

March 15, 2011

Solid Waste Local Enforcement Agency Response  
to Petitioners' Statement of Issues

The County of San Diego Solid Waste Local Agency (LEA) submits this Response to the March 3, 2011 Statement of Issues submitted by Walter Rusinek of Procopio, Cory, Hargreaves and Savitch, LLP on behalf of the Pala Band of Mission Indians (Petitioners). A copy of that Statement of Issues, bracketed to identify comments by number in a manner that corresponds to the discussion in this Response, is attached as Exhibit 1.

**The LEA Application Review Process**

The version of the Gregory Canyon, Ltd. (GCL) permit application that is before this panel for review is the application as it existed on February 1, 2011, not the application submitted on June 24, 2010 and resubmitted as incomplete on August 5, 2010. February 1, 2011 is the date on which the LEA made the determination challenged by Petitioners, i.e., that this application was "complete and correct" under the standards set out in Title 27, California Code of Regulations, Section 21570 (27 CCR Section 21570).

The permit application package at issue here is more than 3,000 pages long. That final application package is the product of an intensive seven month process of refinement. GCL submitted the first version of this permit application to the LEA on June 24, 2010. State law requires the LEA to determine within 30 days whether such applications are complete and correct. The LEA, after an insufficient in-house review, determined that the June 2010 application was complete and correct. Petitioners requested a hearing to challenge that determination, and provided a detailed statement of issues. The LEA and GCL reviewed the statement of issues, and after consultation with the LEA, GCL asked the LEA to rescind its determination that the application was complete and correct. The LEA did so. GCL then resubmitted that application as "incomplete," a classification that allowed GCL up to 180 additional days to correct deficiencies in the application package.

During this 180 day period, the incomplete application package was corrected, updated, supplemented and refined. This was a systematic, documented, well-staffed, comprehensive process. The LEA expended approximately 289 staff hours on its internal review of the application package. LEA staff and LEA legal counsel identified issues and provided specific comments to GCL. GCL supplemented and corrected the application package as

necessary. GCL then provided a summary table to the LEA indicating the action taken in response to each LEA comment/proposed revision. The LEA considered this table when making its determination that the application package was complete and correct. This "LEA/GCL" tracking table is attached as Exhibit 2.

In addition, the LEA commissioned an independent peer review of the application package by URS Corporation, an expert solid waste consulting firm. The LEA and URS reviews overlapped in time. The LEA estimates that URS expended approximately 550 staff hours on this peer review process. In addition to checking for statutory and regulatory deficiencies in the resubmitted incomplete application package, URS checked for consistency between different parts of the application package, and between the application package and the environmental documentation for the project.

URS submitted a report, two tracking tables, and a final Memorandum with detailed comments and proposed revisions to the LEA. (Tracking tables were revised as work progressed; the URS Report was provided on December 21, 2010.) All of URS's detailed comments were carefully reviewed by the LEA and GCL, and revisions to the application package were made as appropriate. GCL added response columns to the URS tracking tables indicating the action taken in response to each URS comment or proposed revision. These "URS/GCL" tracking tables were submitted to the LEA by GCL, and were considered by the LEA when making its determination that the refined permit application package was complete and correct. Identified issues were addressed by revising the application package. The URS/GCL tracking tables (Table 1 and Table 2) are attached as Exhibit 3. The URS Report is attached as Exhibit 4. After GCL responded to the URS tracking tables, URS reviewed those responses and provided a final Memorandum to the LEA, dated January 28, 2011. LEA staff annotated this memorandum as final changes to the permit application were made. That annotated memorandum is attached as Exhibit 5.

Significantly, in addition to checking for errors and omissions, URS also reviewed all of the key design assumptions for the landfill design against the compliance criteria set out in state law and regulations and expressly against the requirement for sufficient detail set out in 27 CCR 21570(d). This requirement for detail is quoted and relied on by Petitioners. Section 21570(d) states that information must be "supplied in adequate detail to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility." URS made 35 separate findings against this standard in its report, concluding that all reviewed design elements were reasonable, sufficiently

detailed, and in compliance with applicable requirements. The URS findings are attached at pages 2-1 to 2-4 of the URS Report, Exhibit 4.

### **The Prior Petition and the Current Petition**

Both the LEA's internal review and the peer review by URS, described above, benefited greatly from the detailed comments in Petitioners' July 2010 challenge to the LEA's determination concerning GCL's June 2010 submission. The specific issues addressed in Petitioners' July 29, 2010 letter were carefully reviewed by the LEA, by URS, and by legal counsel. Where appropriate, these issues were fully responded to in the course of preparing revisions to the application package.

The effectiveness of this process is evident in the new Statement of Issues filed by Petitioners. This second statement does not assert technical errors or oversights. There are no claims that required determinations are missing or unsupported. There are no challenges based on inconsistencies or out-of-date supporting documents.

Instead, Petitioners now raise very different challenges. As discussed below, the large majority of these challenges are not only incorrect, but are also matters not appropriate for resolution by the Solid Waste Hearing Panel in this proceeding. A very brief introductory discussion of these four issue areas is provided below. Further detailed discussion follows based on the bracketed and numbered issues shown in Exhibit 1.

First, in section III.A (**Issue #2**) of the Statement of Issues, Petitioners assert that the Preliminary Closure/Post-Closure Maintenance Plan has not been approved by state agencies. That is correct, but irrelevant for this Solid Waste Hearing Panel: this plan only needs to be deemed complete by, not approved by, those agencies for permit application purposes. A submission date and a calendar determine whether these plans are deemed complete. There is no issue before this Solid Waste Hearing Panel concerning the adequacy of this plan, and the fact that the plan was deemed to be complete by these state agencies is indisputable.

Second, in section III.B (**Issue #3**) of the Statement of Issues, Petitioners assert that the application does not demonstrate compliance with the California Environmental Quality Act (CEQA). The LEA believes that assertion is incorrect, but more importantly for this proceeding, the assertion is irrelevant. State law and regulations, allow for an application to demonstrate compliance with CEQA or for an application to disclose the status of the CEQA process for the project. This application complies with both provisions. The environmental impact report

(EIR) and the revised EIR for this project have been challenged by Petitioners in other proceedings, and have been fully litigated and upheld by the Courts. Remaining disagreements between the LEA and Petitioners concerning the adequacy of CEQA for this project should be resolved in a special judicial writ proceeding as specified in CEQA, not in this proceeding before the Solid Waste Hearing Panel.

Third, in section III.C (**Issue #4**) of the Statement of Issues, Petitioners assert that Proposition C (enacted by the voters of San Diego County in 1994, attached to this Response as Exhibit 6) requires an agreement between the operator and the San Diego County Water Authority (SDCWA or County Water Authority) concerning protection of the First San Diego Aqueduct before a solid waste facility permit (SWFP) can be issued. The LEA disagrees with the assertion, but more importantly, the assertion is irrelevant to what the Public Resources Code requires for an application to be complete and correct. The Solid Waste Hearing Panel is not the arbiter of what Proposition C requires.

