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June 6, 2011

VIA E-MAIL

Mr. Mark Leary
Acting Director
CalRecycle
801 K Street, MS 19-01
Sacramento, CA 95814

Re: Supplement to Statement of the Issues for Hearing on the Permit Application for the Proposed Gregory Canyon Landfill

Dear Mr. Leary:

This letter supplements the Statement of the Issues dated March 3, 2011, submitted by the Pala Band of Missions Indians to the San Diego County Department of Environmental Health, acting as the local enforcement agency (“LEA”) to support the Pala Band’s request for a hearing on the LEA’s determination that the solid waste facility permit application for the proposed Gregory Canyon landfill was complete and correct. The Pala Band’s request for a hearing was timely filed in accordance with Public Resources Code (“PRC”) Section 44307.

A copy of the Statement of the Issues was provided to CalRecycle as an attachment to a letter dated April 14, 2011, explaining the LEA’s refusal to hold the required hearing and appealing that decision under PRC Section 45030. In addition, attached as Exhibit A to this submission is the Pala Band’s March 25, 2011, reply to the LEA’s March 15, 2011, response to the Statement of the Issues. The information contained in these various communications should be considered part of the record in this appeal.

I. CalRecycle’s Decision to Hold a Hearing on the Appeal Makes the Issue of Whether the Appeal Raises “Substantial Issues” Moot.

On behalf of the applicant and the LEA, the Office of County Counsel has stated that it will argue that this appeal “fails to raise substantial issues” and should not be heard. County Counsel has cited PRC Code Section 45031 to support that claim. But the clear language of that section requires that CalRecycle reject the LEA’s position.

In relevant part, PRC Section 45031 states that “[w]ithin 30 days from the date that an appeal is filed with the board, the board may do any of the following: (a) Determine not to hear

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the appeal if the appellant fails to raise substantial issues ... (d) Determine to accept the appeal and hold a hearing within 60 days, unless all parties stipulate to extending the hearing date.” The Pala Band’s appeal was filed on April 14, 2011, meaning that the 30-day period established in this section expired on May 14, 2011. Within that 30-day period, CalRecycle did not determine “not to hear the appeal” because it failed to “raise substantial issues.” As that 30-day period has passed, CalRecycle no longer can make that determination.

Instead, during that 30-day period, CalRecycle chose to act in accordance with subsection (d), and determined that it would hold a hearing within 60 days. This section of the statute allows CalRecycle to choose one of the four options, and it chose to schedule a hearing pursuant to subsection (d). Consequently, the issue of whether the appeal raises substantial issues is moot and should not be considered.

II. CalRecycle’s Role is to Determine Whether the LEA Failed to Act as Required by Law or Regulation.

PRC Section 44307 required the LEA to hold a hearing once the Pala Band requested a review of the LEA’s “failure to act as required by law or regulation” in approving the solid waste facility permit application as complete and correct. But the LEA and the LEA Hearing Panel refused to hold the required hearing, although there is no evidence that the LEA Hearing Panel ever made a decision that it would not reschedule the hearing. That decision apparently was made solely by the Office of County Counsel.

Consequently, the Pala Band was forced to file an appeal with CalRecycle pursuant to PRC 45030. Because the responsible local entities refused to hold the required hearing, CalRecycle is not acting as an appellate body reviewing a decision of the LEA Hearing Panel. Rather, CalRecycle is conducting the initial determination of whether the LEA failed to act as required by law or regulation. The statute does not limit the “laws or regulations” which apply, and because the determination is purely a question of law (and given that the regulations at issue are CalRecycle’s rules), CalRecycle owes no deference to the LEA’s positions on these issues. As the court in *SPRAWLDEF v. County of Solano Department of Resource Management* (2008) 167 Cal.App.4th 1350, 1362, held, the failure of an LEA to proceed in the manner required by law constitutes an abuse of discretion. CalRecycle should find that the LEA failed to act as required by law or regulation, and direct the LEA to require that a complete and correct application be submitted.

III. The LEA’s Position That the Regional Board Deemed the Preliminary Closure/Post-Closure Maintenance Plan (“PCPCMP”) is Untenable.

As shown in the Statement of the Issues and the reply, the LEA’s claims that the PCPCMP was deemed complete by the Regional Water Quality Control Board under 27 C.C.R. Section 21860 fails because that regulatory provision only binds CalRecycle (and its LEAs) and

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not the State Water Resources Control Board and its Regional Boards. Again, regulations that apply to both CalRecycle and the State Board are identified as such. (*See, e.g.*, 27 C.C.R. § 21595).

In addition, 27 C.C.R. Section 21769(d) specifically states that the regional board “shall review and approve all preliminary and final closure plans” and that process “shall follow the same schedule as for the development or revision of WDRs (see PRC §43506).” That latter provision refers to the time schedule in the Water Code, Section 13000 *et seq.*, but does not refer to 27 C.C.R. Section 21860. Because that latter provision cannot bind the Regional Board, it does not apply here, and an applicant must obtain a specific completeness determination from the Regional Board before the application can be deemed complete.

IV. The Joint Technical Document (“JTD”) is Not Complete and Correct.

CalRecycle’s rules state that a “complete and correct application package shall include” a “[c]omplete and correct Report of Disposal Site Information” in the form of a JTD. 27 C.C.R. § 21570(f)(2). Because County Counsel has argued that CalRecycle should ignore its own rules, it bears repeating that those rules define the term “complete” as meaning that “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,” 27 C.C.R. § 21563(d)(1) (emphasis added), and the term “correct” as requiring that “all information provided by the applicant regarding the solid waste facility must be accurate, exact, and must fully describe the parameters of the solid waste facility.” 27 C.C.R. § 21563(d)(2). The rules also require that information in a permit application 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.” 27 C.C.R. §§ 21570(d).

These definitions govern both the permit application and the JTD meaning that the required information must be provided in one or the other of those documents. The fact that a “complete” application of JTD must address requirements placed on operation by other agencies with jurisdiction confirms that the LEA’s role (and CalRecycle’s as well) in reviewing the permit application and the JTD for completeness and correctness is not limited to only the authority granted under the Integrated Waste Management Act and the rules promulgated under that act, but to requirements of other agencies with jurisdiction over operations.

A. Detailed Information on the Aqueduct Protection Must Be Part of the Application.

The operation of the proposed facility would require continual crossing of the easement through which the First San Diego Aqueduct pipelines run. Crossing that easement would require an encroachment permit from the San Diego County Water Authority and its approval could require that the pipelines be relocated to a location approved by the Authority. That is in addition

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to the fact that Proposition C explicitly stated that 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” and defined the term “Project” as being the elements of the Project described in the initiative “as subsequently modified by a detailed site plan submitted by the Applicant to the Integrated Waste Management Board as part of the solid waste facilities permit.”

This language belies the LEA claims that it can simply ignore the fact that, in 17 years, the permit applicant has failed to reach an agreement with the Water Authority concerning the relocation of these pipelines and that no detailed plan to address the issue has been submitted in the permit application. Rather, Section D.5.5 of the JTD simply states that it is “possible” that the aqueduct “may be relocated further west of the landfill footprint.” The clear language of Proposition C, as drafted by the applicant requires that the issue of how the aqueduct would be protected to the satisfaction of the Water Authority be explained in detail in the permit application.

B. New Information on Changes to the Stormwater Control Channels ins Not Included in the JTD.

Appellant’s Statement of Issues identified inadequacies in the JTD that made the application incomplete and those are not repeated here. However, a new report dated April 18, 2011, that is mentioned (but not included) in the California Environmental Quality Act (“CEQA”) documents prepared by the LEA describes mitigation measures intended to address impacts that the proposed landfill (if approved and constructed) would cause to 16,069 linear feet of ephemeral drainages on the site. The measures are not mentioned in the JTD or in the Mitigation Monitoring and Reporting Plan (“MMRP”) that are part of the permit application.

Specifically, the report titled “Ephemeral Drainage Feature Compensation Plan for Gregory Canyon” (“Report”) (attached as Exhibit B) states that approximately 23,000 feet of new earthen channels and drainage swales would be constructed on the site in areas identified either as open space under Proposition C or as habitat mitigation areas in the Final Environmental Impact Report. No information on the construction of these features was included in the JTD submitted as part of the permit application.

In addition, the Report states that 4,382 feet of the eastern and western perimeter drainage channels no longer would be constructed as solid concrete structures as described in the JTD, but rather would be built from “articulated block.” The Report does not describe the size of these blocks or give any other information about them except to state that installing the block instead of constructing the channels with concrete as described in the JTD “will allow for infiltration of water and establishment of vegetation that is similar to the main stem and adjacent drainage features currently existing in the canyon.”

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As described in the JTD (*see, e.g.*, pg. C.2-19), these perimeter storm drain (“PSD”) channels were designed to collect stormwater running off the steep sides of Gregory Mountain that forms the east side of Gregory Canyon and the sides of the unnamed features that form the south and west sides of the canyon to prevent the stormwater from impacting disposed waste in the proposed landfill footprint. Changing a large portion of these PSD channels from solid concrete to articulated block that would allow the collected stormwater to infiltrate out and for vegetation to grow in the channel is a significant change to critical infrastructure. The Report does not discuss how much water would infiltrate out into the landfill footprint or what the impacts would be of that infiltration. There also is no discussion of how the vegetation that would be encouraged to grow in the articulated block sections of the PSD channels would affect the ability of those channels to serve their intended purpose as described in the JTD.

