

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
Squaw Valley Ski Corporation for )  
Review of Order No. 6-76-59 and )  
Resolution No. 76-9, California )  
Regional Water Quality Control )  
Board, Lahontan Region. A-140 )

Order No. WQ 77-5

BY THE BOARD:

On May 13, 1976, the California Regional Water Quality Control Board, Lahontan Region (Regional Board) adopted Order No. 6-76-59 and Resolution No. 76-9. Order No. 6-76-59 was a cease and desist order adopted pursuant to the authority of Water Code Section 13301. This order generally required Squaw Valley Ski Corporation (petitioner) to cease and desist from discharging water in violation of applicable waste discharge requirements and certain prohibitions contained in the Water Quality Control Plan for the North Lahontan Basin (hereafter referred to as the Lahontan Water Quality Control Plan). Resolution No. 76-9 requests the Attorney General for the State of California to take any and all action deemed necessary by virtue of alleged violations of requirements, laws, and prior Regional Board orders.

On June 2, 1976, petitioner filed its petition requesting that the State Water Resources Control Board (State Board) review the aforementioned action of the Regional Board. On June 10, 1976, the petitioner was advised that its petition was defective and allowed until July 5, 1976, to file an amended petition. An amended petition was timely filed under date of July 1, 1976.

As more fully discussed hereafter, petitioner contends that the aforementioned action of the Regional Board was inappropriate and improper for 18 specified reasons. Petitioner requested, in substance, that Order No. 6-76-59 and Resolution No. 76-9 be stayed, that the State Board conduct an independent hearing on the issues involved, and that Order No. 6-76-59 and Resolution No. 76-9 be set aside by the State Board.

On August 19, 1976, the State Board found that petitioner had raised issues appropriate for review.<sup>1</sup> Petitioner withdrew its request for stay. Petitioner was subsequently advised that a hearing would not be held by the State Board, and that its petition would be reviewed on the existing record. Our consideration of the petition follows.

#### I. BACKGROUND

A. The Area. The area known as Squaw Valley is located approximately seven miles northwest of Lake Tahoe. The east-west valley is approximately one and one-half miles long and varies in width from approximately 1,500 feet at its widest point to a narrow channel located at the easterly end of the valley.

The Squaw Valley ski area is located in the Sierra-Nevada mountains which border the western extremity of the valley.

Squaw Creek provides the major drainage for the area. The Creek originates within the ski area proper and divides into a north fork (frequently referred to as Shirley Creek) and a south fork. The two forks are fed by numerous drainages which carry runoff from various portions of the ski area. The two forks

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1. See State Board Order No. WQ 76-14.

emerge at the base of the ski area, form a confluence, and evolve into the main channel of Squaw Creek. Squaw Creek then meanders through Squaw Valley for approximately one and one-half miles to a confluence with the Truckee River.

B. The Petitioner. Petitioner, aka Squaw Valley Development Corporation and Squaw Valley U.S.A., is a Nevada corporation authorized to do business in California and operates the ski facilities at Squaw Valley.

C. Waste Discharge Requirements. The Regional Board adopted waste discharge requirements for petitioner on March 27, 1975, in Order No. 6-75-38. Insofar as relevant to this review, Order No. 6-75-38 contained the following requirements:

"A. GENERAL REQUIREMENTS

"1. Discharge from the Squaw Valley Ski Project Areas shall not cause pollution.

"2. Discharge from the Squaw Valley Ski Project Areas shall not cause a nuisance."

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"4. Discharge from the Squaw Valley Ski Project Areas shall not contain substances in concentrations individually, collectively, or cumulatively toxic, harmful or deleterious to humans, animals, birds, or aquatic biota, including but not limited to those substances specified in the California State Drinking Water Standards.

- "5. The discharge of treated or untreated domestic sewage, industrial waste, garbage or other solid wastes, or any other deleterious material to the surface waters of the Truckee River Basin is prohibited.
- "6. The discharge of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the Truckee River or any tributary thereto is prohibited."

"B. SPECIFIC REQUIREMENTS

- "1. Infiltration and drainage collection or retention facilities shall be maintained to prevent transportation of waste from construction areas.
- "2. Drainage and surface flows from construction areas shall be controlled so as not to cause downstream erosion.
- "3. All requirements herein shall pertain to all construction and erosion control activities, either individually or collectively, undertaken by Squaw Valley USA within the boundaries of the Squaw Valley Ski Project Areas.
- "4. The discharger shall comply with the erosion control and siltation control measures specified in the Squaw Valley Ski Complex Erosion Control Report submitted with the report of waste discharge."

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"6. During construction, temporary dikes or similar facilities shall be constructed downgradient from disturbed areas to prevent the discharge of soil, sand, silt, clay, and other organic and earthen materials from the site.

"7. There shall be no modification of existing drainage patterns.

"8. All surface flows generated from within the project areas which are collected and discharged to tributaries of Squaw Creek shall not contain constituent levels in excess of the following limits:

<u>"Constituent</u>	<u>Units</u>	<u>Maximum</u>
"Turbidity	JTU	20.0
"Suspended Sediment	mg/l	80.0"

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"11. Water collected and discharged to tributaries of Squaw Creek shall be treated if necessary to conform to the water quality limitations set forth in No. 8 above."

D. Prohibitions. The Regional Board adopted the Lahontan Water Quality Control Plan on June 26, 1975.<sup>2</sup> This plan contains the following prohibitions:

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2. See Page I-5-68 of the Lahontan Water Quality Control Plan. This water quality control plan was approved by the State Board on July 17, 1975, and became effective on that date. See Water Code Section 13244.

"4a. The discharge of treated or untreated domestic sewage, industrial waste, garbage or other solid wastes, or any other deleterious material to the surface waters of the Lake Tahoe Basin or Truckee River Basin is prohibited.

"4b. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the surface waters of the Lake Tahoe Basin or Truckee River Basin is prohibited."

"4c. The discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River is prohibited.

"4d. The threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials, due to the placement of said materials

below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River is prohibited."

E. Proceedings Prior to Hearing. The proceedings in this matter, just to this point in time, have already involved the most prolonged and complicated enforcement action undertaken by a Regional Board pursuant to the Porter-Cologne Water Quality Control Act. (Water Code Section 13000 et. seq.) Because of the nature of the objections raised by the petitioner, it is necessary to outline these proceedings in some detail.

On October 22, 1975, after receiving complaints that Squaw Creek was being polluted, and after staff investigation, the Regional Board issued a Notice of Public Hearing to petitioner advising petitioner that a hearing would be held by a panel of the Regional Board on November 12, 1975, to consider enforcement action against petitioner because of alleged violations of waste discharge requirements and prohibitions. Also, on October 22, 1975, the Regional Board, through its Executive Officer, issued Cleanup and Abatement Order No. 75-15 to petitioner, generally requiring that petitioner refrain from construction activities which would increase violations, clean up the results of prior violations, and develop an erosion control plan and implementation plan.

On October 24, 1975, petitioner's counsel corresponded with the Regional Board requesting, among other things, copies of material or testimony to be presented at the hearing and a continuance of the hearing date due to an alleged calendar conflict.<sup>3</sup> On

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3. See Exhibit A attached.

October 30, 1975, the Regional Board replied that, while they would like to accommodate the request for a continuance, they were unable to do so because of the number of those interested persons who would be involved in the hearing and who had planned for the date and time involved.<sup>4</sup> The actual staff report for the hearing was still in the course of preparation and was not available until November 11, 1975, at which time it was supplied to counsel for the petitioner.<sup>5</sup> The staff report was extensive, and petitioner again requested a continuance of the hearing date of both the Regional Board Executive Officer and the chairperson. The requested continuance was again denied.

Petitioner thereupon filed a Petition for Writ of Prohibition requesting that the Regional Board be prohibited from conducting the hearing scheduled for November 12, 1976.<sup>6</sup> The petition for writ was based primarily on contentions that the charges against petitioner were not sufficiently specific and that petitioner had not been allowed sufficient time to prepare a defense. Based upon affidavits, the Superior Court of El Dorado County issued an Alternative Writ of Prohibition restraining the holding of the hearing scheduled for November 12, 1975, and setting a return date of December 5, 1975 for further court hearing.

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4. See Exhibit B attached.

5. It is, of course, customary for the staff of the Regional Board to prepare a staff report in connection with a cease and desist hearing. The staff report is ordinarily not finalized until shortly prior to the hearing, and consequently is not available until shortly prior to the hearing. Upon request of any interested party, the staff report is provided when available. The actual Regional Board files are, of course, open to inspection at any and all reasonable times, and petitioner was so advised in the Notice of Hearing of October 22, 1975.

6. Action No. 26333, Superior Court, County of El Dorado.



Subsequently, the petitioner and the Regional Board, in conjunction with the Office of the Attorney General, agreed upon a hearing date of December 17, 1975, and the Alternative Writ was dismissed without prejudice pursuant to stipulation of the parties.

The Regional Board thereafter, on December 3, 1975, issued its second Notice of Public Hearing in this matter, confirming the December 17th hearing date previously agreed upon.

On December 15, 1975, petitioner again filed a petition for Writ of Prohibition with the El Dorado County Superior Court.<sup>7</sup> This petition was primarily based upon a contention that the members and staff of the Regional Board were "so biased, prejudiced and arbitrary" that petitioner could not receive a fair or impartial hearing, and that the proposed public hearing would be a sham. On the same day, the El Dorado Superior Court issued an Alternative Writ of Prohibition restraining the holding of the hearing scheduled for December 17, 1976, and setting a return date of December 26, 1976, for further hearing by the court.<sup>8</sup>

Petitioner subsequently noticed the taking of depositions of certain of the staff of Regional Board for January 20, 1976, and also certain members of the Regional Board for June 21, 1976, and also filed notice requiring the production of certain documents.

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7. Action No. 26515, Superior Court, County of El Dorado. The pleadings in this action indicate that this case was originally erroneously assigned No. 26333.

8. The facts upon which petitioner based its allegations of bias and prejudice will be discussed later in response to the contention of petitioner in connection with this review and consequently will not be detailed here.

