

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
CITIZENS FOR SEWAGE QUALITY INITIATIVE)
)
for Review of Order No. 6-84-24 of the)
California Regional Water Quality)
Control Board, Lahontan Region. Our)
File No. A-350.)
_____)

ORDER NO. WQ 84-4

BY THE BOARD:

On February 9, 1984, the California Regional Water Quality Control Board, Lahontan Region, (Regional Board) adopted waste discharge requirements for proposed changes to the South Tahoe Public Utility District's wastewater reclamation plant and disposal operations. On March 8, 1984, the State Board received a petition from Citizens For Sewage Quality Initiative (petitioners) seeking review of several provisions of the Regional Board's Order.

I. BACKGROUND

The South Tahoe Public Utility District (District) provides sewage service to the south portion of the Lake Tahoe Basin. The District currently collects sewage within its service area and transports it to its wastewater reclamation facility at the City of South Lake Tahoe. That facility presently provides tertiary level treatment of the sewage. After treatment, the effluent is transported via a twenty-seven mile pipeline to Indian Creek Reservoir located outside the Lake Tahoe Basin in Alpine County. Indian Creek Reservoir serves as both a recreational and irrigation storage impoundment. Reclaimed

wastewater is currently released from Indian Creek Reservoir during the growing season where it is beneficially reused as irrigation water. Export of sewage from the Tahoe Basin is required by Water Code Sections 13950-1. Alpine County permits the District to transport the effluent to the county pursuant to a contract initially entered into in 1967.

For a variety of reasons the District has proposed a major change in its treatment and disposal operations. These reasons include reliability and capacity issues regarding the wastewater treatment facility and the export pipeline; the expense of continuing to provide tertiary treatment; and problems Alpine County has had in handling the effluent received from the Tahoe Basin.

In response to these concerns the District has proposed the following changes in its operation: conversion of the treatment facility from tertiary to filtered secondary; construction of a new effluent storage reservoir in Alpine County (the Harvey Place Reservoir); improved effluent transport facilities; and increased disposal of effluent through irrigation of specified areas in Alpine County.

Prior to considering waste discharge requirements for the District's new proposal, the Regional Board adopted amendments to the North Lahontan Water Quality Control Plan (Basin Plan) relating to this matter. The State Board and the federal Environmental Protection Agency approved these amendments on December 15, 1983 and April 19, 1984, respectively. The amendments modified water quality objectives for the West Fork Carson River and the Indian Creek Watershed. Without such amendments, the District's proposal could not have been considered by the Regional Board.

The District submitted a completed report of waste discharge for its proposed changes on January 3, 1984. On February 9, 1984, the Regional Board

issued waste discharge requirements in response to the District's proposal. Among other provisions the requirements prohibit discharges within the Lake Tahoe Basin, require the District to develop "raw sewage overflow and sewage effluent export system failure preventive maintenance and spill response programs"; require discharges to Harvey Place Reservoir to meet secondary treatment standards; limit flows to the treatment plant to 7.5 million gallons per day (mgd); require discharges to comply with Basin Plan objectives for receiving waters; and require wastewater used for irrigation to meet Department of Health Services' criteria.

As the District proceeded with its plans, opposition arose in Alpine County. This opposition culminated in the adoption of an Initiative Ordinance by the voters of Alpine County on November 8, 1983. This Ordinance would require the District to continue to provide tertiary treated effluent in Alpine County. The District has challenged the validity of the Ordinance in court.

Petitioners raise several objections to the Regional Board Order in support of their request that the State Board either modify the order to parallel the Initiative Ordinance requirements or to stay the effect of the order pending the outcome of lawsuits challenging the Initiative Ordinance.

II. CONTENTIONS¹

1. Contention: Petitioners argue that the Regional Board Order is inconsistent with the provisions of the Water Code which call for the removal of sewage from the Tahoe Basin.

¹ Contentions not specifically discussed are dismissed for failure to raise substantial issues. (23 Calif. Admin. Code, Section 2052(a)(1))

Finding: Petitioners contend that the sewage export pipeline is defective, has failed in the past and that the effects of such failures in the future will be worse if the District is allowed to convert to a secondary treatment facility.