More importantly, the change to articulated-block construction of the PSD channels is not mentioned in the JTD. Based on the limited design drawings included in the Report, it appears that the articulated block section of the perimeter channels might be wider but shallower than the perimeter channels identified in the JTD Drawing 21, but that is not clear. Also, the Report appears to indicate that flows collected in the southern part of the eastern perimeter channel actually would flow south around the southern end of the canyon and into the western perimeter drainage channel to the western desilting basin. The limited discussion in the JTD appears to indicate that water collected in this section would flow to the eastern desilting basin.

As we have stated previously, the far-too limited description of the construction of the PSD-channel system in the JTD failed to identify how these channels would be constructed and stabilized along the sides of the canyon, especially on the Gregory Mountain side, and that lack of detail made the JTD incomplete. Now, with an entirely new design for the PSD channels but absolutely no description in the JTD of the new design, the method of construction, or the ultimate stability of this new design, the JTD cannot be complete and correct. Until this issue is resolved and the JTD revised to reflect the actual design for these critical stormwater management structures, the permit application cannot be considered complete and correct.

We note that this issue is reflective of the general problem with the JTD, which is intended to serve as the template for the construction of this facility. Indeed, the approved permit simply incorporates the JTD as if it contains sufficient information to allow the LEA or other agencies to determine whether the facility is being constructed in a specified manner. The lack of detail required in the JTD apparently has made the applicant believe that it can simply revise those “designs” if necessary without the need to change the JTD. That is not the way the design and construction of a major project should proceed and still be protective of the environment.

V. Conclusion

For all the reasons stated above and in the previous submissions, CalRecycle should determine that the LEA failed to act as required by law and regulation when it approved the

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permit application as being complete and correct. CalRecycle should direct the LEA to rescind its previous approval of the permit application and of the permit it has sent to CalRecycle for review, and not forward a permit to CalRecycle for review until a complete and correct application is submitted.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. E. Rusinek', enclosed within a hand-drawn oval.

Walter E. Rusinek

WER

Enclosures

Robert H. Smith, Chairman, Pala Band of Mission Indians
Ms. Shasta Gaughen, Director, Pala Environmental Services
Mr. Spencer MacNeil, U.S. Army Corps of Engineers
Ms. Shanti A. Santulli, U.S. Army Corps of Engineers
Mr. Jared Blumenfeld, USEPA, Region IX
Ms. Michelle Moreno, U.S. Fish & Wildlife Service
Mr. David Gibson, Regional Water Quality Control Board
Mr. Stephen Moore, San Diego County Air Pollution Control District
Ms. Maureen Stapleton, San Diego County Water Authority
Damon Nagami, Esq., NRDC
Pamela Epstein, Esq., Sierra Club
Ms. Laura Hunter, Environmental Health Coalition
Everett L. DeLano III, Esq.

EXHIBIT A

**REPLY TO THE LEA'S RESPONSES TO THE STATEMENT OF ISSUES
ON THE PROPOSED GREGORY CANYON LANDFILL
MARCH 25, 2011**

The following brief reply is provided to respond to some of the responses made by the San Diego County Department of Environmental Health ("LEA") to our Statement of Issues submitted on March 3, 2011.

I. General Comments

The LEA repeatedly refers to the URS Corporation as an "independent" third-party, which conducted a review of the solid waste facility permit application ("SWFPA") and the Joint Technical Document ("JTD"). But what the LEA failed to mention is that URS has worked for Gregory Canyon Ltd. ("GCL") for years on this project as its principal consultant for stormwater management, biological resource, and other issues. URS also argued on GCL's behalf that there were no "waters of the United States" in the canyon, an argument rejected by the Army Corps of Engineers. Consequently, the characterization of its review as an independent third-party review is a stretch.

The LEA also argues that the authority of this Hearing Panel is limited and that, in effect, it must defer to the LEA's decisions. But the LEA cites no authority for its position. By statute, the Hearing Panel's role is to "review an alleged failure of the agency to act as required by law or regulation." (Pub. Res. Code § 44307). There would have been no reason for the legislature to establish a Hearing Panel if it simply was required to defer to the LEA's determinations. Rather, the statutory language shows that the Hearing Panel must determine whether the actions of the LEA are in compliance with all laws or regulations based on the facts presented.

1. The Completeness Determination for the Preliminary Closure/Post-Closure Maintenance Plan ("PCPCMP")

The LEA claims that the PCPCMP was deemed complete by the Regional Water Quality Control Board ("Regional Board") when it failed to object within 30 days to the PCPCMP submitted to it by GCL on December 23, 2010 (a Christmas present). The LEA cites 27 C.C.R. section 21860 to support that claim.

But, as pointed out in the Statement of Issues, the CalRecycle rule addressing the need for a completeness determination as part of the application process does not refer to Section 21860. (27 C.C.R. § 21570(f)(6)). In addition, GCL's letter to the Regional Board only stated that the PCPCMP had been submitted in accordance with 27 C.C.R. Section 21780(c)(2), and did not indicate that the Regional Board had 30 days to comment on the plan or it would be deemed complete as a matter of law.

Section 21860 is identified as a rule promulgated by the California Integrated Waste Management Board (now CalRecycle). As the LEA argues in its response, the solid waste regulations are divided between those implemented by CalRecycle and those implemented by the State Water Resources Control Board ("SWRCB"). Regulations that apply to both CalRecycle and the SWRCB are identified as such. (*See, e.g.*, 27 C.C.R. § 21595). Given this distinction, CalRecycle's rules "shall not be construed by the CIWMB or the enforcement agency (EA) in a

manner that would infringe upon or interfere with the administration or implementation of a comprehensive program of regulatory standards promulgated by the SWRCB in this title for the protection of water quality” (27 C.C.R. § 20005).

Consequently, even if Section 21860 did apply to the completeness determination, being a CalRecycle rule, it cannot bind the Regional Board on that issue. While the LEA can require a permit applicant to obtain a completeness determination from the Regional Board, CalRecycle cannot limit the Regional Board’s ability to make that determination as it sees fit.

2. The Requirement That an Agreement with the San Diego County Water Authority Be Reached Concerning its Pipelines

The LEA’s claim that this issue was not properly raised in the Statement of Issues is wrong. The Statement of Issues specifically states that “one of the critical problems with the SWFPA is that it does not address the protection of these pipelines as required by Proposition C.” (Page 4). Clearly, the issue was raised as to whether the SWFPA should have been considered complete without having addressed the protection of the aqueduct.

Moreover, the LEA’s attempt to distinguish between the SWFPA and the issuance of the permit is merely semantic. By accepting the SWFPA as complete, the LEA concluded that it was prepared to issue the permit within 60 days, by April 1, 2010. Given that the County Water Authority testified at the February 23, 2010, hearing that GCL still had not provided the requested information (*see* Exhibit 1), there was no possibility that the required agreement between the two parties would be completed before the LEA issued the permit.

The County Water Authority’s letter to the LEA dated August 12, 2010, made the same request. (*See* Statement of Issues, Exhibit E). That letter specifically requested that the LEA “consider the application package not ready for forwarding to Cal Recycle until there is an executed agreement between the Water Authority and Gregory Canyon Ltd., (or their successors-in-interest) regarding the protection of the San Diego Aqueduct pipelines and facilities.” By accepting the SWFPA as complete without such an agreement, the LEA effectively rejected the County Water Authority’s request.

As to whether this issue is properly before the Hearing Panel, the LEA’s claim that the Hearing Panel “has no authority to tell the LEA how Proposition C – a local law – should be interpreted or applied” ignores the statutory duty of the Hearing Panel to determine whether or not the LEA has acted “as required by law or regulation.” The statute does not make any distinction between state and local law.

There is no dispute that Section 3.G of Proposition C, titled “Protection of San Diego Aqueduct,” stated that 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.” Section 8.d of the initiative then defined the “Project” as the “associated structures and improvements as described in Section 3 of this initiative measure as subsequently modified by a detailed site plan submitted by the Applicant to the Integrated Waste Management Board as part of the solid waste facilities permit.” By its terms, Proposition C inserted the identification of the measures needed to protect the aqueduct into the solid waste permit process.

Given that language, the LEA's argument that this Hearing Panel cannot consider the conditions imposed by Proposition C must be rejected. That position makes no sense because Proposition C contains a number of other requirements, such as the approved days and hours of operation, to which the SWFPA must conform. Under the LEA's logic, this Hearing Panel could not consider if the SWFPA described operational requirements that violated Proposition C. In effect, the initiative can be considered the major use permit ("MUP") for the project, and if the SWFPA included provisions that contradicted the MUP, this Hearing Panel could conclude that accepting the application was improper as a matter of law. Likewise, the Hearing Panel has the authority to ensure that the LEA properly applies the requirements in Proposition C.

Without resolution of this issue to the satisfaction of the County Water Authority, GCL has no right to access the proposed landfill footprint and other areas because that would require crossing the Water Authority's easement. As the entire design of the facility is predicated on such access, the SWFPA cannot be complete if access to the operations area is not even assured.