The Attorney General's Office, on behalf of the Regional Board, filed a Motion to Quash the Alternative Writ of Prohibition and to Deny the Petition for Writ. The Attorney General's Office also filed a companion Motion to Quash Subpenas for the Taking of Depositions and Notice to Produce Documents. These motions were generally based upon contentions that the petitioner had failed to state a cause of action, failed to exhaust alternative and administrative remedies, and that the court did not have power to grant the relief or action sought by petitioner. On January 19, 1976, the El Dorado Superior Court granted the motion to quash the subpenas and the notice to produce documents. On January 23, 1976, the same court quashed the Alternative Writ of Prohibition. On February 6, 1976, the court entered formal judgment recalling and quashing the Alternative Writ of Prohibition and denying the request for Writ of Prohibition.

The Regional Board then, for the third time, rescheduled and renoticed the proposed public hearing related to petitioner. The Notice of Public Hearing was issued on March 1, 1976, and set the hearing for March 16, 1976. On March 10, 1976, petitioner obtained a stay order from the El Dorado Superior Court. This order stayed the prior judgment denying the writ of prohibition and also stayed further action of the Regional Board until April 4, 1976, or until further order of the court. The basis for this stay was that petitioner intended to file a petition for writ of mandamus questioning the judgment which had been entered by the El Dorado Superior Court, with petitioner contending that petitioner should not be required to proceed to hearing before the Regional Board when it was possible that mandate would be issued to prevent the proposed hearing.

Petitioner did file its petition for writ of mandamus with the California Court of Appeal, Third Appellate District.<sup>9</sup> On April 1, 1976, the petition for writ of mandamus was denied by the Court of Appeal.<sup>10</sup>

On April 19, 1976, counsel for petitioner advised the attorney for the Regional Board by letter that it was rumored that the hearing related to petitioner was going to be set for May 12, 1976, and that Mr. Breen, who was counsel for petitioner, had a prior commitment for that entire day and would not be available. Request was made that the Regional Board "reschedule its hearing for a mutually convenient date."<sup>11</sup> On April 26, 1976, the Regional Board, for the fourth time, noticed the public hearing related to petitioner. The hearing was scheduled for May 12, 1976, to commence at 7:00 p.m. By letter of April 27, 1976, Chief Counsel for the State Board responded to petitioner's counsel regarding the hearing date and time, advising petitioner's counsel of the reasons for the May 12th hearing date and advising that the hearing had been scheduled to commence at 7:00 p.m. so as not to interfere with Mr. Breen's schedule and that the hearing would proceed as scheduled.<sup>12</sup> On the same date, April 27, 1976, petitioner's counsel by letter acknowledged receipt of the Notice of Hearing, requested that the hearing date be changed, and indicated an

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9. Action No. 3 Civil 15844.

10. Petitioner subsequently requested and was denied review by the California Supreme Court.

11. See Exhibit C attached.

12. See Exhibit D attached.

objection to commencing the hearing at 7:00 p.m., indicating that the hearing would be lengthy.<sup>13</sup> On May 5, 1976, the petitioner was advised that the Regional Board was prepared to continue the hearing in the morning on May 13, 1976, if the time available on May 12th did not prove sufficient.<sup>14</sup>

The hearing did commence at 7:00 p.m. on May 12, 1976. By virtue of the nature of petitioner's contentions, the course of the hearing and the evidence involved therein will be discussed as part of consideration of the contentions.

F. Contentions of Petitioner. Petitioner's contentions are so numerous and so broadly stated that we deem it appropriate to quote from the petition itself. Petitioner states:

"Petitioner's (sic) allege that the Respondent Board's action was improper and inappropriate for the following reasons, although not necessarily limited thereto.

1. The Board Order 6-76-59 is not substantiated by the evidence.
2. The various charges and findings in said Board Order are repetitious and are not founded in law or fact.
3. The constituent levels stated in paragraph B, 8 of said Board Order are impossible to meet and as such, they are unreasonable.
4. The actual orders contained in said Board Order are not substantiated by the evidence and are impossible to comply with.

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13. See Exhibit E attached.

14. See Exhibit F attached.

5. The Respondent Board's Resolution 76-9 is not substantiated by the evidence, especially in connection with findings of negligence and intentional conduct.
6. Said Resolution is ambiguous and in conflict with the Board's Order 6-76-59.
7. That the hearing conducted by the Respondent Board lacked the rudiments of impartiality, fair play, justice or due process.
8. That the Respondent Board was not an impartial Board but was prejudiced against petitioner and had prejudged petitioner, which became more evident when the Board adopted its Board Order 6-76-59 and the Resolution No. 76-9 exactly as proposed by the staff members of the Respondent Board without any change whatsoever.
9. That the Respondent Board prejudicially relies upon the testimony of its own staff members to the exclusion of any other testimony which may be presented by the opposing party.
10. That petitioner's case was prejudiced by the Respondent Board members having access to all of the staff's files and reading the staff's reports, which include inflammatory, prejudicial and objectionable material, prior to the conduct of any hearing, which aids and compels a prejudgment of any one in the position of petitioner.

11. The Respondent Board's counsel's remarks, insinuations and innuendos and recommendations were improper, denied petitioner a fair and impartial hearing, constituted misconduct, and were intended to prejudice the Respondent Board against the petitioner, and constitutes grounds for a mishearing.
12. That the policies and procedures by which the Respondent Board conducts its hearings, is unconstitutional, in that it deprived petitioner of a fair and impartial hearing and violated its rights to due process under the law.
13. The Respondent Board abused its discretion in not granting a continuance of the hearing to a mutually convenient date for all parties concerned.
14. The Respondent Board abused its discretion in not continuing the hearing until at least 1:00 o'clock p.m. on May 13, 1976.
15. The Respondent Board deprived petitioner of due process and its right to cross examination of witnesses which it heard in the absence of petitioner and its counsel.
16. The testimony and the manner of testimony given by the Respondent Board's staff member, David Antonucci, was improper, highly prejudicial and calculated with intent to prejudice the minds of the members of the Respondent Board and no proper foundation was laid for any of his testimony or the photographs he displayed.

17. That there was no proper foundation laid for the introduction of Exhibits 2, 3 and 4 admitted into evidence and said exhibits were further objectionable as containing hearsay, conclusionary material, recommendations and inflammatory language.
18. That by reason of the arbitrary and capricious action of the Respondent Board, its staff members and its counsel, petitioner was deprived of any hearing whatsoever, in violation of petitioner's constitutional rights to due process, a fair and impartial hearing, and its right to cross examination."

By virtue of the voluminous and repetitive nature of these contentions, and the frequent general nature of their statement, we have carefully reviewed the statement of Points and Authorities supplied by the petitioner in an attempt to define with some degree of accuracy the actual issues which petitioner seeks to raise for our consideration. As nearly as we can determine, the petitioner's contentions amount to the following:

1. Order No. 6-76-59 and Resolution No. 76-9 are not supported by evidence or law. Generally included within this contention are following issues:

- (a) There was insufficient or lack of evidence to justify a finding of negligent or intentional misconduct.
- (b) That there was no proper foundation received for staff exhibits 2, 3, and 4.

- (c) Evidence offered by the staff was not the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (d) Earthen materials, such as silt, are not waste and do not lead to contamination or pollution.

2. That petitioner was deprived of due process and of a fair and impartial hearing before the Regional Board. Generally included within this contention are the following issues:

- (a) The petitioner should have been allowed to voir dire the members of the Regional Board prior to hearing to determine their bias and prejudice.
- (b) That the members of the Regional Board were in fact biased and prejudiced against the petitioner which became evident when the Regional Board adopted Order No. 6-76-59 and Resolution No. 76-9 exactly as proposed without any change whatever.
- (c) Petitioner should have been granted a continuance of the May 12, 1976, hearing date, and a continuance to 1:00 p.m. when the hearing carried over to May 13, 1976.
- (d) Due to failure to grant the continuance and subsequent proceedings, the petitioner was deprived of the right to cross-examine witnesses, to call witnesses and present evidence in its own behalf, and the Regional Board relied solely upon evidence of its own staff.



## II. CONTENTIONS AND FINDINGS

Those contentions which allege that Order No. 6-76-59 and Resolution No. 76-9 are not supported by evidence or law require some difference in consideration. The legal issue raised, i.e., that earthen materials such as silt are not waste or pollutants, and consequently not within the jurisdiction of the Regional Board, is completely devoid of merit and can be simply and concisely answered.

"Waste" is defined in the Porter-Cologne Water Quality Act<sup>15</sup> as including sewage and any/all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin or from any producing manufacturing, or processive operation of whatever nature...."<sup>16</sup>

This definition has uniformly been interpreted as including eroded earthen materials such as those involved in the construction activities of petitioner. (See 27 Ops.Cal.Atty.Gen. 182 which specifically holds that earth which erodes into waters of the State from logging operations is a waste; 16 Ops.Cal.Atty.Gen. 125, 130, 131, reaching the same conclusion.)

Secondly, the erosion involved in this case (which we will subsequently discuss in some detail) obviously affects surface waters of the United States, i.e., navigable waters of the

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15. Water Code, Division 7, commencing with Section 13000.

16 Water Code Section 13050.

United States insofar as that term is considered pursuant to the Federal Water Pollution Control Act as amended in 1972.<sup>17</sup> This Federal Act, and that portion of the Porter-Cologne Water Quality Control Act which implements it,<sup>18</sup> prohibit the discharge of pollutants without an appropriate permit.<sup>19</sup> The term "pollutant" specifically includes "solid waste", "rock, sand", cellar dirt and the like.<sup>20</sup> The contention that the Regional Board lacked jurisdiction over control of solid waste and its deposition into state waters or waters of the United States is clearly meritless.

The remaining contentions regarding the evidence, its admissibility, and its probative value require somewhat more discussion. Initially we summarize the evidence itself.

