

Public Comment #32 & 33
BOS Recd. 9-11-23

From: Cheryl Bly-Chester <cherylblychester@aol.com>
Sent: Monday, September 11, 2023 12:00 PM
To: BOS-Clerk of the Board
Subject: Resend of Public Comments to Items 32 and 33 BOS meeting Sept 12, 2023
Attachments: Public Comment Items 32 and 33 BOS Sept 12, 2023 hearing Corrected.pdf

Dear Clerk of the Board,

I am resending my comments for the above the items. Please replace my earlier version with these comments on both items regarding the Diamond Springs Parkway being considered on September 12, 2023.

Thank You,

Cheryl Bly-Chester,
District 2

(916) 721-8557 (Pacific Time)
(916) 747-2293 (mobile)

Public Comment

Item 32 & Item 33

BOS Hearing 9/12/2023

la Covenant and Agreement between the California Regional Water Quality Control Board, Central Valley Region, and the County of El Dorado

Offer of Dedication of known Contaminated lands.

Cheryl Bly Chester, P.E.

District 2

Comment 1. - On this topic I want to first reinforce a comment made during the initial hearing. It is unconscionable to have placed this controversial item on the Consent Calendar knowing that it would not receive unanimous consent from her Board. Trying to slip this in under the radar to disenfranchise the people of the County from knowing what the County is up to with millions of dollars of tax money is an abuse of the consent calendar process and of the public trust.

Comment 2. - No ex parte disclosures were made at the onset of this hearing, but three Supervisors appeared prepped for the exchange, despite it being on the consent calendar.

The County Transportation Engineers prevaricated in response to the Supervisor's question as to whether this Remedial Action Plan complied with the EIR. The engineers misled that the remedial action plan is consistent with the EIR. The brief questions and prepared statements between three Supervisors and the Transportation Department appeared to be scripted to give this Board of Supervisors cover in adopting a project design never addressed in CEQA. The way the questions and answers flowed appeared to be the result of a serial meeting, maybe between intermediaries, wherein a quorum of the board appear to be skating very close to a Ralph M. Brown Act violation.¹

Comment 3. - Neither the 2011 Diamond Springs Parkway EIR nor 2016 Supplemental EIR ever considered the environmental impacts of a significant lime kiln hazardous waste remediation project as part of the Phase 1B Diamond Springs Pkwy in the selected alternative corridor. Remediating Lime kiln waste was not part of the project description or directly contemplated in any mitigation measure for

¹ 54952.2. (b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. AND 54959. Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

. 2011 EIR Environmental Impact and Mitigation Findings

the Department of Transportation will stop construction

either the original EIR or Supplemental EIR for the Diamond Springs Parkway. In both EIRs, the only mitigation measure identified with regard to lime kiln waste is that if encountered, all construction on the project will cease. Therefore, the only way for the Diamond Springs Parkway project to be consistent with the CEQA EIRs is to cease all construction as soon as any lime kiln waste is encountered. Since the Transportation Project can't simultaneously cease all construction and complete the Phase 1B project, the mitigation stated in the EIR's cannot be implemented.

In 2015, the environmental health department reported that it had no file on the historic lime kiln site, no records, no case officer assigned, and no evidence that incredibly caustic high pH of 13.5 and higher was emanating from a historic lime kiln site within the Diamond Dorado Parkway area. My notes from that meeting are attached to this report followed by the Grand Jury Report on the matter.

In the 2016 supplemental environmental Impact report, after extensive investigation identified the pH of groundwater as high as pH 14 and surface water approaching pH 13, the Supplemental Environmental Impact report stated that waste from "the Diamond Lime Mineral Plant (051-250-46 and 051-250-54) are located outside the vicinity of the proposed Phase 1B design modification" and therefore, "As evaluated and presented in this Draft SEIR, the Phase 1B design modification would not result in any new significant impacts and would not increase the severity of significant impacts previously

identified in the 2011 EIR."³

I have long witnessed what I believe to be the County's actively working at obscuring the truth from the public about the lime kiln hazardous waste cleanup activities impacting the Diamond Dorado Parkway and other associated hazardous projects in that corridor, including Sierra Door Site at Old Depot Road.⁴

