

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
LAKE COMBIE ASSOCIATION, INC.)
For Review of Order No. 88-025)
of the California Regional Water)
Quality Control Board, Central)
Valley Region. Our File No. A-530.)

ORDER NO. WQ 89-4

BY THE BOARD:

Petitioner, the Lake Combie Association (Association) filed a timely petition to review Order No. 88-025 of the California Regional Water Quality Control Board, Central Valley Region (Regional Board). Order No. 88-025 prescribes waste discharge requirements for a sand and gravel operation in Combie Reservoir and the Bear River and a processing plant for the extracted material and a rock quarry in Placer County operated by the Joe Chevreaux Sand and Gravel Company (Discharger).

I. BACKGROUND

In 1926, the Nevada Irrigation District (NID) built Van Giesen Dam on the Bear River. The Dam originally stored approximately 5,500 acre-feet of water from the Bear River and

Wooley Creek. The impoundment, known as Combie Reservoir,¹ is located on the Placer County-Nevada County border. At its nominal high-water elevation of 1,600 feet above sea level, Combie Reservoir measures about 3/10 of a mile wide and 2-1/2 miles long. It has a surface area of about 276 acres. The beneficial uses of the Reservoir as set forth in the Water Quality Control Plan for Sacramento-San Joaquin River Basin (Basin Plan) include municipal and agricultural supply, freshwater fish habitat, wildlife habitat, groundwater recharge, power generation, recreation and aesthetic enjoyment.

Natural stream flows transport and deposit substantial gold rush era hydraulic mining debris in the water bodies of the Sierra Nevada foothills. Because its long, narrow shape gradually reduces the sediment transport energy of the Bear River, Combie Reservoir has accumulated substantial quantities of gravel, sand, and silt in fairly distinct zones. Heavier materials typically settle in the upstream reaches of Combie Reservoir while progressively finer material such as silt collects near Van Giesen Dam. To restore lost reservoir capacity, NID and Joe Chevreaux, Sr., executed a lease agreement in 1946 to annually remove up to 100,000 cubic yards of gravel,

¹ The record contains various references to the pool behind Van Giesen Dam as "Combie Reservoir," "Lake Combie," "the lake," etc. We will call the impoundment "Combie Reservoir" in accordance with customary engineering usage for such man-made facilities and with our License for Diversion and Use of Water for this impoundment (the Division of Water Rights' license number 10350 and permit number 5803).

sand, and silt from Combie Reservoir. In 1965, Rollins Reservoir was built upstream and reduced to an unknown amount the rate of sediment accumulation. Accumulated sediments now fill an approximate volume of Combie Reservoir of 2,000 acre feet (or about 3.23 million cubic yards).

In 1978, NID and the discharger executed a ten year contractual arrangement, with a 10 year renewal option, to continue removing material from Combie Reservoir. The Joe Chevreux Sand and Gravel Company uses a dragline to remove or "mine" approximately 75,000 to 100,000 cubic yards of gravel, sand, and silt from throughout Combie Reservoir and portions of the Bear River each year. Historically, since 1946 when sediment removal began, the discharger has operated throughout the entire reservoir as the water level permitted.

The discharger accumulates extracted materials within work areas and allows any captured water to drain. Containment dikes or levees separate the sediment removal work areas from the reservoir and the low-flow river channel. (That is, the discharger does not mine sediment in open water.) Periodically, the removal operation moves to new work areas as sediments are removed and the reservoir level changes. The discharger loads extracted materials into trucks at the active work areas and hauls them to a processing facility within the reservoir's boundary where the materials are then washed and classified.

An on-site well supplies the processing facility's wash water. The processing activities generate about one million gallons of wastewater per day which is now discharged into three settling and evaporation-percolation ponds, also at Chevreaux's facility. The discharger now recycles a portion of the total wastewater flow to the washing operations. The ponds, which are operated in series, and the processing facility are both within the reservoir boundary; these locations are dry except during extremely wet years. The finished products are stockpiled near the processing plant.

The Regional Board has prescribed requirements for this operation since 1962. In July 1985, the discharger submitted a revised report of waste discharge proposing a change in the operation. The discharger advised the Regional Board that a third settling pond would be built, polymers would be used, and a portion of the waste flow would be recycled. The Regional Board staff began updating the requirements. During the same period, the discharger submitted a "Reclamation Plan" to Placer County in accordance with the state Surface Mining and Reclamation Act ("SMRA", Public Resources Code 2770, et seq.). Placer County approved the plan in January 1986.