The admissibility of three exhibits has been questioned. Exhibit No. 2 constituted the files of the Regional Board pertaining to the Squaw Valley ski area, Squaw Valley U.S.A. (R. T., page 22). Exhibit No. 3 constituted a written resume of the staff report. (R.T., page 28). Exhibit No. 4 included

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17. P. L. 92-500, Section 502(7); 33 U.S.C.A. Section 1362. Under this Act, "navigable waters" means waters of the United States, which in turn has been construed by the Environmental Protection Agency to include generally all surface waters within the United States. See United States v. Holland, 6 E.R.C. 1388, where nonnavigable canals, were held to be waters of the United States within the meaning of this Federal Act.

18. Water Code, Division 7, Chapter 5.5, commencing with Section 13370.

19. Water Code Section 13376.

20. Water Code Section 13373; 33 U.S.C.A. Section 1362(6).

an addendum to the staff report. (R.T., page 29). In addition, petitioner objects to some 63 slides which were introduced by the staff of the Regional Board as a part of the staff presentation on the ground that no proper foundation was laid for this evidence.

In addition to the exhibits just described, and other exhibits, the evidence can be summarized as follows. Mr. Antonucci, a water quality control engineer and staff employee, testified that on October 16, 1975, as a result of a number of complaints, he and other staff members conducted an investigation of the Squaw Valley ski area. At that time, recently disturbed ski slopes were observed and were resulting in massive discharge of wastes, earth and solids into Squaw Creek. (R.T., pages 34-35).

On the following day, a follow-up investigation was conducted which confirmed the findings on the previous date. At that time, the manager of the operations was advised of the violations and an oral request to stop work and halt erosion violations was made. On the same day, a letter to the petitioner was prepared which noted the violations occurring, and which requested immediate cessation of work and institution of erosion control measures.<sup>21</sup> (R.T., pages 35-36). On October 22, 1975, the Regional Board Executive Officer issued Cleanup and Abatement Order No. 75-15 directing the petitioner to refrain from further grading and to take immediate control measures to prevent further erosion.<sup>22</sup> (R.T., page 36).

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21. See Exhibit G attached.

22. See Exhibit H attached.

Mr. Antonucci went on to point out that the major degradation had occurred in the South Fork of Squaw Creek, also known as Shirley Creek, Squaw Creek being a major tributary of the Truckee River. Squaw Creek itself has many beneficial uses, including agricultural supply, groundwater recharge, water and nonwater contact recreation, cold fish water habitat and wildlife habitat. The Truckee River has additional beneficial uses of municipal water supply and hydroelectric power generation. (R.T., pages 37-38).

The major problem occasioned by the activities of the petitioner was erosion from grading and clearing activities resulting in deposit of silt and sedimentation in the receiving water. These activities result in bottom deposits in the receiving waters, violated requirements and prohibitions governing the petitioner, and have far-reaching and harmful effects on the receiving waters. For example, as to aquatic life, it reduces light penetration, carries organic oxygen-consuming materials, smothers bottom insects which serve the food chain, destroys spawning beds for trout, and can cause abrasion injuries to fish and insect life. It reduces photosynthetic rates interfering with the food chain and is aesthetically unpleasing. (R.T., pages 38-40).

The nature of the work being done, and the detrimental effects flowing therefrom, including gross turbidity, was geographically presented to the Regional Board in a series of 63 slides. (R.T., pages 40-75). In addition to these slides, a

series of film clips were taken on October 29 and November 4, 1975, showing grading and road activities, lack of erosion control facilities, turbid flows from the construction site and stream conditions. (R.T., pages 79-87).

In response to questioning, Mr. Antonucci indicated that, in his professional judgment, the erosion problems could have been avoided by proper control measures, indicated some of the measures which could have been utilized, and indicated that, in any event, the activity of the petitioner in conducting grading activities at this late juncture of the year was highly conducive to erosion damage from such activities. (R. T., pages 87-97).

In addition, the Regional Board staff conducted daily sampling from October 16, 1975, to October 29, 1975, and intermittently thereafter. Samples were taken for turbidity and suspended sediment, analyzed and tabulated as a part of the staff report. One hundred ninety-six samples were taken. The samples indicated 70 violations. (R.T., pages 125-135). Mr. Antonucci further testified that, in his opinion, the violations involved were still continuing, (R.T., page 137), and that the petitioner had failed to file any report of waste discharge for its expanded grading activities. (R.T., page 141). In summary, Mr. Antonucci testified that, on the basis of facts observed by him, the petitioner had violated some 13 discharge requirements and prohibitions applicable to the petitioner. (R.T., page 147).

Staff also introduced an additional 16 slides taken from October 16, 1975, through November 5, 1975, showing muddy waters of Squaw Creek intermixing with the Truckee River, and the confluence of the North and South Forks of Squaw Creek, to show the continuing nature of the problem and the water quality degradation involved. (R.T., pages 147-153).

After the staff presentation, a witness for the petitioner was then taken out of order at the request of petitioner's counsel, a Mr. Walt Bemis. Mr. Bemis, testifying as an expert witness, was a licensed forester and a project manager for S.W.A. Group, an environmental planning and design firm. He had some considerable experience in preparation and drafting of erosion control plans. (R.T., pages 178-179). He had previously engaged in studies of the soils, geology and water quality in the Squaw Valley region in connection with reports for Mainline Corporation, Squaw Valley Ski Corporation and other clients. (R.T., page 180).

Sometime in November of 1975, Mr. Bemis was retained by the petitioner to begin an erosion control plan for the Squaw Valley ski area. (R.T., pages 180-181, 185). Interim draft plans were prepared, including a first draft on December 11, 1975. (R.T., page 189). The final plan was completed late in April of 1976. (R.T., page 185).

Mr. Bemis described the proposed plan in some detail for the Regional Board, and summarized his plan as follows:

"But in summary what we would do in all areas, all graded areas with exposed soil would be seeded and fertilized and designated areas as well and shrub plantings where necessary, wherever we feel that the continuing stabilization wouldn't be met with the grass seeding. The plantings will utilize a combination of Squaw Carpet, Manzanita, white-thorn, or sage and the seeding will be at the rate of thirty pounds per acre including ten pounds per acre of crested wheatgrass, fifteen pounds per acre of pubescent wheatgrass, and five pounds per acre of other grass and/or native brush and shrub species. A slow release fertilizer twenty parts nitrogen, ten parts of phosphorous, five parts of potassium at the rate of two-hundred-fifty pounds per acre is specified to be applied along with this. To aid in the success of the seeding and planting, straw will be generally applied to all areas but especially to slopes of ten percent or greater and will be punched into the soil where slopes permit. Where slopes exceed forty percent and the soil erosion potential is high, loose exposed soil and etc., a jute mesh will be stapled on to the surface for additional protection. Where whole grow or other alternate mesh type protective covers are agreed to -- I'm talking about the Water Quality Board, if they think that that is a better mesh for a particular slope or something like that, we will consider using the substitute. Tow ditches, erosion barriers, selective ditches -- excuse me -- energy dissipators, berms, culverts, road turnouts, erosion basin, rip rap will be constructed as noted on the map. Irrigation will be used where stream water is available and where it is necessary to stabilize and to initiate plant growth. That's the summary of the proposal." (R.T., pages 200-201).

Mr. Bemis also testified that, even if the erosion control plan were now to be implemented, it would be several years before violations would cease.

"Q. Based on your review and on your professional experience what would be your opinion as to the feasibility of the immediate implementation of those requirements in this area which is the subject to the alleged violations?

A. Well, I think that most of the things that we have talked about as per the example of Exhibit C could be implemented with a power to perceive this year

during a particular time that it would -- excuse me -- be effected before the winter storms would come. However, because of the nature of the restabilization from the plantings and a lot of the other stabilization that would need to occur, I wouldn't see the possibility of preventing the violation for the next several years. It's impossible in large storms and heavy rain storms that would or probably occur during this time to avoid the violations regardless of the work that's performed." (R.T., page 204).

Mr. Bemis also gave testimony on a number of other matters relevant to our review, including proper timing of construction and grading activities in the area, and the necessity and proper timing of erosion control measures in conjunction with such activities.

"Q. In that same light knowing what you know about the area and the extent and scope of the discharger's project would you consider timing to be a problem from the standpoint of grading at the time of the year that they were graded?

A. Yeah. I understand the question. I don't really know that the time that the grading started. Was that --

Q. Well, let's talk about the period of October for instance. Do you feel --

A. I would not recommend for an October grading." (R.T., page 211).

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"Q. I may have asked this question before and if I have I certainly apologize.

Had you been involved in this project at its inception would you have professionally recommended erosion control measures to the discharger?

A. Yes. I would have." (R.T., page 221).

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"Q. And a final question then just as a layman from my standpoint.



If you begin construction work of any type that involves excavation or the moving of earth, it is going to result in the necessity of some type of erosion controls. Is it advisable to correlate your erosion controls with the onset of your project?

A. Certainly." (R.T., pages 245-246).

Additional evidence regarding the issues involved was given by other governmental entities. Mr. Leroy Hitchcock, a registered sanitary engineer employed by the Placer County Health Department offered the following evidence:

"On Thursday, October 16, this office received complaints of muddy water in Squaw Creek. We found water in a muddy condition entering the Truckee River from Squaw Creek. We then checked the creek back, and determined the 'muddy' water was coming from the South Fork of Squaw Creek. (The water from Shirley Canyon appeared clear.) We then informed the Squaw Valley Ski Corporation offices that we were entering their property to investigate, and that we would inform them of our findings.

In the area above the abandoned lodge water supply dam, -- so you get an idea this was where slides fifty-two and fifty-three last night were shown; those are the slides from the precise point where we made this observation in the next paragraph -- we observed that there were two large caterpillar tractors cutting the north bank of the creek. One machine was cutting the bank, the other was pushing the material. We observed several pushes of earth into the creek. (The bank here are rather steep and from the work to the creek was approximately seventy-five to one hundred feet.) We also noticed that there was still a heavy flow of muddy water above this work, from the northern drainage at Cornice. (The southern fork was clean.)

"There was a conjunction as you saw also in the pictures where the southern most portion of the southern fork was running relatively clean water. We then traced it up to the northerly direction.