The Transportation Engineers admitted that they were not hazardous waste engineers and the County needs to receive testimony about this project from the County's Environmental Management Department or the State Water Resources Control experts **and that testimony needs to be under oath.**

Comment 4 - Having said that, I am not in opposition to completing the Phase 1B project. What I am opposed to is the County hiding the truth from the people of the county and assuming full responsibility for hazardous waste cleanup where the taxpayers have no opportunity to recoup the costs. The state of California should already have named all the principal responsible parties who have joint and several liability for the cleanup under CERCLA. El Dorado County should never be named a Principal Responsible Party with liability for this cleanup, and this protection from liability must be stated in all agreements, with the County retaining the ability through the legal system to recoup the cost of the cleanup from the Principal Responsible Parties.

The EPA recommends that local governments refer to the statutory language of CERCLA⁵, the regulations at 40 C.F.R. Parts 300, 310, and 312, and relevant EPA documents (referenced throughout this guidance) prior to taking any action to acquire ownership or control, or to clean up or redevelop contaminated property. There are Superfund Liability Protections for Local Government Acquisitions after the Brownfields Utilization, Investment, and Local Development Act of 2018. El Dorado County

³2016 Supplemental EIR 's
<https://www.edcgov.us/government/dot/ceqa/dsp/documents/Diamond%20Springs%20Parkway%20Draft%20Supplemental%20Environmental%20Impact%20Report.pdf>

⁴ YouTube video El Dorado County pH 13.5, <https://www.youtube.com/watch?v=N8xZzzT0eMw>

⁵ EPA Fact Sheet on Superfund Liability 6 <https://www.epa.gov/sites/default/files/2020-06/documents/local-gov-acquisition-guide-final-2020-esign.pdf>

must take steps to acquire these protections prior to entering into any agreements or accepting any dedication of right-of-way.

Comment 5 – The terms of the dedication should not agree to return excess road right-of-way to the underlying fee title holders of the land. Although that is normally done with road right-of-way acquisitions, in this case the underlying fee title holders of the land are the Principal Responsible Parties with financial liability for cleaning up the hazardous waste and that land is a material asset, especially after it has been cleaned up at taxpayer expense. The right-of-way dedication should clearly state that it is for road and other County facility purposes as deemed necessary by the County. This will give the County leeway in the future that best suits the County's needs for any use at all. The landowner should not expect to receive this land back after it has been remediated at taxpayer expense unless the full cost of the remediation is completely reimbursed according to CERCLA joint and several liability laws.

From: Cheryl Bly-Chester <cheryl**blychester@aol.com**>

To: CherylBlyChester <CherylBlyChester@aol.com>

Bcc: george.turnboo <george.turnboo@gmail.com>; donna.Cademartori <donna.Cademartori@edcgov.us>; BOSOne <BOSOne@edcgov.us>; BOStwo <BOStwo@edcgov.us>; BOSThree <BOSThree@edcgov.us>; BOSfour <BOSfour@edcgov.us>; BOSfive <BOSfive@edcgov.us>; pminkle <pminkle@waterboards.ca.gov>; coz <coz@dfg.ca.gov>; coz <coz@dfw.ca.gov>; mgood <mgood@dfg.ca.gov>; mgood <mgood@dfw.ca.gov>; salazar.matt <salazar.matt@epa.gov>

Subject: Fwd: Cheryl Bly-Chester's Notes from the Meeting about a hazardous release from the Historic Diamond Lime Processing Plant

Date: Fri, Apr 10, 2015 2:53 pm

Attachments: 13-16 Illegal Grading on Diamond Dorado.pdf (1431K), 08-09-2012_A07-00018_Z07-0054_PD07-0034_P08-0017_Attachment 3-Exhibit B-2.pdf (344K), Screen Shot 2015-04-10 at 12.16.58 PM.png (1293K), ED Lim Plant c1997.jpg (4034K)

Ms. Cademartori volunteered to forward the email to the EDC attendees, stating that it was not their practice to give out staff emails and none of the staff gave out their cards at the meeting:

On Thursday, April 9, 2015 12:12 PM, Cheryl Bly-Chester <cheryl**blychester@aol.com**> wrote:

Meeting at El Dorado County Environmental Management Department, Building C, April 8, 2015 9:30 am

13 Attending:

George Turnboo, member of the EDC Solid Waste Advisory Committee (SWAC)

