

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

Petition of Helen Burke, Con-
servation Chairperson, San Francisco
Bay Chapter of the Sierra Club,
and Owen P. O'Donnell, for Review
of Order No. 74-44 and Resolution
No. 74-7, of the California Regional
Water Quality Control Board, San
Francisco Bay Region.

Order No. WQ 75-4

BY THE BOARD:

On May 21, 1974, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), after public hearings of March 19 and May 21, 1974, adopted Order No. 74-44 and Resolution No. 74-7. Order No. 74-44 prescribes waste discharge requirements for Diamond A Ranch, Inc., and the City of Pleasanton (discharger). Resolution No. 74-7 is a statement by the Regional Board which finds the discharger to be in general compliance with Regional Board Resolution No. 768 entitled "Policy Statement of the San Francisco Bay Regional Water Quality Control Board with Respect to Sewerage in Urbanizing Areas of the Region".

On June 20, 1974, Helen Burke of the Sierra Club, and Owen P. O'Donnell (petitioners), petitioned the State Water Resources Control Board (State Board) for review of Order No. 74-44 and Resolution No. 74-7 of the California Regional Water Quality Control Board, San Francisco Bay Region. We note

that petitioner filed Exhibits C, D, and E with its petition for review. These exhibits were considered although not expressly made a part of the record.

I. BACKGROUND

Diamond A Ranch is a proposed recreational resort that will comprise 322 guest villas, a tennis center, an equestrian center, health spa, two restaurants and a youth camp. The project will have living accommodations for approximately 1815 guests and resident staff. It is estimated that an additional day-staff of 130 persons will be necessary to service the resident guests and staff.

The development site is located in the south central portion of Alameda County, approximately three miles southeast of the intersection of Interstate 680 and Vallecitas Road. The property is abutted on three sides by public lands: San Francisco Water Department lands are to the northeast, north and northwest; San Antonio Reservoir is less than a mile north-northwest of the site; Sunol Regional Park is adjacent to the ranch to the west and southwest. Private lands, including thirteen 20-acre homesites, are to the southeast. Apperson Creek, an ephemeral stream, traverses the development site, and drains into San Antonio Reservoir.

Approximately 35 acres between the north side of Apperson Creek and the northerly site boundary are reserved for the sewage treatment system. The planned sewage treatment plant will consist of two 37,500 gallon per day (gpd) package units.

One unit is proposed initially with the second to be phased in as the project is developed. The plant will provide primary and secondary treatment consisting of settling in a sludge holding tank, cycling through a recirculation chamber and a biological oxidation tower, retention in a secondary clarifier and passage through a chlorine contact tank. It is proposed that the effluent receive additional treatment consisting of passage through a pressure sand filter to remove residual suspended solids and resultant BOD. The end products of the treatment are sludge and liquid effluent. The sludge will be stored in the primary holding tank which is an integral part of the treatment plant, and will be removed approximately once a year with a suction tank truck for disposal at the closest authorized municipal waste treatment plant. The treated and chlorinated effluent will be pumped to a fenced-in spray disposal field of 31 acres to be planted with reed canary grass.

The proposed spray disposal area is located in the watershed of Apperson Creek, less than one mile from the point where the creek enters San Antonio Reservoir. This reservoir is a domestic water supply under the control of the San Francisco Water Department.

Diamond A has contracted with the City of Pleasanton to operate the proposed sewage treatment plant so as to comply with a Regional Board policy permitting small treatment operations of this sort only if the plant is staffed and operated by a public entity.

II. CONTENTIONS AND FINDINGS

The contentions of the petitioners and our findings relevant thereto are as follows:

1. Resolution No. 74-7 should be overturned. Resolution No. 74-7 reads, in part, as follows:

- "VI. THEREFORE, BE IT RESOLVED, that this Regional Board finds that the Diamond A Guest Ranch proposal is governed by and is in substantial conformance with Resolution No. 768; and
- "VII. BE IT FURTHER RESOLVED, that the Diamond A Ranch, Inc., proposal including the agreement with the City of Pleasanton meets the intent of Resolution No. 768 in V.a. above; and
- "VIII. BE IT FURTHER RESOLVED, that this Board does not expect that a regional waste treatment facility or transport to a regional facility would be feasible with the existing agricultural zoning in effect, and that a master plan for sewerage in this area would not therefore recommend an alternate wastewater disposal to that proposed by Diamond A Ranch, Inc., and the City of Pleasanton, namely, separate treatment facilities and spray disposal on land; and
- "IX. BE IT FURTHER RESOLVED, that the second requirement of Resolution No. 768, V.b. requiring a master plan for sewerage which would include the development would not apply because of the existing zoning and the remote location of the Guest Ranch; and
- "X. BE IT FURTHER RESOLVED, that this Resolution is not intended to in any way change the policy statement of Resolution No. 768, and any future proposals will be examined separately as to their suitability in meeting this Regional Board's policy as expressed in Resolution No. 768; and
- "XI. BE IT FURTHER RESOLVED, that this Regional Board urges the Alameda County Board of Supervisors to take the leadership in establishing a public sewerage agency or agencies to serve this and other developments in unincorporated areas where public sewerage facilities do not presently exist."

