

EL DORADO COUNTY GRAND JURY 2013-2014

TOXIC POLLUTION SPREAD BY ILLEGAL GRADING ON DIAMOND DORADO

Case Number GJ-13-16

Reason for Report

A citizen complained that El Dorado County was ignoring continuing pollution into Webber Creek from the former Diamond Lime Plant site.

Summary

Two adjacent Assessor's parcels in Diamond Springs are located within the former Diamond Lime Plant site. They are also next to the present day Material Recovery Facility (MRF) on Throwita Way. The physical manifestations of the lime plant are long gone. However, the last vestige of the Diamond Lime Plant may be the lime waste that today continues to contaminate the property, surrounding area and adjacent waterways.

The property is currently under investigation by the California Department of Fish and Wildlife (CDFW), formerly the Department of Fish and Game, and the California Regional Water Quality Control Board. CDFW issued a citation with pending fines amounting to almost \$100,000 and was cooperating with the El Dorado County District Attorney who has since dismissed the underlying misdemeanor criminal case.

The owner has improperly and illegally graded the property without an El Dorado County grading permit in spite of a stop work order issued by the County Department of Transportation. In addition the grading was not done according to a conditionally approved grading and lime mitigation plan prepared by professional Engineers at the request of the owner.

The property is a portion of the proposed right of way for the County's Diamond Dorado Parkway. That part of the property has been offered to the County without charge for that purpose. The property is the entire site of the proposed Diamond Retail Center that will be adjacent to and front on the Parkway.

Background

The Diamond Lime Plant was a lime production plant with lime kilns and sludge settling ponds that began operation prior to 1935 and continued until at least 1977. It processed lime from a quarry 6 miles away that was transported to the processing plant on an overhead cable transport system. The lime was processed in kilns then shipped out on the railway that ran alongside the site.

Citizens using the El Dorado Trail, a bike/pedestrian path on the former railroad right-of-way at the North perimeter of the property, reported white milky water and dead mammals in two tributaries of Webber Creek to the CDFW. CDFW documented lime discharge from the property on March 17, 2011. Testing showed alkalinity up to pH 12, equivalent to ammonia or oven cleaner, on the property. A CDFW violation case was filed with the County District Attorney.

The proposed Diamond Dorado Parkway and commensurate utilities will traverse the northern property and the proposed adjacent Diamond Dorado Retail Center will partially occupy the remainder. DRAFT 5

Methodology

- A representative of the California Regional Water Quality Control Board was interviewed.
- A representative of the County Department of Transportation was interviewed.
- Representatives of the El Dorado County District Attorney's office were interviewed.
- The *BRADLEY ROAD PROPERTY LIME KILN WASTE MITIGATION PLAN REPORT for APNs 051-25-51-100 And 051-250-54-100 Bradley Road And Throwita Way, Diamond Springs, El Dorado County, California* Prepared by Holdrege & Kull, Consulting Engineers – Geologists, dated June 4, 2012 was reviewed.
- The *Diamond Dorado Retail Center Project Final Environmental Impact Report* (State Clearinghouse No. 2008012004) was reviewed.
- The *Diamond Springs Parkway Project Final Environmental Impact Report* (State Clearinghouse No. 2007122033) was reviewed.

Discussion

The California Department of Fish and Wildlife (CDFW) recommended that the property be stabilized and a corrective action plan developed. Two corrective action plans submitted by the property owner to CDFW were determined to be incomplete, inadequate or insufficient.

A third plan, also submitted by the property owner, the *BRADLEY ROAD PROPERTY LIME KILN WASTE MITIGATION PLAN REPORT for APNs 051-250-51-100 And 051-250-54-100 Bradley Road And Throwita Way, Diamond Springs, El Dorado County, California* (Waste Mitigation Plan) prepared by Civil Engineer Don Olsen of Holdrege and Kull, was submitted to

CDFW. Its corrective action plan for the lime waste pollution to state waters, including a grading plan, was conditionally approved.