Laurel Stroud, EDC SWAC

Barbara Houghton Environmental Health Manager EDC Environmental Management

Curt Kiesel EDC Environmental Health

Paul Halloway EDC Environmental Management

Amy Velasco, EDC Environmental Management Dept

Pete Minkle, Central Valley Regional Water Quality Control Board

Mitch Good, CA Dept Fish and Wildlife

Amy Phyllips, EDC Stormwater Protection

Greg Stanton, Deputy Director of EDC Environmental Management

Shenine May, Support Staff (also taking notes)

Carol Oz, CA Dept of Fish and Wildlife

Cheryl Bly-Chester, Rosewood Environmental Engineering

The meeting opened with Barbara Houghton going over the OES release report and Amy Velasco and Amy Phillip's report from the County on investigating the release report. Their report basically stated that there was no evidence of a release from the Plant Operations to Weber Creek. They looked primarily at the storm water pollution prevention plan and spill prevention plan elements and BMPs and said that everything was in place with no evidence of a release. The site was dry at the time of the visit and they made visual observations with no sampling.

When he was given an opportunity to speak, Mr. Turnboo interjected that he was not reporting a release from the current operations, but rather from an "illegal" grading operation that caused a release to the surface, likely the subsurface, and to Weber Creek - originating from buried contamination from prior operation. Turnboo received information from an interested party in the historic Diamond Lime Plant, a limestone kiln processing plant, that there was an environmental concern at the site and that people were reportedly getting sick from it. He reported the release conditions to the State Office of Emergency

Services. Barbara Houghton cut him off to go on with her staff report with all the measures they observed at the site, with Amy Velasco continuing to explain where they walked and what the photos in the report depicted. Barbara Houghton appeared to more concerned about the report to OES mobilizing the staff, than about the potential for contamination being reported. She said that they were unaware of any release from the former lime quarry, especially not involving bunker oil.

I (Bly-Chester) asked what the current plant was permitted to process. Barbara Houghton said that is the State's business and not the County's so they can't answer that question - so I looked at Amy Phillips (EDC Stormwater) and asked what processes and pollutants were listed in the SWPPP. I asked Amy P. if petroleum products were considered processing waste included in the covered permit activities. She readily could find the the SIC code (5093) in her notes, but not the pollutants so we agreed that we could find that in the SMARTS database for the Industrial SWPPP for the site. Barbara Houghton explained that there was a large, double-wall containment, vaulted aboveground storage tank at the site. I asked if the plant had an oil/water separator. Amy Velasco volunteered that they had adsorbent pillows and booms to capture petroleum products and there was no sheen or staining in evidence. Amy Phillips answered that she did not know if they had an oil/water separator, but that there was metal structure in the pond at the site. Barbara Houghton cut the discussion short.

Barbara Houghton then turned the discussion to the DFW report. Mitch Good said that he had Carol Oz on the phone with him during his site walk and that he also did not see evidence of a recent release and did not sample. He stated that he thought that reporting the release to OES caused a huge waste of resources and blamed it on the reporting party. He said that they normally receive an OES report, contact the reporting party to get the details and ascertain how urgent the release investigation is so that they can respond appropriately. When asked if he did call the reporting party, he said that he had not. He was told by both Turnboo and Stroud that if he had spoken to either of them he would have known that this was not an urgent matter, but one that had not yet been addressed and was likely continuing.

I asked Carol Oz if she knew if this was the same lime processing plant release to Weber Creek that was reported a few years ago. She said that she didn't know anything about it and had never been to the processing plant. I didn't think that was right, so I tried to jog her memory saying that it was in the Mountain Democrat and there was a Grand Jury Investigation about it. I said that I thought that it caused a fish kill. She said that she didn't know anything about it. She certainly did not volunteer that she had been the DFG Specialist who had sampled Weber Creek previously. She claimed to have no knowledge about releases there.

Stroud said that there was yet another Grand Jury investigation going on. All of the EDC Environmental Management people also said that they didn't know anything about it.

