

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2023-00XX

In the Matter of the petition of

Edward Voice

for reconsideration of Order WR 2022-0152,
order on petitions of Garberville Sanitary District
to change water-right License 3404 (Application A009686)
and water-right Permit 20789 (Application A029981),
which authorize diversions of water from the South Fork Eel River
in Humboldt County

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

This matter came to the State Water Resources Control Board (State Water Board or Board) on the petition of Edward Voice for reconsideration of the Board's Order WR 2022-0152. Order WR 2022-0152 granted the petitions of Garberville Sanitary District (Garberville SD) to change its water-right License 3404 (Application A009686) and water-right Permit 20789 (Application A029981), which authorize Garberville SD to divert water from the South Fork of the Eel River in Humboldt County for municipal uses within the authorized place of use.

In his petition for reconsideration of Order WR 2022-0152, Mr. Voice alleges that the State Water Board's adoption of this order did not comply with the California Environmental Quality Act (CEQA) or the CEQA Guidelines.

For the reasons stated in this order, we deny Mr. Voice's petition for reconsideration.

2.0 GROUND FOR RECONSIDERATION OF A BOARD ORDER; TIMING OF BOARD'S ORDER ON PETITION FOR RECONSIDERATION

Any interested person may petition the State Water Board for reconsideration of a water rights order within 30 days after the date on which the Board adopted the order. (Wat. Code, § 1122.)

The applicable Board regulation (Cal. Code Regs., tit. 23, § 768) provides that a petition for reconsideration may address any of the following causes:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

The State Water Board adopted Order WR 2022-0152 on June 21, 2022. Mr. Voice filed his petition with the Clerk of the Board on July 18, 2022, which was before the 30-day deadline for petitions specified in Water Code section 1122.

Water Code section 1122 provides that the State Water Board shall order or deny reconsideration on a petition within 90 days from the date on which the Board adopts the decision or order. The Board's Administrative Hearings Office (AHO) did not receive a copy of this petition until late August 2022. This delay and other AHO and Board workload issues caused delays in the processing of this petition by the AHO and the Board. For these reasons, we were not able to act on Mr. Voice's petition within 90 days of the date of the Board's adoption of Order WR 2022-0152.

If the State Water Board does not act on a petition for reconsideration within the 90-day period specified in Water Code section 1122, the petitioner may seek judicial review, but the Board is not divested of jurisdiction to act upon the petition. (State Water Board Order WR 2009-0061, p. 2, fn. 1; see *California Correctional Peace Officers Assn v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151.) We therefore have authority to issue this order on Mr. Voice's petition for reconsideration.

3.0 BACKGROUND

3.1 Division of Water Rights, AHO and Board Proceedings

Order WR 2022-0152 discusses the relevant facts regarding the Division of Water Rights, AHO and Board proceedings concerning License 3404 and Permit 20789. (See Order WR 2022-0152, pp. 2-14.)

Section 2.7 of Order WR 2022-0152 discusses the three CEQA documents that Garberville SD filed as hearing exhibits in this proceeding. These CEQA documents are: (a) the 2013 Garberville SD Annexation Project Initial Study/Mitigated Negative Declaration for Change in Jurisdictional Boundary and Place of Use; (b) the 2016 Humboldt County Environmental Impact Report for the Southern Humboldt Community Park Project; and (c) the 2019 Humboldt LAFCo Addendum to the 2013 Initial Study/Mitigated Negative Declaration. (See Order WR 2022-0152, pp. 7-10.)

In 2019, Humboldt LAFCo adopted Resolution Nos. 19-04 and 19-05, which relied on the 2013 Initial Study/Mitigated Negative Declaration and the 2019 Addendum for Humboldt LAFCo's CEQA compliance. Garberville SD was the CEQA lead agency for the project described in the district's 2013 Initial Study/Mitigated Negative Declaration. Humboldt LAFCo was a CEQA responsible agency for its adoption of these resolutions. As discussed in Section 3.1.5 of Order WR 2022-0152, Humboldt LAFCo's actions regarding the 2019 CEQA Addendum for its CEQA compliance for its adoption of these resolutions complied with CEQA Guidelines section 15164, and no one filed a legal challenge to these actions. (Order WR 2022-0152, pp. 19-20.)

For the purposes of considering whether to approve Garberville SD's petitions to change License 3404 and Permit 20789, the State Water Board was a CEQA responsible agency. The CEQA Guidelines provide that, in deciding whether and how to approve a project, a CEQA responsible agency must consider the environmental effects of the project as disclosed in the CEQA documentation prepared by the CEQA lead agency. (CEQA Guidelines, § 15096, subd. (f).) Except under limited circumstances when a CEQA responsible agency may assume CEQA lead agency status or prepare subsequent CEQA documentation, a CEQA responsible agency must

presume that the conclusions reached by the CEQA lead agency in its CEQA documentation regarding the environmental effects of the proposed project are adequate, or challenge the lead agency in court. (*Id.*, subds. (e) & (f).)