Fourth, in section III.D (**Issue #9**) of the Statement of Issues, Petitioners assert that the Joint Technical Document that is a key part of the permit application package does not include enough design detail. Petitioners' seven specific assertions concerning inadequate design detail are discussed as issues 5 through 13 below. This part of the Statement of Issues as a whole is essentially a challenge to the LEA's deliberations as the permitting agency. Specifically, Petitioners seem to believe that the LEA needs more information to write a (proposed) permit that conforms to the Public Resources Code. The Solid Waste Hearing Panel should take into account that these LEA judgments were based on the 2,800 pages of information in the JTD, and were further informed by the URS peer review of key design assumptions for the landfill design, and by URS's 35 separate findings that those designs were reasonable, provided the detail required by 27 CCR 21570(d), and were in compliance with applicable requirements. (See Exhibit 4 at pages 2-1 to 2-4) The Solid Waste Hearing Panel should defer to the permitting agency on these issues; it cannot reject the LEA's determinations concerning the sufficiency of the design information in the permit application package unless it finds that specific information in the application was clearly incomplete or incorrect under state law and regulation. On the record presented, following the review process described above, no such finding is possible.

Finally, as discussed in more detail in the response to Issue #1, many of these "insufficient detail" challenges (**Issue #'s 6, 7, 10 and 11**) incorrectly require LEA to make substantive determinations as to matters within the regulatory authority and expertise of the Regional Water Quality Control Board (RWQCB). Petitioners are, in effect, asking the LEA and this Solid Waste

Hearing Panel to overstep their authority in violation of Public Resources Code Section 43101(c)(2).

In summary, of the 12 substantive claims raised by Petitioners (**Issue #'s 2 through 13**), eight of those, **Issue #'s 2, 3, 4, 6, 7, 9, 10 and 11** can be summarily rejected as not relevant to whether an LEA determination that this solid waste facility permit application was complete and correct under applicable state law and regulations. These issues do not require detailed substantive consideration by the Solid Waste Hearing Panel. This leaves only four issues - **Issue #'s 5, 8, 12, and 13** – that require further consideration.

Nonetheless, the remainder of the LEA's response will address each of the issues raised in the Statement of Issues.

### **Attachments to this Response**

As noted above, the permit application package at issue here is more than 3,000 pages long. The JTD alone, with appendices, is approximately 2,800 pages long.

Tracking tables, reports and memoranda summarizing the LEA/URS review of incomplete revisions to this package are attached as Exhibits 2, 3, 4 and 5, as discussed above.

Selected portions of the complete permit application package are attached in hard copy as follows: Transmittal letters for the final permit application package and the Solid Waste Facility Permit Application Form itself, including all required attachments other than the JTD, are attached as Exhibit 7. The JTD, without the JTD appendices, is attached as Exhibit 8.

A CD containing the entire permit application is attached as Exhibit 9. This material is also available to the Solid Waste Hearing Panel and to the public on-line, at [http://www.sdcounty.ca.gov/deh/waste/chd\\_gc\\_eir.html#2011%20SWFP](http://www.sdcounty.ca.gov/deh/waste/chd_gc_eir.html#2011%20SWFP).

For the convenience of the Solid Waste Hearing Panel, a hard copy of Proposition C is attached to this Response as Exhibit 6. (Proposition C is also Appendix B to the JTD, on the CD attached as Exhibit 9.) Proposition C is not a part of the Public Resources Code, it is a county-wide Proposition passed by the voters in 1994. Whether the proposed landfill conforms to Proposition C is not a directly relevant issue for the Solid Waste Hearing Panel, which sits to assess the LEA's compliance with state law and regulations. But Proposition C has affected

the design of the proposed facility, and the proposition is cited by Petitioners and discussed in this Response.

Other attachments have been included as necessary to respond to Petitioners' contentions, and are introduced when relevant within the following discussion.

**Response to Issue #1 [Legal Standards]:**

In making a general recitation of applicable regulatory requirements, the Statement of Issues does not cite or consider the requirements of the Solid Waste Disposal Regulatory Reform Act of 1993, found at Public Resources Code §43101 et seq. Section 43101(c)(1) mandates that “[a] clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the board [CalRecycle] and the state water board and regional water boards, or between the board and any other state agency, as appropriate.” Section 43101(c)(2) mandates that “[t]he state water board and the regional water boards shall be the sole agencies regulating the disposal and classification of solid waste for the purpose of protecting the waters of the state.” The state regulation that implements this legislation is very direct. 27 CCR Section 21650(i) states “The proposed solid waste facility permit shall contain the EA’s conditions. The proposed solid waste facilities permit shall not contain conditions pertaining solely to air or water quality, nor shall the conditions conflict with conditions from WDRs [waste discharge requirements] issued by the RWQCB.”

The Statement of Issues routinely glosses over these mandates by raising matters outside the scope of LEA’s regulatory authority, and in particular raises matters within the authority of the RWQCB. The sufficiency of information in a permit application to the LEA, for LEA purposes under the Public Resources Code, must be judged in the context of the clear legal prohibition on the LEA’s ability to regulate air and water quality. The LEA cannot write permit terms on matters that are reserved to the RWQCB.

The state regulations that address the required contents of a SWFP permit application are layered. At the first layer, a list of 12 required elements for a complete and correct application is provided in 27 CCR Section 21570(f). (The Statement of Issues erroneously references 27 CCR Section 21570(e), but attaches all of Section 21570 as Exhibit A.) This list is not described in the regulations as a “minimum” list, as Petitioners state, but as a “not necessarily limited to” list. The grant of grace in the latter clause means both that a permit application would not

be “incorrect” if it contained other elements or information, and that it would not be “incomplete” if it only contained these twelve elements.

In a second layer, 27 CCR Section 21570(d) requires that “information be supplied in adequate detail to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility.” Contrary to the assertion of Petitioners, this is not a requirement for construction-level designs for all aspects of the facility, nor a requirement that the applicant specify design elements that show a clear single path to compliance with regulatory standards. The tests within this subsection are instead, as stated, (1) whether information is sufficient to evaluate environmental effects, and (2) whether information is sufficient to assess the likelihood of compliance. As to the environmental effects test, the Solid Waste Hearing Panel should be cognizant of the years of CEQA litigation that have surrounded this project, and of the ultimate judicial determination that the Revised Final EIR for the project meets CEQA requirements. As to the “likelihood of compliance” test, the Solid Waste Hearing Panel should take into account that this test is expressly related to expert LEA regulatory judgment. The Solid Waste Hearing Panel must give considerable deference to LEA determinations of whether information supplied to the LEA is adequate to support LEA determinations.

In a third layer, on which Petitioners appear to primarily rely, Section 21570(f)(2) requires that the joint technical document (“JTD”), which is one of the 12 required elements in an application package, itself be “complete and correct.” The adjectives “complete” and “correct” are in turn defined for application to a broad set of regulations at 27 CCR Section 21653(d)(1) and (2).