Despite the illegal grading operations and hazardous waste release with clear impact on the surrounding area, Greg Stanton, the Deputy Director of the Environmental Management Department, stated that El Dorado County does not have a case file concerning the former Diamond Lime Plant site. I asked if there was a case officer assigned to it - No there is not. I asked who was investigating this release - he said that no one is. I asked who is overseeing clean up - no one is. Then Barbara Houghton said that EMD doesn't have a *right* to investigate the release, as it is on private property and they can't enter private property under any circumstances and certainly not without hard data to put into a report. I challenged that statement from several different angles, but she insisted that the County had no right to address it.

I told Deputy Director Stanton that my understanding of what raised alarm was that it appeared that Environmental Management Staff had intentionally erased all mention of Turnboo's report of a problem during the SW Advisory Meeting from the Conformed Meeting Minutes. That a brief mention of it had

appeared in the Draft Minutes, but all mention of it was taken out in the final minutes. Stanton's explanation was that they did not want to provide full transcripts of the meetings and that the County did not have the resources for complete transcripts and if the Public wanted to listen to the transcripts, they could request them. I said that removing information from a draft of the minutes was not in anyway saving the County's resources, so that didn't make any sense. He then said that he didn't want to set a precedent of providing that much information about what was said during the meetings. I told him that as a member of the Public, I would appreciate one or two sentences just mentioning that a topic had been raised, so that I would know that there might be transcripts of interest to me. He said that a long-standing practice of the staff was to not include any discussion of topics raised unless they were on point for the agenda. I suggested that the staff should not omit such statements made by the Public or by Board Members, if they were within the jurisdiction of the Board. I told him that I found that practice by staff very troubling.

I asked several times what EDC Environmental Management's role was in this matter and were told, mainly by Barbara Houghton and Greg Stanton that they do not have a role in it at all. I asked if there had been any environmental investigations into historical recognized environmental concerns. Barbara Houghton said that there had not been and that the only way such investigations would be initiated was when there was a property transfer of some kind, then the banks would initiate it, but their Environmental Management Department would not and did not have a right to conduct any investigations or have any authority to over the environmental conditions at the historic Limestone quarry. The Environmental Management Department expressly said that they do not have a file at all on the site.

Turnboo mentioned a Parkway project going through the Site - I flat couldn't believe it. I pointedly asked Barbara Houghton if this site was within the Planned Parkway Corridor - Yes it is. I then said that **of course** they had a right and even an obligation to investigate the environmental condition of any parcels being considered for a County right-of-way project and that they **MUST** be working on an EIR that **MUST** have information on the old Diamond Lime Processing Plant. Houghton reiterated that they did not have any such information, that they did not have a file on the Site, and that only when they were acquiring the right-of-way would they even consider initiating such work. Stanton said that we should all wait to see what came out of the current Grand Jury Investigation. This was very frustrating for me, because in no County that I am aware of is the Environmental Management Department so disconnected from the Planning Department and function. Greg Stanton sardonically told me that I had an overblown impression of the reach of the Environmental Management's authorities and responsibilities.

After the meeting The two CDFW representatives were still trying to make their point about wasted resources on reporting the release to the OES. I told them that due to the Porter Cologne Act and other laws, Any citizen or member of the public who has reasonable suspicion, knowledge, or belief of a release of more than five gallons of petroleum product or hazardous materials is obligated to make a report, which is the purpose of the Office of Emergency Services Spill Alert Hotline. I said that it is not the Citizen's responsibility to control the dispatch of government agencies. He first asked if he wasn't a citizen. I had to explain that, in this case, he was a civil servant and not a member of the Public at large. He said that the reporting party had an obligation to tell the truth, which I agreed with. Carol Oz said that she thought that this report should have been made to the County Environmental Health Department and so I reminded her that this all started when Turnboo reported it at the Solid Waste Advisory Meeting with the Environmental Management Department Staff taking all mention of it out of the minutes and not only did they not take the report, but they did not open a file, or assign an officer and then expunged all reference to it being discussed from the minutes of the meeting. She acknowledged that that was what was said in the meeting.

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When I was back in my office, a very quick internet search revealed that the EIR for the Diamond Dorado Retail Center (at the Site of the Diamond Lime Plant) Required the following:

Diamond Dorado Retail Center EIR

Mitigation Measure requiring an onsite inspector for all construction activities (which would include grading) and if a hazardous materials release is found, then a remediation plan must be designed and implemented under EDC Environmental Management Authority.