Petitioners' request for review of Resolution No. 74-7 must be denied since it fails to raise substantial issues that are appropriate for review. A resolution by the Regional Board that the proposed discharge is in general compliance with a prior

policy statement and urging the County to take leadership in establishing a public sewerage agency for unincorporated areas of the County is not an "action" within the meaning of Section 13320 of the Water Code which authorizes the State Board to review any action by a Regional Board under certain enumerated portions of the Water Code.

2. The Regional Board adopted Order No. 74-44 without giving adequate consideration to the possibility of degradation of groundwater and surface water by the discharger.

(a) Groundwater. The petition mentions phosphates and total dissolved solids (TDS) as parameters of the discharge that will degrade groundwater. Petitioners presented no relevant technical material in support of their claims. In spite of the lack of supporting data from the petitioners, we have considered the matter of dissolved phosphates and we note that dissolved phosphates do not readily percolate downward to groundwater but rather become tied up in the soil.

With regard to TDS, the area's springs currently contain TDS concentrations of approximately 100 parts per million (ppm). The record indicates that it is anticipated that the development proposed by Diamond A Ranch, Inc., will at most increase TDS in the effluent by 300 ppm, resulting in an effluent of approximately 400 ppm TDS. This is still considered very good quality water for human consumption. In addition, the proposed application rate of the effluent is sufficiently low that there will normally be

no significant increase of TDS in groundwater as a result of the discharge. Considering evaporation and other characteristics of the disposal site, there will normally be very little downward pressure of dissolved salts. The record indicates that the Regional Board did give adequate consideration to possible degradation of groundwater.

(b) Surface Water. Petitioners' concern with regard to degradation of surface water appears to stem primarily from their belief that the discharge from the sewage treatment plant will lead to increased erosion and siltation because of the inadequacies of the sewage discharge site. Petitioners evidently rely on the fact that the spray field discharge area will receive substantially increased amounts of moisture, leading to erosion and siltation.

In actuality, the spray field will receive approximately 15 percent more moisture as a result of the discharge than it would otherwise get from annual precipitation. The largest relative increase in moisture will occur in the summer months when there is little natural precipitation. However, the evaporation rate is greatest during that period. Further, the spray discharge site will be planted with a mixture of reed canary grass especially formulated for this type of spray field by the United States Soil Conservation Service, to minimize runoff. It appears that with this vegetation covering the spray field, runoff from the discharge area will actually be less than if the area were kept in its original state.

Although no runoff is expected, the discharger has agreed to construct a collection berm or ditch to contain any possible runoff and conduct it to a holding pond. No discharge of effluent will take place during rainy weather and the holding pond has the capacity to hold all effluent for up to 30 days of possible inclement weather.

The waste discharge requirements, with regard to surface water, contain in paragraph B.2 the following prohibitions:

- "1. Discharge of wastewater into surface waters is prohibited.
- "2. Wastewater or precipitation runoff shall not be allowed to escape from the spray disposal area or retention pond via surface flow, surfacing after percolation, or airborne spray.
- "3. Runoff from adjacent land shall be prevented from entering the spray disposal area.
- "4. Runoff or solid wastes from stables, corrals, and areas containing significant animal wastes shall not enter Apperson Creek or any other surface waters of the State."

Along with the comprehensive monitoring program the requirements provide adequate surveillance and protection of ground-water and surface water.

3. The Regional Board did not adequately consider the difference between possible demand on, and capacity of, the sewage treatment facility.

Petitioners assert that while the proposed sewage treatment plant, will have a 75,000 gallons per day (gpd) capacity, the development at maximum occupancy could generate 112,000 gpd

of effluent. Paragraph B.6 of the waste discharge requirement prohibits discharges in excess of 75,000 gpd, and the usual enforcement procedures are available if the requirement is exceeded.

We also note that the 112,000 gpd figure is based on a projected Diamond A Ranch population of approximately 1,900 persons. However, the developer has made a commitment that not more than 1,314 persons will occupy the guest ranch. A careful examination of the record discloses that the anticipated rate of effluent discharge will be well within the 75,000 gpd maximum of the sewage treatment plant.

