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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of)
the Las Virgenes Municipal Water)
District, Advocates for Balanced)
California Development, Inc. Monte)
Nido Valley Property Owners)
Association, and Laurence H.)
Frommhagen for Review and Stay of)
Order No. 80-9 of the California)
Regional Water Quality Control)
Board, Los Angeles Region. Our)
Files Nos. A-264, 266, 267,)
and 268.)

Order No. WQ 80-11

BY THE BOARD:

On February 25, 1980, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), adopted Order No. 80-9 (NPDES No. CA0056014), prescribing revised waste discharge requirements for the Las Virgenes Municipal Water District's Tapia Water Reclamation Facility. Order No. 80-9 modified waste discharge requirements adopted by the State Water Resources Control Board (State Board) on March 2, 1978, in Appendix A of Order No. WQ 78-4, which was rescinded by Order No. 80-9. Order No. 80-9 allows a seasonal discharge, from mid-November through mid-March, of effluent from the Tapia Facility to Malibu Creek and a year-round discharge once filtration facilities are installed.

The State Board received petitions for review of Order No. 80-9 on March 17, 1980 from the Las Virgenes Municipal Water District (District), on March 25 from the Monte Nido Property Owners Association and from Laurence H. Frommhagen,

and on March 26 from Advocates for Balanced California Development, Inc. (ABCD).^{1/} In addition, on March 4 and 17, 1980, the State Board received petitions for a stay of Order No. 80-9 from the District and ABCD, respectively. The District subsequently filed, on March 18 and April 10, a Supplement to Petition for Stay and a Second Supplement to Petition for Stay. On March 13, 1980, Laurence H. Frommhagen filed a response in opposition to the District's request for a stay.

In this Order, we will consider only the requests of petitioners ABCD and the District for a stay of Regional Board Order No. 80-9. We do not here decide the ultimate merits of any of the issues raised by petitioners.

I. BACKGROUND

A. Tapia Plant

The Tapia Water Reclamation Facility is located adjacent to Malibu Creek in Calabasas, California, approximately six miles from the Pacific Ocean.

"Just downstream from the Tapia Plant Malibu Creek passes through Tapia Park, a county park owned and operated by the Los Angeles County Department of Parks and Recreation.

"At its mouth, Malibu Creek traverses a small alluvial plain and forms a lagoon at the ocean shore. Public access to Malibu Creek in the

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1. Due to the factual similarity of the petitions, they have been consolidated for purposes of review on the merits and for consideration of the stay requests. See 23 C.A.C. §2054.

vicinity of the discharge is generally limited to the areas adjacent to and immediately upstream and downstream of Tapia Park and to the tidal prism area. This relative inaccessibility is principally due to topography and private ownership of property which provides only limited access. Picnicking, hiking, fishing, beachwalking, wading and surfing are generally limited to the areas of accessibility mentioned above. Beneficial uses of Malibu Creek and the lagoon are specified in the applicable water quality control plan and include water contact recreation, noncontact water recreation, wildlife habitat, cold and warm freshwater habitat and fish spawning and migration."2/

Malibu Creek is an ephemeral stream with widely varying rates of flow. During dry years, the creek may dry up in portions of its reach.

The Tapia plant has a design capacity of 8.0 million gallons per day (mgd) and treats an average daily dry weather flow of approximately 5.5 mgd. The plant provides secondary treatment, utilizing an activated sludge treatment process with single-stage nitrification.

At present, disposal methods utilized by the District for the reclaimed water from the Tapia plant include discharge to Malibu Creek, disposal to percolation ponds, and spray disposal on land. In addition, a small portion of the effluent is utilized for agricultural and landscape irrigation.

The District is currently upgrading the Tapia facility under the Clean Water Grant Program. The modifications include expansion of the solids handling and disposal capabilities of

2. State Board Order No. 76-11, pages 1 and 2.

the plant and the addition of new chlorination facilities. The District also proposes to construct a filtration system; however, grant eligibility of these improvements is uncertain. According to the District, the new chlorination facilities are expected to be completed by August, 1980, and the filtration system by February, 1982.

