

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petitions of the
Forest Service, U. S. Department of
Agriculture and Heavenly Valley to
Review Action by the California
Regional Water Quality Control
Board, Lahontan Region

Order No. 72-25

⁷¹⁻³³ Pursuant to State Water Resources Control Board Order
No. ~~72-33~~, the State Water Resources Control Board (hereinafter
State Board) held a public hearing regarding the petitions of the
Forest Service, U.S. Department of Agriculture (hereinafter Forest
Service), and Heavenly Valley which requested review of the Cali-
fornia Regional Water Quality Control Board, Lahontan Region,
(hereinafter Regional Board) Order No. 6-71-32. The public hearing
was held on February 16, March 6 and March 15, 1972.

History and Background

The Regional Board in carrying on a program of water
quality control within the Lake Tahoe Basin became aware through
various reports and studies that discharges of soil and silt to
Lake Tahoe were causing water quality problems. The Regional
Board also knew that construction practices within the basin were
accelerating the discharge of soil and silt to the lake. The Region-
al Board considered the threat to be significant enough to require
control of those activities of man with respect to the waste dis-
charge of soil, silt, clay, sand and other earthen materials. The

Regional Board adopted prohibitions on the discharge of soil, silt, sand and clay to Lake Tahoe and its tributary in waste discharge requirements and in the water quality control plan for the region.

On August 13, 1970, the Regional Board adopted Order No. 6-70-19 prescribing waste discharge requirements pertaining to the discharge of earthen and similar waste material from the Heavenly Valley Ski Area operated by Heavenly Valley, a partnership, as permittee on both private land owned by Heavenly Valley and public land within the Eldorado National Forest managed by the Forest Service.

The Regional Board, after a public hearing held on September 15, 1971, found that the Forest Service and Heavenly Valley were violating and threatening to violate waste discharge requirements Nos. 1, 3 and 4 in Order No. 6-70-19 and further had violated provision No. 1 of Order No. 6-70-19. On September 23, 1971, the Regional Board adopted cease and desist Order No. 6-71-32 requiring the Forest Service and Heavenly Valley to cease and desist the discharge and threatened discharge according to a time schedule and to submit certain detailed reports. Heavenly Valley petitioned the State Board to review and reverse Order No. 6-71-32. Pursuant to this petition the State Board held hearings on February 16, March 6 and March 15, 1972.

Based upon the evidence and testimony presented at the hearing the State Board makes the following findings:

1. The Regional Board adopted waste discharge requirements in Order No. 6-70-19 for Heavenly Valley Ski Area requiring

the Forest Service and Heavenly Valley to abate the discharge of silt where it could affect the quality of the waters in the Lake Tahoe Basin. The relevant requirements in Order No. 6-70-19 are as follows:

Discharge Requirements:

1. Surface water runoff from Heavenly Valley Ski Area and Resort shall not cause pollution of Bijou Creek, Heavenly Valley Creek, Lake Tahoe, or any tributary thereto.
3. There shall be no discharge, caused by past or future activities of the discharger, of solid or liquid waste materials including soil, silt, clay, sand, and other earthen materials to Bijou Creek, Heavenly Valley Creek, Lake Tahoe, or any tributary thereto.
4. There shall be no discharge, caused by past or future activities of the discharger, of solid or liquid waste materials including soil, silt, clay, sand, and other earthen materials to lands within the 100-year flood plain of Bijou and Heavenly Valley Creeks, or any tributary thereto.

Provision:

1. A report detailing the steps to be taken to assure compliance with this order shall be submitted by the discharger to this board no later than September 18, 1970, together with a time schedule for achieving compliance with requirements.

2. Erosion from the ski area has occurred in the past and continues to occur to some degree. The discharge of soil, comprised mainly of decomposed granite, occurs at a greater rate from areas which have been cleared of vegetation than from natural areas. The ski runs have been cleared by Heavenly Valley and therefore the soil erosion from these runs is greater than from those left in the state of nature. (RT Vol. I, page 109: 12-14; page 135: 14-21; also see the statement of Irwin Bosworth to the Regional Board August 13, 1970 contained in Staff Exh. 1.)

3. The soil from the ski runs has reached the edge of Heavenly Valley Creek. Soil discharges have also been observed in Bijou Creek. (RT Vol. I, page 36; 19-21; page 38: 23-25; page 39: 3-15.)

4. Erosion from the ski runs has built alluvial fans of soil which extend to the edge of Heavenly Valley Creek. These alluvial fans exist at the foot of several of the ski runs. (RT Vol. I, page 137: 2-8 page 150: 14-151:14.)

5. The Regional Board has received reports regarding the control of erosion from the ski area by Heavenly Valley on August 13, 1970 and September 21, 1970. Heavenly Valley and the Forest Service filed a joint report on July 12, 1971 with the Regional Board and a joint report with the State Board on February 16, 1972. (See Staff Exh. 1 and Heavenly Valley-Forest Service Exh. 1.)