In addition to the 75,000 gpd flow limitation in the waste discharge requirements mentioned above, item 2 of the reporting requirements provides:

"The discharger shall file a written report with the Board within 90 days after the average dry-weather waste flow for any month equals or exceeds 80 percent of the design capacity of his waste treatment and/or disposal facilities. The discharger's senior administrative officer shall sign a letter which transmits that report and certifies that the policy-making body is adequately informed about it. The report shall include:

"Average daily flow for the month, the date on which the instantaneous peak flow occurred, the rate of that peak flow, and the total flow for that day.

"The discharger's best estimate of when the average daily dry weather flow rate will equal or exceed the design capacity of his facilities.

"The discharger's intended schedule for studies, design, and other steps needed to provide additional capacity for his waste treatment and/or disposal facilities before the waste flow rate equals the capacity of present units. (Reference: Sections 13260, 13267(b), and 13268, California Water Code)."

This provision provides a mechanism for alerting the discharger and the Regional Board to the time when sewage treatment plant capacity will be approached. The Regional Board did adequately consider the capacity of treatment facilities and petitioners' contention is without merit.

4. The Regional Board failed to consider adequately the precedent-setting nature of this facility.

Petitioners are concerned with the possible growth-inducing impact of this facility. It should be noted from the transcript that numerous comments were made regarding this factor by Board members. In fact, the Regional Board at the March 19, 1974, hearing continued consideration of this matter in order that the Alameda County Board of Supervisors could make the appropriate land use decision. However, as this land use decision had not been made by the May 21 hearing, the Regional Board proceeded to adopt the requirements.

It appears from the record that the Regional Board did consider petitioners' claim. However, it should be noted that the Regional Board's action merely sets waste discharge requirements and does not approve general use of the facility. Requirements for any other facility in the future should be carefully scrutinized on their relative merits, including the cumulative effects of all waste discharges in the particular area.

5. The Regional Board failed to consider validity of the contract between the dischargers, and in particular, failed to determine that the contract was invalid because the City of Pleasanton had failed to prepare an EIR or a Negative Declaration in connection with the project.

The transcript discloses that considerable discussion by Regional Board members focused on the terms and validity of the contract between the dischargers for operation and maintenance of the treatment plant. The Regional Board has no jurisdiction to inquire into the validity of this contract. However, the dischargers are obligated to comply with the following Board requirement:

"B.5. Discharge of waste is prohibited whenever a public agency is not responsible for the operation and maintenance of the sewerage system.

* * *

"C.11. If the agreement between the City of Pleasanton and Diamond A Guest Ranch, Inc., is terminated pursuant to said agreement, the owner shall close the sewage treatment plant and vacate the resort until such time as the owner is able to enter into an agreement with another governmental agency agreeable to the Regional Board."

6. Lack of Consideration of Draft Environmental Impact Report (EIR), and the Alameda County Local Agency Formation Commission (LAFCO) action.

Section 2718, Subchapter 17, Chapter 3, Title 23, California Administrative Code, provides that the Regional Board, in acting upon an application for waste discharge requirements, may consider environmental factors other than those relating to water quality and may "prohibit or condition the discharge of waste... in order to protect against environmental damage, to minimize adverse environmental impacts, or to insure long range protection of the environment." (See also Ops. Cal. Atty. Gen. No. SO 73-42.)