B. State Board Actions

The question of the desirability of allowing a discharge to Malibu Creek has been a controversial one and was the subject of several prior State Board Orders.^{3/} In Order No. WQ 76-11, the State Board considered the propriety of the Regional Board's denial of the District's request for an all-year discharge to the creek and concluded that the record before the State Board did not justify denial of the request. The State Board reached the same conclusion in Order No. WQ 78-4 after the District had again made an application to the Regional Board for a year-round discharge to Malibu Creek. In Order No. WQ 78-4, the State Board adopted waste discharge requirements for a year-round discharge to Malibu Creek for a one year test period, during which the actual impacts of summertime creek discharges were to be analyzed. The discharge was required to be made in a generally inaccessible area (away from Tapia Park) above Rindge Dam in order that the sands and gravels behind the Dam could provide some natural filtration to the wastewater.

3. E.g., State Board Orders Nos. WQ 75-30, 76-11, and 78-4.

Following the twelve month test period, the waste discharge requirements adopted by the Board provided that the discharge could continue for a maximum period of six additional months during which Regional Board staff was to evaluate the study results. At the conclusion of the 18-month period, the requirements specified that "permission to discharge will be reviewed and may be extended, modified, or terminated depending on the results of the evaluation".^{4/}

C. Regional Board Actions Subsequent to Adoption of State Board Order No. WQ 78-4.

On October 23, 1978, the Regional Board formally established the start of the test discharge to Malibu Creek, pursuant to State Board Order No. WQ 78-4,^{5/} with the start of the one-year study to be July 29, 1978. The termination of the test period and study program was July 28, 1979, with the exception of the virus portion of the study program which was concluded on September 30, 1979.

Prior to the adoption of Regional Board Order No. 80-9 and unrelated to the one-year study, the Regional Board held an enforcement hearing on November 26, 1979, to consider adoption of a cease and desist order with a referral to the Attorney General for violations by the District of Effluent Limitations B-9 and

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4. Discharge Limitation A.2. of Appendix A, Order No. WQ 78-4.
 5. The Regional Board amended State Board Order No. WQ 78-4 on April 24, 1978, by making one minor technical change which is not in issue here.

B-13 of Appendix A of State Board Order No. WQ 78-4.^{6/}

On the basis of evidence introduced at the hearing, the Regional Board found that the discharger had violated the coliform limitations contained in Effluent Limitation B-9 on 10 days in April, 7 days in May, 10 days in July, 6 days in August and, again, during October, 1979, and had violated Effluent Limitation B-13 as a result of a bypass caused by a leaking valve from an unchlorinated treated effluent line to the chlorinated effluent line at the Tapia Plant. At the conclusion of the hearing, the Regional Board adopted Cease and Desist Order No. 79-173, with a referral to the Attorney General.

6. Effluent Limitation B-9 provided:

"Wastes discharged to watercourses shall at all times have a median number of coliform organisms which does not exceed, at some point in the treatment process 2.2 per 100 milliliters, with a 90 percentile not exceeding 20 per 100 ml. The median value shall be determined from samples taken on seven sampling days each week, at least one sample per sampling day, collected at a time when wastewater flow and characteristics are most demanding on the treatment facilities and disinfection procedures."

Limitation B-13 provided:

"The diversion or bypass of any discharge from facilities utilized by the permittee to maintain compliance with the terms and conditions of this permit is prohibited, except (1) where unavoidable to prevent loss of life or severe property damage, or (2) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this permit. The permittee shall immediately notify the Board by telephone and in writing of each such diversion or bypass in accordance with the procedures established in this permit."

On February 7, 1980, the District submitted to the Regional Board a report on the one-year Malibu Creek Study, entitled "Malibu Creek Study, 1978-79", and an addendum entitled "Enteric Virus Study-Progress Report, February 1980", in compliance with State Board Order No. WQ 78-4. The Malibu Creek Study concluded that the Tapia discharge appeared to have no direct effect on fish populations, no affect on the algal populations or on the accumulation of trace elements in fish tissues or sediment downstream of the discharge site, and no adverse effects on the macroinvertebrate populations. The study also concluded that the discharge would not drastically change the populations of naturally occurring insects, and that any increase in riparian vegetation caused by the Tapia discharge could be readily controlled. The virus portion of the one-year Malibu Creek Study, however, was determined to be invalidated due to the discovery in late September, 1979, of the bypass for an unknown period of time of unchlorinated secondary effluent caused by the leaking valve. Consequently, Phase II of the virus study was commenced in December, 1979, and, as of February, 1980, only a preliminary progress report was available.^{7/} On the basis of the Malibu Creek Study, the District submitted a petition to the Regional Board for a year-round discharge to the Creek.