The Grand Jury learned that the Holdrege and Kull grading plan was also submitted to the El Dorado County Department of Transportation (DOT). It was not reviewed by DOT personnel because a plan review fee was never paid by the applicant and a grading permit was never issued. When grading commenced without a permit, DOT issued a stop work order. Despite the stop work order, grading continued.

The Grand Jury learned that when a stop work order is not complied with and/or improper or illegal grading activity continues after a stop work order, there are escalating actions that can be taken to gain compliance. Legal enforcement remedies can be criminal action by the County District Attorney and civil action by the County Counsel. Another possibility is delineated in the County Grading, Erosion, And Sediment Control Ordinance Article IV. Enforcement Section 15.14.410 Corrective work. It allows that "... *the Director may order County workers or contractors to immediately enter private property to abate hazards to public health and safety ...*". The Section also allows direct cost recovery including "... *a lien on the property.*" However, the Grand Jury could not identify any instance where the provision of Section 15.14.410 had been invoked! ***Instead, the County took no action and let the improper and illegal grading continue.***

When grading approached completion, a CDFW inspection of the site revealed several unauthorized activities and CDFW violations including a required El Dorado County Grading Permit was not obtained. DRAFT 5

Subsequently, CDFW issued a citation and referred it to the El Dorado County District Attorney. The District Attorney initially pursued prosecution of the CDFW violation but eventually dismissed the underlying misdemeanor criminal case after the Grand Jury inquired about the status of the case.

Examination of the property afterward revealed that the grading did not approach the provisions of the Holdrege and Kull grading plan. Cut-off walls were not installed. The property was graded and filled in places with between 7 and 15 feet of contaminated material spread from other parts of the property. It essentially dug up contaminated soil and used it to cover up the worst lime waste deposits without proper remediation or possible mediation.

The grading raised the grade of the property creating a *dam* effect that completely obstructed the previous drainage pattern from the MRF. A substantial storm water drainage system was installed by MRF on a County easement between the MRF and the graded property to alleviate the problem. The storm water system was installed with a County Permit. Ironically, the need for it was caused by grading ***without a permit despite a stop work order!***

The owners initiated a project to construct the Diamond Dorado Retail Center on the property. The retail center would front on the proposed County Diamond Dorado Parkway that would partly occupy part of the property. The owners took steps to give part of their property to the County at no cost for the Parkway.

Findings

1. The unpermitted grading spread toxic limestone waste over the site causing dangerously high levels of pH in surrounding tributaries.

Response: The respondent agrees with the finding.

2. Toxic limestone waste continues to flow into adjacent waterways. Nobody is doing anything to stop it. Not the owner, not the County and not the State.

Response: The respondent disagrees partially with this finding since making this determination is outside the Transportation Division's jurisdiction. The Division has issued a Stop Work Notice which is in effect until such time as the property owner obtains a grading permit and completes the approved work.

3. The property along with several adjacent parcels have become the site of two important County projects: Diamond Dorado Parkway and Diamond Dorado Retail Center.

Response: The respondent partially agrees with the finding. The Diamond Springs Parkway is a County project; the Diamond Dorado Retail Center is a private project.

4. El Dorado County has executed and recorded two CONSENT TO MAKING OF IRREVOCABLE OFFER OF DEDICATION, where it appears the owners have offered part of the property to the County without charge for rights-of-way for a portion of the Parkway. The offer can be accepted by the County until 5/25/2025.

Response: The respondent agrees with the finding.

5. The County did not enforce the Grading Ordinance, Title 15.14 of the County Code. It is the law. The law was not enforced.

Response: The respondent disagrees wholly with the finding. The Transportation Division followed the actions prescribed in the Grading Ordinance and forwarded the complaint to the appropriate agency for follow up and enforcement.