6. The Heavenly Valley report dated September 21, 1970, in response to Order No. 6-70-19 states at page 2 "... Heavenly Valley has authorized engineering firms to proceed with the

engineering details and paperwork to the point where bids or job cost estimates can be made. ... until such time as the project is approved by the U. S. Forest Service it cannot be financed by Heavenly Valley."

7. The Forest Service and Heavenly Valley report dated July 12, 1971, is titled "Joint Plan of Heavenly Valley and Forest Service Siltation in Heavenly Valley Creek." The plan states in part during the time frame for 1971:

No. 3 Water Distribution System

This system will distribute water from the reservoir at Heavenly Valley Meadows and will irrigate all slopes being vegetated to control erosion. Design plans therefore will be submitted to the Forest Service for approval not later than September 15, 1971, and will be promptly reviewed by the Forest Service.

No. 4 Land Treatment Measures

The Forest Service and the permittee are now developing a detailed plan of land treatment measures to be taken on permittee's area of national forest land to prevent erosion. It is hoped that this plan will be completed and mutually agreed upon by September 15, 1971.
(Emphasis added.)

8. On February 16, 1972, Heavenly Valley and the Forest Service filed with the State Board as Heavenly Valley-Forest Service's Exhibit No. 1, a document titled "Erosion Control Plan for National Forest Land Heavenly Valley Ski Area." This document states at page 1:

INTRODUCTION

This plan is offered as a general plan for reducing, as much as possible, the soil erosion that may occur on the man-made disturbed areas at Heavenly Valley Ski Area. It is intended that, as specific projects are proposed or different situations arise, the general erosion control measures hereinafter, set forth will be updated and become more specific.

Also, on pages 7 and 8 the document states:

TIME SCHEDULE

Calendar Year 1972

Items to be accomplished:

1. Complete the development of engineering plans for, and construction of, a permanent source for irrigation water.
2. Complete the investigation of alternatives and develop engineering plans for improving the skier congestion and stream sedimentation problems in the Special Study Area, i.e., Maggie's Run and Creek Station.
3. Complete the study of skier traffic on Roundabout and Roundabout Ridge Cut and Creek fill for continuous downhill ski run.
4. Construct the dam across Heavenly Valley Creek at the designated site at Heavenly Valley Meadow.
5. Construct those items that are approved in the Special Study Area along Heavenly Valley Creek.
6. Construct an irrigation water distribution system.
7. Commence erosion control Treatment No. 1 in the areas where the irrigation system will be completed so as to provide the needed water (e.g., Maggie's, Patsy's, Groove, and Waterfall Runs) after the earthmoving and reshaping is completed.
8. Commence erosion control Treatment No. 3 on roads (including the Roundabout after reshaping, etc.) where needed.
9. Commence irrigation where water is available and land areas have been seeded, mulched and netted.
(Emphasis added.)

9. Erosion control plans submitted by Heavenly Valley and the Forest Service are not adequate since they do not provide specific information required for the evaluation of the work to control erosion. Time schedules contained in these plans are general terms and do not indicate specific starting or completion dates. The

reports are conceptual plans with broadly stated principles for action by Heavenly Valley. No detailed plan requested by Order No. 7-70-19 or 6-71-32 has been provided. (Staff Exh. 1 and Heavenly Valley Exh. 1 citations.)

10. The Forest Service is a necessary party to these proceedings as it owns most of the land from which discharges of waste materials occur, all erosion control measures require its approval and its participation is necessary for a final solution for water quality control in the Heavenly Valley Area. Title 33, Section 1171(a), of the U. S. Code requires all federal agencies to comply with applicable state water quality standards. The Forest Service as a controlling agency of the National Forest lands must comply with these provisions and the provisions of Executive Order 11507.

11. No evidence was introduced to show a violation of requirements 1 and 4 in Order No. 6-70-19.

Conclusions

We conclude as follows:

1. Erosion from the Heavenly Valley Ski Area threatens to discharge soil, silt and sand to Heavenly Valley Creek, a tributary of Lake Tahoe in violation of Requirement No. 3 of Order No. 6-70-19 and the provisions of Order No. 6-71-32.

2. Heavenly Valley and the U. S. Forest Service have not submitted to the Regional Board the report required by Provision 1 in Order No. 6-70-19 and are therefore in violation of that order and Order No. 6-71-32.

3. The discharge of soil to Bijou Creek was temporary and has been abated by Heavenly Valley.

4. Order No. 6-71-32 was appropriate and proper except as it refers to Requirements 1 and 4 of Order No. 6-70-19.

IT IS HEREBY ORDERED that the relief requested by petitioner in its petition for review is denied.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: November 2, 1972

W. W. ADAMS
W. W. Adams, Chairman

RONALD B. ROBIE
Ronald B. Robie, Vice Chairman

E. F. DIBBLE
E. F. Dibble, Member

ABSENT
Roy E. Dodson, Member

MRS. CARL H. AUER
Mrs. Carl H. (Jean) Auer, Member