We then proceeded up the vicinity of the bottom of Headwall lift. Here we found a sea of mud that was barely passable in four-wheel drive. The way I had been told, if I got stuck there, I would have to push the car out. So it was very muddy and we were up to our axles in mud and rocks, whatever have you. There appeared to have been some additional excavation work in this area. We saw that

the entire area around the lift and the road above it had been disturbed. The road above Headwall had been widened with earth pushed into the swale. There was considerable flow of water over the disturbed earth in all areas. The road was so muddy that Squaw Valley Ski Corporation crews were cutting diversion trenches in an attempt to keep the road from washing out more than it already had. We went above the recent work area and found some areas where the undisturbed road was contributing mud, and we found areas where the water was clear of mud. It was our conclusion that the disturbed area around and above the Headwall lift was the major contribution of the mud and that the work around the dam allowed even more debris to be put into the water.

We took three samples, one was from a large drainage above the work at Headwall. It had a JTU reading, Jackson Turbidity Unit, reading of under 10. We took another sample near the western terminus of Cornice-1 at the bridge. It was 2,750 Jackson Turbidity Units. Finally, we took a sample at the County Bridge on Squaw Valley Lodge Road. It had a reading of 210 Jackson Turbidity Units. The equipment used was a HECH portable field laboratory, and the tests were performed by Mr. Hitchcock.

At approximately 4:00 p.m., we notified the Squaw Valley Ski Corporation office that we felt the work should be halted and corrective measures taken. We learned that the contractor, Mr. Hans Burkhart was solely in charge and only the secretary of the corporation was available to request action of. The Mountain manager, Mr. Dennis Hurt stated he had no control over the contractor, and Mr. Burkhart was nowhere to be found.

On October 17, Mr. Hitchcock accompanied Mr. Bruno Bellato of the Public Works, the Placer County Public Works Department, on an inspection of the area. The same conditions existed. Representatives from Lahontan Water Quality Control Board and Department of Fish and Game were also on the site.

On October 27th, at 3:00 p.m., Mr. Hitchcock obtained a water sample from Squaw Creek where it is crossed by the Squaw Valley Lodge Road. The sample showed 35 Jackson Turbidity Units, while the North Fork of Squaw Creek appeared clear. The Truckee River was observed to be cloudy from the junction of Squaw Creek to Big Chief.

It is our opinion that the construction work did cause or allow a considerable amount of material to be put into the water as far as its junction with the Truckee River to appear cloudy for several miles downstream."  
(R.T. (May 13, 1976), pages 27-30). (Emphasis Supplied).

Mr. Robert Haussler, an associate water quality biologist with Department of Fish and Game, provided the following report:

"On November 3rd, 1975, I and Lahontan Regional Board staff Environmental Specialist, Mr. Winchester, utilized electro-fishing equipment to sample the fish population of the North and South Forks of Squaw Creek just above their confluence at Squaw Valley.

I trust you all have an attached map.

The purpose of the work was to evaluate the present condition of Squaw Creek fishery.

The North Fork of the creek has remained unaffected by current siltation, while the South Fork contains major deposits of silt and sand. Both forks have been channelized in the sampled areas to accommodate Squaw Valley development.

Downstream from the confluence of the North and South Forks, Squaw Creek proper and the Truckee River have also been adversely affected by turbidity.

Previous records of the Department of Fish and Game establish that Squaw Creek (below Squaw Valley) and the Truckee River supported healthy populations of trout. The Truckee River supports approximately eighty-thousand angler-days of fishing use per year. These streams should be diligently protected from the sources of siltation and turbidity to ensure continued healthy and productive trout populations and recreation enjoyment. The electro-fishing data obtained on November 3rd, 1975 indicates that a viable trout fishery exists in both the North Fork and the South Fork of Squaw Creek, but there are distinct differences in the size of the population in the two streams.

The field data is in your hands for these two forks of the stream.

It should also be noted that while the North Fork of the stream had an abundance of aquatic insects of many species, only a sparse population of a single species (a Mayfly) could be found in the South Fork. Copies of the field report forms are attached to this statement. The aquatic insect life of the streams is an important source of food for fish populations in the Truckee River

as well as the Squaw Valley tributaries. Fish in the river derive much of their food from drift organisms contributed by feeder streams.

Capture of electro-shocked fish was difficult in the South Fork of Squaw Creek because of excessive turbidity. We are confident, however, that the percentage of capture was approximately the same in both forks of the stream.

The data indicates that there is a good population of fish in the North Fork whereas the South Fork has about one-half as many fish in terms of pounds per acre. The streams have approximately the same type of habitat but the presence of silt and sand covering the spawning gravels in the South Fork has had a distinctly adverse effect on its trout population. We recognize that this impact could have occurred over a period of years, and it is not entirely the direct result of this fall's stream degradation.

Silt from previous years has contributed to this problem, but this year's siltation has significantly affected the stream, and, in future years, will continue to do so. We estimate that once the source of pollution is stopped, full stream recovery from siltation may take as long as fifteen years if it occurs at all.

The adverse effects of silt and turbidity on aquatic life of streams is well known. Spawning gravels are damaged by the cementing effect of silt and sand and fish eggs are smothered because of the lack of water percolation through the gravel. Aquatic insects are smothered by silt and bombarded and/or displaced by rapidly moving sand particles. Turbidity and siltation does degrade a stream for both recreational and aesthetic uses.

The long-term adverse effect of silt on fish populations result from the reduction of available spawning, gravel, decreased survival of fish eggs and larvae, and elimination of aquatic insects which service a major source of food for fish. The fish population dwindles because of starvation and predation or disease resulting from poor condition.

The silt, sand, and associated turbidity are presently causing adverse aesthetic effects in the Squaw Creek Watershed and the Truckee River. Adverse biological effects are still occurring, but these effects are not as readily or immediately detectable. They must be measured over a period of months or years.

To minimize the stream degradation, measures must be taken to eliminate the silt and sand at its source. At this time of year, that is last November, the run-off from the

disturbed hillsides is almost at a minimum because of intermittent freezes. Next spring run-off from the melting snow will cause high flows capable of seriously increasing turbidity and the amount of settleable materials in the waters of Squaw Creek and the Truckee River. We believe that this must be prevented at all costs, and therefore request that immediate measures be taken at the earliest possible date to stabilize slopes and prevent silt and sand from entering the streams in the Squaw Creek Watershed.

The bed of the South Fork should be cleaned of silt and sand by means approved by the Board and the Department of Fish and Game. Furthermore, the original stream bed composition of gravel and rubble should be restored by placement of clean imported materials. Such work should not be initiated, however, until the disturbed soils on slopes and in the valley are properly stabilized." (R.T. (May 13, 1976), pages 44-46). (Emphasis Supplied).

In additional testimony, Mr. Haussler added:

"Q. ...Mr. Haussler, in the report you just submitted to the Board and read to the Board page two, next to the last paragraph, you state that silt from previous years has contributed to this problem but this year's siltation has significantly affected the stream.

My question to you would be whether in your professional opinion you are satisfied that the discharger is the primary cause of the problem.

A. Yes." (R.T. (May 13, 1976), pages 46-47).

At this point, we must repeat one further portion from the transcript of the proceedings before the Regional Board:

"MRS. SMITH: Further questions from the Board members?

MR. DANERI: I have one.

MRS. SMITH: Mr. Daneri?

MR. DANERI: I don't know if Mr. Bemis can answer it or not and it may not be relevant at this time.

If I'm correct -- maybe our staff will have to answer this -- but were waste discharge -- were waste discharge requirements supplied and issued for the project they are speaking about?

MR. ZIVE: (One of petitioner's counsels) I didn't hear you.

MR. DANERI: Pardon me?

MR. ZIVE: I didn't hear you.

MR. DANERI: Were siltation discharge requirements or discharge requirements applied for and issued for the project in question?

MR. ZIVE: No, sir.

MR. DANERI: Never were?

MR. ZIVE: No, sir.

MR. DANERI: That's all I have." (R.T., pages 235-236).  
(Parenthetical Note Added).

Several concerned citizens also gave direct testimony on their personal observations of the construction and grading activities at the Squaw Valley ski area and the effects of these activities on Squaw Creek and its environs. This testimony was largely repetitive of that already recited and will not be reiterated here.

Turning then to the questions raised by petitioner regarding the sufficiency of the evidence to support Regional Board Order No. 6-76-59 and Resolution No. 76-9, we find that an overwhelming quantity of clear and direct evidence demonstrating the following facts. On and presumably prior to October 16, 1975, the petitioner undertook construction and grading activities at its Squaw Valley ski area. These activities were knowingly, willfully and intentionally undertaken by the petitioner. They were undertaken without applying for or receiving waste discharge requirements required by law.<sup>23</sup>

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23. Water Code Sections 13260 and 13264.

They were undertaken without the preparation of an erosion control plan necessary for the protection of the Truckee River and its tributaries, although by the testimony of petitioner's own witness erosion control measures should have been taken. They were undertaken, or at least carried on, during an improper time of the year, when it must have been known that such activities would be likely to result in the problems and violations which subsequently resulted. They were carried on without retention facilities, dikes or similar facilities necessary to prevent the discharge of solid waste, soil and silt from the project site. There were, in fact, direct pushes of earth into Squaw Creek as a result of construction activities. Petitioner and its agents failed to halt activities when the violations were pointed out to them and failed to take action to abate the consequences of these activities.

As a result of the foregoing, there were gross and continuing violations of waste discharge requirements and prohibitions and prohibitions contained within the Lahontan Water Quality Control Plan. Large quantities of solid waste, soil and silt were deposited and caused to be deposited into Squaw Creek and the Truckee River creating conditions of nuisance and pollution.<sup>24</sup>

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24. "Pollution" simply means an alteration of the quality of the waters of the state to a degree which unreasonably affects these waters for beneficial uses, including recreation, esthetic enjoyment and preservation and enhancement of fish and other aquatic resources." Nuisance constitutes anything which is offensive to the senses, or an obstruction to the free use of property, which interferes with the comfortable enjoyment of property, affects any considerable number of persons even though the extent of annoyance or damage may be unequal and occurs during or as a result of disposal of wastes. [See Water Code Section 13050(f), (1) and (m).]

The concentrations and amounts of the improper discharge of these wastes were and will continue for an indeterminate time in the future to be harmful and toxic to aquatic life.