“Complete” is defined to mean “...all requirements placed upon the operation of the solid waste facility by statute, regulation, and other agencies with jurisdiction have been addressed in the application package.” That definition fits very poorly with the requirement for a “complete JTD” in Section 21570(f)(2), because the JTD by itself is not “the application package” referenced within the definition. Moreover, the JTD is a document that describes the proposed facility; it is not a compilation of all applicable requirements, and is not a permit. It is therefore appropriate to say that a “complete permit application” must be “complete” as defined in Section 21653(d)(1), but it is internally contradictory to say that a mere JTD must be “complete” according to the application-referencing definition in Section 21653(d)(1). In practice, the required contents of a JTD need not be interpreted from this poorly fitting, general purpose definition. State regulations instead provide a detailed description of what a JTD must contain in three columns of detailed regulatory text at 27 CCR Section 21600, attached as

Exhibit 10. The LEA and URS reviews of the permit application package cross-referenced the JTD against these detailed regulatory specifications, and concluded that those specifications had been met. See Exhibits 2 and 3.

In addition, even in the context of the permit application as a whole, the Statement of Issues reads too much into the 27 CCR §21563(d)(1) definition of “complete.” When no other permits have yet been issued, the reference in this definition to “all requirements *placed upon* the operation of the solid waste facility . . . by other agencies with jurisdiction” (emphasis added) describes an empty set: an application cannot address permit requirements that have not yet been imposed. What an applicant can do, and what makes sense in the context of the JTD for a landfill, is address RWQCB permit application requirements. Requiring such information in the JTD portion of an application for a landfill permit is appropriate, because the JTD is a part of the permit application both for the LEA and the RWQCB.<sup>1</sup>

The definition of “complete” refers to “all requirements placed on the operation of the” facility, and Petitioners’ quotation of this definition emphasizes that this clause relates to “other agencies with jurisdiction.” Petitioners do not identify any important “other agency” requirements have been omitted from the permit application package, so the Solid Waste Hearing Panel need not address that issue. Because the phrase “other agencies with jurisdiction” was emphasized, however, the LEA wants to be clear that it does not agree that all requirements that may be imposed by all other agencies need to be dealt with in the permit application package. The information a permit application should contain on statutes, regulations, and permit requirements that are not the LEA’s permitting business is very limited: 27 CCR §21563(d)(1) only calls out requirements that are “placed upon” “the operation” of the facility. Similarly, the most detailed description of the CalRecycle-required contents of a JTD that can be found in state regulations, at 27 CCR Section 21600, imposes only a feasible requirement: the JTD must include a “Compilation of approvals—Provide a list of all approvals having jurisdiction over the disposal site. (27 CCR Section 21600(b)(9).)”

As discussed above, “placed upon” can only mean actual permit conditions imposed by other agencies, to the extent they exist at the time of the complete and correct determination by LEA, that condition the operation of the solid waste facility. The LEA cannot speculate as to these future undefined conditions.

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<sup>1</sup> As other requirements are “placed upon the operation” of the solid waste facility by other agencies, those requirements would be included within the application package or permit requirements in accordance with 27 CCR Sections 21620 or 21655, as appropriate.

Finally, these requirements, to the extent they exist, only need to be “addressed” in the permit application. That means simply what it says – that information on a required topic is contained in the application. A recitation of the information required by RWQCB contained in the JTD is set forth in Table 1 of the JTD, at p. A.1-6 - A.1-9, and all required topics are “addressed”. (The JTD, not including appendices, is attached to this Response as Exhibit 8. JTD Appendices are included on the Exhibit 9 CD.)

27 CCR Section 21570(f)(2) also requires that the JTD be “correct.” Reference to the detailed specifications for JTDs at 27 CCR Section 21600 is the most appropriate test of whether a JTD is correct, in part because that section provides the most detailed specifications that can be found in state law and regulations, and in part because the general purpose definition of “correct” at 27 CCR Section 21563(d)(2) is not an appropriate fit as an adjective modifying “JTD.” Section 21563(d)(2) refers to information outside of the JTD, i.e., to “...all information provided by the applicant regarding the solid waste facility...” Despite this apparent inconsistency, the key terms in the definition that elaborate on “correct” are not problematic in this case. The definition requires that “correct” information, whether in the JTD or elsewhere, “must be accurate, exact, and must fully describe the parameters of the solid waste facility.” See 27 CCR Section 21563(d)(2).

The “correct information” requirement does not require the LEA to undertake a substantive review of RWQCB requirements, or any other non-LEA requirement. The definition of “correct” does not include a reference to “other agencies with jurisdiction,” or to “requirements,” or to compliance. Information is “correct” if it is sufficiently descriptive. Such a distinction is necessary because the RWQCB is the expert agency in matters related to water quality, while the LEA is the expert in solid waste facility operations.

A proper understanding of these applicable regulatory provisions summarily disposes of Petitioners’ claims in Section III.D of the Statement of Issues related to JTD Sections B.5.1.3.1, B.5.1.7, C.2.5.4 and C.2.8.3.4 (**Issue #’s 6, 7, 10 and 11**) for purposes of this Solid Waste Hearing Panel. That is because the LEA is not required to make a substantive determination; it is only required to determine whether these topics were “addressed”.

Moreover, the LEA notes that the “correct” definition does not call for a complete description of the facility, at a construction-level or otherwise, as Petitioners urge. What must be described are “parameters,” not features or details. Dictionaries define “parameters” as “limits,” “boundaries,” or “characteristic

elements.” The descriptive materials in the 3,000 pages of this permit application package are more than adequate to allow the LEA to set limiting parameters in a solid waste facility permit.

Once again, the detailed CalRecycle specifications for JTDs at 27 CCR Section 21600 confirm that construction-level design specifications are not required. Under “General Design Parameters” the JTD must “Describe how the site design accommodates or provides for the service area, climatological factors, physical setting, soils, drainage, and other pertinent information.” That is very general.

Based on the above discussion, the requirements for the LEA’s complete and correct determination with respect to **Issue #’s 6, 7, 10, 11** were satisfied because those matters were addressed in the JTD. No further inquiry is required for purposes of this appeal.

**Response to Issue #2 [Preliminary Closure/Post Closure Maintenance Plan]:**

Petitioners assert that the Preliminary Closure/Post Closure Maintenance Plan (PCPCMP) for the landfill must be “approved by the Regional Board and by CalRecycle before the LEA can accept the application...” Petitioners assert that compliance with this requirement has not been demonstrated, because “GCL merely refers to Section 21860, which applies to final closure plans.”

Petitioners are incorrect. In order for LEA to make its complete and correct determination, the PCPCMP need only be deemed complete by the reviewing agencies. That requirement has been met. There is no support in state law and regulations for the assertion by Petitioners that the PCPCMP must be affirmatively determined to be complete, or must be “approved” by the reviewing agencies.

Petitioners’ selection of regulatory provisions to quote in support of its argument is incomplete, and its application of the relevant regulations is incorrect.

First, the SWFP permitting regulations simply do not require that a PCPCMP be “approved” by the Regional Board and CalRecycle before a permit application can be accepted by the LEA. The actual language in 27 CCR Section 21570(f)(6), only requires a “completeness determination...as specified in Sections 21780, 21865, and 21890.”

