

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION  
  
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No. 81-505  
  
AUGUST 20, 1981

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THE HONORABLE RAY JOHNSON, SENATOR, FIRST DISTRICT, has requested an opinion on the following questions:

1. Are the sewer system connection requirements of Water Code section 13950 applicable to areas of a public utility district that are not provided with transportation facilities sufficient to transport resultant effluent outside the Lake Tahoe Basin?
2. Are the sewer system connection requirements of Water Code section 13951 applicable in areas where newly installed (as well as existing) septic tanks, cesspools, and other means of waste disposal will not affect the quality of the waters of Lake Tahoe, and where the sewerage of such areas will have a damaging effect upon the environment?

## CONCLUSIONS

1. The sewer system connection requirements of Water Code section 13950 are inapplicable to areas of a public utility district that are not provided with transportation facilities sufficient to transport resultant effluent outside the Lake Tahoe Basin.

2. The sewer system connection requirements of Water Code section 13951 are inapplicable in areas where newly installed (as well as existing) septic tanks, cesspools, and other means of waste disposal will not affect the quality of the waters of Lake Tahoe, and the sewerage of such areas will have a damaging effect upon the environment.

## ANALYSIS

The Legislature has enacted a comprehensive statutory scheme, the Porter-Cologne Water Quality Act (Water Code §§ 13000–13998),<sup>1</sup> the declared objective of which is “that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.” (§ 13000.)

Under the legislative enactment, nine regional water quality control boards share in the responsibility for coordinating and controlling water quality throughout the state. (§§ 13001, 13050, 13200.)

We are asked two questions concerning the applicability of two statutes, sections 13950 and 13951, dealing specifically with the water quality of the Lake Tahoe Basin, an area under the jurisdiction of the Lahontan region water quality control board. (§ 13200, subd. (h).) We conclude that both statutes are inapplicable under the circumstances we are given.

### A. The Provisions of Section 13950

The first question deals with section 13950, which states:

“Notwithstanding any other provision of law, upon any district in the Lake Tahoe Basin providing in any area of the district a sewer system and treatment facilities sufficient to handle and treat any resultant waste and transportation facilities sufficient to transport any resultant effluent outside

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<sup>1</sup>All section references hereafter are to the Water Code.

the Lake Tahoe Basin, the further maintenance or use of cesspools or other means of waste disposal in such area is a public nuisance and the district shall require all buildings from which waste is discharged to be connected with the sewer system within a period of not less than 90 days from the completion of such system and facilities.”

We are asked whether the sewer system connection requirements of section 13950 are applicable where the public utility district does not have a sewer system in a particular area sufficient to handle resultant waste and transport the resultant effluent outside the Lake Tahoe Basin.

In answering the question, we are guided by several well-established principles of statutory construction. Recently, the Supreme Court restated these principles in *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 698, as follows:

“In construing a statute ‘we begin with the fundamental rule that a court “should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” ’ [Citations.] ‘An equally basic rule of statutory construction is, however, that courts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them.’ [Citations.] Although a court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. [Citations.] ‘If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.’ [Citations.]”

Applying these principles, we believe that the language of section 13950 is plain and unambiguous and that the ordinary import of the words used fully discloses the intent of the Legislature.

Preliminarily, we note that we need not attempt to harmonize the provisions of section 13950 with those of other statutes. By the use of the phrase “Notwithstanding any other provision of law,” the Legislature has made the statute stand alone and *sui generis*. (*In re Marriage of Dover* (1971) 15 Cal. App. 3d 675, 678, fn. 3, *State of California v. Superior Court* (1965) 238 Cal. App. 2d 691, 695–696.)

Under the unequivocal language of section 13950, it is a public nuisance to maintain or use a method of waste disposal other than connection to a sewer system in an area where a public utility district in the Lake Tahoe Basin provides (1) a sewer system,

(2) treatment facilities, and (3) transportation facilities sufficient to handle, treat, and transport the resultant effluent outside the basin. Where those three conditions do not exist, however, there is no requirement concerning connection to a sewer system.