This is not a new issue. In addition to the language in the 1994 initiative, the 2002 FEIR required that an agreement be executed with the Water Authority "providing for relocation and protection of the San Diego Aqueduct pipelines." In fact, the LEA's responses to the Water Authority's comments on the issue indicated that GCL was negotiating with the Water Authority concerning relocation "and has verbally agreed to the relocation." (Exhibit 2). Even so, the issue remained unresolved from 2006 to 2010 while the LEA erroneously maintained that the solid waste permit for the facility was valid. Given this situation, the application should be considered incomplete until an agreement is reached with the County Water Authority regarding the relocation and protection of the pipelines as required in Proposition C and in the FEIR.

3. The Need to Supplement the Revised Final Environmental Impact Report

The LEA continues to take the position that no additional environmental review will be needed to access the significant impacts from greenhouse gas ("GHG") emissions from the proposed project. We note that this analysis could have been conducted once it became clear that CEQA would be revised to identify the significance of GHG emissions. Rather than complete the analysis, the LEA (as it did with the issue of the validity of the solid waste facility permit) has steadfastly maintained its position that no analysis is required. This appears to be an issue that will have to be resolved by the courts.

4. Incomplete Information in the Joint Technical Document ("JTD")

a. Lack of Secondary Access to the Site if the Bridge is Damaged

The LEA claims that if the bridge is not usable, a "temporary crossing" identified in the FEIR would be used. The page of the FEIR cited by the LEA states that "construction equipment and deliveries will be brought into the site over the existing river crossing, which is currently used for the dairy operation at the west end of the site. The construction equipment will cross the river using the temporary crossing and will remain on the south side of the river."

Given that the FEIR acknowledges that this secondary access also crosses the river, one must question how when the river is in the flood stage, there would be access to the site through a crossing in the river. Clearly, this explanation does not address the issue of how health and

environment would be protected if there were no access to the site. That issue should be have been addressed in the JTD.

b. Lack of Sufficient Groundwater Monitoring Wells

The LEA's position is that its role is limited "to ensuring, when it accepts a permit application is complete and correct, that groundwater monitoring is addressed in the JTD." State law requires that a "sufficient number" of monitoring points be installed at appropriate locations to monitor potential leaks from the landfill. The JTD acknowledges that a sufficient number of wells have been installed to monitor potential leaks from this proposed landfill. Consequently, as a matter of law, the JTD is not complete because it does not provide information that satisfies this requirement.

c. Construction Within the 100-Year Floodplain

The LEA appears to argue that, because a misleading FEMA floodplain map was included in the FEIR, the JTD does not need to confirm that no facilities would be located within the 100-year floodplain. Because the JTD shows that the 100-year floodplain is very near the eastern desilting basin (compare JTD Figures 30B and 21), the LEA should require the applicant to confirm that is not the case.

EXHIBIT B

Report

EPHEMERAL DRAINAGE FEATURE COMPENSATION PLAN FOR THE GREGORY CANYON LANDFILL PROJECT

Prepared for

Gregory Canyon Limited
160 Industrial St. Suite 200
San Marcos, CA 92078

Reference No. GCL2011

A handwritten signature in black ink, appearing to read "Bill Magdych". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bill Magdych, Ph.D.

April 18, 2011

**Bill Magdych Associates
Environmental Consulting**

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List of Acronyms and Abbreviations

ACOE	U.S. Army Corps of Engineers
cfs	cubic feet per second
ft	feet
GCL	Gregory Canyon Limited
LF	Linear Feet
OHWM	Ordinary High Water Mark
RWQCB	San Diego Regional Water Quality Control Board

SECTION 1 INTRODUCTION

This compensation plan provides for the establishment of erosional and ephemeral drainage features that are similar to the form and function of erosional and ephemeral drainage features that will be disturbed by the Gregory Canyon Landfill Project as compensation requested by the San Diego Regional Water Quality Control Board (RWQCB). Section 2 of this report describes the proposed project, including areas that will be impacted, and functions to be addressed by compensation. Section 3 describes goals of this compensation plan, compensation areas, compensation plans, monitoring and maintenance, and the responsible party.

SECTION 2 PROJECT DESCRIPTION**2.1 PROJECT LOCATION**

The compensation project will occur on the Gregory Canyon Limited (GCL) property that will also contain the Gregory Canyon Landfill project. The project area is located approximately 3.5 miles east of I-15 along SR 76 in San Diego County (Figure 1). The facilities that will be created for the Gregory Canyon Landfill project are shown in Figure 2. Impacts that will result from the Gregory Canyon Landfill project on erosional and ephemeral drainage features are within the footprints shown on Figure 2, all of which are south of SR 76 and mostly south of the San Luis Rey River. The compensation area is also located south of SR 76 with most of the primary area south of the San Luis Rey River.

2.2 DRAINAGE FEATURES AFFECTED BY THE PROJECT

The Gregory Canyon Landfill project will include grading and filling of the landscape within the project footprint shown in Figure 2 that will result in the disturbance of erosional and ephemeral drainage features. The U.S. Army Corps of Engineers (ACOE 2010) performed a jurisdictional determination of areas within and near the project's proposed impact areas. As part of this jurisdictional determination, the ACOE found jurisdictional waters of the U.S. within the mainstem of Gregory Canyon. The ACOE also found drainage features within the project's impact areas that bore an ordinary high water mark (OHWM), but were either isolated or had no significant nexus to foreign or interstate commerce and were not Federal jurisdictional waters of the U.S. The ACOE also evaluated several historic erosional and drainage features that were swale-like in appearance, but were found to not have a bed, bank, or channel bearing an OHWM. The RWQCB has requested that all of these features, including the swale-like features identified by the ACOE that were not within Federal jurisdiction, be mitigated by creation of similar features (Mike Porter, RWQCB, personal communication). The extent of all of these features within and near the proposed project impact areas are shown in Figure 3.

This compensation plan provides for the establishment of erosional and ephemeral drainage features that are similar to the form and function of erosional and ephemeral drainage features that will be disturbed by the Gregory Canyon Landfill Project as compensation requested by the San Diego Regional Water Quality Control Board (RWQCB). Surface water flow has only been observed in the mainstem, drainage G6, and drainage G7 in Gregory Canyon and in drainage A in Stockpile Area B for the project since 2001 and only in during three discrete storm events in January 2005 (2005 rain year), January 2010 (2010 rain year), and December 2010 (2011 rain year), and the storms producing these flows have been very high level events.. Each of these flow events were initiated when rainfall on the local watershed exceeded 6 inches in total

falling within a period of up to 4 days. Smaller amounts of rain over the same time period or similar to large amounts of rain spread over longer periods with one or more non-rain days within the period have not been observed to produce initial flow in these drainages. The peak flows observed from the Gregory Canyon mainstem have been less than 30 cfs in each of the 3 storm events that produced flow. The surface flows observed have generally peaked shortly after flow is initiated and flow usually ceases shortly thereafter, although trickle flow and puddling may persist after one day in portions of these drainages, depending upon conditions and subsequent rainfall.

Flows from the Gregory Canyon mainstem have been observed to reach the overbank floodwaters of the San Luis Rey River during these three events for periods of less than 12 hours per event. Without overbank flooding from the San Luis Rey River, water flow from Gregory Canyon would percolate into the alluvial soils at the mouth of the canyon without a direct surface nexus to the San Luis Rey River. Similar flow patterns have been observed in drainage A in Stockpile Area B; however, surface flows have not been observed connecting to the drainage in Couser Canyon, which flows directly to the San Luis Rey River.

No flow has been observed since 2001 in the other drainage features identified in Figure 3. Minor localized water seepage and surface expression from soil saturation was observed during the December 2010 extreme storm event in portions of drainages G9, G10, A1 and A2 without surface flow in the overall length of these drainages (the December 2010 storm event has been characterized as being 400 to 800 percent of normal by the National Weather Service (2011a and 2011b)). No flow has been observed in drainages G1, G2, G3, G4, G5, G8, G11, A3, A4, A5, A6, or C during these time periods, and no flow is expected in most, if not all, storm events for these drainage features.

Portions of the Gregory Canyon mainstem are vegetated, while other areas may be unvegetated, especially after rare flow events. The predominant vegetation in and along the mainstem is upland scrub vegetation and grasses. Portions of G6 are unvegetated, although much of G6 has predominantly upland scrub vegetation and grasses or oak woodland in and along its length. G7 is generally dominated by upland scrub vegetation and grasses. There are occasional hydrophytes along these drainages, especially the mainstem, such as curly dock (*Rumex crispus*) and some mulefat (*Baccharis salicifolia*); however, these hydrophytes are not dominant members of the plant community and are very rare. The other drainages (G#) in Gregory Canyon are swale-like and dominated by upland scrub vegetation and grasses.

Much of drainage A is vegetated with scrub species and grasses, although there are some reaches of unvegetated channel. The rest of the A and C drainage features are swale-like and dominated by upland scrub and grasses.

Representative photos of these drainages are shown in Figures 4 through 24. These photos document that these drainages are dominated by upland vegetation. Table 1 describes the lengths of these drainages with a total of 16,069 linear feet of erosional or drainage features within the impact area on site.