6. It would be completely irresponsible of the County to allow the Diamond Dorado Parkway project to proceed without ensuring that all environmental issues and mitigations have been resolved.

Response: The respondent agrees with the finding

7. Section 15.14.410 of the Grading Ordinance is an extremely valuable tool to enforce proper grading of property. It should be used.

Response: The respondent agrees with the finding

8. It is somewhat disquieting that enforcement compliance can be predicated by payment of fines and fees by the offending party, particularly when environmental concerns are paramount.

Response: The respondent agrees with the finding

Recommendations

1. The Grand Jury recommends that El Dorado County immediately review whether spending public monies for the planning, engineering or improvements for Diamond Dorado Projects is wise given environmental concerns.

Response: The recommendation will not be implemented because it is not warranted. The County is spending “public monies” to construct the Diamond Springs Parkway which has benefits for a wide range of County residents. The Diamond Dorado commercial project is being proposed by private developers. The County prepared an Environmental Impact Report (EIR) for the Diamond Springs Parkway Project (Project), which was adopted by the Board of Supervisors in 2011. The EIR is a comprehensive document that identifies and evaluates potentially significant adverse environmental effects of the Project, as well as mitigation measures that would serve to avoid or reduce these impacts to a less-than-significant level. Through this process, pursuant to the California Environmental Quality Act (CEQA), the County determined that the Project would result in a less-than-significant environmental impact by implementing a Mitigation Monitoring and Reporting Plan.

2. The County should engage an environmental consultant to measure the impacts of existing grading upon dispersal of limestone waste in consideration of up to date reports and water samples from State agencies including the Regional Water Quality Control Board and the Department of Fish and Game.

Response: Recommendation has not yet been implemented but will be in the future. The County prepared an Environmental Site Assessment (ESA) for the Project, which

evaluated the project area for potential or known hazardous materials, hazardous waste, and contamination. Preparation of the ESA included a records search, field visits, and historical research on past land uses within the Project area in order to identify potential sources of contamination. The ESA identified recognized environmental conditions at 2 parcels within the Project area, and also recommended that the County provide on-site monitoring during construction of the parcels within the former lime plant site for the presence of hazardous material releases or contamination. The County will also conduct soil testing at the 2 parcels with recognized environmental conditions in order to determine the extent of contamination and create a work plan outlining the appropriate course of action in constructing the Project improvements.

3. The County should ensure that all environmental issues and mitigations have been resolved before continuing with the development of the Diamond Dorado Parkway and the Diamond Dorado Retail Center.

Response: Recommendation has been implemented. It is the responsibility of the County as the Project lead, to ensure that all measures included in the Mitigation Monitoring and Reporting Plan are implemented and addressed in order to satisfy CEQA requirements for construction of the Project. Environmental remediation activities and required mitigation pursuant to CEQA compliance for the Diamond Dorado Retail Center (DDRC) are the responsibility of the developer and not the County, as the DDRC is a proposed development that is separate from the Project and funded with private dollars.

4. Property owners adjacent to the Project or in the vicinity of the Diamond Lime Plane should be advised of the existing contaminations.

Response: Recommendation will not be implemented. Adoption of the EIR for the Project involved public outreach wherein all property owners in the Project area, as well as the general public via press releases, were notified of the document and provided the opportunity to review and submit comments.

5. Planning Services and DOT should explore using County Grading, Erosion, and Sediment Control Ordinance Section 15.14.410 to achieve prudent results.

Response: Recommendation has been implemented. The Community Development Agency will continue to monitor each inquiry for a permit to determine if it is prudent to issue a permit and/or if remedial action is warranted.

6. The County should enforce the provisions of the Grading, Erosion, and Sediment Control Ordinance, Chapter 15.14 of the County Code.

Response: Recommendation has been implemented. The Community Development Agency enforces the Grading, Erosion, and Sediment Control Ordinance to fullest extent possible within the language and limitations contained in the Ordinance and with the resources available to staff.