In January 1987, the discharger submitted a "Reclamation Plan" to Nevada County. Nevada County conditionally approved the plan and adopted a Mitigated Negative Declaration on

November 24, 1987. The mitigation measures included open-water dredging if regulatory agencies so permitted. Other permit approvals for the discharger's operation were received from the Department of Fish & Game, and the U.S. Army Corps of Engineers. These regulatory agencies rejected open-water dredging but allowed either a dredge or dragline within containment works.

The Regional Board held a hearing on January 24, 1988 and adopted the waste discharge requirements which are the subject of this petition.

II. CONTENTIONS AND FINDINGS

Petitioners make several contentions, relating both to substantive issues of water quality² and procedural issues involving the California Environmental Quality Act (CEQA). We turn first to the water quality concerns.

1. Contention: The discharger's activities release mercury, and thereby threaten a domestic water supply.

Finding: The available data and related information in the record do not demonstrate the existence or a threat of mercury pollution or contamination from the discharger's activities or its waste discharge to land.

² For a detailed technical analysis of the water quality contentions, see Staff Report by the Division of Water Quality; for the "Petition of the Lake Combie Association, Inc., to Review Order No. 88-025 of the Central Valley Region, File No. A-530".

Turning first to the Discharger's treatment operation, petitioners are concerned that the dischargers operation has caused increased levels of mercury or other heavy metals from chemicals used in that operation. The discharger apparently uses polymers as part of the treatment process for wastewater turbidity control. These polymers do not pose a water quality threat. Polymers are water soluble, widely used organic agents and do not contain mercury or arsenic. Further, the discharge is to ponds, and not the Combie Reservoir. There is one incident in the record where the discharger released wastewater from a pond to the reservoir, but that improper discharge was stopped on the same day. Other than that, we find no evidence that the discharger has discharged waste from the ponds to Combie Reservoir.

There is evidence in the record that there is mercury in the sediments of Combie Reservoir. The source of the mercury is unclear. For example, the highest levels were found at the mouth of Wooley Creek, the sampling location most distant from and the least likely to be influenced by the discharger's activity. Historically, mercury was used in the Sierra Nevada and its foothills during the Gold Rush. Since these sediments are the residual debris from historic gold mining, this is the probable source of mercury. The natural forms of mercury are found in the Coastal Range but are geologically unlikely in the Sierra Nevada. Mercury is relatively insoluble in water.

While mechanical dredging of sediments that contain mercury may slightly increase mercury concentrations in a small zone in the water around the mechanical device, nearly all of the resuspended mercury will likely be redistributed by settling. The U.S. Environmental Protection Agency (EPA) reported that less than one percent of the increased amount may remain waterborne.³ Similarly, hydraulic dredging may further reduce the resuspended amount, but the dredge spoils would contain more water.

The Regional Board has taken a number of samples of sediments. While there are some discrepancies between the results, in part due to different laboratory analyses, we find that the Regional Board correctly concluded that the discharger's operation did not affect mercury levels in Combie Reservoir.

The Basin Plan's numeric water quality objective for mercury for all inland surface water including Combie Reservoir is 0.002 milligrams/liter (Mg/l) based upon the Title 23 California Code of Regulations § 64403. EPA has established the same maximum contaminant level (MCL) of mercury in drinking water of 0.002 Mg/l.

The file record does contain an analysis of Combie Reservoir water which one may compare with EPA's drinking water MCL. A laboratory reported to a resident that the mercury concentration in his water sample was less than 0.0002 mg/l.

³ George Feick, Edward E. Johanson, Donald S. Yeaple, et al., Control of Mercury Contamination in Freshwater Sediments, October 1972, page 2 (prepared by EPA's Office in Research and Monitoring and labeled as document number "EPA-R2-72-077").

Such results signify that current analytical techniques cannot detect the mercury concentration. Although the record's numeric water column data may be scant, the water and sediment data collectively do not indicate a water quality condition which poses a threat to domestic or municipal use.

Additionally, we note that NID carefully and routinely monitors the water quality of Combie Reservoir. The water regularly meets all of the applicable standards.

2. Contention: The discharger's waste is improperly classified and the operation is not conducted pursuant to State Board regulations.

Finding: The Regional Board correctly determined that the mining waste is nonhazardous and classified it as "Group C" pursuant to § 2571 of our mining waste regulations (Title 23 California Code of Regulations (CCR), Subchapter 15, Article 7). To determine if a mining waste is hazardous, our regulations look to the "hazardous" definitions of the Department of Health Services in Title 22 CCR 66300. For mercury to be considered hazardous, a solid sample (such as the sediment samples taken of the discharger's waste) must exceed 20 mg/kg (approximately, 20 parts per million (ppm)). The mercury level for the sediment from the discharger's primary pond ranged (depending on the particular laboratory) from approximately 0.24 ppm to 1.08 ppm. As the waste is below the applicable levels, it does not constitute a "Group A" waste.