We will add one other comment at this time. Among its many contentions, petitioner contends that the constituent levels of its waste discharge requirements are "impossible to meet and as such, they are unreasonable." The record does not bear this out. Petitioner's own expert, Mr. Bemis, testified:

"Q. Now, your testimony was I believe that after the expiration of about five years (the erosion control plan) will result in less erosion than was occurring there before the initiation of the project?

A. In my opinion yes.

Q. And will this correct all the preexisting problems as well?

A. That's a pretty large categorical general statement. It will correct at least the majority of the obvious problems.

MR. ZIVE: Let me ask this question. Would it meet the waste discharge requirements?

A. Certainly." (R.T., page 243). (Emphasis and Parenthetical Note Added).

With respect to petitioner's complaints on the exhibits introduced before the Regional Board, Exhibit No. 2, constituted the files of the Regional Board related to the petitioner. These files are, of course, public documents open to the public and the petitioner at all times. Petitioner was so advised in the numerous notices of hearing served on it. These files are also, of course, governmental and business records kept and maintained in the ordinary course of business. We know of no judicial authority to sustain a proposition that an administrative agency may not officially take cognizance of its own records and files



as a part of its fulfillment of its statutory function, nor are we impressed by petitioner's contention that receipt of these records somehow prejudiced the defendant, particularly when all records were at all times subject to petitioner's review and analysis prior to the hearing.

Exhibits Nos. 3 and 4 comprise the written staff report of the Regional Board and an addendum thereto. We seriously question petitioner's attempt to classify these documents as hearsay, since they are again records prepared and maintained as a part of the regular business of the Regional Board and, in addition, are reports prepared by governmental employees in the normal course of their duties. Even if they are classified as hearsay, the Regional Board was not bound by the formal rules of evidence and hearsay, as such, is not inadmissible in administrative proceedings. While we recognize that the Regional Board could not rely upon hearsay alone as a basis for its determinations, there was direct testimonial evidence on all substantive matters covered by the report and the addendum. Again, considering all of the direct evidence introduced and the totality of the evidence, we fail to perceive how receipt of this evidence could have in any way prejudiced the petitioner.

Finally, with respect to the 63 slides which were received into the record, these slides were fully and completely identified as to the date and photographer and staff position of the photographer who took the photographs. (R.T. pages 104-111).<sup>25</sup> These were described for the Regional Board as to content

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25. There was one exception. The photographer for slide number 51 was not identified.

and there is no question raised that they accurately and fairly represent their content. They were used to pictorially present to the Regional Board the conditions and area being described by direct testimony. We believe that these exhibits were sufficiently identified to show the time, place and accuracy of that which they purported to represent, that they were properly received by the Regional Board, and that their receipt in no way prejudiced the petitioner.

Turning to the other contentions of the petitioner, petitioner did not have a right to voir dire the members of the Regional Board prior to the hearing. Petitioner does not have the legal right to inquire into the mental processes of the Regional Board members. There is, first of all, a legal presumption that the official duties of the Regional Board members will be regularly performed. (Evidence Code Section 664; Cooper v. State Board of Public Health, 102 Cal.App.2d 93). Secondly, a recent California case, specifically held it to be improper to inquire into the mental processes by which an agency and its members arrive at their decision. Interestingly enough, this result was reached in a situation where the agency's staff advised and assisted the agency members, and against the argument that the agency's proposed decision by its administrative officer prior to the hearing, was read by each member prior to the hearing, and that each member of the agency had a copy of the proposed decision before and during the oral hearing. (Board of Administration v. Superior Court, 50 Cal.App. 314; See also Chosick v. Reilly, 125 Cal.App.2d 334, 338). These principles have been upheld by the California Supreme

Court. City of Fairfield v. Superior Court, 14 Cal.3d 768 held that discovery proceedings related to statements made prior to the hearing, even statements indicating an intended decision would not disqualify members from voting and were not the proper basis for discovery proceedings. Finally, in the case of State of California, et al. v. Superior Court of Orange County, 12 Cal.3d 237, discovery was sought to show that a fair hearing before the California Coastal Zone Conservation Commission was denied upon the alleged grounds that the Commission had received secret testimony from its staff prior to hearing and had prejudged the matter. The right of discovery was denied, the court remarking:

"To the extent, therefore, that the interrogatories seek to determine what material the commission read and relied upon in reaching its determination and to the extent that they seek to probe the mental processes of the commission, the trial court erred in overruling the commission's objections thereto." (State of California, et al. v. Superior Court of Orange County, 12 Cal.3d, supra at 258; See also United States v. Morgan, 313 U.S. 409, 422).

We believe that the foregoing authorities also adequately respond to petitioner's contention that the members of the Regional Board were in fact biased and prejudiced against the petitioner. The record certainly does not so reflect, and it must be presumed that the Regional Board members performed their official duties in a regular and proper manner.

We will now address the final contentions of the petitioner, the contentions that petitioner was deprived of due process by refusal to grant continuances and that failure to grant these continuances deprived petitioner of the right to cross-examine witnesses and to call witnesses in its own behalf. In order to present these contentions in context, we need to again refer to the proceedings before the Regional Board in some detail.

As we have previously pointed out, the hearing commenced at 7:10 p.m. on May 12, 1976. Petitioner was represented by two counsels, Mr. Milos Terzich and Mr. Gregg W. Zive. Mr. Terzich claimed the continuance should be granted because of the absence of Mr. F. R. Breen, who was the primary counsel for petitioner and also because the hearing was to be held in the evening which he considered to be an inappropriate and prejudicial time to the interests of the petitioner in a matter of such great importance to the petitioner. The motion for continuance at this point was denied. (R.T., pages 9-15). We believe the denial of this request for continuance was appropriate and would point out the following facts:

1. The hearing was scheduled to commence at 7:00 p.m. to accommodate the petitioner and Mr. Breen. The Regional Board had been advised by letter that Mr. Breen would not be available on the day of May 12, 1976, by virtue of a prior commitment, and the hearing which would ordinarily have commenced much earlier was consequently scheduled for 7:00 p.m.

2. Administrative agencies frequently conduct meetings and hearings during evening and night hours, particularly those agencies whose board members are laymen and whose other concerns and businesses make such meetings inevitable. We are aware of no legal basis for a claim by petitioner that the time of the holding of this hearing constituted unfairness or invited prejudice against petitioner.

3. To the extent that this contention may imply that petitioner was somehow prejudiced by the absence of Mr. Breen,

we cannot agree. All prior proceedings related to this matter were handled by Mr. Terzich, a member of Mr. Breen's firm. Immediately after denial of the motion for continuance, Mr. Terzich indicated that he wished to make an opening statement. An examination of the record, including the examination of Mr. Bemis, clearly shows that counsels for petitioner were prepared to proceed with the hearing, and were perfectly capable of representing the interests of petitioner in this matter.

After denial of this original request for a continuance, the staff of the Regional Board presented its evidence to the Regional Board. At this point, which from the record appears to have been approximately 11:00 p.m., Mr. Terzich saw fit to advise the Regional Board that he had other commitments for the following day, including a hearing in Carson City at 10:00 a.m. and a federal court hearing at 4:00 p.m., and that he probably would not be able to continue with the hearing on the following day. Mr. Zive also indicated that he would not be able to be present on the following day. Considerable colloquy followed this somewhat surprising announcement. (See R.T., pages 159-176). During the course of these discussions, counsels for petitioner were both asked the nature of those other commitments which would preclude their continuation of the hearing on the morning of the 13th. We quote their response from the record:

"MR. WHITE: Madam Chairman, I would like to ask the two attorneys for the discharger -- of course, Mr. Terzich, what court do you have to be in tomorrow?

MR. TERZICH: Be in the Nevada Industrial Commission in Carson City at 515 East Musser. The number is 835-5220. Before the appeals officer, Richard Bortelin, at 10:00 o'clock in the Goldie Martin case.

MR. WHITE: At this point it is impossible for you to continue it?

MR. TERZICH: It has been continued three times. I could try to continue it again. The opposing party has objected the last time. The reason it was continued before is my client didn't show up. And I don't think she is going to show up again. But it was a dull case.

MR. WHITE: And you expect it to take a couple of hours?

MR. TERZICH: Probably two hours. Maybe less. I would say possibly within an hour.

MR. WHITE: What is your commitment, sir?

MR. ZIVE: I -- excuse me -- will go on the record do not -- am not employed with the same law firm that employs Mr. Terzich. My employer has demanded that I be in the office tomorrow. We have a trial that is starting in the near future of which I am responsible for the preparation. I have a meeting with the attorney at 10:00 o'clock in the morning.

MR. WHITE: Madam Chairman.

MR. ZIVE: I could attempt to -- I could call out there now and perhaps carry it over. But I think that would be putting a severe strain on it." (R.T., pages 173-174). (Emphasis Supplied).

After full discussion, it was determined to continue the hearing as far as they could go that evening. Cross-examination of Mr. Antonucci was deferred so that petitioner could, at his request, put Mr. Bemis on out of order. Examination and cross-examination of Mr. Bemis was completed and the hearing continued until 1:35 a.m. on the morning of May 13, 1976. After some additional discussion, during which recommencement of hearing was discussed, during which it was considered whether the hearing should be reconvened at 10:00 a.m. or 1:00 p.m., the Regional Board Chairman recessed the hearing until 10:00 a.m. on the morning of May 13, 1976. (R.T., pages 246-247).

The hearing reconvened at 10:15 the following morning. Neither counsel for the discharger nor the discharger himself were present. At 9:30 that morning, Mr. Terzich had phoned a clerk typist for the Regional Board to advise that he had not obtained a continuance of his workman's compensation case and that he would not be there until 1:15 p.m. or thereafter. The Regional Board Chairman thereupon recessed the hearing until 11:15 p.m. so that Mr. Terzich's office could be advised the the Regional Board would wait until 11:15 and would then reconvene the hearing. Mr. Terzich's office was so advised. Mr. Zive did not contact the Regional Board at all on this day. At 11:18 a.m., the Regional Board reconvened the hearing and received the remainder of the evidence already referred to in this order. (R.T. (May 13, 1976), pages 5-7).