Completeness determination procedures are controlled by 27 CCR Section 21860. That section is not cross referenced in 27 CCR Section 21570(f)(6), but the three sections that are cross-referenced are either silent on procedures, or point

to Section 21860. 21780 discusses when and how plans must be submitted, 21865 discusses the amendment of plans *and cross references Section 21860* on the evaluation and approval of plan, and 21890 requires adherence to plans approved *pursuant to Section 21860* unless changes are approved.

27 CCR 21860 is not limited in its application to “final” closure plans as Petitioners assert. Unlike other sections of these regulations, neither the title nor the text of Section 21860 draw a distinction between preliminary and final plans. (This section is titled “Schedule for Review and Approval of Closure and Post-Closure Maintenance Plans.”) There is no other section of the regulations that addresses completeness determinations or the schedule and process for review and approval of closure and maintenance plans, whether preliminary or final. The regulatory provision that applies is Section 21860.

27 CCR 21860(c) contains the following critically important language, which Petitioners chose not to attach, cite or quote:

**21860(c).** Within 30 days of receipt, closure and postclosure maintenance plans *shall be deemed complete by default* unless the RWQCB, the EA, or the CIWMB determines and informs the operator that the plan is determined to be incomplete pursuant to applicable CIWMB and SWRCB requirements. ... (emphasis added)

Summarizing the above, state law and regulations require that the PCPCMP be submitted to state agencies when a permit application is submitted, they require a completeness determination for that plan, and they provide that state agencies will be deemed to have made that determination 30 days after the plan is submitted, unless they affirmatively state otherwise

The PCPCMP was provided by GCL to the reviewing agencies on December 23, 2010. These transmittal letters are attached as Exhibit 11. The LEA determined that the PCPCMP was complete on January 23, 2011; this letter is attached as Exhibit 12. The LEA also copied the reviewing agencies on the LEA’s determination. In accordance with 27 CCR §21860(c), the PCPCMP was deemed complete by default by the other agencies 30 days after receipt by those agencies (i.e., on or about January 23, 2011) because none of the reviewing agencies informed GCL that the PCPCMP was incomplete within thirty days of their receipt of GCL’s submittal.

It is informative to note that the process for completing the review of the PCPCMP for approval is ongoing, and that under state law and regulations the final date for completing that process in this case is April 23, 2011, 120 days after

the initial submission by GCL. This deadline for plan approval is after the statutory deadline for LEA submittal of a proposed permit to CalRecycle. If this plan need not be approved for an actual permit to be proposed, it clearly need not be approved for a permit application to be determined to be complete and correct.

**Response to Issue #3 [CEQA]:**

Petitioners assert that the LEA has not complied with CEQA because the certified EIR documents for the project are old, because subsequent addendums were not adequate, and because the effects of green house gas emissions from the landfill have not been assessed. After making those CEQA-based assertions, Petitioners stop.

Petitioners do not actually assert in their Statement of Issues that compliance with CEQA is required for an application for a solid waste facility permit to be accepted as complete and correct (as discussed below, it is not), and Petitioners do not attempt to explain how the CEQA issues they raise make the LEA's determination that this application package is complete and correct contrary to law. The Solid Waste Hearing Panel should therefore decline to address Issue #3.

If the Solid Waste Hearing Panel does address CEQA in the context of this permit application package, it must find for the LEA because state law and regulations do not require "compliance with CEQA" before a solid waste facility permit application can be accepted as complete and correct. An applicant may provide "evidence that there has been compliance with CEQA" as one way to provide the "CEQA compliance information" required by 27 CCR §21570(f)(3). See 27 CCR 21570(f)(3)(A). But 27 CCR §21570(f)(3)(B) provides that an application can instead meet the "CEQA compliance information" requirement by including "information on the status of the application's compliance with CEQA...". Attachment SWFP-C to the permit application form (See Exhibit 7) provided (at a minimum) the status of CEQA compliance for this project. The Statement of Issues did not challenge the accuracy of the information contained in Attachment SWFP-C. While the CEQA issues raised in the Statement of Issues may be litigated at a future time, the information in the permit application on the status of CEQA was adequate to support LEA's complete and correct determination.

Based on the applicable state law and regulations regarding CEQA and solid waste facility permit application requirements, the Solid Waste Hearing Panel need not and should not engage on the substantive and procedural CEQA issues that Petitioners appear to be proposing in their Statement of Issues. The

LEA cannot be certain, at the time it submits this Response, that these issues will not be raised by Petitioners at the requested hearing. Therefore, the LEA offers the brief discussion below.

The demand for additional CEQA analysis to address greenhouse gas (GHG) impacts was previously raised in a letter from Petitioners to the LEA, dated April 21, 2010, and fully responded to in a letter from GCL to the LEA dated June 21, 2010. These letters are not part of the permit application package but were known to the LEA when it determined this application package was complete and correct. Therefore, these letters are attached as Exhibits 13 and 14.

The LEA's ability to require a subsequent or supplemental EIR for this project, which has a certified EIR, is limited by state law, which provides that an environmental impact report is conclusively presumed to be valid after certification, unless the requirements for a supplemental EIR (SEIR) are met. Public Resources Code section 21167.2, and 14 CCR Section 15162.

The Statement of Issues seems to assert that GHG emissions represent new information that was not analyzed and thus, a SEIR was needed. However, the threat of global warming was well known even before the RFEIR was certified on May 31, 2007, and does not constitute "new information" within the meaning of Public Resources Code section 21166(c).<sup>2</sup> Similarly, the revisions to the CEQA Guidelines referred to by Petitioners became effective on March 18, 2010, after the RFEIR was certified. Thus, the revisions are not applicable to this project.

#### **Response to Issue #4 [Protection of County Water Authority Pipelines]:**

Water supply pipelines cross the landfill site, outside of the proposed waste footprint. The Statement of Issues describes briefly how landfill construction and operation could affect these pipelines, and quotes relevant language from Proposition C (Exhibit 6), as follows: "The Project will include work required to protect any San Diego Aqueduct pipelines to the extent and in the manner required by the San Diego County Water Authority." Petitioners then equate project to

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<sup>2</sup> See, *A Local & Regional Monitor v. City of Los Angeles* (2d Dist. 1993) , 12 Cal.App.4th 1773, 1800 (in order to show that an SEIR is required, a petitioner must demonstrate that the "new information was not known and *could not have been known* at the time the EIR was certified." *Emphasis in original.*); *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 114 (petitioner must establish "new information" could not have been obtained "with the exercise of reasonable diligence."). Since the information on GHG emissions was known and available, the conditions for requiring preparation of a SEIR are not met.

permit, and state “the issue of how the aqueduct would be protected to the satisfaction of the County Water Authority must be resolved *before the SWFP can be issued....*” (emphasis added) Note that this Statement of Issues does not directly contend that this issue must be resolved prior to LEA’s complete and correct determination.