These erosional or drainage features do not convey surface water much of the time, and most of them do not convey surface water at all. Therefore, their aquatic functions are minimal, and rather, they are upland habitats similar to the lands surrounding them. There is no transport of nutrients, seeds, or other materials by surface water in the features that lack flow. The canyon mainstem and drainage A are the primary features that exhibit surface flow; however, this surface flow is very infrequent, low in total discharge, and very ephemeral in nature. Materials that are transported through these drainages become alluvial deposits at the mouths of these drainages. Only the canyon mainstem tends to have some surface water nexus to the San Luis Rey, also very infrequently and for very short duration. When this surface nexus does occur, the connection is to flood waters from the San Luis Rey River in portions of the floodplain that have ineffective flow and little opportunity for transport to San Luis Rey River system, largely because the amount of flow from the canyon is so low as to prevent overcoming the zone of ineffective flow at the limits of the floodplain.

SECTION 3 COMPENSATION PLAN

3.1 COMPENSATION GOAL

The primary goal of this compensation plan is to provide similar swale-like features on site that will replace the erosional or drainage features affected by the project, avoid temporal loss of these features, and maintain similar functions within the new features. This will be accomplished through construction of perimeter drainages around the landfill and Stockpile Areas A and B, as well as creation of drainage swales north and south of the San Luis Rey River within the 500-year floodplain of the river.

3.2 COMPENSATION DESIGN

This compensation design includes perimeter drainages for the landfill and Stockpile Areas A and B, plus creation of drainage swales in the floodplain of the San Luis Rey River in areas disturbed by prior agricultural practices. The overall design concept is simple because the features being mitigated for are simple, generally consisting of swale-like features dominated by upland vegetation that will carry water if there is sufficient rainfall to produce flow.

The perimeter drainages around the landfill will consist of articulated block and concrete sections in the areas shown in Figure 25. Designs for the articulated block portion of these perimeter drainages are shown in Figure 26. The articulated block will provide protection from potential adverse erosion along that portion of the perimeter drain while also allowing vegetation to become established in this reach that is similar to the vegetation in the affected existing channels in this area. The length of this portion of the landfill perimeter drain with articulated block is 4,382 feet. This reach will allow for infiltration of water and establishment of vegetation that is similar to the mainstem and adjacent drainage features currently existing in the canyon. It is expected to convey water during large storm events, as does the mainstem of Gregory Canyon. The concrete portions of the perimeter drainages for the landfill will also convey water during such times, and they will be similar in function to portions of the canyon thalweg that have granite substrates that are not readily subject to groundwater infiltration.

The perimeter drainages around Stockpile Areas A and B will consist of earthen channels and are shown in Figure 25. Design details are shown in Figure 26. These channels will be very similar to the existing channels in both the stockpile areas and Gregory Canyon. The combined lengths of the perimeter drainages around Stockpile Areas A and B are 12,873 feet. These perimeter drainages will provide for transport and infiltration in a manner very similar to the drainages affected by the project, and will develop vegetation similar to those drainages.

The drainage swales to be created in the greater San Luis Rey River floodplain are shown in Figure 25. These swales will be created in alluvial soils within the floodplain and will consist of excavations approximately 2 to 4 feet wide and 0.5 to 1 foot deep. The length of these drainage swales will be 10,105 feet in total. Therefore, the total length of new drainage features created for compensation will be 27,360 feet, plus 6,508 feet of concrete channel for a total of 33,868 feet (Table 2).

Although not part of this immediate compensation design, it should be noted that drainages will be added within Stockpile Area B and the top of the landfill upon closure. These drainages will become natural features of the project upon closure of the landfill and are part of long term closure/post-closure maintenance plan for the landfill project. These features will also add thousands of feet of additional ephemeral drainage features at the time of closure.

3.3 IMPLEMENTATION PLAN

The landfill will be constructed incrementally, and impacts on the ephemeral erosion or drainage features will also occur incrementally. The perimeter drainages will be constructed in parallel with the impacts, as the drainages will be required as the disturbance areas are expanded, such that there will not be a time delay in the creation of these compensation features. The drainage swales for the San Luis Rey River floodplain will be constructed on the south side of the river channel at the beginning of the project, and on the north side of the river channel as the area is prepared for habitat restoration. These areas in the floodplain are subject to removal existing structures, demolition of fencing and concrete roads and pads, and other measures due at the initiation of the project. It will be necessary to create these swales after such demolition activities and prior to implementation of habitat creation and restoration activities in these areas. The creation of these ephemeral erosion or drainage features will avoid temporal loss prior to development of the perimeter channels around the landfill footprint and the stockpile areas.

The perimeter drainages around the landfill footprint and the Stockpile Areas will be constructed adjacent to existing undisturbed habitat that supports the species desired for establishment in the perimeter drainages. This undisturbed habitat will generally be upslope from the perimeter drainages, such that seed dispersal to the perimeter drainages should occur naturally and in an ongoing basis. This seed source will provide a desirable source of native seeds from the local population of plant species, and promote natural recolonization of the perimeter drainages by vegetation. It is expected that some portions of the earthen drainages, especially in portions around Stockpile Areas A and B may develop localized scoured flow paths within them along their reach. This will also be consistent with existing conditions on site, and is considered to be part of the planned implementation of these perimeter drainages.

The drainage swales that will be created in San Luis Rey River floodplain are in areas where native habitats will be created. Therefore, these areas will be seeded and/or planted as described in the project's Habitat Restoration and Resource Management Plan (HRRMP) (URS 2008). Most of these swales will be in areas targeted for creation of oak woodland/alluvial scrub habitat. Oak trees will not be planted directly in these swales; however, they may be placed along the edges of these swales. Otherwise, conditions in these drainage swales are expected to be suitable for establishment of alluvial scrub and other habitats as described in the HRRMP.

3.4 MONITORING AND MAINTENANCE

Monitoring for the perimeter drainages and drainage swales will be performed as described for restoration/creation areas in the project's HRRMP. These perimeter drainages and drainage swales are expected to be self-maintaining and no further physical maintenance for the channel form is expected. These areas will be monitored as described in the HRRMP, and undesirable vegetation will be removed during the monitoring period if found in these drainage features. Seeding and/or planting as described in the HRRMP are not expected to be necessary; however, it may be implemented in the manner described in the HRRMP if needed as a contingency plan during the monitoring period. A reach of the perimeter drainages and drainage swales will be determined complete once these drainage features are stabilized with native vegetation plus any potential local scour channels within them. Each reach is expected to be completed with these goals in mind within 5 years of implementation of the reach, or as otherwise determined for areas within restoration/creation areas described in the HRRMP.

3.5 RESPONSIBLE PARTY

GCL is the responsible party for implementing this compensation plan.

SECTION 4 REFERENCES

URS. 2008. Habitat Restoration and Resource Management Plan for Gregory Canyon Landfill Property

Table 1. Drainages within Project footprints

USACE 2010 jurisdictional waters of the United States			
Tributary	Width (ft)	Length (ft)	Area (ac)
G - Canyon Mainstem	3.92	4,765	0.43
USACE 2010 Federal non-jurisdictional drainages without significant nexus			
Tributary	Width (ft)	Length (ft)	Area (ac)
G2	3	292	0.02
G5	3.1	371	0.03
G6	4.5	1,163	0.12
G7	9	581	0.12
G9	2.2	595	0.03
USACE 2010 Federal non-jurisdictional upland features without an ordinary high water mark			
Tributary	Width (ft)	Length (ft)	Area (ac)
G1	1	901	0.02
G2	1	515	0.01
G3	1	646	0.01
G4	1	183	0.00
G5	1	385	0.01
G8	1	396	0.01
G10	1	607	0.01
G11	1	98	0.00
A2	1	713	0.02
A4	1	172	0.00
C	1	264	0.01
USACE 2010 Federal non-jurisdictional isolated drainages			
Tributary	Width (ft)	Length (ft)	Area (ac)
A	1	2,566	0.06
A1	1	453	0.01
A3	1	403	0.01

Table 2. Lengths of Compensation Drainages

Area	Length in feet
Landfill articulated block perimeter drain	4,382
Stockpile A perimeter drain	5,709
Stockpile B perimeter drain	7,164
Floodplain drainage swales	10,105
Subtotal Length	27,360
Landfill concrete perimeter drainages	6,508
Total Length	33,868