At 1:35 p.m., Mr. Terzich appeared at the hearing claiming that the Board's proceedings had deprived petitioner of his constitutional rights of due process, the right of cross-examination and the right to present evidence. There ensued a lengthy discussion of the situation and the possibilities of some accommodation satisfactory to Mr. Terzich. No accommodation was reached. Ultimately Mr. Terzich declined to cross-examine any of the witnesses who were present or to proceed with the hearing. The hearing was closed and the Board adopted Order No. 6-76-59 and Resolution No. 76-9<sup>26</sup> with some slight modifications. (R.T. (May 13, 1976), pages 88-141).

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26. See Exhibits I and J.

Our findings are as follows:

1. Mr. Terzich obviously knew, and reiterated on a number of occasions, that the hearing would be lengthy. He knew the number of witnesses he intended to call and the extensive time which would probably be taken in their examination and cross-examination. He estimated at least four to five hours for his own presentation. (R.T., page 165; see also Exhibit E, a letter from petitioner indicating that the hearing would be lengthy). On May 5, 1976, petitioner and Mr. Terzich were specifically advised that the Regional Board would be prepared to continue the hearing on the morning of May 13 if time on May 12th did not prove sufficient. (See Exhibit F). In other words, petitioner and Mr. Terzich were advised sufficiently before the hearing that the hearing could and would continue on the 13th so that they could make arrangements for adequate representation at the hearing.

2. Given the foregoing advance knowledge and notice, and the importance of the hearing which Mr. Terzich constantly stressed, it is our belief that petitioner should have been prepared to proceed with the hearing on May 12th and 13th. We are frankly amazed that they were not. The excuse provided which Mr. Terzich himself described as "dull" and about which he expressed doubt that his client would even appear, is totally unacceptable. Mr. Terzich's law firm is comprised of a fairly substantial number of attorneys, and there is no apparent reason why Mr. Terzich could not have made at least contingent arrangements for alternate representation at the workman's compensation



hearing. We believe that Mr. Terzich was under a duty to do so, and that a Regional Board need not serve solely at the convenience of counsel for the petitioner.

3. While there was some discussion of continuance of the hearing to 1:00 p.m. on the 13th, the Regional Board Chairman, in a matter which we believe to be discretionary, determined to reconvene at 10:00 a.m. Undoubtedly, this was due to the contemplation of an extended hearing on the 13th. Mr. Terzich estimated some four to five hours for direct presentation and some three to four hours for cross-examination of Mr. Antonucci. With the prospect of an extended hearing on the 13th, we find no abuse of discretion in continuing the hearing to the morning of the 13th rather than the afternoon, particularly when we believe that petitioner and Mr. Terzich should and could have been prepared to proceed at that time.

In short, it is our finding that the tactics of Mr. Terzich were a continuance of "dilatory tactics" to avoid proper administrative remedies and to further restrain an important governmental agency in performing critical police power functions.<sup>27</sup> We will not condone such tactics.

### III. CONCLUSIONS

After review of the record, and for the reasons heretofore expressed, we have reached the following conclusions:

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27. See Response of Real Parties In Interest In Opposition To Petition For Writ of Mandamus, Conclusion, page 27, filed in the Third Appellate District, 3 Civil 15844.

1. Order No. 6-76-59 and Resolution No. 76-9 are supported by evidence and law.

2. Petitioner was not deprived of due process or of a fair and impartial hearing before the Regional Board.

IV. ORDER

IT IS HEREBY ORDERED that the petition of Squaw Valley Ski Corporation is denied.

Dated: February 17, 1977

/s/ John E. Bryson  
John E. Bryson, Chairman

/s/ W. Don Maughan  
W. Don Maughan, Vice Chairman

/s/ Roy E. Dodson  
Roy E. Dodson, Member

/s/ W. W. Adams  
W. W. Adams, Member

/s/ Jean Auer  
Jean Auer, Member

EXHIBIT A

BREEN, YOUNG, WHITEHEAD & HOY

CHARTERED

ATTORNEYS AND COUNSELLORS AT LAW

232 COURT STREET

RENO, NEVADA 89501

AREA CODE 702 786-7600

LAKE TAHOE OFFICE

PAGE BUILDING

ROUND HILL

P. O. BOX 2100

ZEPHYR COVE, NEVADA 89448

A.C. 702 588-6667

OR 882-6790

F. R. BREEN  
C. CLIFTON YOUNG  
JERRY CARR WHITEHEAD  
DAVID R. HOY  
MILOS TERZICH  
DAVID R. BELDING  
JEFFREY K. RAHBECK

October 24, 1975

Rec'd	27 1975	10-188
DFD	10/28/75	
DCB		
RLH	10/29	
kybl	10-28	
	10-28	
	10-28	

Mr. Ray C. Hampson  
Executive Officer  
California Regional Water  
Quality Control Board -  
Lahontan Region  
P. O. Box 14367  
South Lake Tahoe, California 95702

Re: Squaw Valley Ski Corporation

Dear Mr. Hampson:

I represent Squaw Valley Ski Corporation, which is the subject of your notice dated October 22, 1975.

In order that we can properly prepare for the hearing, will you please forward to me a copy of Board Order No. 6-75-38, issued on March 27, 1975. Would you also send me a copy of the Water Quality Control Plan for the North Lahontan Basin, adopted June 26, 1975.

You are hereby advised, in reference to your Clean-up and Abatement Order No. 75-15, that during the grading activities, erosion control measures were taken; that an erosion control plan specifically applicable to the area graded was in effect prior to the commencement of work. Run-off ditches were constructed, some of which would serve as long term, and some of which would serve as temporary erosion control measures. In addition, the old reservoir on Squaw Creek was deepened so it would act as catch basin for any siltation that would get into the upper part of the creek. As soon as the grading is completed the area will be seeded.

Mr. Ray C. Hampson  
October 24, 1975  
Page Two

Please consider the foregoing as the report requested on page 3 of your Clean-up and Abatement Order No. 75-15.

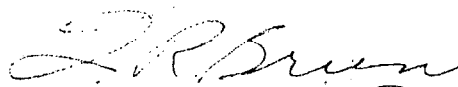
I note that you request, if possible, written copies of testimony to be presented be furnished to the Board in advance of the hearing. It is requested that the undersigned be furnished with copies of any such material presented to the Board, such copies to be furnished to the undersigned in sufficient time in advance of the hearing so it may be studied.

The notice states that the hearing will be held at 7:30 p.m., November 12, 1975. It is requested that this hearing be rescheduled since the undersigned has previous commitments for November 12th, the time of 7:30 p.m., presents no problem either for the undersigned or the witnesses, however, it would be appreciated if the matter could be rescheduled for any of the following dates:

Monday, November 17; Monday, November 24; Tuesday, November 25; Monday, December 1; Tuesday, December 2; Wednesday, December 3; Wednesday, December 10; or Thursday, December 11, 1975.

Thank you for your cooperation.

Very truly yours,

  
F. R. Breen

FRB/p

cc: Mr. John Buchman

Dictated but not read.

EXHIBIT B

(916) 544-3481

October 30, 1975

BREEN, YOUNG, WHITEHEAD & HOY  
ATTN: P. R. Breen  
Attorneys and Counsellors at Law  
232 Court Street  
Reno, NV 89501

Dear Mr. Breen:

Thank you for your letter of October 24, 1975 regarding the Squaw Valley Ski Corporation. In your letter you requested a copy of Board Order 6-75-38 and a copy of the Water Quality Control Plan for the North Lahontan Basin. Please find attached a copy of said order.

We are unable at this time, however, to forward you a copy of the Plan because we have none available other than our office copy. You may review it in our office or there are reference copies available at various libraries in the area including the Truckee library. We are having additional copies printed now and we will forward one to you as soon as they are available.

You also requested in your letter that the hearing scheduled for 7:30 P.M. on November 12, 1975 be rescheduled due to your previous commitments. We would like to accommodate your request but are unable to do so. The notice of the hearing has been issued and published and there are many other people involved who are planning to attend on that date. I can advise you that you do have the right to appear at the scheduled time and request the Board to grant a continuance, but we do advise you or one of your associates to be prepared to respond to the matter at the hearing if the continuance is not granted.

One additional item which I wish to mention, concerns the report requested in our Clean Up and Abatement Order 75-15. The last paragraph on page one of your October 24, 1975 letter does not satisfy the requirements for the report completely. We will be in contact with you shortly to elaborate on the additional information which we deem necessary for the report.

If you have any questions concerning this matter, please contact David Dubois or David Antonucci at (916) 544-3481.

Very truly yours,

ROY C. HAMPSON  
EXECUTIVE OFFICER

Encls.

RCH:cp

cc: Mr. John Buchman Regional Board and SWRCB/Bill White

BREEN, YOUNG, WHITEHEAD & HOY

CHARTERED

ATTORNEYS AND COUNSELLORS AT LAW

232 COURT STREET

RENO, NEVADA 89501

AREA CODE 702 786-7600

LAKE TAHOE OFFICE

PAGE BUILDING

ROUND HILL

P. O. BOX 2100

ZEPHYR COVE, NEVADA 89448

A. C. 702 588-6667

OR 832-6790

F. R. BREEN  
G. CLIFTON YOUNG  
JERRY CARR WHITEHEAD  
DAVID R. HOY  
MILOS TERZICH  
DAVID R. BELDING  
JEFFREY K. RAHBECK

April 19, 1976

Reply to: Zephyr Cove

William D. White  
State Water Resources Control Board  
Legal Department  
P.O. Box 100  
Sacramento, CA 95801

RE: SQUAW VALLEY

Dear Mr. White:

Word has it that the California Lahontan Regional Water Quality Control Board is proposing to schedule another Squaw Valley hearing for May 12, 1976.

Please be advised that Mr. Breen, who is counsel for Squaw Valley, will be in charge of presenting any evidence at any such hearings. Please be further advised that Mr. Breen has a prior commitment for the entire day on May 12, 1976 and he will not be able to attend any such hearing. It is therefore respectfully requested that the Board re-schedule its hearing for a mutually convenient date. If you or any of your staff would contact me, I will be more than glad to give you all available dates.