MM HAZ-3d: A Registered Environmental Assessor (REA) that is certified by the California Department of Toxic Substances Control shall provide onsite monitoring of construction activities for parcels formerly part of the Diamond Lime Plant (APNs 051-250-51 and 54) to observe for the potential indication of hazardous materials releases, disposal areas or contaminated soils. If the REA identifies environmental conditions that require remediation or require further investigation, construction activities shall cease to allow the Project applicant to prepare and submit a site remediation permit application and draft work plan to the El Dorado County Department of Environmental Management. To document the implementation of the prescribed mitigation measure, the contracted REA must provide a memorandum of observations to the El Dorado County Department of Environmental Management.

This clearly gave the Environmental Management Department not only the means to initiate an investigation when grading operations revealed the hazardous materials, but also should have initiated a file on the Site for ongoing observations from the required onsite inspector. Where is that file?

The EIR should have had a history section on the property. I contacted two different EDC DOT personnel familiar with the Site and they both said that, of course, anything remotely related to recognized environmental concerns would have been reviewed by Environmental Management and they were both confused that Environmental Management would disavow any knowledge about the problems with the former lime plant at the Site or say that they did not have a file on it. They thought maybe we didn't ask the question in a way that Environmental Management understood. I said that we asked it several times coming from every angle we could imagine and that Barbara Houghton said they didn't have a right to investigate the private property. These Planning department people were quite confused by that, saying that this right-of-way and parkway project has been known for a very long time, that this is not new, and that Environmental Management is very aware of the project.

I also found on the Internet the attached Grand Jury Report. There was a Grand Jury hearing about the improperly regulated limestone waste release in 2013. (Case Number GJ-13-16, findings attached.) The El Dorado County Grand Jury found that the cause of the release was the former Diamond Lime Plant site, that the toxic limestone waste continued to flow into adjacent waterways with no attempt by any party to stop it, and that El Dorado County had not enforced grading and environmental ordinances in connection to the site. stating squarely the following findings:

FINDINGS

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

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

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.
- 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.
- 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.
- 4.Property owners adjacent to the Project or in the vicinity of the Diamond Lime Plane should be advised of the existing contaminations.
- 5.Planning Services and DOT should explore using County Grading, Erosion, And Sediment Control Ordinance Section 15.14.410 to achieve prudent results.
- 6.The County should enforce the provisions of the Grading, Erosion, and Sediment Control Ordinance,Chapter 15.14 of the County Code.

The Internet search revealed the following responses from the County

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.

County's 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.

County's 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.

SO, in conclusion, it appears that EDC Environmental Management Department were fully aware that a hazardous release had occurred at the Site and were feigning ignorance of it and that they are intentionally trying to suppress public knowledge and obstruct discussion of it. They refused to accept or investigate the additional information about the bunker oil in a buried settling pond. They gave the appearance of being ignorant of, and disinterested in, this very public environmental threat, and at least the appearance of being negligent in their duty to provide for Public Safety and Protect the Environment.

2 Attached Images





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.

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.

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

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.
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.
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.
4. Property owners adjacent to the Project or in the vicinity of the Diamond Lime Plane should be advised of the existing contaminations.
5. Planning Services and DOT should explore using County Grading, Erosion, And Sediment Control Ordinance Section 15.14.410 to achieve prudent results.
6. The County should enforce the provisions of the Grading, Erosion, and Sediment Control Ordinance, Chapter 15.14 of the County Code.

RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury, presiding judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This Report has been provided to the El Dorado County Board of Supervisors, Development Services Department and Department of Transportation.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at:
courtadmin@eldoradocourt.org

ATTACHMENTS [Adobe Reader is required to view attachments]

[DFG Lindeman Violation Notice](#)

[DFG Notice of Violation to District Attorney](#)

From: Cheryl Bly-Chester <cherylblychester@aol.com>

To: CherylBlyChester <CherylBlyChester@aol.com>

Bcc: george.turnboo <george.turnboo@gmail.com>; donna.Cademartori <donna.Cademartori@edcgov.us>; BOSOne <BOSOne@edcgov.us>; BOStwo <BOStwo@edcgov.us>; BOSThree <BOSThree@edcgov.us>; BOSfour <BOSfour@edcgov.us>; BOSfive <BOSfive@edcgov.us>; pminkle <pminkle@waterboards.ca.gov>; coz <coz@dfg.ca.gov>; coz <coz@dfw.ca.gov>; mgood <mgood@dfg.ca.gov>; mgood <mgood@dfw.ca.gov>; salazar.matt <salazar.matt@epa.gov>