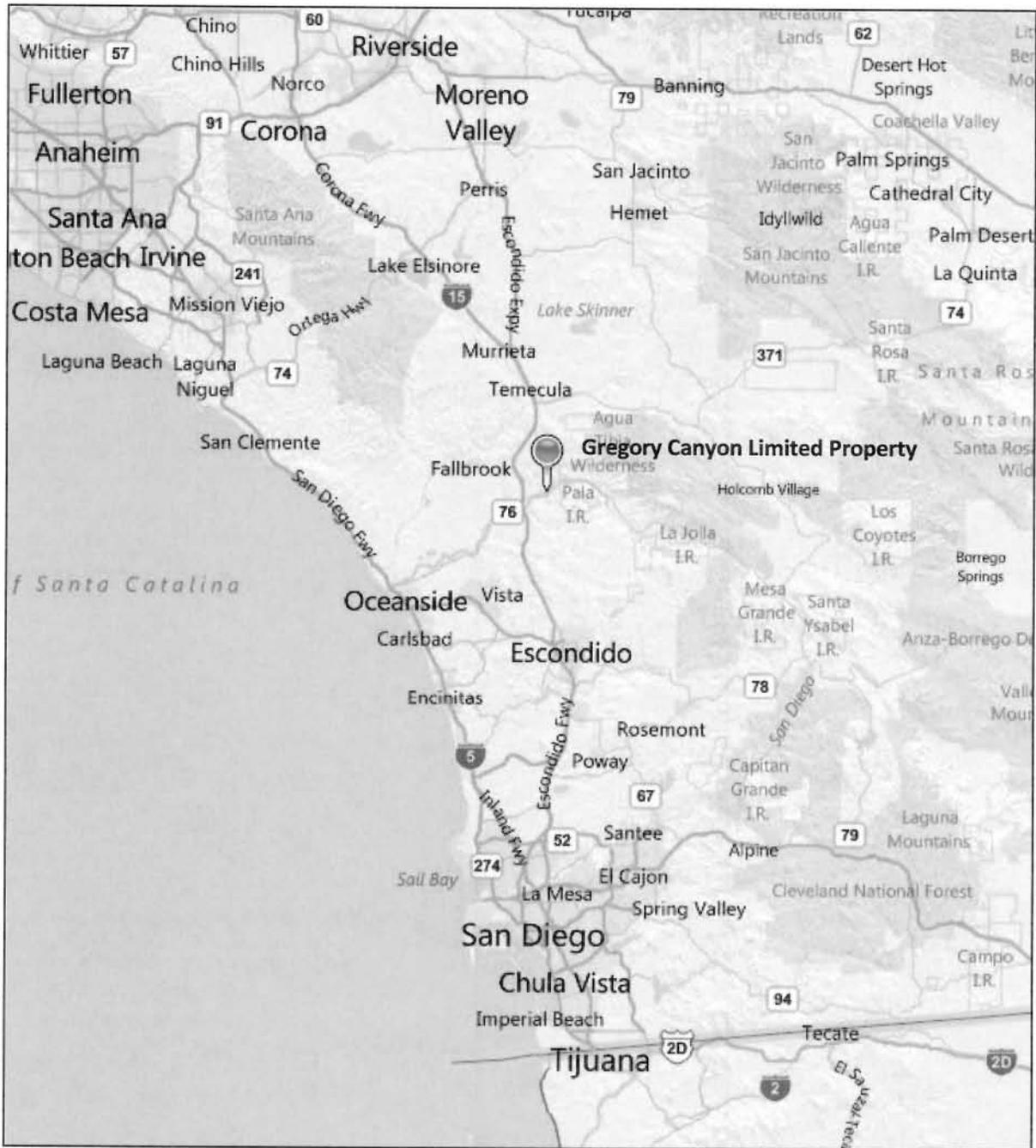


Figure 1. Regional location of Gregory Canyon Limited property.



Figure 2. Gregory Canyon Limited project site and proposed features.

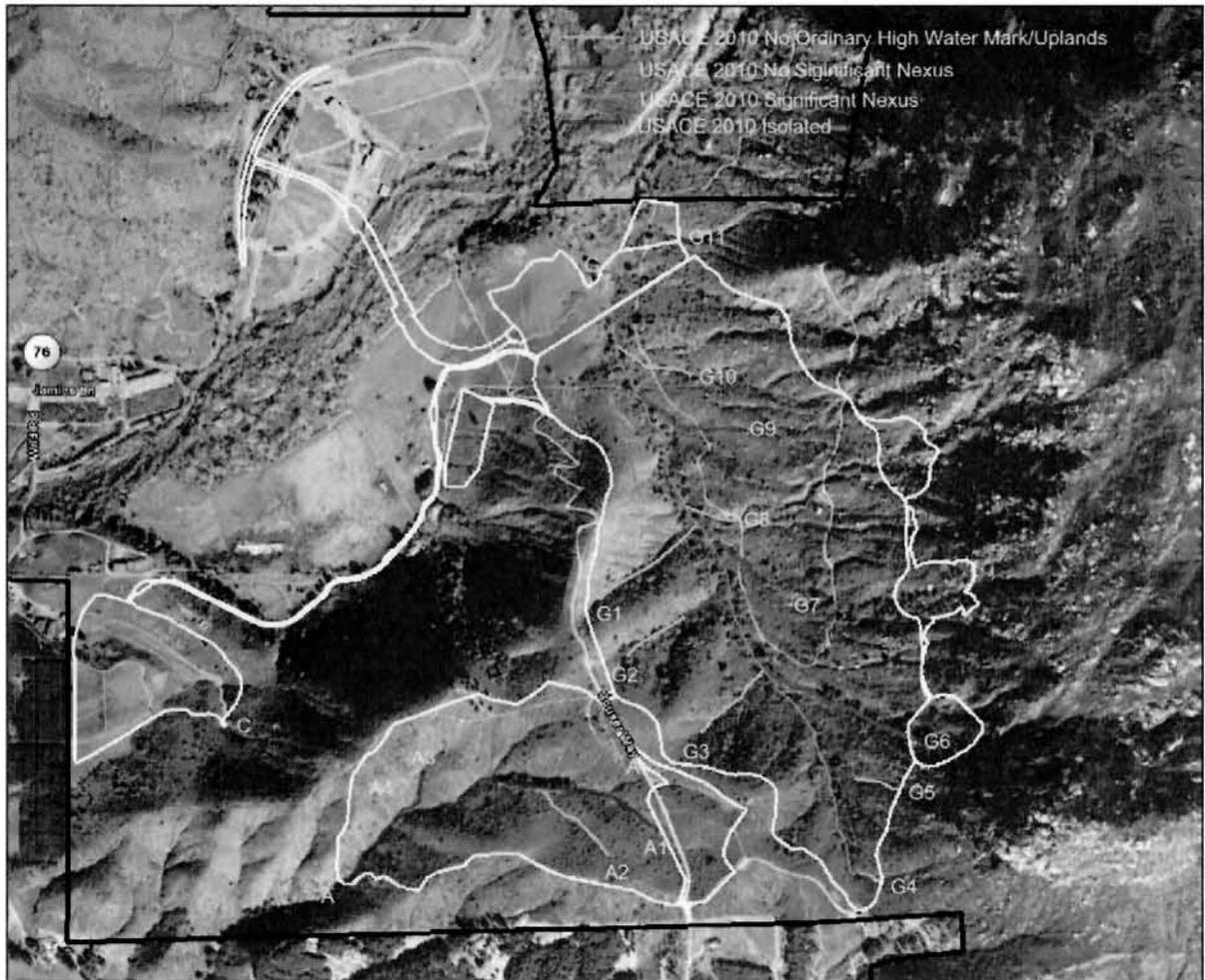


Figure 3. USACE 2010 Drainages.



Figure 4. Gregory Canyon Mainstem on December 21, 2010 after 4 inches of prior rainfall.

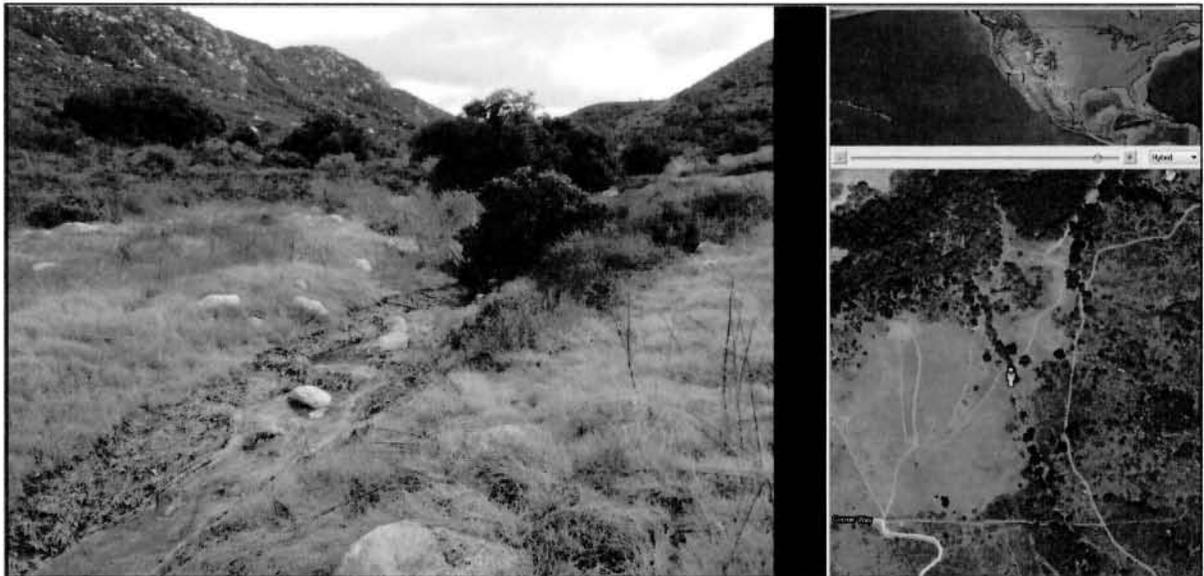


Figure 5. Gregory Canyon Mainstem on December 23, 2010 after 8 inches of prior rainfall and a peak discharge of 22.2 cfs.

