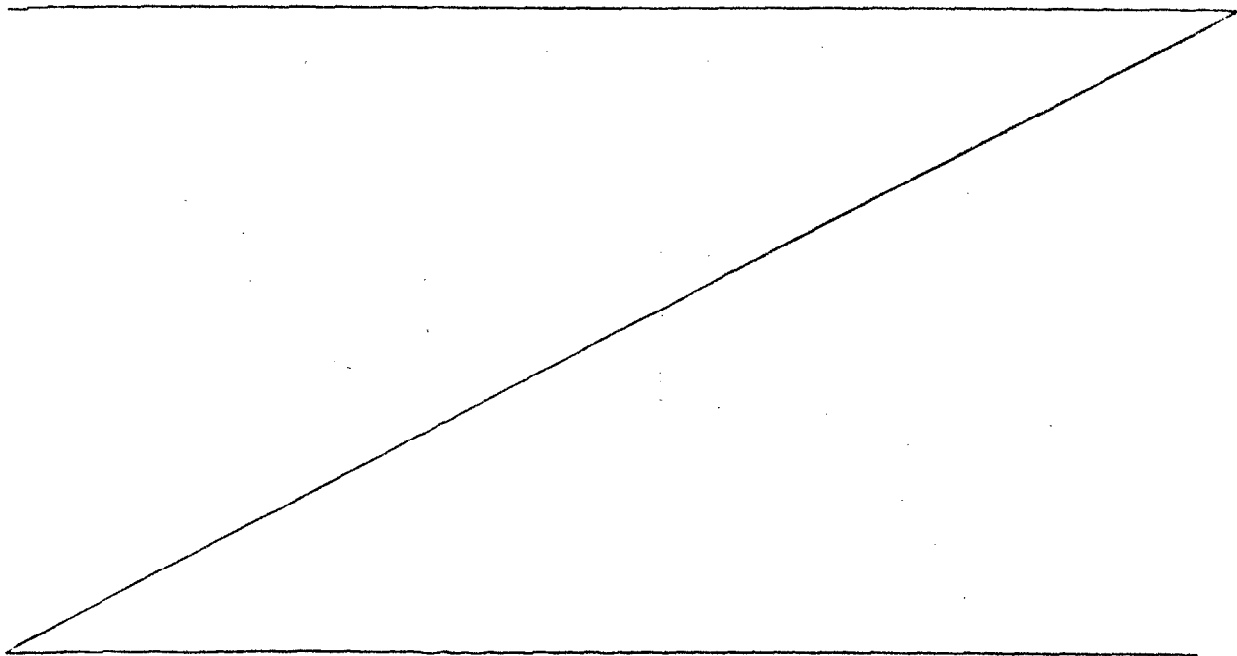
The CEQA was further amended in 1977, and it now clearly limits the ability of all public agencies acting as responsible agencies in reviewing a project to consideration of only those matters within their statutory jurisdiction to approve or carry out. (See Public Resources Code Section 21002.1(d) setting forth express legislative policy for CEQA implementation.) The CEQA as presently in effect also states specifically that lead agencies are responsible for deciding whether an environmental impact report is necessary, determining the effects of a project and preparing necessary environmental documents, and that these determinations are conclusive as to all responsible agencies, unless judicially challenged (see Public Resources Code Section 21080.1).

Petitioners' concerns with respect to historical resources in the general area near the Magma test well site could be more appropriately addressed by Mono County, the lead agency for this project. The Regional Board has indicated that Magma has not yet proceeded with the project. We also note that the project considered by the Regional Board and Mono County consisted only of drilling a test well and conducting flow tests of that well. Any project to further develop the test well or to construct additional exploratory wells would likely require additional environmental review and approvals of other governmental agencies. At that time if Petitioners are dissatisfied with the environmental documentation and evaluation prepared by the County, they should judicially challenge that evaluation pursuant to Section 21080.1 of CEQA as amended. Alternatively, Petitioners' concerns may be appropriately addressed by the State Office of Historic Preservation of the Department of Parks and Recreation or the Division of Oil and Gas

of the State Department of Conservation, agencies with some jurisdiction to protect historical resources. We do not mean to suggest that the cumulative effects of projects on the environment, whether historical, cultural or natural resources are affected, should be ignored or to imply in any way that historical resources do not deserve protection pursuant to CEQA. However, the authority of the Regional Boards to review pursuant to the provisions of CEQA is limited as herein above discussed.

III. CONCLUSION

The Regional Board's review of proposed Magma Energy, Inc., geothermal test well "Magma Energy/Mammoth #1" based upon the negative declaration for the project prepared by the County of Mono and the Regional Board's finding of no significant environmental effect for this project were appropriate and proper to comply with the requirements and the policy of the California Environmental Quality Act.



IV. ORDER

IT IS, THEREFORE, ORDERED that the petition of Clyde E. Kuhn and Beth A. Jersey for review of Order No. 6-77-115 of the California Regional Water Quality Control Board, Lahontan Region, is denied.

Dated: **MAR 15 1979**

/s/ W. Don Maughan
W. Don Maughan, Chairman

/s/ William J. Miller
William J. Miller, Member

/s/ L. L. Mitchell
L. L. Mitchell, Member