Additionally, the waste does not qualify as a "Group B" waste under our definition, as it is neither hazardous nor soluble. The waste therefore, is properly classified as "Group C" pursuant to § 2571.

The containment facilities prescribed by the Regional Board are adequate to protect water quality. Our review of the record leads us to conclude that the settling ponds have sufficient capacity and will be adequately protected from storms.

The dredging operation itself is required to be conducted so that all dredging and dragline work areas are isolated from the Reservoir and the Bear River so that turbidity is not increased. To do so, the discharger has built earthen dikes between the work areas and the reservoir and river channel. Isolating work areas is also necessary to comply with the Streambed Alteration Agreement between the discharger and the Department of Fish & Game for protection of fish and wildlife. The waste discharge requirements require that the discharger build, operate and remove any isolation levees so that the levees do not erode or slough. Accordingly, we find that the wastewater and mining activity containment works as specified in the waste discharge requirements adequately prevent inundation, erosion or sedimentation and satisfactorily assures protection of water quality and beneficial uses.

3. Contention: The Regional Board failed to comply with the California Environmental Quality Act (CEQA).

Specifically, the Regional Board should have assumed lead agency responsibility.

Finding: As discussed previously, the discharger has been extracting sands and gravel from Combie Reservoir since 1946. The Regional Board has regulated the operation with waste discharge requirements since 1962. Pursuant to the requirements of SMRA, the discharger submitted "Reclamation Plans" to both Placer and Nevada Counties. Placer County approved the Plan in January 1986. Nevada County approved the Plan together with a Mitigated Negative Declaration on November 24, 1987.

When the Regional Board adopted waste discharge requirements for the project on January 29, 1988, it made two findings concerning CEQA. In Finding 14, referring to the sand and gravel recovery operation, the Regional Board referred to the Nevada County negative declaration and concurred with the County that "there is no substantial evidence that the project, as revised will have a significant impact on water quality." In Finding 15, referring to the quarry operation, the Regional Board found that there would be no significant changes, and to the extent the project goes beyond the Negative Declaration, it was exempt from CEQA pursuant to Section 15301, Title 14 CCR (relating to existing facilities). Since petitioner's contentions relate to the project at Combie Reservoir, we will not discuss the environmental documents relating to the quarry.

We find that the Regional Board's findings are proper. We base this finding on several factors:

1. The sand and gravel mining extraction activity in the Reservoir appears to be an on-going project and thus exempt from CEQA. As noted in the record, the mining/extraction has been continuous since 1946. Both Counties recognized this fact and chose to treat the mining extraction activity as having received a vested right. There is a statutory exemption from CEQA for an "ongoing project" (Section 15261(b); Title 14 CCR). Where a private project has received approval of a permit, license or other entitlement for use before April 15, 1973, later approvals ordinarily are exempt from CEQA.

A project is subject to CEQA only if the approval or approvals after April 5, 1973 involve a greater degree of responsibility or control over the project as a whole than did the approvals prior to April 5, 1973. In this case, the Regional Board continued to exercise the same degree of responsibility.

As we recently held in the matter of the Petition of Coalition of West Covina Homeowner's Associations, Order No. 88-5, when a Regional Board's approval does not involve a greater degree of responsibility for the project than before, CEQA is not triggered. In that Order, we reviewed a situation where a landfill had been regulated by the Regional Board since 1963. The Regional Board renewed waste discharge requirements, and allowed expansion into a previously permitted, but unused area. We found the project to be an ongoing project, noting that the

Regional Board has more limited responsibility than a local government and focuses on protection of water quality. We further found that in issuing the updated waste discharge requirements the Regional Board exercised no greater responsibility for the project than before. We find the instant situation similarly does not trigger CEQA, noting further that all previously permitted areas were used.

While the Regional Board did not explicitly rely on the ongoing project exemption, it appears to us to be appropriate in this case relating to the mining/extraction project. The project has been ongoing for some 40 years and the Regional Board in revising waste discharge requirements is simply exercising its responsibility for the protection of water quality in accordance with the more detailed requirements of regulations in effect at this time.⁴

Petitioners assert that Lewis v. Seventeenth District Agricultural Association (1985) 165 Cal.App.3d. 826, 211 Cal.Rptr. 884 applies. In that case, the court determined that auto racing at a county fairground immediately adjacent to a

⁴ In this case, both the 1962, 1974 and 1978 Regional Board waste discharge requirements covered gravel extraction in the whole of the Reservoir. Testimony in the record indicates that the discharger historically has worked throughout the Reservoir. Our finding that CEQA is not triggered is consistent with the holding of Committee for a Progressive Gilroy v. State Water Resources Control Board (1987) 192 Cal.App.3d 847, 237 Cal.Rptr. 723. The Court held that: "The reestablishment of discharge requirements within previously approved levels is merely a separate governmental reapproval of the original project and does not itself constitute a new project under CEQA." Id at 864, 237 Cal. Rptr. at 733.