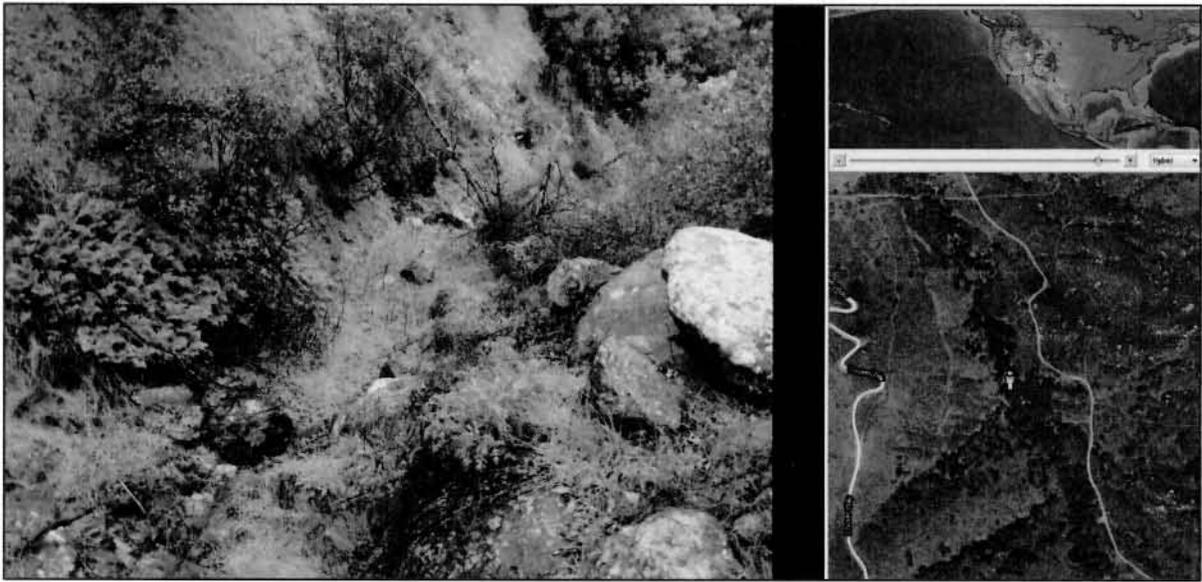


Figure 6. Gregory Canyon Mainstem in mid canyon.

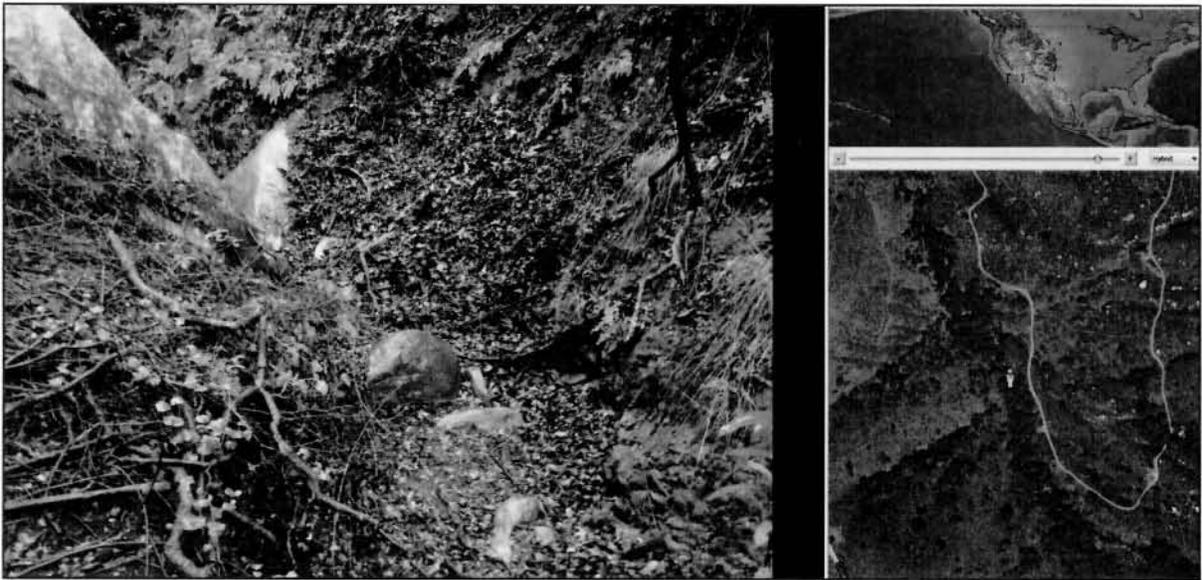


Figure 7. Gregory Canyon Mainstem in mid canyon.

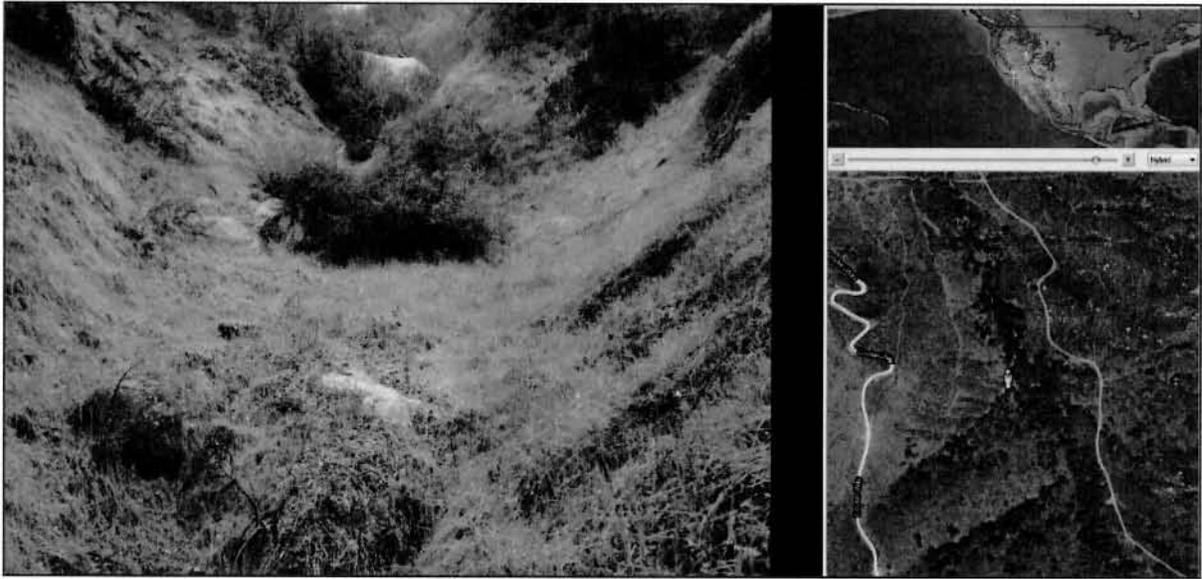


Figure 8. Gregory Canyon drainage G1.

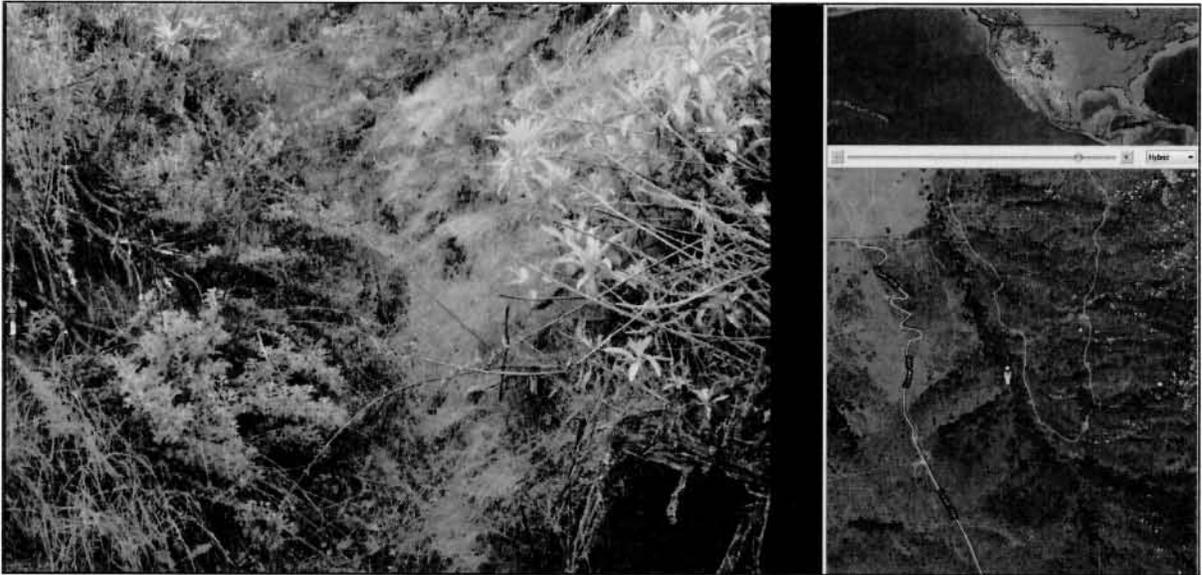


Figure 9. Gregory Canyon drainage G2.