Petitioners' argument that the Regional Board Order is inconsistent with the Legislature's mandate that sewage be exported from the Tahoe Basin is groundless. The Order contains several specific provisions that ensure such export:

1. The Order prohibits the discharge of waste within the Tahoe Basin (Provision I.E.6.).
2. The District is required to develop programs to prevent spills from export system (Provision II.8).
3. The Order continues in force cease and desist orders issued to the District requiring it to prevent spills from the export system (Provision 11.12).

Simply put, the Legislature has mandated that sewage be exported from the Lake Tahoe Basin. It has not required that the exported sewage be treated to a tertiary level.

2. Contention: The petitioners contend that the Initiative Ordinance, which mandates that the District continue to discharge tertiary effluent to Alpine County, is part of the Tahoe Regional Planning Agency (TRPA) Plan which must be followed by the Regional Board.

Finding: This contention is without merit. The TRPA Compact created the Tahoe Regional Planning Agency, sets forth its planning functions

and establishes restrictions on new development in the Lake Tahoe Basin (Government Code Sections 66801 (et seq.)). The Tahoe Region as defined in the Compact does not include Alpine County (Government Code Section 66801, Article IIa). There is nothing in the Compact that even remotely suggests that TRPA's authority extends to the use of facilities in Alpine County, an area clearly outside of the Lake Tahoe Region. The Sewage Initiative Ordinance sets water quality standards for Alpine County, not the Tahoe Region. As such, it does not affect or conflict with water quality standards established by TRPA.

Petitioners nonetheless assert that because the TRPA Compact allows TRPA to consult with local entities whose boundaries are contiguous to TRPA's, because local agencies are not precluded by the Compact from adopting their own standards, and because the TRPA Plan is supposed to include stricter local water quality standards established within the Tahoe Region, that somehow the Initiative Ordinance must control the Regional Board's action. We think not. Alpine County simply does not, under the TRPA Compact, have authority to require by Ordinance tertiary treatment levels within the Tahoe Region.

3. Contention: Petitioners apparently contend that provisions of the Porter-Cologne Water Quality Control Act require the Regional Board Order to conform to the local Ordinance.

Finding: Petitioners have cited Water Code Section 13002 and two Attorney General opinions in support of this position. These authorities do not support a conclusion that Regional Board's Order must conform to local law. Rather they indicate that the Porter-Cologne Water Quality Act does not preempt local agencies from taking independent actions which impose further conditions with respect to the discharge of waste. If such conditions are

established, the Regional Board need not enforce them or conform its orders thereto. To suggest otherwise is contrary to the plain meaning of Water Code Section 13002.

4. Contention: The Regional Board Order should have prohibited certain sites from receiving filtered secondary effluent.

Finding: Petitioners have raised a concern that certain sites originally scheduled to receive effluent for irrigation purposes are inappropriate because of such factors of unsuitability of soils and proximity to schools and wells.

Petitioners are correct that Water Code Section 13243 allows the Regional Board to specify, in waste discharge requirements, certain areas where the discharge of waste will not be permitted. However, contrary to petitioners' assertions, their concerns about the sites have been adequately addressed by the Regional Board. Disposal at the objectionable sites is no longer proposed by the District. Areas where disposal is authorized are specifically listed in the Order and do not include the objectionable sites. Disposal outside of the areas designated in the waste discharge requirements is not allowed and would be a violation of the Order.

5. Contention: Petitioners question several operational aspects of the District's plan:

a. Petitioners assert that the District does not have sufficient acreage for disposal of the sewage it will be transporting into Alpine County and that proposed rates of application of sewage to the land will result in runoff.

b. Petitioners contend that failure to line Harvey Place Reservoir could lead to adverse impacts on groundwater.

c. Petitioners feel the District should not be allowed to proceed until it has identified means for making up the losses of water that will occur at Indian Creek Reservoir when discharges of sewage to Indian Creek Reservoir are stopped.