The Solid Waste Hearing Panel could choose not to address this issue on either of two grounds. First, as noted above, Petitioners have not properly raised this as an issue that is relevant to the determination that a permit application is complete and correct. This is not simply a technical or semantic distinction, because Petitioners combine their lack of a focused assertion, with a complete absence of any explanation why Petitioners believe that their preferred earlier timing for an agreement is legally mandatory. Proposition C is clear that the operator of this landfill is eventually going to need an agreement with the County Water Authority. The issue is whether that agreement was required before this permit application could be determined to be complete and correct, and Petitioners have not met their threshold burden of putting that issue before this hearing panel.

A second ground for not engaging on this issue is that Petitioners are not asking for a decision based on state law and regulation, but based on a local Proposition addressing purely local land use matters—a General Plan amendment, a zoning change, and establishment of a use-by-right within rezoned parcels. The requirement for an agreement with the County Water Authority is a local condition imposed by the voters of San Diego County in connection with those land use entitlements—it is not a requirement imposed by or derived from state law or regulations. The function of the Solid Waste Hearing Panel sitting pursuant to Public Resources Code section 44310(a)(1) is to address issues of compliance with state law and regulation. The hearing panel has no authority to tell the LEA how Proposition C—a local law—should be interpreted or applied.<sup>3</sup>

If the Solid Waste Hearing Panel chooses to engage on this issue, it should uphold the LEA’s determination that this permit application was complete and correct, for several independent reasons.

First, even if the Solid Waste Hearing Panel has authority over this issue, it must uphold the LEA’s determination unless the LEA has clearly acted “contrary to law.” Proposition C does not say when this agreement is required, so the LEA’s determination that the agreement is not required yet cannot be contrary to law.

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<sup>3</sup> It must be noted for the record that the LEA disagrees with the interpretation of Proposition C proposed by Petitioners.

Second, the LEA has stated clearly and repeatedly that it will require this agreement to be in place prior to the start of construction, i.e., prior to any activity that could endanger the pipeline. Petitioners have attached an August 12, 2010 County Water Authority letter asking the LEA not to issue a permit until this agreement is in place. (Note that the Water Authority did not ask that the *permit application* be rejected as not being complete and correct.) The LEA replied to that letter, providing appropriate assurances. The LEA reply to the SDCWA letter of August 12, 2010 is attached as Exhibit 15.

Third, the agreement that Proposition C requires need only address work that is required to protect the pipelines. It is likely that the agreement will include allowances for uncertainty before it is satisfactory to the County Water Authority, but the core issue to be addressed is still the work that is required to protect the pipelines. To a significant degree this is a fact-driven technical question, and the full answer to the technical part of this question is apparently not yet resolved to the mutual satisfaction of the parties who must make this agreement. The Solid Waste Hearing Panel should not compel the LEA to require that this agreement be in place before it is feasible for the parties to reach agreement.

Finally, the timing that Petitioners are seeking is clearly unnecessary. The LEA is committed to prohibit any landfill construction until this agreement is in place. That is sufficient to ensure that these pipelines are not put at risk by the landfill project. Acceptance of a permit application does not authorize any activity that could endanger these pipelines, so an agreement at this preliminary stage is not required to ensure protection of the aqueducts.

**Response to Issue #5 [Inclement Weather Operations]:**

The JTD provides for a bridge over the San Luis Rey River that should provide 18 inches of clearance above the expected river level in a 100 year, 24 hour storm. The Statement of Issues asserts that the JTD “fails to discuss” and should provide contingency measures if the San Luis Rey River damages the bridge, or otherwise poses risks that require the bridge to be closed.

27 CCR Section 21600(b)(4)(A) states that a JTD must “describe how the site design accommodates or provides for...climatological factors...” The JTD does this. Apart from the flood-accommodating design of the bridge itself, the actions to be taken in response to high river conditions are adequately described on page B.4-14 of the JTD. If there is potential flooding that could overtop the bridge deck, waste haulers will be notified using the ongoing notification system, and operations will be halted. Although the JTD does not expressly say so,

obviously the same contingency measures would be implemented if the bridge were damaged and could not be safely used.

The Statement of Issues also says the JTD fails to address risks associated with a landfill that can only be accessed by a bridge. The premise of that comment is incorrect; alternative access to the landfill site would be in place for fire protection and other purposes in the event the bridge were damaged. The 2003 Final Environmental Impact Report (2003 FEIR) for the project, at p. 3-28, describes the use of an existing river crossing prior to construction of the landfill access road bridge. The location of that crossing at the western end (boundary) of the site, which is permanently available to the applicant through an easement, is depicted on Figure 3, of Appendix I-3 of the JTD and the property description is set forth in Attachment SWFP-A of the permit application (Parcel 43).

#### **Response to Issue #6 [Groundwater Monitoring Well Locations]:**

The JTD describes an enhanced groundwater monitoring system that GCL proposes to implement, based on the recommendation of Dr. David Huntley, Professor Emeritus of Geological Sciences, San Diego State University. Approval of plans for this enhancement is pending at the RWQCB. GCL and the LEA anticipated that if WDRs are issued for this landfill, they will require that this system be implemented.

The Statement of Issues asserts that the Solid Waste Hearing Panel should direct the LEA to require the installation of this enhanced system before the LEA determines that an application is complete and correct. In effect, Petitioners would turn a proposed system enhancement that is under consideration at the RWQCB, into an application defect at the LEA. To satisfy Petitioners, the LEA would have to somehow require that this good idea *be implemented* before the idea could be *accepted for consideration* by the LEA or RWQCB. That is not the sequencing that state solid waste facility permitting laws and regulations require. State laws and regulations also do not empower the LEA to require physical work on any aspect of a facility as a precondition for accepting a permit application.

Petitioners are also challenging the wrong agency. Groundwater monitoring relates directly to protection of waters of the state, and falls within the regulatory authority of RWQCB. The LEA has no authority to approve the pending workplan for this enhanced groundwater monitoring system, or to impose permit conditions to protect groundwater. The LEA's role under the Public Resources Code is limited to ensuring, when it accepts a permit application as complete and correct, that groundwater monitoring is addressed in the JTD. That requirement has been met.

The Statement of Issues cites no authority to support its assertion that the permit application cannot be complete and correct for SWFP purposes because RWQCB has not approved the work plan, or because the additional monitoring wells have not yet been installed. A review of Title 27 reaches a different conclusion.

27 CCR §20415 provides general standards for groundwater monitoring programs. The purpose for the detection monitoring program (DMP) is to monitor groundwater that might be affected by a release from the Unit. The need for a DMP is triggered by the receipt of waste, not a complete and correct determination, or even the issuance of WDR's by RWQCB. 27 CCR §20420 provides additional detail for the DMP. In addition to well installation, adequate samples have to be taken to establish background. However, there is no set time for this to be achieved, other than prior to waste receipt.