Figure 10. Gregory Canyon drainage G3.

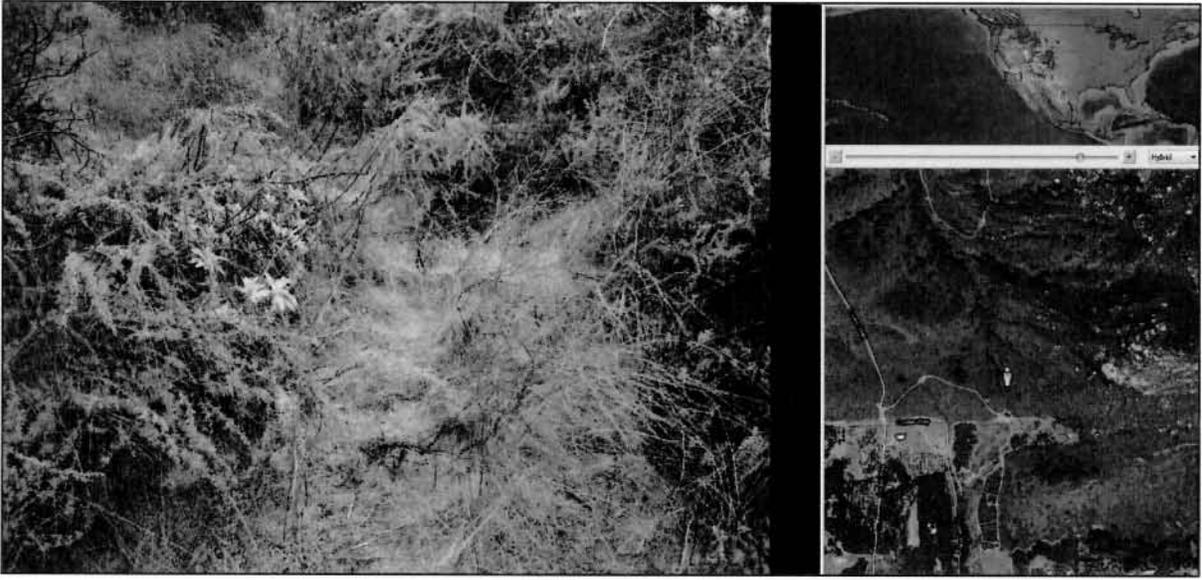


Figure 11. Gregory Canyon drainage G4.



Figure 12. Gregory Canyon drainage G5.

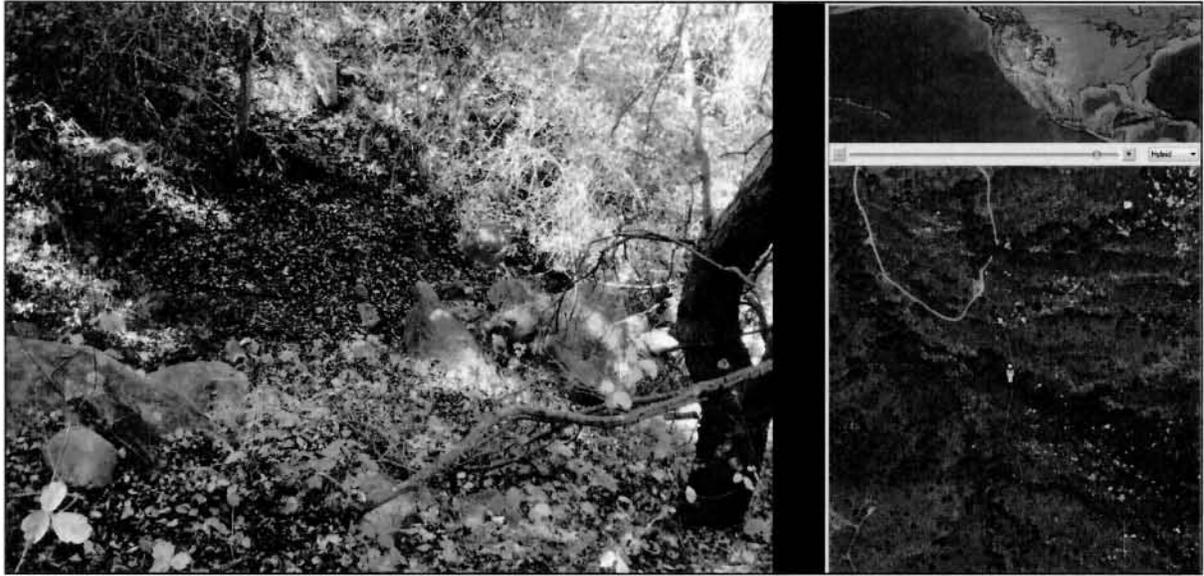


Figure 13. Gregory Canyon drainage G6.

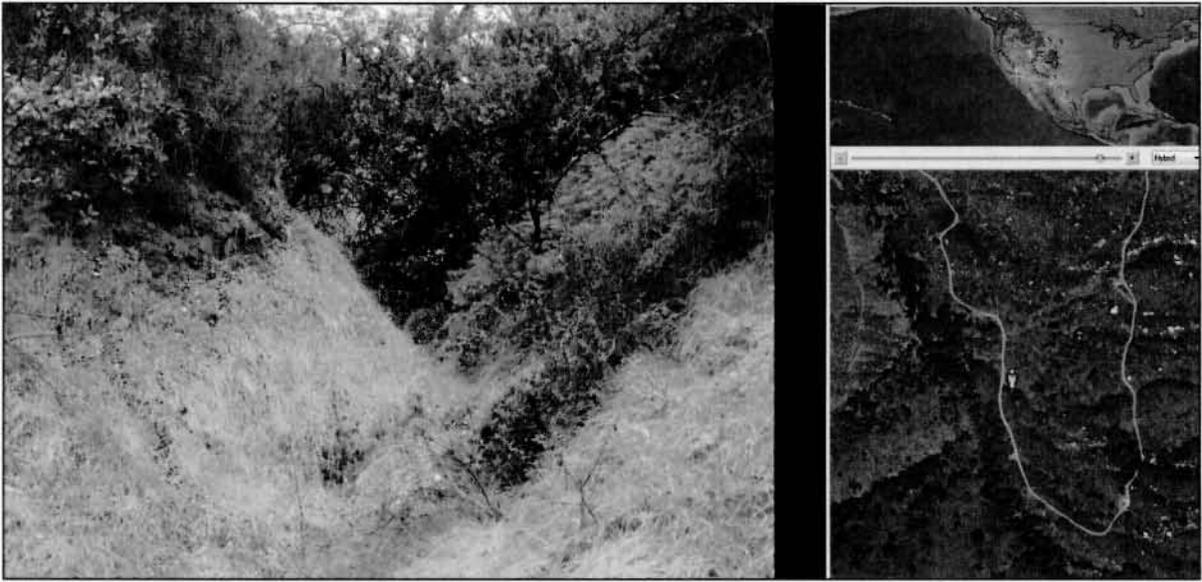


Figure 14. Gregory Canyon drainage G7.

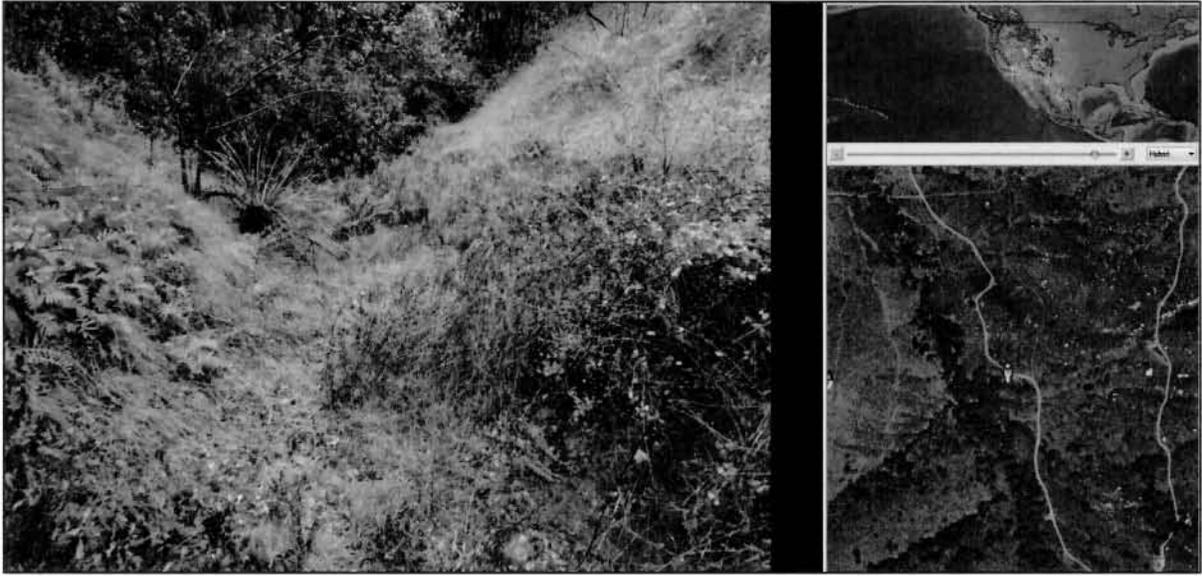


Figure 15. Gregory Canyon drainage G8.