residential area is not categorically exempt from CEQA. While the track had been in place since 1958, the facility was modified in 1973. Plaintiffs sued the district for entering into a new racing contract asserting improper reliance on a categorical exemption. The court determined the defendant improperly applied a categorical exemption. We note several differences between that case and the instant appeal: 1) We are not relying on a categorical exemption for gatherings but rather note the statutory "ongoing project" nature of the activity; 2) The court relied on a change in the operation of the track, with the 1973 track modification. Here, the record clearly shows the mining has been similarly conducted since 1946; and 3) The plaintiffs filed a timely challenge to the lead agency's CEQA determination, whereas here there was no such timely challenge.

2. The Regional Board did not have the authority to become the lead agency.

An environmental document was prepared by Nevada County. However, the document was technically not for the mining activity, but rather the reclamation plan. This appears to be a matter of semantics. The SMRA requires reclamation plans for all mining activities. Normally, reclamation would involve restoring a mined site to a usable condition "which is readily adaptable for alternative land uses and create no danger to public health or safety" (Public Resources Code §2733). In this case, the mining activity is extracting material which continues to be transported into Combie Reservoir because of historical hydraulic

gold mining techniques. Under normal circumstances, Combie Reservoir and the Bear River would not have a built up of these sands and gravels in the amounts now occurring. In this case, the mining/extraction and the reclamation activity happen to be the same thing. In order to "reclaim" the Reservoir, the sand and gravel material needs to be removed, which is occurring with the mining/extraction process. Thus, the reclamation is the mining.

Nevada County approved the reclamation plan and the accompanying negative declaration in November 1987. No challenges to the negative declaration were filed in court. The negative declaration is thus conclusively presumed to be adequate for use of the Regional Board as a responsible agency pursuant to § 15231 (Title 14 CCR) unless a subsequent EIR or negative declaration is required under § 15162 (Title 14 CCR).

Section 15162 provides only three circumstances as set forth below in which a subsequent environmental document need be prepared. None of these circumstances are present here:

1. Changes are proposed in the project. No changes have been proposed.
2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken. There is no evidence in the record of any substantial change in the circumstances which occurred between the County adoption in late November 1987, and the Regional Board action approximately two months later.

3. New information becomes available which was not known and could not have been known at the time the negative declaration was adopted. Likewise, we see no evidence in the record of any new information which was not known at the time of the adoption of the negative declaration.

Thus, since a subsequent environmental document could not be required, the Regional Board appropriately accepted the Nevada County negative declaration. The Regional Board could not have assumed the lead agency role. As a responsible agency, the Regional Board concurred with the negative declarations and the time period for objections has, in any event, long since passed (Section 15096(e), Title 20 (4 CCR)).

Finally, petitioners urge the consideration of a June 14, 1988 letter from the Nevada County Board of Supervisors and comments at the workshop stating that the County never reviewed the entire mining project when it approved the reclamation project. When Nevada County adopted the Negative Declaration in November 1987, the project clearly was defined to include both reclamation and mining, since reclamation was to be achieved by mining. Since that time, representatives of Nevada County have stated the document only was intended to cover reclamation activities, as the county did not have jurisdiction over the mining itself. In response we note that we must rely on the Negative Declaration itself as written.

In any event, we find that letter and comments not to be dispositive. Since the mining activity is an ongoing project,

it does not really matter whether Nevada County considered it separately as part of the reclamation plan.

III. SUMMARY AND CONCLUSION

1. The record confirms that neither the discharger's "mining" activity nor its waste discharge to land has polluted or threatens to pollute Combie Reservoir, the Bear River, or any ground waters.

2. Mercury exists at undetectable and non-hazardous amounts in the surface water and sediments of Combie Reservoir, respectively. Neither the discharger's sediment removal activity nor its waste discharge has been shown to affect mercury levels in Combie Reservoir.

3. The Regional Board correctly classified the discharger's waste as "Group C" and specified adequate and necessary containment works pursuant to the State Board's mining waste management regulations.

4. The Regional Board was not required to prepare any additional environmental documents pursuant to CEQA.

IV. ORDER

IT IS HEREBY ORDERED THAT the petition is denied.

CERTIFICATION

The undersigned, Administrative Assistant to the 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 April 5, 1989.

AYE: W. Don Maughan
Edwin H. Finster
Danny Walsh

NO: Darlene E. Ruiz

ABSENT: Eliseo M. Samaniego

ABSTAIN: None


Maureen Marche
Administrative Assistant
to the Board