7. The study is not expected to be completed until July or August, 1980.

While the District was conducting its study, the Regional Board staff conducted a more limited study of the impacts of year-round discharge to Malibu Creek, the results of which generally coincided with the District's study. On the basis of the District's study and the staff investigation, the Regional Board staff concluded that the year-round discharge of high-quality effluent from the Tapia plant would not have a significant adverse impact on the creek or its beneficial uses. (Staff, however, acknowledged that the virus study was currently underway.) The staff concurred in the recommendation of the State Department of Health Services and the Los Angeles County Department of Health that the Tapia effluent should be filtered prior to discharge.

Therefore, the staff recommended to the Board that waste discharge requirements be adopted which would allow a year-round discharge by the District to Malibu Creek once filters are installed. Prior to that time, staff recommended that discharge be limited to: (1) the period between mid-November and mid-March following maximum reclamation and maximum use of all spray disposal fields consistent with good management practices; and (2) those occasions during and immediately following periods of rain when spray fields or percolation areas could not be used. In addition, staff proposed a daily dry weather flow limitation of 5.55 mgd for the interim period prior to the construction of filters, because of the limited spray disposal areas available to the District.

On February 25, 1980, the Regional Board, after a public hearing, adopted Order No. 80-9, in accordance with staff's recommendations.

II. CONTENTIONS AND FINDINGS

With respect to stay orders, State Board regulations provide, in part:

"(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of

(1) substantial harm to petitioner or to the public interest if a stay is not granted.

(2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted and

(3) substantial questions of fact or law regarding the disputed action."8/

The thrust of the District's request for a stay is that substantial harm to the District and the public will result if a stay is not granted because violations of Order No. 80-9 are inevitable in that sufficient lands are not available for disposal of the District's effluent, and that, even if suitable lands were available, acquisition of such lands would be prohibitively expensive, would curtail the District's reclamation programs, and would result in increased housing costs. Further, the District contends that the public will not be adversely affected by granting a stay of Order No. 80-9 because the Malibu Creek Study indicated that no adverse

8. 23 C.A.C. §2053.

environmental consequences will result from a creek discharge, and that a creek discharge may, in fact, be beneficial. With respect to the public health aspects of a creek discharge, the District has submitted the affidavit of Dr. Lawrence Y. C. Leong, who has a Ph.D. in Environmental Health Science, stating that the amount of water estimated to be present in Malibu Creek until September 1980 will be sufficient to significantly dilute the effluent discharged to the creek from the Tapia plant, and giving his opinion that the discharge of effluent, under such circumstances, will have no adverse public health consequences until at least September, 1980, when the new disinfection facility is expected to be on-line.

ABCD concurs in the District's request for a stay and alleges, in addition, that irreparable harm will befall ABCD if a stay is not granted because its members, who consist of owners and developers of property serviced by the Tapia facility, will bear the financial burden of any penalties which might be imposed upon the District by a court for noncompliance with Order No. 80-9, in the event that the Regional Board referred the District to the Attorney General for violations of the Order. ABCD also contends that its members will be irreparably harmed by any connection ban which might be imposed by the Regional Board for noncompliance with Order No. 80-9. ABCD further contends that the Regional Board lacked jurisdiction to adopt Order No. 80-9 and that its provisions are unconstitutionally vague.

Laurence Frommhagen disagrees with the District's contentions that sufficient lands are not available for disposal

of the Tapia plant effluent and that the Malibu Creek Study indicated the creek discharge may be beneficial to the receiving waters.

We find it unnecessary to address all of the contentions raised by petitioners in this Order. The following discussion will be dispositive of petitioners' requests for a stay.

A. Unavailability of Lands

The District alleged in its original petition for a stay that it currently had 441 acres of land available for disposal of effluent, but that, commencing in April, 1980, approximately one-third of these lands would no longer be available because the State Department of Parks and Recreation had determined to discontinue the District's right to use the lands under the Department's jurisdiction. The District also alleged that, due to the construction of the new disinfection facilities, a needed regulatory reservoir had been removed from the land disposal distribution system and that, therefore, not all of the effluent could be transported to the lands available for disposal. In addition, by the end of March, 1980, the District was scheduled to commence work on the new solids disposal area, consisting of 88 acres of land previously available for effluent disposal.