The CEQA Guidelines do not specifically address the situation where one agency prepares a CEQA document as a CEQA lead agency, a second agency then prepares a CEQA addendum as a CEQA responsible agency, and a third agency, here the State Water Board, then must comply with CEQA for its actions regarding the project described in the CEQA addendum. When we adopted Order WR 2022-0152, we interpreted the CEQA Guidelines as authorizing the Board to consider and rely upon Garberville SD's 2013 Initial Study/Mitigated Negative Declaration and Humboldt LAFCo's 2019 Addendum for the Board's CEQA compliance. (See Order WR 2022-0152, p. 20.)

3.2. Mr. Voice's Petition for Reconsideration

In his petition for reconsideration, Mr. Voice argues that Garberville SD's change petitions and 2019 Humboldt LAFCo CEQA addendum did not comply with CEQA. (2022-07-18 E. Voice notice of petition for reconsideration, with attachment (E. Voice petition), p. 2¹.) Mr. Voice included as an attachment to his petition a copy of the comments he submitted to the Board during its June 21, 2022 meeting. (*Id.*, pp. 5-9.) Mr. Voice's June 21, 2022 comments referred to footnote 15 on page 20 of the draft order that became Order WR 2022-0152. That footnote states:

¹⁵ Although section 2.6 discusses the 2016 Humboldt County EIR for the Southern Humboldt CP project, the proposed project described and analyzed in that EIR did not include proposed extensions of Garberville SD water service to Southern Humboldt CP, and the 2019 Humboldt LAFCo CEQA Addendum was not an addendum to that EIR. We therefore do not rely on the 2016 EIR for the Board's CEQA compliance for this order.

Mr. Voice argues that the State Water Board could not rely on the 2019 Humboldt LAFCo Addendum for the Board's CEQA compliance for Order WR 2022-0152,

¹ Mr. Voice's July 18, 2022 petition for re-consideration and his June 21, 2022 comments to the Board are in one composite pdf file in the administrative record. This order refers to the pdf page numbers of that file.

because the 2019 Addendum cited the 2016 Humboldt County EIR as a reference and included its mitigation, monitoring and reporting plan as an exhibit. (E. Voice petition, pp. 5-7; see exh. CEQA-18, pp. 19, 25-52.)²

Mr. Voice's argument is incorrect.

Humboldt LAFCo did not rely directly on Humboldt County's 2016 EIR for its CEQA compliance. Instead, Humboldt LAFCo relied on the 2013 Initial Study/Mitigated Negative Declaration and the 2019 Addendum to that document for its CEQA compliance. As discussed in section 3.1 of this order, that reliance complied with CEQA Guidelines section 15164, and no one filed a legal challenge to these actions.

After Humboldt LAFCo took these actions, we similarly relied on the 2013 Initial Study/Mitigated Negative Declaration and LAFCo's 2019 Addendum for the Board's CEQA compliance. Footnote 15 in Order WR 2022-0152 simply confirms that we did not rely directly on the County's 2016 EIR for the Board's CEQA compliance. Nothing in that footnote, CEQA or the CEQA Guidelines prevented us from relying on the 2019 Addendum for the Board's CEQA compliance. even though this addendum refers to and incorporates parts of the 2016 EIR.

We also reject Mr. Voice's argument that Humboldt LAFCo's 2019 Addendum was improper piecemealing or segmenting. (See E. Voice petition, p. 7.) Paragraph 3 of Appendix C to Order WR 2022-0152 summarizes Mr. Voice's and Ms. Sutton's prior argument on this issue and states our response:

2. Mr. Voice and Ms. Sutton argued to the AHO that the CEQA process for Garberville SD's petitions to change License 3404 and Permit 20789 was "piecemealed," confusing, incomplete and inadequate. (E. Voice Closing Brief, pp. 3-4; L. Sutton Closing Brief, p. 5.)

Response: Section 2.7 discusses Garberville SD's 2013 ID/MND, Humboldt County's 2016 EIR, and Humboldt LAFCo's 2019 CEQA Addendum. While this CEQA history is complicated, Garberville SD's 2013 IS/MND and Humboldt LAFCo's 2019 CEQA Addendum together

² Exhibit CEQA-18 is one of the exhibits Garberville SD filed with the AHO during the AHO's proceeding.

satisfy the applicable CEQA requirements for Garberville SD's petitions to change License 3404 and Permit 20789. As a CEQA Responsible Agency, the State Water Board may use these CEQA documents for the Board's CEQA compliance for this order. (See CEQA Guidelines, § 15096, subd. (e) & (f).)

(Order WR 2022-0152, App. C, pp. 1-2.)

4.0 CONCLUSION

Mr. Voice's petition for reconsideration basically repeats his prior arguments regarding the Board's CEQA compliance for Order WR 2022-0152. We considered and rejected those arguments before we adopted Order WR 2022-0152. Having reconsidered these arguments, we once again conclude that they are not valid and that we therefore should deny Mr. Voice's petition.

ORDER

IT IS HEREBY ORDERED that:

1. The Board denies Edward Voice's petition for reconsideration of Order WR 2022-0152.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 7, 2023.

AYE:

NAY:

ABSENT:

ABSTAIN:

Courtney Tyler
Acting Clerk to the Board