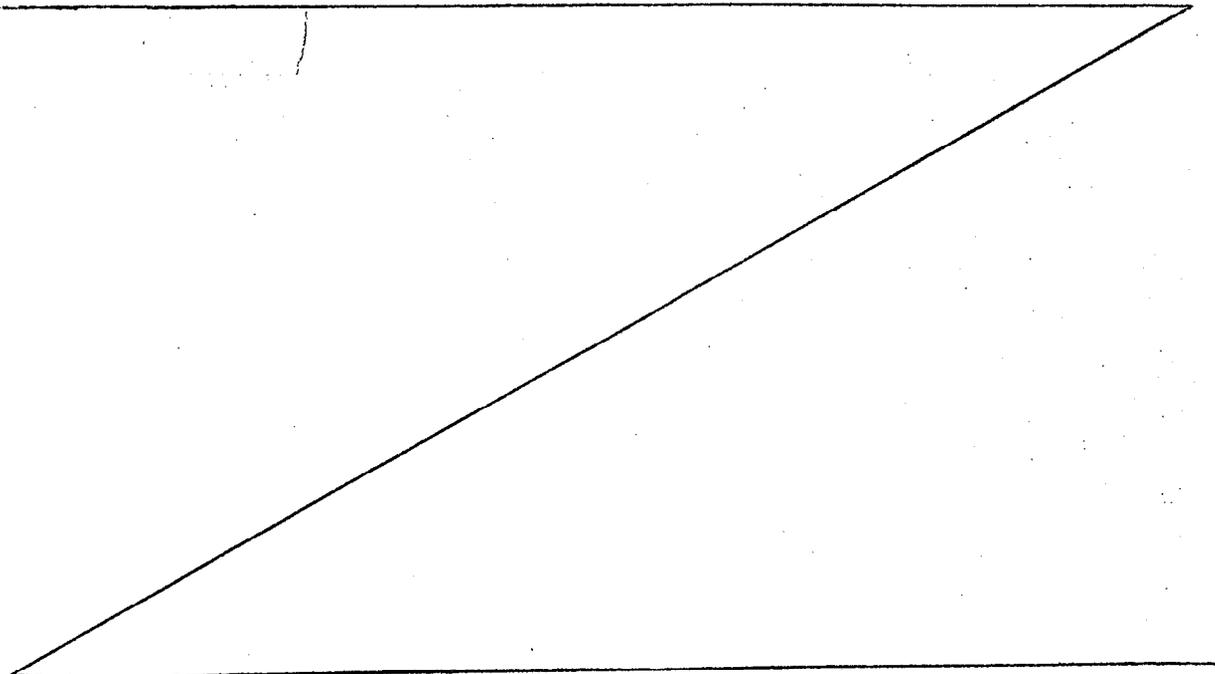
Section 2718 has been part of the Board's administrative regulations since mid-1973. Regional Board action under Section 2718 is usually based upon material contained in an environmental impact report. Although an environmental impact report was not available at the time of the Regional Board action, some information was available to the Board on the environmental effects of the proposed project. The record of the Regional Board proceeding clearly shows that there are considerable environmental impacts which will result from this proposed development in addition to the impacts related to water quality. The Regional Board apparently did not consider prohibiting the discharge of waste pursuant to Section 2718, because the draft EIR had not been prepared and the 120-day time period within which there could be no discharge without requirements was about to expire.

While the present record will not support a finding that the prohibition of the discharge on grounds other than water quality was appropriate, these requirements should be referred back to the Regional Board for full consideration under the provisions of Section 2718.

The Regional Board was not required to await a LAFCO determination prior to issuance of appropriate waste discharge requirements.

III. CONCLUSIONS

After review of the record and consideration of all the contentions of the petitioners and for the reasons discussed in this order, the State Board concludes that the Regional Board should review Order No. 74-44 pursuant to the provisions of Section 2718, Subchapter 17, Chapter 3, Title 23, California Administrative Code.



NOW, THEREFORE, IT IS ORDERED that Order No. 74-44 is remanded to the Regional Board for action consistent with the findings and conclusions of this order.

Dated: January 16, 1975

"no" *
W. W. Adams, Chairman

Ronald B. Robie
Ronald B. Robie, Vice Chairman

Roy E. Dodson
Roy E. Dodson, Member

Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member

"no" *
W. Don Maughan, Member

*See Dissenting Opinion (Attached)

DISSENT OF
BOARD CHAIRMAN ADAMS AND BOARD MEMBER MAUGHAN

We respectfully dissent from the Board's decision for the following reasons:

1. Section 2718, Subchapter 17, Chapter 3, Title 23, California Administrative Code provides that the Regional Board in acting upon an application for waste discharge requirements may consider environmental factors other than those relating to water quality and may "prohibit or condition the discharge of waste...in order to protect against environmental damage, to minimize adverse environmental impacts, or to insure long-range protection of the environment". It is a discretionary provision and is not predicated upon an absolute requirement that an EIR must be completed before waste discharge requirements are adopted or considerations under Section 2718 can be made.

2. Testimony was offered at the Regional Board hearings concerning some of the environmental issues and much of the technical basis for the EIR was available to the Board at the time of the Board's adoption of the requirements. Since waste discharge requirements are an activity which is categorically exempt from the requirements of CEQA, there is no reasonable basis for the return of the order to the Regional Board based on the absence of the complete EIR, and the unsupported statement in the State Board Order No. 75-4, approved on January 16, 1975, that "The Regional Board apparently did not consider prohibiting the waste pursuant to Section 2718...."

3. Governmental responsibilities overlap and there is a growing tendency for each and every agency to rule not only on its primary responsibility, but related ones as well. That is all well and good -- to a degree -- because there are growing interrelationships between water, land, air, people, growth, etc. However, the evaluation of all the environmental factors is beyond the expertise of the Regional Board but within that of other duly authorized regulatory governmental agencies. Therefore, we are of the opinion that the Regional Board used good judgment in providing waste discharge expertise at the earliest practicable date, and leaving full environmental consideration to other appropriate governmental regulatory bodies.

4. The final reason for our dissent involves the continuing dilemma of what action should come first. If the Regional Board had refused to prescribe waste discharge requirements until completion of the EIR, the EIR itself would be incomplete because it needs to include a responsible evaluation of how waste will be disposed.



W. W. Adams
Chairman



W. Don Maughan
Member