The tentative Monitoring and Reporting Program (M&RP) for the landfill, found at Appendix S, p. 29-30 of the JTD, requires submittal of a plan for expanding and improving the existing groundwater quality network, in order to meet all the required performance criteria for a DMP. Although that portion of the JTD pertains to RWQCB, not LEA matters, the LEA can discern deadline dates from the draft M&RP. The submittal date for the workplan, at Appendix S, p. 33 of the JTD, is within 90 days of adoption of the RWQCB Order (issuance of WDR's). That timing would be well before the initial receipt of waste, and for that reason would appear to the LEA to be consistent with the requirements of 27 CCR §20415.<sup>4</sup>

In summary, regardless of the merits or feasibility of these groundwater monitoring enhancements, and regardless of the status of this plan at the RWQCB, the requirements for the LEA's complete and correct determination with respect to Issue 6 have been satisfied because those matters were addressed in the JTD. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as Exhibit 8.) No further inquiry is required for purposes of this petition.

**Response to Issue #7 [Mitigating a Foreseeable Release]:**

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<sup>4</sup> GCL asserts that the Gregory Canyon Landfill is remarkable for the number of monitoring wells that have been installed and sampled at this stage of development. The LEA understands that this is expected to provide a wealth of information for RWQCB in making its permitting decision.

The Statement of Issues asserts that GCL should have used a different release scenario to determine the required amount of assurance for financial responsibility required pursuant to 27 CCR 22221(a). The release scenario Petitioners dislike was developed by Dr. Huntley, who also developed the groundwater monitoring enhancements that Petitioners are so eager to have implemented. (Issue #6.) Although this is a RWQCB issue with an LEA follow-on, Petitioners have challenged only the RWQCB aspects of the issue.

27 CCR 22221(a) is related to groundwater corrective action scenarios, but the section is a CalRecycle regulation. The cross-reference in Section 22221(a) is to a corrective action cost estimate submitted or approved pursuant to Section 22101(a), which is also a CalRecycle regulation. But 22101(a) states that this critical cost estimate for reasonably foreseeable releases from landfills to water must be “in accordance with the program required by the [State Water Resources Control Board (SWRCB)] pursuant to Section 20380(b).”

The determination of the reasonably foreseeable releases to water relates directly to protection of waters of the state, and based on the allocation of responsibility between agencies on which state solid waste facility regulatory programs are based, this determination falls squarely within the regulatory authority of RWQCB and SWRCB. The regulations discussed above confirm this: even where the requirement for financial assurance is administered by CalRecycle, the corrective action cost estimate, which is driven by the release scenario, must conform to the SWRCB program.

Once that cost estimate is submitted to an LEA, it is a CalRecycle / LEA responsibility to ensure that appropriate financial assurance is provided. But the gravamen of Petitioners' claim on this issue is that GCL's release scenario is technically inappropriate because of the way Petitioners assert contaminants from the landfill would behave in groundwater. That is an SWRCB / RWQCB issue. The issue is addressed in the JTD, which is sufficient and provides adequate information to support a complete and correct determination by LEA on any matter that is within the exclusive jurisdiction of the RWQCB.

There is sufficient information in the JTD for the SWRCB to assess the reasonableness of the release scenario submitted by GCL. The JTD, at p. B.5.21-23, includes a detailed discussion and rationale for the selection of the reasonably foreseeable release, which formed the basis for the corrective action cost estimate. Based on that material, there is substantial evidence that a release from the landfill would not significantly impair the alluvial aquifer. In fact, Dr. Huntley opined in Appendix C-2, p.4 of the JTD that any release from fractured bedrock to the

alluvial aquifer would be rapidly attenuated over a distance of as little as 50 feet downgradient of the interface between the fractured bedrock and the alluvial aquifer, to a point of virtual non-detection. This would be well within the landfill property, and there would be no reasonably foreseeable impact on any downgradient users of the alluvial aquifer. These are determinations to which the SWRCB and RWQCB can readily apply their expertise. It is the LEA's understanding that the RWQCB will address this issue before WDRs are issued, and that state regulations will require the issue to be revisited periodically thereafter.

In summary, regardless of any dispute as to whether the release scenario addressed in the JTD is appropriate, the requirements for the LEA's complete and correct determination with respect to Issue 7 were satisfied because those matters were addressed in the JTD. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as Exhibit 8.) No further inquiry is required for purposes of this petition.

#### **Response to Issue #8 [Fire Control]:**

The Statement of Issues asserts that more information on fire control should have been included in the permit application package. In some sense more information is always better, but the LEA determined that the information in this application was sufficient to inform the permitting process. Petitioners have not shown that that determination was clearly contrary to state law and regulation.

The JTD contains more information on fire control than Petitioners acknowledge. The on-site capabilities of the operator to respond to fires on the landfill property are apparent from the equipment list included on p. B.4-6 of the JTD, which include 2-4 dozers, 1-2 compactors, and 2 scrapers. This is the equipment that would be utilized to address subsurface fires, as provided in the JTD, p. B.5-41. This equipment could also be used to assist in combating wildfires, for activities such as brush clearance or creation of fire breaks.

The primary thrust of the discussion in the Statement of Issues relates to wildfires, and the discussion is incomplete. The Statement of Issues failed to acknowledge that the JTD, at p. B.5 -41, discussed additional fire protection capabilities through the San Diego County Fire Authority, the North County Fire Protection District, and the Pala Reservation fire station. Also, the JTD noted that the fire protection authorities are parties to reciprocal aid agreements, meaning that the closest fire stations would provide the initial response to a wildfire.

With respect to blasting operations, the JTD, at p. B.5- 41 notes that the agency providing fire protection services will enforce compliance with all provisions of the County Consolidated Fire Code. Based on the fire protection letter provided in Attachment SWFP-D of the permit application, that agency likely would be the San Diego County Fire Authority, since the landfill site is within the boundaries of the Authority. Also, the JTD at p. B.5 - 42 notes that fire protection measures related to blasting include the use of a fine mesh screen over the blasting area to prevent the escape of rock fragments, dust or other debris.

The LEA's determination that this information is sufficient is confirmed by the independent URS Corporation peer review. The URS report (Exhibit 4) assessed the fire protection information in the JTD, and concluded at page 2-2 that "Litter, dust, vector, bird, noise, fire, odor and hazardous waste controls are typical to techniques that have been successfully used at other similar facilities."

#### **Response to Issue #9 [Design Features]:**

The Statement of Issues makes the unsupported claim that "conceptual" design drawings are inadequate for permitting purposes, and cites to the example of remodeling a private residence. There is no support for this claim and no indication as to what level of design state law and regulations require, or Petitioners would acknowledge to be adequate. Moreover, the analogy to a home remodeling is inapposite, since a home remodel would require a building permit, and that process would require a final design. That situation is not the same as that one presented here.

The confusion over this issue is best demonstrated by a review of the precise words used in the Statement of Issues -- "[w]hile final drawings **may not be required**, conceptual designs are not sufficient" (emphasis added). Moreover, Petitioners' position seems to be evolving, since in its July 29, 2010 Statement of Issues (discussion of JTD Section C.2.1), Petitioners conceded that "final drawings **are not required**". (emphasis added.)