I am sending you this letter at this early moment in order to avoid your Board of going to the expense of setting a hearing which may have to be reset in any event.

Also, be advised that I have on this date talked to Mr. Williamson of the Attorney General's office and advised him that it may be wise to wait until such time as the Supreme Court issues its decision, either granting or denying a hearing, before any hearing on this matter is set. In the event the Supreme Court has not rendered a decision before a reasonable time prior to any scheduled hearing date, we shall be compelled to seek a Stay Order from the Supreme Court itself. It would seem appropriate and a less expensive procedure to wait until the Supreme Court does render its decision before scheduling a new hearing date.

If you have any questions or desire to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

Milos Terzich

MT/kso

cc: Ray Williamson

Rec'd.	4223
QAD	4/23/76
RCH	
DCA	4-26-76
Copy Received	✓
NRS	
GJT	4/23/76
WED	4-23-76

STATE WATER RESOURCES CONTROL BOARD

1015, RESOURCES BUILDING  
6 NINTH STREET • SACRAMENTO 95814.



P. O. Box 100, Sacramento, CA 95801  
(916) 322-3580

In Reply Refer  
to: 220:BDW

APR 27 1976

Rec'd.	APR 29 1976 4-283
CC Reg Bud	4-29
RCH	4-29
DFD	4/30/76
DCA	5-4-76
WDW	5-5-76

Mr. Milos Terzich  
Attorney at Law  
Breen, Young, Whitehead  
and Hoy  
Page Building, Round Hill  
P. O. Box 2100  
Zephyr Cove, NV 89448

SQUAW VALLEY

This is in response to your letter to Mr. Bill White dated April 19, 1976, concerning the proposed public hearing by the Lahontan Regional Board for consideration of the Squaw Valley Development Company matter.

Mr. White, the attorney for the Lahontan Regional Board, worked with the staff in order to establish a date for the proposed hearing. The Board Chairman polled the individual Board members and the dates of May 12 and May 13, 1976, were the most satisfactory dates for the hearing. As you know, a number of the Board members must come from southern California. Another hearing has been scheduled for May 12 at North Tahoe, others are tentatively being set for the southern California area, and it would not be feasible for the Board to schedule a hearing for any other date in May. Because of the length of time that the matter has taken being brought to hearing, together with the fact that with the short winter the alleged problems may become more acute, it is felt that the hearing must be expedited in the interests of protecting water quality. We are interested in mitigating potential damage to the waters of the State. I should hope that your principals would take a similar view.

In order to accommodate Mr. Breen, if in fact he does intend to replace you as the attorney of record for this entire matter, the Board is scheduling the time for start of the hearing at 7:00 p.m. on May 12, 1976. This certainly cannot interfere with any presumed court appearances to which Mr. Breen may have been committed.

Mr. Milos Terzich

-2-

It is my understanding that you have had some three or four months to prepare for this hearing the staff having kept you fully informed of all plans well in advance, and that on at least one occasion you, Mr. White and Mr. Williamson settled upon a date for hearing which was acceptable to you.

Therefore, please be advised that the Regional Board will hold the hearing as scheduled.

*/s/* W. R. Attwater  
W. R. Attwater  
Chief Counsel

cc: Mr. Roy Hampson  
Executive Officer  
Lahontan Regional Board

Mr. Ray Williamson  
Deputy Attorney General  
Department of Justice  
555 Capitol Mall, Suite 550  
Sacramento, CA 95814



EXHIBIT E

BREEN, YOUNG, WHITEHEAD & HOY

CHARTERED

ATTORNEYS AND COUNSELLORS AT LAW

232 COURT STREET

RENO, NEVADA 89501

AREA CODE 702 786-7600

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A. C. 702 588-6667

OR 882-6790

F. R. BREEN  
C. CLIFTON YOUNG  
JERRY CARR WHITEHEAD  
DAVID R. HOY  
MILOS TERZICH  
DAVID R. BELDING  
JEFFREY K. RAHBECK

April 27, 1976

Reply to: Zephyr Cove

Roy C. Hampson  
Executive Officer  
California Regional Water Quality  
Control Board-Lahontan Region  
P.O. Box 14367  
South Lake Tahoe, CA 95702

RE: SQUAW VALLEY

Dear Mr. Hampson:

This will acknowledge receipt of your notice of Hearing, dated April 26, 1976, scheduling a hearing for Wednesday, May 12, 1976, commencing at 7:00 p.m. at Tahoe City, California.

I assume that you had previous to April 26, 1976 received a copy of my letter addressed to Mr. White, dated April 16, 1976.

The undersigned, again, is requesting that the hearing date be changed to a mutually convenient date for the reasons expressed in my aforesaid letter.

Further, commencing the hearing at 7:00 p.m. does not appear to be an appropriate time for a hearing which will entail, as you know, a great many issues and voluminous documentations and other evidence.

You will recall that you noticed your first hearing for November 12, 1975 at 7:30 p.m. After a Writ of Prohibition was issued against your proceeding for such a hearing, a meeting was held in our offices and it was generally agreed that the hearing should be scheduled to commence in the morning as all concerned acknowledged that a hearing in this matter would most probably last all day and probably more than one day. Thereafter, you did schedule a hearing on December 17, 1975 to commence at 9:00 a.m. As you know, another Writ was obtained to prevent this hearing, which proceeding is now in the California Supreme Court pursuant to a Petition for Hearing.

Again, on March 16, 1976, you scheduled a hearing to commence at 2:00 p.m. A Stay Order was obtained to prevent this hearing so that a Petition could be filed in the Appellate Court. As stated, the matter is now pending before

Rec'd.	APR 29 1976 4-269
<del>RCW</del>	<del>4-29-76</del>
RCW	4-29-76
DFD	4/30/76
DA	5-4-76
MRS	5-5-76
GT	5/5/76

WED 5/5/76  
WED 5/5/76  
JB 5/5/76

Roy C. Hampson  
April 27, 1976  
Page 2

the California Supreme Court and inspite of that, you have now scheduled a hearing for May 12, 1976 to commence at 7:00 p.m. As was previously agreed between all concerned, this is not an appropriate time to start a hearing which could well last in excess of eight or ten hours.

Further, it appears that your procedure has changed as the first two Notice of Hearings were to be heard by a panel of the Board and the last two Notice of Hearings indicate that the full Board will be presiding. The fact that the full Board is intending to hear this matter, of itself, indicates that the hearing would be more lengthy than if heard by a panel.

Therefore, it is again requested that the scheduled hearing date be continued to a mutually satisfactory date and that such a hearing be scheduled to commence at 9:00 or 10:00 in the morning.

Thank you for your considerations.

Kind regards.

Very truly yours,



Milos Terzich, Esq.

MT/kso

cc: Bill White  
Ray Williamson

EXHIBIT F

916/544-3481

May 5, 1976

Mr. Milos Terzich  
Attorney at Law  
Breen, Young, Whitehead  
and Hoy  
Page Building, Round Hill  
P.O. Box 2100  
Zephyr Cove, NV 89448

Dear Mr. Terzich:

RE: SQUAW VALLEY

Your letter of April 27, 1976, was received by this Office on April 29, the same day on which we received a copy of the April 25 letter to you from Mr. W.R. Attwater, Chief Counsel of the State Water Resources Control Board. Mr. Attwater responded to the concerns you expressed in your April 19 letter to Mr. Bill White, and we concur with his comments.

Your letter questioned the rescheduling of the Regional Board hearing on the Squaw Valley matter to 7:00 p.m. on May 12, 1976. The notice of the hearing was sent to you as early as we possibly could to allow you time to make arrangements. You should understand that the time and day set for the hearing was selected because it was the most convenient for the majority of people involved. The Regional Board is prepared to continue the hearing in the morning on May 13, 1976 if the time available in the evening of May 12 does not prove sufficient to conclude the proceedings.

We urge your cooperation in resolving the issue at this time.

Very truly yours,

a/David F. Dubois

ROY C. HAMPSON  
EXECUTIVE OFFICER

RCH/df

EXHIBIT G

(916) 544-3481

October 17, 1975

CERTIFIED MAIL

Mr. John T. Buchman, Manager  
Squaw Valley Ski Corporation  
P. O. Box 2007  
Olympic Valley, CA 95730

Dear Mr. Buchman:

RE: SQUAW VALLEY SKI AREA - SQUAW VALLEY USA

You are in violation of waste discharge requirements issued by Lahontan Regional Board under Board Order No. 6-75-38 adopted on March 27, 1975. The violation is the result of grading and earth moving that you are doing on your property in the Squaw Valley Ski Area.

You are hereby advised to immediately cease such grading and earth moving activities and immediately begin to take erosion control measures.

Section 13350 of the California Water Code provides for a fine of \$6,000 per day where a discharger in violation of waste discharge requirements negligently causes a condition of pollution or nuisance. We have documentation to substantiate two days of violation.

We would appreciate your immediate attention to this matter and your immediate response not later than October 20, 1975.

Very truly yours,

ROY C. HAMPSON  
EXECUTIVE OFFICER

cc: Regional Board  
Bill White/Legal

EXHIBIT H

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

CLEAN-UP AND ABATEMENT ORDER NO. 75-15

Requiring Squaw Valley U.S.A. to Clean-Up and Abate the Discharge and Threatened Discharge of Waste Earthen Materials from the Project Construction Site Within the Truckee River Basin.

The California Regional Water Quality Control Board, Lahontan Region, finds:

1. Squaw Valley U.S.A. has recently been performing grading and other construction activities on a significant portion of its ski area slopes.
2. Regional Board staff inspections of the ski slopes on October 16, 17, 18, and 19 have determined that grading and other construction practices at Squaw Valley U.S.A. have violated the following discharge specifications listed in this Board Order 6-75-38, setting forth waste discharge requirements for Squaw Valley Ski Area-Squaw Valley U.S.A.:

"A. GENERAL REQUIREMENTS

- "1. Discharge from the Squaw Valley Ski Project Areas shall not cause pollution.
- "2. Discharge from the Squaw Valley Ski Project Areas shall not cause a nuisance.
- "3. Discharge from the Squaw Valley Ski Area shall not cause any measurable color, bottom deposits, floatable materials, oil, grease, or radionuclides to be present in the Truckee River or any tributary thereto.
- "4. Discharge from the Squaw Valley Ski Project Areas shall not contain substances in concentrations individually, collectively, or cumulatively toxic, harmful or deleterious to humans, animals, birds, or aquatic biota, including but not limited to those substances specified in the California State Drinking Water Standards.
- "5. The discharge of treated or untreated domestic sewage, industrial waste, garbage or other solid wastes, or any other deleterious material to the surface waters of the Truckee River Basin is prohibited.
- "6. The discharge of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to the Truckee River or any tributary thereto is prohibited.