The District now concedes that "one of the major obstacles to implementing land disposal as required by Order No. 80-9 [which] was the removal of the State Park lands"

from the area available to the District for land disposal has now been obviated.^{9/} The Department has agreed to extend the District's lease for the spraying of treated sewage effluent at Malibu Creek State Park until construction of the tertiary filters at the Tapia plant is completed, until the Regional Board allows a creek discharge, or until April 30, 1982, whichever comes soonest.^{10/}

Nevertheless, the District asserts that, while the availability of State Park lands will assist the District in meeting land disposal requirements in the future, the District's ability to comply with Order No. 80-9 continues to be thwarted by the construction of the new disinfection facilities.

We find it difficult to understand, from an engineering standpoint, why the construction of the chlorination facilities could not have been planned so as not to interfere with the land disposal capabilities of the Tapia plant. Further, we note that State Board Order No. 78-4 obligated the District to maintain its off-stream disposal facilities for existing flows to the plant. The Order provided that:

"[i]n the event the [District] loses some of those areas for reasons beyond its control (e.g., some lands may be withdrawn from disposal use by the Department of Parks and

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9. Page 2 of the District's "Second Supplement to Petition for Stay".
 10. Letter from Russell W. Cahill, Director of the State Department of Parks and Recreation, to Mr. Will Stokes, General Manager of the District, dated March 27, 1980.

Recreation) the petitioner must provide additional off-stream disposal capability sufficient to dispose of the growth in wastewater flows to the Tapia Plant during the test period. Waste discharge requirements, adopted as a part of this Order (Appendix A) requires this. It is the intent of this Board that should this provision not be complied with by the petitioner for any reason whatsoever, the discharge to the Creek shall be prohibited in accordance with [the prior Regional Board Order] until such capacity is available."11/

If the District has not maintained its land disposal capabilities, it is in noncompliance with this provision of State Board Order No. WQ 78-4.

In view of the availability of the State Park lands, we are not persuaded that the District has borne its burden of

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11. Pages 21-22 of Order No. WQ 78-4. This requirement was also contained in Discharge Limitation A.2 of Appendix A of the Order, which stated in part: "During the period of the test discharge through Discharge Serial No. 003 the discharger shall maintain the existing offstream disposal facilities used, currently, for existing flows. In the event the discharger loses some of those areas for reasons beyond its control (e.g., some lands withdrawn from disposal use by the Department of Parks and Recreation), the petitioner (sic) shall provide additional off-stream disposal capacity. Upon the occurrence of such an event, the discharger shall immediately notify the Regional Board in writing and within 30 days submit a plan to the Regional Board indicating how additional off-stream disposal capacity will be provided. The discharger shall also acquire additional off-stream disposal capability sufficient to dispose of the growth in wastewater flows to the Tapia Plant during the test period. For each increase of 50,000 gpd (average dry weather flow over any calendar month) to the Tapia Plant, the discharger shall report in writing to the Regional Board what off-stream disposal capabilities are available or have been provided to manage the new flows. The discharger may substitute new reclamation disposal capacity for existing off-stream disposal facilities."

proof of demonstrating substantial harm due to the unavailability of lands for disposal of the Tapia plant effluent.^{12/} Nor do we feel that the District is in a position to allege substantial harm on this ground due to the express mandate by this Board to the District that its off-stream disposal capabilities must be maintained during the test period specified in Order No. WQ 78-4 for a creek discharge.

