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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the)
Casitas Municipal Water District for)
Review of the Waiver of Waste Dis-)
charge Requirements by the California)
Regional Water Quality Control Board,)
Los Angeles Region, for Uranium)
Exploration by the Homestake Mining)
Company. Our File No. A-234.)

Order No. WQ 79-36

BY THE BOARD:

On April 23, 1979 the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) determined that no waste discharge requirements would be adopted for the proposed uranium exploratory operations of the Homestake Mining Company (Homestake) in the Lake Casitas watershed in the Los Padres National Forest. Pursuant to California Water Code Section 13320, the Casitas Municipal Water District has requested the State Board to review the Regional Board's failure to adopt waste discharge requirements, asserting that they are necessary to protect water quality.

We take notice that the area of the proposed exploration has temporarily been withdrawn from mining development. (44 Federal Register 28666 -- Wednesday, May 16, 1979.) However, insofar as such a withdrawal is subject to valid existing mining rights and pending further definition of such rights, it is appropriate for us to review this matter.

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I. BACKGROUND

In January 1978 Homestake Mining Company submitted to the United States Forest Service (Forest Service) an operations plan to conduct limited exploratory operations on certain mining claims in the Los Padres National Forest. The plan included a three-phase schedule for the exploration of 36 uranium mining claims situated in the Coyote Creek drainage, which is tributary to Lake Casitas. During the proposed exploration, 9,011 feet of temporary road could be constructed and up to 76 test holes could be drilled to depths of 80 to 250 feet. The proposed period of operations is from April through August.

The Forest Service prepared a draft Environmental Analysis Report (E.A.R.) which considered the possible environmental effects related to the exploratory activities proposed by Homestake. The Forest Service specifically excluded from its analysis and consideration any mining production proposal which could follow the exploratory program. On April 15, 1978, following public review and comment, the Forest Service issued the final Environmental Analysis Report and on May 10, 1978, adopted Homestake's operating plan subject to the following conditions:

1. All disturbed areas will have an erosion control plan prepared by the Forest Service;
2. A bond of \$20,000 to cover all rehabilitation costs will be required;
3. The operator will adhere to a fire plan prepared by the District Ranger;
4. A portable restroom will be required at the project site;

5. Portable tanks will be required to hold drilling mud from drilling operations;
6. Drilling mud will be disposed of at sites designated by the District Ranger or his representative; and
7. Scintillation counter traverse along each of the proposed lines of exploratory holes should be taken daily and results made available for District Ranger review.

The Regional Board discussed Homestake's proposed uranium exploration at its March 26, 1979, meeting and directed further investigation by the Regional Board staff. On April 23, 1979, the Regional Board further considered the proposed exploratory operation by Homestake Mining Company in the Casitas watershed area of Ventura County. After consideration of all comments, the Regional Board adopted a motion directing staff to notify Homestake Mining Company that it would have to file a report of waste discharge and obtain waste discharge requirements from the Board prior to any operations beyond the uranium exploratory proposal approved by the Forest Service. The Regional Board in effect waived the adoption of requirements and filing of a report for the proposed exploratory operations, as limited by the conditions adopted by the Forest Service, pursuant to California Water Code Section 13269.

On June 7, 1979, Casitas Municipal Water District petitioned the State Water Resources Control Board to review the Regional Board action taken on April 23, 1979. Petitioner generally contends that the Homestake exploratory operation in the Los Padres National Forest could affect water quality and that in the absence of waste discharge requirements water quality will not be adequately protected. Petitioner further contends that:

* * *

"a) Radioactive material from the drilling mud or from samples from the drilling program could enter the surface and underground water sources to Lake Casitas and pollute the water supply.

"b) The cuts which will be necessary for the construction of the one to one and one-half miles of proposed access roads necessary for the exploration project will result in an increase in the amount of siltation carried into the lake, and will affect the water quality of the lake and its tributaries.

"c) The L. A. Board's decision not to issue discharge requirements was improperly based upon its staff's motivation to avoid the responsibilities of CEQA which might attach if the L. A. Board issued waste discharge requirements. (See Staff Report, attached as Exhibit C.)" (Petition, June 7, 1979, page 2.)

The petition requests the State Board to direct the Regional Board to issue waste discharge requirements immediately for the Homestake exploratory operations. However no specific requirements or quality limitations are proposed or requested. The petition asserts that Homestake's proposed uranium exploration and any ultimate production are essentially one project for which waste discharge requirements should be issued immediately.

Homestake responded to the petition asserting that the Regional Board's action was appropriate.