Furthermore, this claim is nothing more than a bald assertion that whatever has been submitted is not enough. That hardly suffices as a substitute for the LEA's (or RWQCB's) reasoned judgment as to what is required to demonstrate the ability to conform to applicable standards. The implicit suggestion that final design drawings would attempt to undercut the level of environmental protection imposed by the authorities is both speculative and unwarranted, since final drawings would be required to be consistent with permit-level drawings to obtain approval from RWQCB. As explained at Appendix S, p. 44 of the JTD, the tentative WDR's require that detailed designs be submitted to and approved by

RWQCB prior to initiating construction, and that final construction reports with as-built drawings be submitted to and approved by RWQCB prior to the receipt of waste.

Useful guidance on the amount of design detail that is sufficient in an application for a solid waste facility permit is contained in 27 CCR Section 21600 (Exhibit 10), which has been cited frequently in this Response. Regarding ancillary facilities: “provide a plot plan showing all ancillary facilities at the site, including ...buildings, entrance facilities, scales, maintenance structures, and hazardous materials storage areas.” Regarding general design parameters: “Describe how the site design accommodates or provides for the service area, climatological factors, physical settings, soils, drainage and other pertinent information.” Regarding drainage and erosion: “Provide *a conceptual design and description* of the drainage system as it pertains to roads, structures and gas monitoring systems, preventing safety hazards and preventing the escape of waste.” (Emphasis added.) These requirements are general in nature, and there is no provision in 27 CCR §21570 or any other provision of Title 27 that requires a discussion in the JTD as to how the landfill is to be constructed. The required information in the JTD goes to “what”, but not “how”. The information in the JTD is adequate to support LEA’s complete and correct determination.

It should also be noted that URS, an expert firm with substantial experience with solid waste permitting throughout California, did not take issue with the level of design drawings in the permit application. Instead, URS expressly found that designs for required elements provided the level of detail required by 27 CCR 21570(d). See, Exhibit 4, pages 2-1 to 2-4. Concerning the perimeter storm drain, URS found at p. 2-4 that “the perimeter storm drain (PSD) system consisting of a reinforced concrete trapezoidal drainage channels placed around (outside) the refuse footprint and earthen berms to divert run-on from adjacent slopes and the up-canyon areas of the undisturbed footprint into the perimeter storm drains is appropriate for the site”, that “the phased construction of the PSD moving up canyon as the landfill is developed is reasonable”, and that the “discharge and percolation area appears to be adequately sized and the energy dissipaters proposed are typical”.

It is helpful that URS’s expert judgment confirms that of the LEA concerning sufficiency of design detail. But for purposes of the decision the Solid Waste Hearing Panel must make, it may be more important that that 27 CCR 21600(b)(8)(F) expressly endorses the JTD’s use of “conceptual” designs for drainage systems, and of “plot plan” designs more generally. Because the JTD often goes beyond this minimum level of detail and generally includes design drawings at a level of detail consistent with longstanding industry and regulatory

practices, the JTD presents more than is necessary for the LEA's complete and correct determination. But even if the designs for the perimeter drainage channel (or for other aspects of the landfill) were merely "conceptual," the minimal design detail standards established in 27 CCR 21600 mean that LEA cannot be said to have acted contrary to state law and regulation when it found this permit application to be complete and correct.

**Response to Issue #10 [Leachate Control and Recovery]:**

As to this issue, and no other, the Statement of Issues asserts that an aspect of the landfill design as disclosed in the permit application package would violate a specific regulatory standard. Petitioners are mistaken.

The discussion of 27 CCR §20340 in the Statement of Issues is misleading. The regulation provides that certain Class III landfills (including Gregory Canyon) are required to have a Leachate Collection and Recovery System (LCRS), but does not "require that the entire waste unit be underlain by an LCRS". Since Gregory Canyon will utilize a standard LCRS, the design is governed by 27 CCR §20340(e), which requires that the LCRS extend up the side slope as much as possible.

The JTD at p. B.5-2 – B.5-3 includes a detailed discussion of the design of the side slope collectors and the rationale for compliance with 27 CCR §20340(e). In particular, the JTD indicates that leachate entering into the bench collectors would flow by gravity into the LCRS mainline placed down the center of the refuse area. Leachate not entering the bench collectors would flow by gravity along the interface between the operations layer and the geomembrane liner to the bottom areas and into the LCRS. The benches and bench collector piping would be sloped to prevent ponding, and, obviously, the side slopes would be sloped and would prevent ponding. The URS report, at p. 2-3 noted that one important advantage of a gravity-based LCRS is that it would eliminate the possibility of a pump failure causing a leachate release. This design complies with applicable regulatory requirements.

The Solid Waste Hearing Panel should decline to address this issue. Leachate collection and treatment are undertaken to protect waters of the state, and falls within the regulatory authority of RWQCB. Leachate collection and treatment is addressed in the JTD, which is sufficient to support a complete and correct determination by LEA on any matter that is within the exclusive jurisdiction of the RWQCB. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as Exhibit 8.) No further inquiry is required for purposes of this appeal.

**Response to Issue #11 [Desilting Basin]:**

In this issue area, the Statement of Issues alleges a missing rationale, a lack of discussion, use of an obsolete reference, and inadequate support for a selected technical parameter. All of these allegations are mistaken, but the nature of the allegations is sufficient to show that Petitioners are off the mark. The question before the Solid Waste Hearing Panel is whether the LEA clearly acted contrary to state law and regulations, not whether technical debates about hydrology issues are possible. In addition, the issues Petitioners raise (and confuse) here are storm water desiltation and infiltration. Those aspects of storm water management relate to protection of waters of the state, and fall within the regulatory authority of RWQCB. Storm water management is addressed in the JTD, which is sufficient to support a complete and correct determination by LEA on any matter that is within the exclusive jurisdiction of the RWQCB.

Despite that conclusion, the discussion in the Statement of Issues demonstrates a lack of understanding of the design methodology for the storm water management system. As indicated in the JTD at p.C.2-20 – C.2.21, the 10-year, 6-hour event was used in conjunction with particle size to determine the desiltation efficiency of the sedimentation basins, and determine their appropriate sizing to reduce downstream sediment loading. This is different than flows through the system, which were designed to accommodate a 100-year, 24-hour storm calculated using the Rational Method. And, the JTD, at p. C.2-20, notes that the design of the desilting basins was based on the 2009 version of the California Stormwater Best Management Practices Handbook, not the earlier 2003 version as alleged in the Statement of Issues.

The URS Report, at p. 2-3 concluded that “[d]esilting basins are designed based on the 10-year, 6-hour storm flows sediment capacity and for the storm water runoff flows of the 100-year, 24-hour storm event. The spillway is sized for the 100-year, 24-hour storm event. This complies with the regulatory requirements and is reasonable for the site.”