"B. SPECIFIC REQUIREMENTS

- "1. Infiltration and drainage collection or retention facilities shall be maintained to prevent transportation of waste from construction areas.

- "2. Drainage and surface flows from construction areas shall be controlled so as not to cause downstream erosion.
  - "3. All requirements herein shall pertain to all construction and erosion control activities, either individually or collectively, undertaken by Squaw Valley U.S.A. within the boundaries of the Squaw Valley Ski Project Areas.
  - "4. The discharger shall comply with the erosion control and siltation control measures specified in the Squaw Valley Ski Complex Erosion Control Report submitted with the report of waste discharge.
  - "6. During construction, temporary dikes or similar facilities shall be constructed downgradient from disturbed areas to prevent the discharge of soil, sand, silt, clay, and other organic and earthen materials from the site.
  - "7. There shall be no modification of existing drainage patterns."
3. Further, Squaw Valley U.S.A. is in violation of prohibitions included in the Water Quality Control Plan for the North Lahontan Basin adopted on June 26, 1975. The prohibitions provide, in part, as follows:
- "4b. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the surface waters of the Lake Tahoe Basin or Truckee River Basin is prohibited.
  - "4c. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River is prohibited.
  - "4d. The threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials, due to the placement of said materials below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River is prohibited."
4. The discharger is threatening to violate the requirements and prohibitions listed in finding nos. 2 and 3 above.
  5. The Regional Board has personally notified a representative of the discharger at the construction site on October 17, 1975 of the violation and has requested immediate action to eliminate such violation.

IT IS HEREBY ORDERED that pursuant to California Water Code Section 13304, Squaw Valley U.S.A. shall:

1. Immediately refrain from performing grading and other construction activities which would increase the magnitudes of the violations listed in nos. 2 and 3 above.
2. Immediately implement erosion control measures to clean-up and abate the above-mentioned violations.
3. Immediately begin development on an erosion control plan which is specifically applicable to the recently created erosion problems referred to herein. Such report shall be submitted not later than October 31, 1975 and shall include:
  - a. Temporary erosion control measures.
  - b. Long-term erosion control measures.
  - c. An implementation plan for (a) and (b) above, including a time schedule of when each measure will become effective.

Dated: October 22, 1975

Ordered by: Roy C. Hampson  
ROY C. HAMPSON  
EXECUTIVE OFFICER

## EXHIBIT I

### CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LAHONTAN REGION

BOARD ORDER 6-76-59

Requiring Squaw Valley USA to Cease and Desist From Discharging and Threatening to Discharge Wastes in Violation of Waste Discharge Requirements Prescribed by the California Regional Water Quality Control Board, Lahontan Region.

The California Regional Water Quality Control Board, Lahontan Region, finds:

1. Squaw Valley USA recently performed extensive grading and other construction activities on a portion of its ski area slopes.
2. Regional Board staff inspections from October 16, 1975 to December 17, 1975, revealed that grading and other construction activities at Squaw Valley USA have violated and threaten to further violate the following waste discharge requirements specified in Board Order 6-75-38, adopted on March 27, 1975 for the Squaw Valley Ski Area:

#### "A. GENERAL REQUIREMENTS

- "1. Discharge from the Squaw Valley Ski Project Areas shall not cause pollution.
- "2. Discharge from the Squaw Valley Ski Project Areas shall not cause a nuisance."
- "4. Discharge from the Squaw Valley Ski Project Areas shall not contain substances in concentrations individually, collectively, or cumulatively toxic, harmful or deleterious to humans, animals, birds, or aquatic biota, including but not limited to those substances specified in the California State Drinking Water Standards.
- "5. The discharge of treated or untreated domestic sewage, industrial waste, garbage or other solid wastes, or any other deleterious material to the surface waters of the Truckee River Basin is prohibited.
- "6. The discharge of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the Truckee River or any tributary thereto is prohibited."

#### "B. SPECIFIC REQUIREMENTS

- "1. Infiltration and drainage collection or retention facilities shall be maintained to prevent transportation of waste from construction areas."



- "2. Drainage and surface flows from construction areas shall be controlled so as not to cause downstream erosion.
- "3. All requirements herein shall pertain to all construction and erosion control activities, either individually or collectively, undertaken by Squaw Valley USA within the boundaries of the Squaw Valley Ski Project Areas.
- "4. The discharger shall comply with the erosion control and siltation control measures specified in the Squaw Valley Ski Complex Erosion Control Report submitted with the report of waste discharge."
- "6. During construction, temporary dikes or similar facilities shall be constructed downgradient from disturbed areas to prevent the discharge of soil, sand, silt, clay, and other organic and earthen materials from the site.
- "7. There shall be no modification of existing drainage patterns.
- "8. All surface flows generated from within the project areas which are collected and discharged to tributaries of Squaw Creek shall not contain constituent levels in excess of the following limits:

<u>"Constituent</u>	<u>Units</u>	<u>Maximum</u>
"Turbidity	JTU	20.0
"Suspended Sediment	mg/l	30.0"

- "11. Water collected and discharged to tributaries of Squaw Creek shall be treated if necessary to conform to the water quality limitations set forth in No. 8 above."
3. The Board adopted the Water Quality Control Plan for the North Lahontan Basin on June 26, 1975.
4. The discharger has violated the following discharge prohibitions contained in the Water Quality Control Plan for the North Lahontan Basin:
- "4a. The discharge of treated or untreated domestic sewage, industrial waste, garbage or other solid wastes, or any other deleterious material to the surface waters of the Lake Tahoe Basin or Truckee River Basin is prohibited.
- "4b. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the surface waters of the Lake Tahoe Basin or Truckee River Basin is prohibited."

- "4c. The discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River is prohibited.
- "4d. The threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials, due to the placement of said materials below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River is prohibited."
5. The Board has received complaints regarding the discharge of wastes from the Squaw Valley Ski Area to Squaw Creek.
  6. Board staff notified a representative of the discharger at the construction site on October 17, 1975, of the violations and requested immediate action to eliminate such violations.
  7. Violations have been documented on the days of October 15 through October 29, October 31, November 1, and November 3 through November 6, and December 4, 1975, April 23, and May 3, 1976.
  8. On May 12 and 13, 1976, in Tahoe City, California, after due notice to the discharger and all other affected persons, the Regional Board conducted a public hearing at which the discharger appeared and evidence was received concerning the discharge.
  9. The discharger is violating and threatening to further violate waste discharge requirements and discharge prohibitions listed in 2. and 4., respectively.

IT IS HEREBY ORDERED THAT:

1. Squaw Valley USA shall cease and desist forthwith from discharging wastes in violation of requirements and discharge prohibitions listed above in findings 2. and 4., respectively.
2. Squaw Valley USA shall cease forthwith grading and other construction activities which could cause additional violations.
3. Squaw Valley USA shall submit to the Regional Board by July 1, 1976, a comprehensive compliance report detailing an erosion control plan including both temporary and long-term erosion control measures which will be employed to prevent further discharges in violation of requirements and discharge prohibitions.

4. Squaw Valley USA shall submit to the Regional Board by July 1, 1976, an implementation schedule detailing when the temporary and long-term erosion control measures will be provided and when they will become effective.
5. Squaw Valley USA shall submit to the Regional Board a monthly report on the progress towards providing erosion control measures by the first day of each month beginning with June 1976.
6. Squaw Valley USA shall submit to the Regional Board a comprehensive final compliance report describing the conditions of all erosion control measures taken to bring the Squaw Valley Ski Area into compliance with waste discharge requirements and prohibitions.
7. Squaw Valley USA shall eliminate all violations and threatened violations of waste discharge requirements and discharge prohibitions not later than October 15, 1976.
8. If, in the opinion of the Executive Officer of the Lahontan Region, Squaw Valley USA fails to comply with the provision of this Order, the Executive Officer is directed to request the Attorney General to take the appropriate enforcement action against the discharger.

I, Roy C. Hampson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on May 13, 1976.

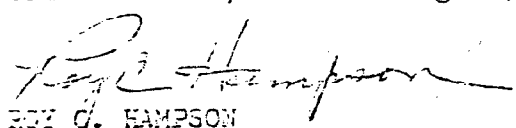
  
ROY C. HAMPSON  
EXECUTIVE OFFICER

EXHIBIT J

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

Resolution 76-9

WHEREAS:

1. The Board held a public hearing on May 12 and 13, 1976, after notice to all interested persons, for the purpose of considering the matter of violations by Squaw Valley USA of waste discharge requirements, discharge prohibitions, administrative orders of the Regional Board, and sections of the California Water Code.
2. The Board finds that Squaw Valley USA negligently and intentionally discharged wastes in violation of requirements causing a condition of pollution.
3. The Board finds that Squaw Valley USA negligently and willfully discharged pollutants without an NPDES permit issued pursuant to Section 13378 of the Water Code.
4. The Board finds that Squaw Valley USA refused to comply with Clean-Up and Abatement Order 75-15.
5. The Board finds that Squaw Valley USA has not complied with Sections 13260 and 13264 of the Water Code.

THEREFORE BE IT RESOLVED:

1. The Board requests the Attorney General for the State of California to take any and all legal action that may be deemed necessary in this matter.
2. The Executive Officer is authorized and directed to take any and all appropriate steps to assist the Attorney General for the State of California in any legal action concerning this matter.

I, Roy C. Hampson, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on May 13, 1976.

  
ROY C. HAMPSON  
EXECUTIVE OFFICER