B. Threat of Enforcement Action

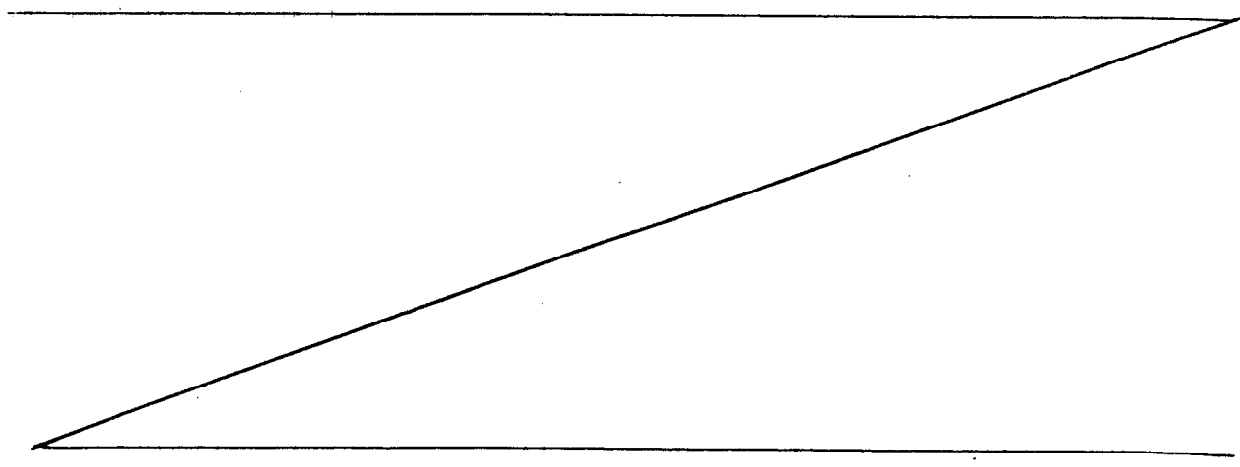
Petitioner ABCD alleges that its members will suffer irreparable injury if a stay is not granted because the District will be in immediate noncompliance with Order No. 80-9, thereby subjecting the District to possible enforcement action, including a cease and desist order with a connection ban and a referral to the Attorney General for civil monetary remedies. ABCD alleges that its members will bear the financial burden of any civil penalties or a connection ban which might be imposed against the District. In addition, ABCD contends that if a stay is not granted, the District may have to institute a water rationing program to reduce influent to the Tapia plant, which again would cause economic damage to the members of ABCD.

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12. We also note that Exhibit "I" to the District's Petition for Review, which is entitled "Spray Field Capacity Report" by Jim Colbaugh to H.W. Stokes, concludes that "depending upon weather conditions, it [is] possible to stay out of the creek from one to three weeks even if we lost the irrigation rights to State Park land," and that "if State Park lands can be retained and if the old Sampo Ranch can be used for irrigation, we can probably come close to having emergency spray field absorptive capacity."

Even assuming that the Regional Board referred the District to the Attorney General for civil penalties, we note that this Board will have decided the petitions on the merits in this matter long before legal proceedings will have been instituted and any judgment obtained against the District. Further, we think that the possibility that the District might institute a water rationing program at this point is fairly speculative, and, in any case, we doubt that the District would institute such a program, assuming that it were inclined to do so, prior to our resolution of petitioners' appeals. Finally, we have been informed by the Regional Board that the earliest date by which it would consider any possible enforcement actions would be the end of June, by which time we expect to have acted on the merits of the matter.

C. Potential Public Health Impacts

In prior State Board Orders we stated that the quality of effluent produced at the Tapia plant was excellent and that it met, and even exceeded the numerical parameters set by the State Department of Health Services in Section 60315, Title 22



of the California Administrative Code,^{13/} for disinfection.^{14/} The record indicates, however, that this is no longer the case. As indicated previously, the Regional Board held an enforcement hearing in November, 1979, in which it was found that the District had exceeded the coliform limitation of 2.2 most probable number (mpn)/ml. contained in State Board Order No. WQ 78-4 on numerous occasions during April, May, July, August, and October, 1979. The violations ranged from 4 to 17 mpn/ml. The discharger's self-monitoring data for January through April 13, 1980, indicates that these violations are continuing. The District exceeded the coliform limitation on four occasions in January, 11 in February,^{15/} 27 in March

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13. This section provides: "Reclaimed water used as a source of supply in a nonrestricted recreational impoundment shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 2.2 per 100 milliliters and the number of coliform organisms does not exceed 23 per 100 milliliters in more than one sample within any 30-day period. The median value shall be determined from the bacteriological results of the last 7 days for which analyses have been completed."

The same numerical parameters for coliform are applicable to the Tapia plant effluent under the State Department of Health Services', "Uniform Guidelines for Sewage Disinfection," Section II.c.

14. State Board Order No. WQ 75-30, pages 4-6, No. WQ 76-11, pages 14-15, No. WQ 78-4, page 5.
15. The violations in February, 1980, occurred prior to the period from February 15 through February 28, when the Tapia plant was out of operation due to storms, which caused flooding and power outages at the plant.

and 13 in April. The numbers varied during these months from 5 to 27 mpn/ml. It appears that the District will not, in fact, be able to achieve consistent compliance with the coliform limitations prescribed in State Board Order No. WQ 78-4 and subsequent Regional Board Order No. 80-9 until completion of construction of the new disinfection facilities at the Tapia plant. As previously indicated, the new disinfection facilities are not expected to be on line until August of 1980.