The statute thus does not require the impossible (connection to a nonexistent sewer system) or an “ineffectual” act (connection to a sewer system that does not meet the standards set by the Legislature).

In answer to the first question, therefore, we conclude that the sewer system connection requirements of section 13950 are inapplicable to areas of a public utility district that are not provided with transportation facilities sufficient to transport resultant effluent outside the Lake Tahoe Basin.

B. The Provisions of Section 13951

The second question deals with section 1395.1, which states:

“Notwithstanding any other provision of law, on or after January 1, 1972, waste from within the Lake Tahoe watershed shall be placed only into a sewer system and treatment facilities sufficient to handle and treat any such waste and transportation facilities sufficient to transport any resultant effluent outside the Lake Tahoe watershed, except that such waste may be placed in a holding tank which is pumped and transported to such treatment and transportation facilities.

“As used in this section ‘waste’ shall not include solid waste refuse.

“The further maintenance or use of cesspools, septic tanks, or other means of waste disposal in the Lake Tahoe watershed on or after January 1, 1972, by any person, except as permitted pursuant to this section, is a public nuisance. The occupancy of any building from which waste is discharged in violation of this section is a public nuisance, and an action may be brought to enjoin any person from occupying any such building.

“This section shall not be applicable to a particular area of the Lake Tahoe watershed whenever the regional board for the Lahontan region finds that the *continued* operation of septic tanks, cesspools, or other means of waste disposal in such area will not, individually or collectively, directly or indirectly, affect the quality of the waters of Lake Tahoe and that the sewerage of such area would have a damaging effect upon the environment.

“This section shall not be applicable to any area or areas within the Fallen Leaf Lake watershed in the event the regional board for the Lahontan region finds that with the export of toilet wastes by single-family residences or with the export of toilet and kitchen wastes with respect to any commercial properties, the continued use of septic tanks, cesspools, or other means of waste disposal in such area or areas for the treatment and disposal of the remaining wastes, will not, individually or collectively, directly or indirectly, affect the quality of the water of Lake Tahoe, and that the sewerage of such area or areas would have a damaging effect upon the environment.

“This section shall not affect the applicability of Section 13950.”  
(Italics added.)

We are asked whether the sewer system connection requirements of section 13951 are applicable in areas where newly installed, as well as previously existing, septic tanks, cesspools, and other means of waste disposal will not affect the quality of the waters of Lake Tahoe, and where the sewerage of such areas will have a damaging effect upon the environment. In other words, does the use of the word “continued” in the fourth paragraph of the statute require that, for example, a given septic tank be in operation as of the date specified in the statute, January 1, 1972, or may it be installed after said date?

Unlike the provisions of section 13950, the language of section 13951 is not entirely clear. In such circumstances, we must choose that construction of the statute “which most comports with the intent of the Legislature.” (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 844.) Interpretations that defy common sense or lead to absurdity are to be avoided. (*Fields v. Eu* (1976) 18 Cal. 3d 322, 328.)

Before discussing the particular paragraph of section 13951 at issue, we note that the statute begins with the same phrase as section 13950: “Notwithstanding any other provision of law . . .” No conflict exists between the two statutes, however, since section 13951 specifically provides: “This section shall not affect the applicability of Section 13930.” Consequently, if the conditions exist for a sewer system connection under section 13950, the exclusion of certain areas under section 13951 from sewer system connections is inapplicable.

Turning to the legislative purpose in enacting section 13951, we find the following declaration made at the time of enactment:

“This act, applicable only to the watershed of Lake Tahoe, is necessary to meet the unique problems of water quality control presented by

the population growth and development of the area in relation to Lake Tahoe's geographic location and the necessity to export any waste produced in the area out of the Lake Tahoe basin," (Stats. 1969, ch. 1356, § 7.)