II. DISCUSSION AND FINDINGS

The general issue raised for our consideration by the petition is whether it was appropriate and proper for the Regional Board to waive the filing of a report of waste discharge and the issuance of waste discharge requirements for the proposed Homestake exploratory drilling operation in the Los Padres National Forest. Based upon our review of the petition and the administrative record in this matter, we conclude that the Regional Board's waiver of the

report of waste discharge and requirements for this project was premature. Our analysis follows.

California Water Code Section 13269 governs the waiver of waste discharge reports and requirements by the Regional Board under the Porter-Cologne Water Quality Control Act, California Water Code, Division 7 (commencing with Section 13000).

Section 13269 provides:

"The provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by a regional board as to a specific discharge or a specific type of discharge where such waiver is not against the public interest. Such waiver shall be conditional and may be terminated at any time by the board."
(Emphasis added.)

Water Code Section 13260 requires the filing of a report from "any person...proposing to discharge within any region that could affect the quality of the waters of the state...", and Section 13263 requires the Regional Board to prescribe waste discharge requirements as to the nature of any proposed discharge, unless the evidence before the Regional Board is sufficient to indicate that as to a specific discharge a waiver is not against the public interest. In our opinion, considering only the proposed exploratory operation and excluding from consideration the possibility of a future mining project, there was ample indication in the record before the Regional Board that the project included a proposed discharge of waste which could affect water quality. However, the record does not contain evidence adequate to sustain the conclusion to waive waste discharge requirements.

The exploratory mining operation includes a maximum of 9,011 feet of temporary road and up to 76 test holes drilled on drill pads about 25 by 25 feet in size.

Such an operation is well defined and distinguishable from a subsequent mining operation and governmental approvals are issued for the specific exploratory proposal. Based upon the record before us, we cannot conclude that the project approved by the Forest Service and considered by the Regional Board encompasses any ore production proposal (mining), nor that the approvals heretofore granted in any way commit the public agencies to approve future mining proposals for production. Petitioner cites no authority for considering the exploration and any possible future mining to be one project. Any actual mining and production proposal will constitute a new project with respect to the provisions of both the Porter-Cologne Act and the California Environmental Quality Act, Public Resources Code, Division 13, commencing with Section 21000. (See No Oil, Inc. v. City of Los Angeles (1975) 13 Cal.3d 73, 78.) Therefore, our analysis pertains only to the Homestake exploratory mining operation.

The petitioner asserts that the discharge of wastes from the Homestake exploratory project could affect the quality of both underground and surface waters, and that the conditions imposed upon the project by the Forest Service to protect water quality are not alone sufficient to assure such protection or to support a waiver. We agree.

Petitioner is concerned both with contamination (Water Code Section 13050) as a result of the possible contact with radioactive materials due to the exploratory drilling and with erosion caused by soil disturbance associated with the construction

of the proposed roads and drilling pads and the drilling itself. There is no question that any such byproducts of the exploration would constitute wastes within the meaning of Water Code Section 13050. Without the development of additional factual information with respect to both of these issues, a waiver of reporting and of requirements is not appropriate.

It is the purpose of the proposed project to explore certain mining claims for uranium ore. In mineral form under natural conditions, most such ores pose no threat to public health or water quality. However, some radioactive materials are water soluble, and if removed they could pose a potential water quality threat due to the possibility of a spill, an incomplete drill site closure, or other improper disposal. Project conditions numbered 5, 6 and 7, as adopted by the Forest Service and set forth at page 3 herein, address this concern. As presented to the Regional Board, the exploratory operation will include portable tanks to hold drilling muds, daily readings of radioactivity (scintillation counter readings) along the proposed lines of the exploratory holes, and regulation by the Forest Service of the ultimate disposal of the drilling muds.

Neither the Regional Board's record nor the Environmental Assessment Report nor the Forest Service conditions reflect the location of and protective measures for the ultimate disposal sites. No spill contingency plan for the drilling muds or procedures are described or proposed. No criteria are presented for the evaluation of the scintillation counter readings. No response plan is included in the project should the readings indicate that

special measures are necessary to protect water quality and the public health. Without further investigation of these items and appropriate modification of the project, if necessary, we do not consider a waiver of requirements to be appropriate. Evidence that a waiver is not against the public interest must be apparent.

The issue of water quality effects of potential erosion which could result from proposed project must also be addressed. The Environmental Assessment Report reflects that the drilling sites are located in a 720-acre area of the Los Padres National Forest which has elevations ranging from 1,680 feet to 2,760 feet and which is drained by Coyote Creek and the West Fork of Santa Ana Creek. Slopes in the area are described as moderate to steep (5° to 40°). Annual precipitation in the area averages from 20 to 30 inches. In addition, the Environmental Assessment Report references and accepts a geological analysis that the project area contains a high percentage of "unstable soils". (Environmental Assessment Report, page 14.) The Forest Service conditions imposed upon the exploratory project require the implementation of an erosion control plan which is to be prepared by the Forest Service on all disturbed areas. The Forest Service apparently contemplates that restoration and rehabilitation of the project sites will be complete in approximately ten years.