The District's position is that these are only technical violations, which do not pose a threat to the public health. We must note, however, that the State Department of Health Services has consistently recommended that the Creek discharge meet the Department's criteria for disinfection. We believe that the District should comply with the State Department of Health Services' recommendations with respect to the appropriate coliform limitation for the Tapia plant discharge, and we conclude that the consistent violation by the District of the 2.2 mpn/ml coliform standard demonstrates problems with the present disinfection facilities that can threaten the public health. At the least, we feel that there is a potential threat to the public health. Consequently, this Board is unable to conclude that there will be a lack of substantial harm to the public should a stay be granted.

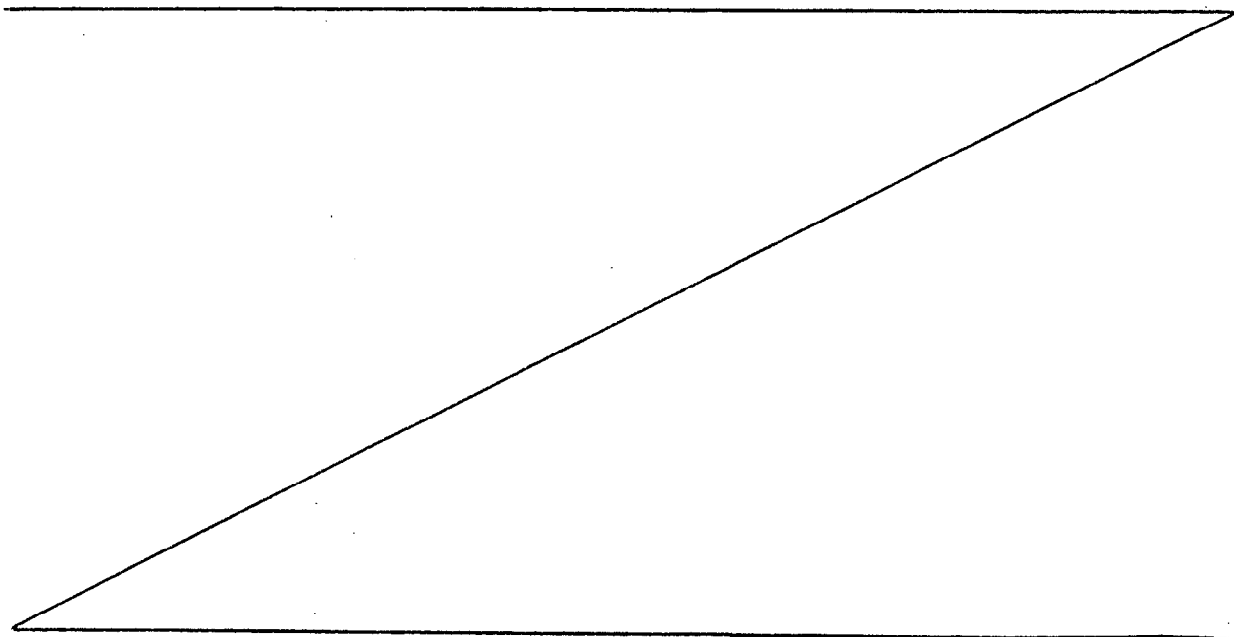
At the workshop session, a suggestion was made that the stay requests be reopened should the Regional Board take any enforcement or other action on Order No. 80-9 prior to our consideration of the petitions for review of Order No. 80-9. This suggestion has merit and our Order will so provide.

III. CONCLUSIONS

For the reasons previously stated, we are not persuaded that petitioners ABCD and the District have demonstrated that they will suffer substantial harm if a stay is not granted, nor have they demonstrated a lack of substantial harm to the public if a stay is granted.

IV. ORDER

IT IS HEREBY ORDERED that the requests of petitioners ABCD and the District for a stay of Order No. 80-9 are denied.



This order shall be immediately reconsidered if, prior to our determination of the petitions for review of Order No. 80-9, the Regional Board takes any enforcement action based on **Order** No. 80-9.

Dated: May 15, 1980

/s/ Carla M. Bard

Carla M. Bard, Chairwoman

/s/ William J. Miller

William J. Miller, Vice-Chairman

/s/ L. L. Mitchell

L. L. Mitchell, Member

/s/ Jill B. Dunlap

Jill B. Dunlap, Member

/s/ F. K. Aljibury

F. K. Aljibury, Member

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