Hence, protection of the environment in general and the water quality of Lake Tahoe in particular should be the primary considerations when analyzing the meaning of the statute's language. (See *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal. 3d 480, 493; *Fallen Leaf Protection Assn. v. State of California* (1975) 46 Cal. App. 3d 816, 830.)

With this purpose in mind, we examine the critical fourth paragraph of section 13951. The Legislature has declared that the statute's sewer system connection requirement is inapplicable where "the continued operation of septic tanks, cesspools, or other means of waste disposal in such area will not, individually or collectively, directly or indirectly, affect the quality of the waters of Lake Tahoe, and that the sewerage of such area would have a damaging effect upon the environment." Under such specified conditions, not only would the specific purpose of the statute (protecting the water quality of Lake Tahoe) not be furthered, but the general objective (protecting the environment) would be significantly impaired.<sup>2</sup>

In such context, use of the word "continued" in section 13951 must be closely analyzed. "Continued" means a stretching out in time or space, especially without interruption. (Webster's New Internat. Dict. (3d ed. 1966) p. 493.) The key question is not the definition of the word "continued," however, but rather what activity is being "continued."

It would be difficult to conceive of an area of the Lake Tahoe Basin as a total vacuum, one without habitation of any sort or means of waste disposal. *Something* was being continued after January 1, 1972, that did not involve a sewer connection. The issue is whether the Legislature intended for all non-sewer means of waste disposal to be considered as a whole in being "continued" or whether a particular means at a particular site may only be considered.

We reject the latter interpretation as being contrary to the objectives of the statute and leading to absurd results. The Legislature obviously intended to protect the Lake Tahoe watershed environment after, as well as before, January 1, 1972. It would equally

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<sup>2</sup>The Legislature had delegated to the regional board for the Lahontan region the responsibility for determining when the statute is not to apply. This delegation of authority is constitutional, as are the other provisions of both sections 13950 and 13951. (*Fallen Leaf Protection Assn. v. State of California, supra*, 46 Cal. App. 3d 816, 828–831.)

be concerned with “the sewerage of such area [having] a damaging effect upon the environment” both before and after the 1972 date. As long as the quality of the waters of Lake Tahoe would not be affected by other means of waste disposal, requiring new sewer connections beginning in 1972 that damaged the environment would be inconsistent with the goals of the statute.

Moreover, we do not believe that the Legislature intended to create, a demand for constructing individual septic tanks, cesspools, and other means of waste disposal immediately prior to January 1, 1972, merely to avoid the sewer connection requirement. Would the Legislature intend for such hasty action to be undertaken where the objectives of the statute would not be frustrated by a more orderly and systematic approach?

For purposes of the fourth paragraph of section 13951, therefore, the January 1, 1972 date may be considered in light of a *condition* of non-sewer systems still being in existence. What is being “continued” after said date are all non-sewer systems of waste disposal, whether a new septic tank or other means is installed at a particular site thereafter or not.

It would be absurd to suggest that one additional septic tank may not be installed after January 1, 1972, or a cesspool means of waste disposal may not be changed to a septic tank method where (1) requiring sewer connections would damage the environment and (2) all non-sewer means of disposal “in such area will not, individually or collectively, directly or indirectly, affect the quality of the waters of Lake Tahoe.”

The regional board for the Lahontan region has had an order in effect for the past ten years which allows for the installation of non-sewer systems of waste disposal if the statutory conditions are met. It is well settled that the contemporaneous administrative construction of legislation is entitled to great weight when determining the proper meaning of uncertain language. (See *Judson Steel Corp. v. Workers’ Camp. Appeals Bd.* (1978) 22 Cal. 3d 658, 668–669; *Merrill v. Department of Motor Vehicles* (1969) 71 Cal. 2d 907, 917; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal. 2d 321, 325–326.)

Based upon the foregoing considerations, we conclude in answer to the second question that the sewer system connection requirements of section 13951 are not applicable in areas where newly installed, as well as existing, septic tanks, cesspools, and other means of waste disposal will not affect the quality of the waters of Lake Tahoe, and the sewerage of such areas will have a damaging effect upon the environment.

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