The Statement of Issues makes the unsupported claim that all flows, even from undisturbed areas, should flow through the desilting basins for sediment removal. This claim reflects a fundamental misunderstanding of current storm water protection practice, which is to mimic the pre-development condition with respect to both flows and functions. The plan presented in the Storm Water Management Plan (Appendix I-1 of the JTD) was designed to mimic the volumes of flow from the Gregory Canyon mainstem occurring during pre-development

condition. The goal was not to prevent flow, but to allow flow to occur under conditions where flow would occur during the pre-development condition. The storm water management system also is designed to allow for the transport of sediments where it would have occurred during the pre-development condition. Routing storm water flows from undisturbed areas through the desilting basins would limit the ability to preserve this pre-development function.

The comment letter prepared by Dr. Richard Horner, attached to the Statement of Issues, makes two primary assertions. First, the landfill is criticized for not utilizing a flow modeling technique that is not fully developed, and is not in widespread (or even any) use in California. Such a criticism cannot constitute a reason to overturn LEA's complete and correct determination.

Moreover, the crux of this new and untested method is to take into account additional factors, such as rainfall over a period of time and antecedent moisture, and Dr. Horner further criticizes GCL for not making more detailed on-site observations. However, GCL undertook extensive on-site observations of an extreme rainfall event during the 2004-2005 rain year occurring over a period of numerous days that resulted in flows in the Gregory Canyon mainstem. Those observations considered the factors raised in the Horner comment letter (e.g. rainfall over a period of time and antecedent moisture), and were described in the Updated Hydrogeomorphology and Beneficial Uses at Gregory Canyon report (Hydrogeomorphology Report), included as Appendix I-1 of the JTD. GCL also performed HEC-1 modeling of flows, which are presented in Table 1, p. T-1 of the Hydrogeomorphology Report.

The series of storms producing flow in the 2004-2005 rain year exceeded six inches of rain, as described in the Hydrogeomorphology Report, p. 2-7. And, importantly to the design of storm water facilities, the maximum flow volume in this extreme event was in the range of 21-31 cubic feet per second (cfs), with an average of 26 cfs, and was representative of a 10-40 flood event (depending on the frequency and method), as described in the Hydrogeomorphology Report, p. 2-6. The volume of flow seen onsite was substantially less than the volumes calculated through use of the Rational Method (138.35 cfs in a 10-year event), which was the basis of design for the basic elements of the storm water management system. The calculations were consistent with the flow estimates produced through the HEC-1 modeling. The Hydrogeomorphology Report at p. 2-4 noted that the Rational Method tends to exaggerate flows within the watershed, which was the case here. But, in any event, the calculations provide substantial assurance that the storm water management facilities are adequately sized, and if anything, oversized.

The URS Report (Exhibit 4), at p. 2-3 – 2-4 concluded that “[t]he drainage

control system designed for 100-year, 24-hour storm event run-off volumes complies with the regulatory requirements and is reasonable for the site”, that “[t]he estimated run-off values calculated based on the San Diego County Hydrology Manual (2003 version) in conjunction with computer software developed by Advanced Engineering Software (AES) is appropriate”, and that “[t]he hydrologic analysis conducted using the Rational Method Computer program (in accordance with the San Diego County Hydrology Manual Criteria) to determine the peak flows discharged from the Gregory Canyon watershed under pre- and post-developed conditions is reasonable for the project”.

The requirements for LEA’s complete and correct determination with respect to Issue #11 were satisfied because those matters were addressed in the JTD. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as Exhibit 8.) No further inquiry is required for purposes of this appeal.

**Response to Issue #12 [Floodplain]:**

The Statement of Issues asserts that the landfill design calls for desilting and infiltration structures and “possibly” other facilities to be located within the 100 year floodplain, that the impacts of this “construction” have not been studied, and that without further analysis and FEMA (Federal Emergency Management Agency) approval, the permit application package cannot be complete and correct. These assertions are erroneous in part, and to the extent they may be correct, they do not establish that the LEA acted contrary to law and regulation when it determined that the permit application was complete and correct.

The assertion in the Statement of Issues that the eastern desilting basin and portions of the facilities area are within the 100-year floodplain is not established by the map Petitioners have attached. Figure 30B does not include an outline of the location of those features, and without that information it would be impossible to reach the conclusion asserted in the comment. Floodplain mapping in the 2003 FEIR (Exhibit 4.4-2, p. 4.4-5) shows that no portion of these features is within the 100- or even 500- year floodplains, and the adequacy of this mapping or analysis was never challenged by Petitioners (or any other party) or overturned by the courts.

Nevertheless, floodplain maps can be imperfect. However, even if the infiltration area were within the 100-year or 500-year floodplain, the LEA’s determination that the permit application package was complete and correct would not be contrary to law. As discussed in response to Issue #11, one goal of the storm water management system is to mimic the pre-development condition. Thus, if there were pre-development flooding in this area during a storm event, the storm

water management system would want to allow flooding to occur post-development. Also, this simply is an infiltration area, there is no physical development or disturbance of the pre-development condition. An infiltration area would not interfere with a flood.

The Statement of Issues does not specify what “FEMA approvals” allegedly are required for the landfill project to receive a SWFP, or for the permit application to be complete and correct. That is because there are no required FEMA approvals, and FEMA has not been designated as responsible agency for this project for CEQA purposes, or as an approving agency for SWFP application purposes. FEMA mapping relates to the availability of flood insurance, or disaster recovery assistance. In contrast, regulation of federal or state waters is through the U.S. Army Corps of Engineers or the RWQCB.

**Response to Issue #13 [Rockfall and Protective Construction]:**

The Statement of Issues notes that the JTD states that rockfall protection measures will be necessary at the landfill, and objects because the location and design of those features is not disclosed.

Essentially, this is another “design detail” objection, and the discussions of that objection in connection with Issue #'s 1 and 9 above are also applicable here. The information provided in the JTD is adequate to support the LEA's complete and correct determination. The tentative WDR's, at Appendix S, p. 44 of the JTD, require that drainage control facilities be subject to detailed design and as-built review by RWQCB, as discussed in more detail in the response to Issue #9.

Regarding locations, Petitioners' reference to open space appears to be based on a concern that open space required to be maintained pursuant to Proposition C (and CEQA) could be affected by this construction. Proposition C compliance and CEQA compliance are not issues within the purview of this Hearing Panel, as discussed above in connection with Issues #3 and #4.

Furthermore, GCL and the LEA do not expect this construction to intrude on protected open space. Construction of rockfall protection of one or more of the types depicted in the examples in Figure 36 of the JTD can be accommodated within the current limits of grading. In addition, the current limits of grading preserve more open space than Proposition C required. Section 3B of the Proposition provides that the amount of open space acreage can be adjusted, but

must be at least 1,313 acres.<sup>5</sup> Also, Section 3A of the Proposition provides that the size and location of facility components can be adjusted.

### **Conclusion**

Petitioners have not shown that the LEA acted contrary to state law and regulations. The relief Petitioners seek should therefore be denied.

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<sup>5</sup> The FEIR, at Exhibit 3-9 on p. 3-23, provides that with the proposed project development, and subtracting 150.5 for “other areas and easements” (some of which are speculative), there would be 1324.7 acres remaining for open space, in excess of the required 1,313 acres.