Subject: Fwd: Cheryl Bly-Chester's Notes from the Meeting about a hazardous release from the Historic Diamond Lime Processing Plant

Date: Fri, Apr 10, 2015 2:53 pm

Attachments: 13-16 Illegal Grading on Diamond Dorado.pdf (1431K), 08-09-2012_A07-00018_Z07-0054_PD07-0034_P08-0017_Attachment 3-Exhibit B-2.pdf (344K), Screen Shot 2015-04-10 at 12.16.58 PM.png (1293K), ED Lim Plant c1997.jpg (4034K)

Ms. Cademartori volunteered to forward the email to the EDC attendees, stating that it was not their practice to give out staff emails and none of the staff gave out their cards at the meeting:

On Thursday, April 9, 2015 12:12 PM, Cheryl Bly-Chester <cherylblychester@aol.com> wrote:

Meeting at El Dorado County Environmental Management Department, Building C, April 8, 2015 9:30 am

13 Attending:

George Turnboo, member of the EDC Solid Waste Advisory Committee (SWAC)

Laurel Stroud, EDC SWAC

Barbara Houghton Environmental Health Manager EDC Environmental Management

Curt Kiesel EDC Environmental Health

Paul Halloway EDC Environmental Management

Amy Velasco, EDC Environmental Management Dept

Pete Minkle, Central Valley Regional Water Quality Control Board

Mitch Good, CA Dept Fish and Wildlife

Amy Phyllips, EDC Stormwater Protection

Greg Stanton, Deputy Director of EDC Environmental Management

Shenine May, Support Staff (also taking notes)

Carol Oz, CA Dept of Fish and Wildlife

Cheryl Bly-Chester, Rosewood Environmental Engineering

The meeting opened with Barbara Houghton going over the OES release report and Amy Velasco and Amy Phillip's report from the County on investigating the release report. Their report basically stated that there was no evidence of a release from the Plant Operations to Weber Creek. They looked primarily at the storm water pollution prevention plan and spill prevention plan elements and BMPs and said that everything was in place with no evidence of a release. The site was dry at the time of the visit and they made visual observations with no sampling.

When he was given an opportunity to speak, Mr. Turnboo interjected that he was not reporting a release from the current operations, but rather from an "illegal" grading operation that caused a release to the surface, likely the subsurface, and to Weber Creek - originating from buried contamination from prior operation. Turnboo received information from an interested party in the historic Diamond Lime Plant, a limestone kiln processing plant, that there was an environmental concern at the site and that people were reportedly getting sick from it. He reported the release conditions to the State Office of Emergency

Services. Barbara Houghton cut him off to go on with her staff report with all the measures they observed at the site, with Amy Velasco continuing to explain where they walked and what the photos in the report depicted. Barbara Houghton appeared to more concerned about the report to OES mobilizing the staff, than about the potential for contamination being reported. She said that they were unaware of any release from the former lime quarry, especially not involving bunker oil.

I (Bly-Chester) asked what the current plant was permitted to process. Barbara Houghton said that is the State's business and not the County's so they can't answer that question - so I looked at Amy Phillips (EDC Stormwater) and asked what processes and pollutants were listed in the SWPPP. I asked Amy P. if petroleum products were considered processing waste included in the covered permit activities. She readily could find the the SIC code (5093) in her notes, but not the pollutants so we agreed that we could find that in the SMARTS database for the Industrial SWPPP for the site. Barbara Houghton explained that there was a large, double-wall containment, vaulted aboveground storage tank at the site. I asked if the plant had an oil/water separator. Amy Velasco volunteered that they had adsorbent pillows and booms to capture petroleum products and there was no sheen or staining in evidence. Amy Phillips answered that she did not know if they had an oil/water separator, but that there was metal structure in the pond at the site. Barbara Houghton cut the discussion short.

