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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
CONCERNED CITIZENS FOR AGRICULTURE)
IN SONOMA COUNTY for Review of)
Resolution No. 79-15 and Order)
No. 79-169 of the California)
Regional Water Quality Control)
Board, San Francisco Bay Region.)
Our File No. A-255.)

Order No. WQ 80-20

BY THE BOARD:

On October 15, 1979, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), adopted Resolution No. 79-15 entitled, "Resolution of Intent With Respect to City of Petaluma Wastewater Treatment and Disposal". In Resolution No. 79-15, the Regional Board recited a prohibition contained in the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) against the discharge of waste to confined water bodies, such as the Petaluma River (River), and found that the City's present wastewater treatment facilities contribute to the water quality problems of the River. The Resolution confirmed the need for eliminating waste discharges into the River, especially during dry weather months, and stated the intention of the Regional Board to require the City to comply with the prohibition against a river discharge in the shortest reasonable time. The Regional Board further found in discussing compliance alternatives that a wetlands creation project with a discharge into the River would not remove the substances currently contributing to the water quality problems in the River, that such

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a project would be unacceptable in terms of water quality protection for the River, and that the Regional Board would not accept delays in the implementation of a project to eliminate river discharges in order that a wetlands project could be studied. The Resolution also stated that the Regional Board would reconsider its position, based upon a review of the Step 2 design studies for the City's proposed agricultural reclamation project, particularly as these studies relate to the availability of lands for irrigation.^{1/}

On November 15, 1979, the State Water Resources Control Board (State Board) received a petition from Concerned Citizens for Agriculture in Sonoma County (petitioners) seeking a stay and review of the Resolution. On November 29, 1979, the State Board informed petitioners that the Resolution was inappropriate for State Board review, and that the petition would be held in abeyance pending final action by the Regional Board.

On December 18, 1979, the Regional Board adopted waste discharge requirements in Order No. 79-169 (NPDES No. CA0037810) for the City of Petaluma, in accordance with Resolution No. 79-15. The requirements prohibit a discharge to the River during the dry weather months, and include a time schedule for the construction of treatment facilities to achieve compliance with the Basin Plan. The requirements grant an exception to the prohibition in the

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1. The City studied various alternatives for disposing its wastes in compliance with the Regional Board prohibition. This study was conducted with Clean Water Grants funds. The recommended alternative was a winter discharge to the river coupled with reclamation on agricultural land during summer. A further study was completed for the City on August 18, 1980, which confirmed that voluntary irrigation by agricultural reclamation was feasible.

Basin Plan for discharges during wet weather months, if the wastewater is used for a feasible agricultural reclamation project during dry weather. This exception is consistent with the conditions of the Clean Water Grant. On January 18, 1980, the State Board received an amended petition for review of Resolution No. 79-15 and Order No. 79-169 from petitioners seeking a stay and review of the Resolution and Order. Petitioners also request a hearing in this matter. On April 17, 1980, the State Board denied petitioners' request for a stay of Order No. 79-169. Order No. WQ 80-8.

I. BACKGROUND

At the time that the Resolution was adopted, the Eastern Marin-Southern Sonoma Wastewater Management Study, a facilities planning study funded under the Clean Water Grants program, had been completed. The study had selected, as the apparent best wastewater treatment alternative for the City of Petaluma, a project involving a discharge to the River during the winter months with agricultural reclamation during the dry weather months.^{2/} Opposition to the proposed project, however, was voiced by concerned citizens and owners of the agricultural lands that might be subject to the irrigation project. These individuals proposed a wetlands project as an alternative. The Regional Board rejected this

2. While petitioners claim that an agricultural reclamation project would not be feasible, we do not find it necessary to resolve this conflict in this Order. The time schedule adopted in Order No. 79-169 provides for submission of a new Report of Waste Discharge should the discharger find the project not to be feasible.

alternative, and limited its exception to the prohibition on discharges to the River to those in compliance with the agricultural reclamation project.

II. CONTENTIONS AND FINDINGS

1. Contention: Petitioners contend that the Regional Board relied only on the Basin Plan in finding that discharges to confined bodies of water are prohibited, rather than considering State Board intent as expressed in State Board Resolution No. 79-20 and other policies.^{3/}

Finding: As conceded by petitioners, Resolution No. 79-20 was limited in scope to wastewater management in the Humboldt Bay Area, and the Regional Board was therefore not bound to follow the result therein. Furthermore, the State Board in Resolution No. 79-20 was considering very different water quality problems, i.e., the bacteriological quality of bay waters, than those found in the instant case. Therefore, consideration of Resolution No. 79-20 was neither necessary nor appropriate. Finally, it is fundamental that a Regional Board's primary duty is to protect water quality. None of the policies cited by petitioners state or imply that wetlands projects are to be pursued unless water quality protection is assured.

2. Contention: Petitioners contend that a wetlands creation project would meet the requirements for an exception

3. In Resolution No. 79-20, the State Board found that a marsh treatment process proposed by the City of Arcata may enhance the water quality in Humboldt Bay.

to the Basin Plan's prohibition against discharge of waste to confined water bodies.

