

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petitions for Review
of Order No. 6-71-27 of the California
Regional Water Quality Control Board,
Lahontan Region, by the North Tahoe and
Tahoe City Public Utility Districts
and Dollar Cove Corporation

Order No. 71-30

Petitions requesting a stay, review and hearing of Order No. 6-71-27 adopted on August 12, 1971, by the California Regional Water Quality Control Board, Lahontan Region, have been received by the State Water Resources Control Board as follows:

Tahoe City Public Utility District	-- August 30, 1971
North Tahoe Public Utility District	-- September 7, 1971
Dollar Cove Corporation	-- September 13, 1971

The State Board, having reviewed the petitions and records of the regional board, finds:

1. The California Regional Water Quality Control Board, Lahontan Region, after notice to all affected persons, held a hearing on August 12, 1971, in Tahoe City, California, to receive evidence concerning alleged violations and threatened violations of waste discharge requirements contained in board Resolution No. 68-5. After considering testimony from all persons, the board adopted Order No. 6-71-27 requiring the North Tahoe and Tahoe City Public Utility Districts to cease and desist a threatened violation of waste discharge requirements.

The board included in the order the following provision with respect to further connections to the sewage disposal system:

"Additional connections to the sewage disposal system should not be made except those which are presently existing and occupied and/or have existing valid building permit and allocation for sewer connection from either North Tahoe Public Utility District or Tahoe City Public Utility District."

2. The petition of Tahoe City Public Utility District has been withdrawn.

3. The North Tahoe Public Utility District filed an amended petition on September 28, 1971.

4. The grounds alleged by the petitioners and the board comments are as follows:

a. The North Tahoe Public Utility District alleges that the regional board failed to follow proper procedures in adopting Order No. 6-71-27 resulting in an unfair hearing.

The regional board after notice to the public utility districts and other affected persons, including notice published in the local newspapers, held a public hearing at which the districts appeared and offered testimony. Testimony of the staff was given under oath and the districts were given the opportunity to cross-examine all witnesses. The original staff report, which had been distributed to the district contained certain minor factual errors and for that reason was not used in the proceedings. However, the testimony given orally did not differ materially with that previously distributed and the district was not prejudiced

by withdrawal of the staff report. The procedures followed were proper and the hearing was fair.

b. Both petitioners allege that the findings in Order No. 6-71-27 are not supported by the evidence before the regional board. North Tahoe Public Utility District alleges that findings (3), (4), (5), (6), (8) and (9) were improper. Dollar Cove Corporation alleges that findings (3), (6), (7), (8) and (9) were improper.

Finding (3) states

"... Inspections by board staff and others have revealed that the dischargers have not complied fully with requirement number 2 and that the threat of additional violations exists."

This finding is supported in the record by staff testimony that they had observed previous violations of waste discharge requirements. There was also evidence that the anticipated flows to the disposal area would be greater than the design capacity and that the dischargers had not adequately constructed disposal facilities in the past. Based upon this evidence the staff was of the opinion that a threatened violation of waste discharge exists.

Finding (4) states

"... The dischargers were notified of the violations of requirement number 2 and were requested to take immediate action to eliminate the violations and to prevent further violations."

Finding (4) is supported by evidence from the files of the regional board that the districts were notified of past deficiencies and violations.

Finding (5) states

"... On August 12, 1971, at 9:30 a.m., in Tahoe City, after due notice to the dischargers and all other affected persons, the regional board conducted a public hearing at which the discharger appeared and evidence was received concerning the discharge."

Finding (5) is supported from the records of the regional board and as previously stated in 4(a) above.

Finding (6) states

"... At the hearing plans and specifications for an alternate disposal site was presented by the discharger, although the capacity of this area has not been completely determined."

Finding (6) is supported from the testimony at the hearing regarding the capacity of Section 35. This alternate disposal area was presented for the first time at the hearing and superseded the previous proposal of Section 27. The regional and state board staff did not support the conclusions of the discharger's witnesses. The board could not adequately evaluate the future capacity of this area from the limited information available at the hearing.

Finding (7) states

"... The discharger has violated and is threatening to violate the requirement listed in (2) above."

Finding (7) was made by the board after hearing all of the evidence presented at the hearing. It expresses the board's conclusion, based upon the staff inspections and opinions as expressed in finding (3), that further violations of waste

discharge requirements might occur. The board was not required to rely on testimony presented by the discharger that repairs and construction would result in future compliance with waste discharge requirements.

Finding (8) states

"... Additional connections are anticipated to the sewer system which will increase the volume of waste discharge above the capacity of the present disposal site at the Cinder Cone."

Finding (8) is supported by evidence before the board that the anticipated volume of waste would exceed the capacity of the Cinder Cone. Any additional connections to the sewer system would provide further waste loads in excess of the designed capacity.

Finding (9) states

"... Additional connections will further unreasonably cause threats of violations of waste discharge requirement number 2."

Finding (9) is supported by the evidence that additional volumes of waste would exceed the capacity of the disposal area, and that this excess would result in a threatened violation of requirements by overflow from the disposal area.

c. Further allegations of Dollar Cove Corporation along with the board's comments are:

(1) The regional board failed to consider Water Code Sections 13263 and 13241 in issuing the order.

Sections 13263 and 13241 are not relevant in the consideration of a violation or threatened violation of previously prescribed waste discharge requirements.

Section 13263 concerns the factors to be considered in adopting waste discharge requirements. Section 13241 contains factors to be considered in adopting water quality objectives in a water quality control plan.

(2) The regional board's order will have the effect of preventing the district from constructing and renovating the disposal facilities and will prevent compliance with Water Code Section 13951.

The regional board considered evidence of the discharger's construction and renovation of the disposal area. The record is silent on the inability to complete this program should an order be issued. The board heard testimony that certain time schedules would be met to complete construction, but concluded upon sufficient evidence that the threatened violation would not be abated.

The issue of compliance with Water Code Section 13951 was not relevant at this hearing. The districts admitted that numerous dwellings would be unable to connect to the sewerage facilities as they were presently planned regardless of the action of the regional board.

5. The regional board's action in adopting Order No. 6-71-27 was appropriate and proper.

IT IS HEREBY ORDERED that the petitions of North Tahoe Public Utility District and Dollar Cove Corporation for review of the action of the California Regional Water Quality Control Board, Lahontan Region, in adopting Order No. 6-71-27 be denied.

Adopted as the order of the State Water Resources Control Board.

Dated: October 13, 1971

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

W. W. ADAMS
W. W. Adams, Member