Barbara Houghton then turned the discussion to the DFW report. Mitch Good said that he had Carol Oz on the phone with him during his site walk and that he also did not see evidence of a recent release and did not sample. He stated that he thought that reporting the release to OES caused a huge waste of resources and blamed it on the reporting party. He said that they normally receive an OES report, contact the reporting party to get the details and ascertain how urgent the release investigation is so that they can respond appropriately. When asked if he did call the reporting party, he said that he had not. He was told by both Turnboo and Stroud that if he had spoken to either of them he would have known that this was not an urgent matter, but one that had not yet been addressed and was likely continuing.

I asked Carol Oz if she knew if this was the same lime processing plant release to Weber Creek that was reported a few years ago. She said that she didn't know anything about it and had never been to the processing plant. I didn't think that was right, so I tried to jog her memory saying that it was in the Mountain Democrat and there was a Grand Jury Investigation about it. I said that I thought that it caused a fish kill. She said that she didn't know anything about it. She certainly did not volunteer that she had been the DFG Specialist who had sampled Weber Creek previously. She claimed to have no knowledge about releases there.

Stroud said that there was yet another Grand Jury investigation going on. All of the EDC Environmental Management people also said that they didn't know anything about it.

Despite the illegal grading operations and hazardous waste release with clear impact on the surrounding area, Greg Stanton, the Deputy Director of the Environmental Management Department, stated that El Dorado County does not have a case file concerning the former Diamond Lime Plant site. I asked if there was a case officer assigned to it - No there is not. I asked who was investigating this release - he said that no one is. I asked who is overseeing clean up - no one is. Then Barbara Houghton said that EMD doesn't have a *right* to investigate the release, as it is on private property and they can't enter private property under any circumstances and certainly not without hard data to put into a report. I challenged that statement from several different angles, but she insisted that the County had no right to address it.

I told Deputy Director Stanton that my understanding of what raised alarm was that it appeared that Environmental Management Staff had intentionally erased all mention of Turnboo's report of a problem during the SW Advisory Meeting from the Conformed Meeting Minutes. That a brief mention of it had

appeared in the Draft Minutes, but all mention of it was taken out in the final minutes.

Stanton's explanation was that they did not want to provide full transcripts of the meetings and that the County did not have the resources for complete transcripts and if the Public wanted to listen to the transcripts, they could request them. I said that removing information from a draft of the minutes was not in anyway saving the County's resources, so that didn't make any sense. He then said that he didn't want to set a precedent of providing that much information about what was said during the meetings. I told him that as a member of the Public, I would appreciate one or two sentences just mentioning that a topic had been raised, so that I would know that there might be transcripts of interest to me. He said that a long-standing practice of the staff was to not include any discussion of topics raised unless they were on point for the agenda. I suggested that the staff should not omit such statements made by the Public or by Board Members, if they were within the jurisdiction of the Board. I told him that I found that practice by staff very troubling.

I asked several times what EDC Environmental Management's role was in this matter and were told, mainly by Barbara Houghton and Greg Stanton that they do not have a role in it at all. I asked if there had been any environmental investigations into historical recognized environmental concerns. Barbara Houghton said that there had not been and that the only way such investigations would be initiated was when there was a property transfer of some kind, then the banks would initiate it, but their Environmental Management Department would not and did not have a right to conduct any investigations or have any authority to over the environmental conditions at the historic Limestone quarry. The Environmental Management Department expressly said that they do not have a file at all on the site.

Turnboo mentioned a Parkway project going through the Site - I flat couldn't believe it. I pointedly asked Barbara Houghton if this site was within the Planned Parkway Corridor - Yes it is. I then said that **of course** they had a right and even an obligation to investigate the environmental condition of any parcels being considered for a County right-of-way project and that they **MUST** be working on an EIR that **MUST** have information on the old Diamond Lime Processing Plant. Houghton reiterated that they did not have any such information, that they did not have a file on the Site, and that only when they were acquiring the right-of-way would they even consider initiating such work. Stanton said that we should all wait to see what came out of the current Grand Jury Investigation. This was very frustrating for me, because in no County that I am aware of is the Environmental Management Department so disconnected from the Planning Department and function. Greg Stanton sardonically told me that I had an overblown impression of the reach of the Environmental Management's authorities and responsibilities.