Finding: Petitioners rely on the following language found in the Basin Plan:

Exceptions will also be considered where a discharge is approved as part of a reclamation project or where it can be demonstrated that environmental benefits will be derived as a result of the discharge. Basin Plan, 5-46.

Petitioners contend that a Marsh Policy, adopted by the Regional Board on February 15, 1977, recognizes the beneficial aspects of marshlands. Petitioners further argue that a marshland project was a proper exception to the prohibition, and that the Regional Board was required to consider and discuss this exception.

While the Regional Board has not denied that some beneficial aspects may accrue from creation of a wetlands, it concluded that the City of Petaluma's discharge contributes to degraded conditions in the River by the addition of nutrients, oxygen-demanding substances and toxicants, and that discharges from a wetlands project would contain these same pollutants. While petitioners claim that they can produce evidence to show that a wetlands project will remove nutrients, oxygen-demanding substances (BOD) and toxicants from the wastewater, they have presented no such evidence to either the Regional Board or the State Board.

Given these concerns, the lack of evidence to rebut them, and the Regional Board's concern with the delay which would derive from a more detailed study of a wetlands project, we find that the Regional Board was reasonable in declining to fully

explore this alternative. However, in this regard, we agree with the Regional Board's conclusion that a wetlands project appears to have certain fundamental limitations in removing nutrients and BOD that cannot be overcome by further study. We note that petitioners are in no way precluded from undertaking their own study of the wetlands alternative and presenting their findings to the Regional Board.

3. Contention: Petitioners contend that the Regional Board's findings that the River has "extremely limited waste assimilation capacity," and its conclusion that fish kills are caused by discharges, are without foundation.

Finding: In support of their first claim, petitioners argue that the Basin Plan permits discharge of secondary effluent up to 5 mgd before exceeding 5,000 pounds per day of oxygen-demanding substances. This estimate, however, was based on the assumption of a 10 cfs flow in the River. Basin Plan, Table 15-28. Actual mean monthly flows of the River are reflected in Table 11-8 of the Basin Plan, and reveal that during the dry weather season the flow is far below 10 cfs. Reading these provisions together, we conclude that the 5,000 pounds assimilative capacity figure is not applicable during the dry weather season, and that the assimilative capacity during this period is essentially zero.

In support of their argument that fish kills are not caused by discharge, petitioners cite the ability of carp to tolerate low oxygen conditions and other effects of discharge. The River has traditionally supported steelhead and striped

bass, however, and the Regional Board properly considered such past beneficial use of the River. Water Code Section 13241(a).

4. Contention: Petitioners claim that the Regional Board did not properly find that the City of Petaluma pollution control facilities contribute to water quality problems, including discharges of metals and toxicants.

Finding: The fact that operation of the facilities during the summer results in the discharge of nutrients to a water body with no assimilative capacity is essentially undisputed by petitioners. The discharge of oxygen-demanding waste under such conditions depresses the dissolved oxygen of the receiving water. This condition may cause fish kills and other water quality problems. We therefore conclude that the Regional Board was reasonable in finding that the City's pollution control facilities contribute to the River's water quality problems.

5. Contention: Petitioners claim that they were precluded from introducing additional evidence at the Regional Board hearing on December 18, 1979 and they request a hearing before the State Board to present additional evidence.

Finding: Having reviewed the record in its entirety, including tape recordings of both Regional Board hearings in this matter, we conclude that petitioners were accorded full opportunity to present their views and evidence. Since petitioners have not provided sufficient explanation as to why evidence was not presented to the Regional Board, and as we find

that the Regional Board did not improperly exclude evidence, no hearing is required before this Board. 23 Cal. Admin. Code Section 2050(b).

III. CONCLUSIONS

1. The Regional Board accorded petitioners a full opportunity to present evidence at its hearings, and petitioners' Statement of Nature of the Evidence and Facts to be Presented does not contain contested facts or material sufficient to warrant a hearing before the State Board. See 23 Cal. Admin. Code Sections 2050(b) and 2066(b).

2. The Regional Board acted reasonably in adopting waste discharge requirements which prohibit discharge to the Petaluma River during the dry weather months, establish a time schedule for implementation of the Step 1 recommended agricultural reclamation project, and which do not provide for creation of a wetlands project with discharge to the Petaluma River.

IV. ORDER

IT IS HEREBY ORDERED that petitioners' request for a hearing in this matter is denied.

IT IS FURTHER ORDERED that the Petition of Concerned Citizens for Agriculture in Sonoma County for review of Order No. 79-169 of the California Regional Water Quality Control Board, San Francisco Bay Region is denied.

Dated: **NOV 20 1980**

/s/ Carla M. Bard
Carla M. Bard, Chairwoman

/s/ William J. Miller
William J. Miller, Vice-Chairman

/s/ L. L. Mitchell
L. L. Mitchell, Member

/s/ Jill B. Dunlap
Jill B. Dunlap, Member

/s/ F. K. Aljibury
F. K. Aljibury, Member

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