Finding:

a. Our review of the record indicates that sufficient lands have been designated by the District for disposal of effluent and that proposed application rates are proper. If there is future expansion of the present plant capacity, future sites on some of the land areas can be expanded. The petitioners' concern that there are insufficient disposal lands apparently stems from their belief that the District's facilities will be disposing 7.5 mgd of effluent in Alpine County every day of the year. This is not the case. The 7.5 mgd limit in the waste discharge requirements is based on the maximum daily flow to the plant. Such peak flows occur only infrequently. The Regional Board's Order contains provisions to insure adequate capacity. These include a requirement for an annual report regarding the effluent capacity of each key element of the collection treatment, export and disposal system and a prohibition against the discharge of wastewater in Alpine County other than to designated storage and disposal areas.

b. Regarding the issue of lining the Reservoir, the waste discharge requirements require monitoring of groundwater at the base of Harvey Place Dam and that the District provide mitigation in the event of threatened contamination or pollution. We find that these provisions provide adequate protection of groundwater underlying the Reservoir.

c. Regarding makeup water for Indian Creek Reservoir, the Regional Board Order requires the District to maintain beneficial uses of Indian Creek. It would be unduly restrictive to require the District to obtain a firm substitute supply of water as a precondition to issuance of the waste discharge requirements.

6. Contention: Petitioners raise several California Environmental Quality Act (CEQA) issues:

a. Petitioners assert that the Regional Board's staff exercised bad faith in preparing environmental documents and that the environmental documentation is a sham.

b. Petitioners argue that new environmental information necessitates a reconsideration of environmental documents.

c. Petitioners contend that there have been substantial changes in the project which require a subsequent environmental report.

Finding:

a. The Regional Board did not prepare an environmental document in connection with the issuance of the waste discharge requirements since it was not the lead agency. The District was the lead agency and prepared environmental documents for the project including a Final Supplemental Environmental Impact Report (EIR), dated May 12, 1983. Petitioners did not challenge the EIR.

The only Regional Board environmental document related to this matter was prepared in connection with the Basin Plan Amendments for the Indian Creek watershed. Petitioners did not contest this document before the Regional Board when it was adopted. Neither did they appear before the State Board during the

approval process. Any current objections to the environmental document for the Basin Plan are now, at the least, untimely and will not be considered. The time to challenge the Basin Plan and any accompanying environmental documents has come and gone (Water Code Section 13330, Public Resources Code Section 21080.5(d)(2)(v), 14 Calif. Admin. Code, Section 15112(c)(3)).

b. Regarding petitioners' contention that new earthquake potential data should be considered, our review of the record indicates that such data is not new information and was considered by both the District and the Regional Board. Suffice it to say that the Harvey Place Dam has been designed for a maximum credible earthquake with a Richter magnitude of 7.5. Furthermore, the State of California, Division of Safety of Dams, must approve the design and issue a construction permit.

c. In response to petitioners' assertion that changes in the project necessitate further CEQA review, CEQA states that where an EIR has been prepared, no further or supplemental EIR is required by the lead agency unless, among other things, substantial changes are proposed in the project which will require major revisions in the EIR (Public Resources Code Section 21166a).

Petitioners assert that a major change in the project has occurred: the deletion of several of the sites that were to have accepted wastewater for irrigation.

Even disregarding the fact that it was the petitioners who had asked that these parcels not be used, we must conclude that there have been no substantial changes in the project. The District's environmental documents addressed impacts of discharges on all the lands permitted by the waste discharge requirements. The amount of disposal capability addressed exceeded

the flow limits in the Regional Board Order. We conclude, under the circumstances, that deletion of some of the lands is not a substantial change in the project.

III. CONCLUSIONS

1. The Regional Board Order is consistent with and in fact implements Water Code provisions requiring the export of sewage from the Tahoe Basin.

2. The TRPA Compact does not require the Regional Board to implement the Sewage Initiative Ordinance.

3. The Porter-Cologne Act does not require the Regional Board to implement the Sewage Initiative Ordinance.

4. Since the Regional Board limited disposal to certain areas, there was no need to prohibit disposal in other areas.

5. The provisions of the Regional Board Order relating to adequacy of disposal acreage, protection against seepage from the Reservoir, and maintenance of Indian Creek Reservoirs beneficial uses are proper.

6. Petitioners' contentions that CEQA has not been complied with are without merit.

IV. ORDER

IT IS HEREBY ORDERED THAT the petition of Citizens For Sewage Quality Initiative in this matter is denied.

V. CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 21, 1984.

Aye: Carole A. Onorato
Warren D. Noteware
Kenneth W. Willis
Darlene E. Ruiz

No:

Absent:

Abstain:



Michael A. Campos
Executive Director