After the meeting The two CDFW representatives were still trying to make their point about wasted resources on reporting the release to the OES. I told them that due to the Porter Cologne Act and other laws, Any citizen or member of the public who has reasonable suspicion, knowledge, or belief of a release of more than five gallons of petroleum product or hazardous materials is obligated to make a report, which is the purpose of the Office of Emergency Services Spill Alert Hotline. I said that it is not the Citizen's responsibility to control the dispatch of government agencies. He first asked if he wasn't a citizen. I had to explain that, in this case, he was a civil servant and not a member of the Public at large. He said that the reporting party had an obligation to tell the truth, which I agreed with. Carol Oz said that she thought that this report should have been made to the County Environmental Health Department and so I reminded her that this all started when Turnboo reported it at the Solid Waste Advisory Meeting with the Environmental Management Department Staff taking all mention of it out of the minutes and not only did they not take the report, but they did not open a file, or assign an officer and then expunged all reference to it being discussed from the minutes of the meeting. She acknowledged that that was what was said in the meeting.

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When I was back in my office, a very quick internet search revealed that the EIR for the Diamond Dorado Retail Center (at the Site of the Diamond Lime Plant) Required the following:

Diamond Dorado Retail Center EIR

Mitigation Measure requiring an onsite inspector for all construction activities (which would include grading) and if a hazardous materials release is found, then a remediation plan must be designed and implemented under EDC Environmental Management Authority.

MM HAZ-3d: A Registered Environmental Assessor (REA) that is certified by the California Department of Toxic Substances Control shall provide onsite monitoring of construction activities for parcels formerly part of the Diamond Lime Plant (APNs 051-250-51 and 54) to observe for the potential indication of hazardous materials releases, disposal areas or contaminated soils. If the REA identifies environmental conditions that require remediation or require further investigation, construction activities shall cease to allow the Project applicant to prepare and submit a site remediation permit application and draft work plan to the El Dorado County Department of Environmental Management. To document the implementation of the prescribed mitigation measure, the contracted REA must provide a memorandum of observations to the El Dorado County Department of Environmental Management.

This clearly gave the Environmental Management Department not only the means to initiate an investigation when grading operations revealed the hazardous materials, but also should have initiated a file on the Site for ongoing observations from the required onsite inspector. Where is that file?

The EIR should have had a history section on the property. I contacted two different EDC DOT personnel familiar with the Site and they both said that, of course, anything remotely related to recognized environmental concerns would have been reviewed by Environmental Management and they were both confused that Environmental Management would disavow any knowledge about the problems with the former lime plant at the Site or say that they did not have a file on it. They thought maybe we didn't ask the question in a way that Environmental Management understood. I said that we asked it several times coming from every angle we could imagine and that Barbara Houghton said they didn't have a right to investigate the private property. These Planning department people were quite confused by that, saying that this right-of-way and parkway project has been known for a very long time, that this is not new, and that Environmental Management is very aware of the project.

I also found on the Internet the attached Grand Jury Report. There was a Grand Jury hearing about the improperly regulated limestone waste release in 2013. (Case Number GJ-13-16, findings attached.) The El Dorado County Grand Jury found that the cause of the release was the former Diamond Lime Plant site, that the toxic limestone waste continued to flow into adjacent waterways with no attempt by any party to stop it, and that El Dorado County had not enforced grading and environmental ordinances in connection to the site. stating squarely the following findings:

FINDINGS

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

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

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.
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.
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.
4. Property owners adjacent to the Project or in the vicinity of the Diamond Lime Plane should be advised of the existing contaminations.
5. Planning Services and DOT should explore using County Grading, Erosion, And Sediment Control Ordinance Section 15.14.410 to achieve prudent results.
6. The County should enforce the provisions of the Grading, Erosion, and Sediment Control Ordinance, Chapter 15.14 of the County Code.

The Internet search revealed the following responses from the County

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.

County's 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.

County's 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.

SO, in conclusion, it appears that EDC Environmental Management Department were fully aware that a hazardous release had occurred at the Site and were feigning ignorance of it and that they are intentionally trying to suppress public knowledge and obstruct discussion of it. They refused to accept or investigate the additional information about the bunker oil in a buried settling pond. They gave the appearance of being ignorant of , and disinterested in, this very public environmental threat, and at least the appearance of being negligent in their duty to provide for Public Safety and Protect the Environment.

2 Attached Images





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.