The record before us indicates that the Casitas Municipal Water District is presently under direction from the State Department of Health Services to construct a water supply treatment

plant to remove turbidity. Plans for erosion control for the proposed project must be carefully prepared and considered to minimize the siltation of Lake Casitas. Until a specific erosion control plan is presented for review, no determination can be made that it is adequate to protect water quality and to prevent or mitigate potential erosion and siltation.

In effect, an erosion control plan will provide additional limitations on the proposed project; and until such a plan is presented for consideration along with the project, the project has not been adequately described. Since Water Code Section 13269 permits waivers to be issued only for specific projects or types of projects, we must conclude that the issuance of a waiver in this case without consideration of an erosion control plan was inappropriate.

In summary, prior to issuing a waiver of waste discharge requirements, the Regional Board should have obtained and considered additional information with respect to potentially radioactive wastes associated with the project and specific erosion control measures for the project. Erosion control measures should of course be as site specific as possible. However, the E.A.R. indicates that for some time the actual proposed locations of the test holes may be considered confidential. (E.A.R., page 6.) This may necessitate establishing specific erosion control practices in cooperation with the Forest Service, instead of site specific plans. The Regional Board may also consider the need for areawide waste discharge requirements or reporting requirements to address the cumulative water quality impacts of the project on the watershed.

Since our order is based upon the record before the Regional Board, this opinion does not conclude that a waiver of requirements would not be appropriate for this project. Therefore, it is appropriate to comment upon the issuance of waivers in general to guide the future deliberations of the Regional Board. It should be noted that the question of whether to grant a waiver need not even be considered in cases where no discharge is proposed that could affect the waters of the state. When a discharge is proposed that could affect water quality and when an issue is raised regarding the appropriateness of a waiver under Water Code Section 13269, such waivers of waste discharge requirements should be adopted in written form and should include or incorporate a specific description of the project and any conditions attached to it. The waiver should also indicate the facts considered and the reasons for the Regional Board conclusion that a waiver is not against the public interest. Generally, administrative agencies are required to include in their decisions findings sufficient to indicate their analysis and the reasons for their conclusion. (Topanga Association v. Los Angeles (1974) 11 Cal.3d 506, 113 Cal.Rptr. 836.)

Finally, unless the project is found to be exempt, the issuance of a waiver must include compliance with the provisions of the California Environmental Quality Act (CEQA). Such consideration may result in the adoption of a Negative Declaration, indicating that the project will have no potentially significant environmental effects, if the Regional Board is acting as the lead agency for the project under CEQA, or in a finding of no

effect after the Regional Board reviews and considers the environmental documents prepared by the lead agency, when the Regional Board acts as a responsible agency. When environmental documents pursuant to the National Environmental Policy Act (NEPA) have been prepared for a project, then it is necessary to determine whether those documents fulfill the requirements of CEQA.

(California Public Resources Code Sections 21083.5 et seq.)

We note that the petitioner has attributed to the Regional Board staff the improper motive of avoiding compliance with the requirements of CEQA in recommending that the Regional Board waive the filing of a report of waste discharge and the issuance of waste discharge requirements for the Homestake exploratory drilling operations. Generally, it is presumed that official duties have been regularly performed and that an administrative agency such as the Regional Board has acted in a proper manner. California Evidence Code Section 664 states, "It is presumed that official duty has been regularly performed." More than bare allegations and vague references to comments by the Regional Board staff are necessary to rebut such a presumption.

III. CONCLUSIONS


Based upon our review of the record herein and for the reasons stated above, we conclude that the Regional Board's waiver pursuant to Water Code Section 13269 of the requirement to file a report of waste discharge and of waste discharge requirements for the uranium exploratory operations proposed by the Homestake Mining Company in the Los Padres National Forest was not appropriate. The Regional Board should carefully consider the monitoring provisions

and the specific erosion control measures necessary to address the water quality concerns associated with this project. Pursuant to Water Code Section 13269, waivers should generally be issued in writing after compliance with the California Environmental Quality Act based upon a finding of no harm to the public interest.

IV. ORDER

IT IS HEREBY ORDERED that the waiver issued by the Los Angeles Regional Water Quality Control Board on April 23, 1979, to Homestake Mining Company for proposed uranium exploratory operations in the Lake Casitas watershed of the Los Padres National Forest is terminated. The Regional Board is directed to reconsider this matter consistent with the terms of this order.

Dated: NOV 15 1979



Carla M. Bard, Chairwoman



William J. Miller, Vice Chairman



L. L. Mitchell, Member