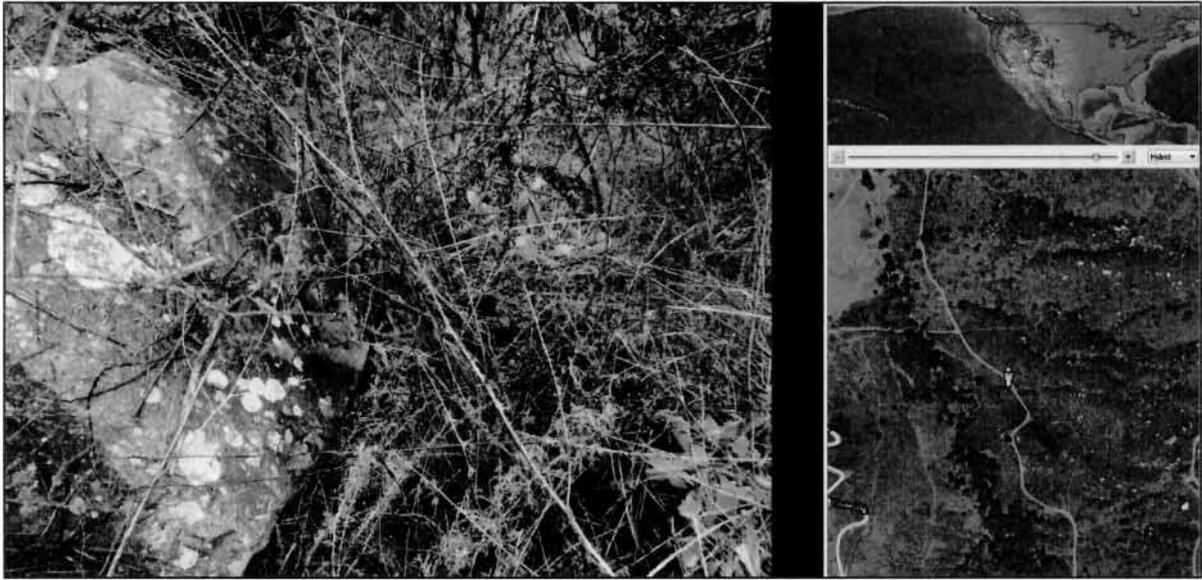


Figure 16. Gregory Canyon drainage G9.

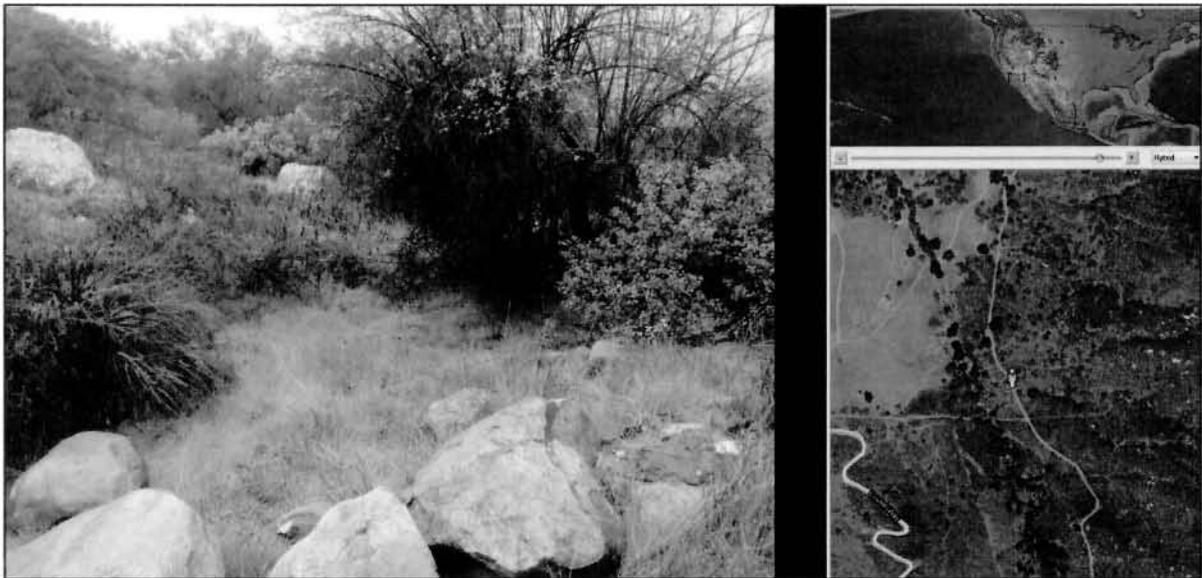


Figure 17. Gregory Canyon drainage G10.

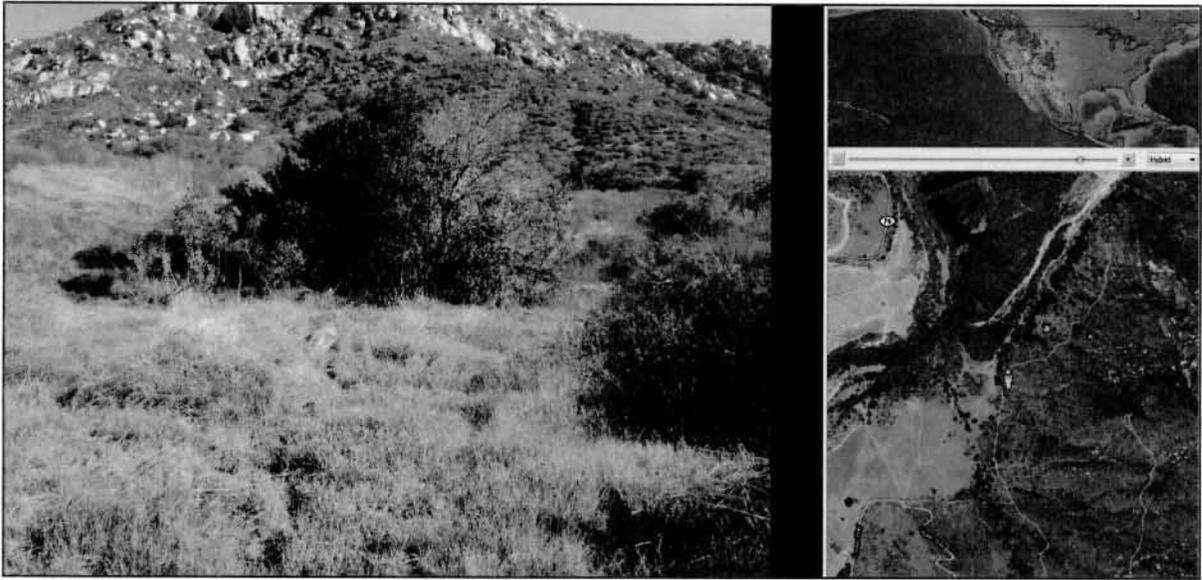


Figure 18. Gregory Canyon drainage G11.



Figure 19. Drainage A.

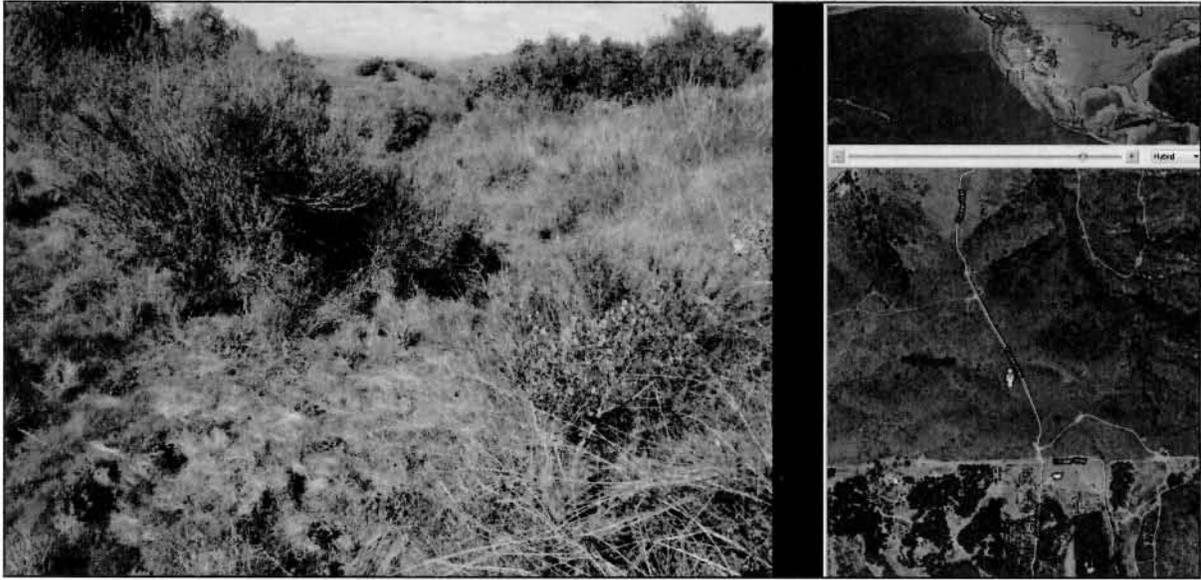


Figure 20. Drainage A1.

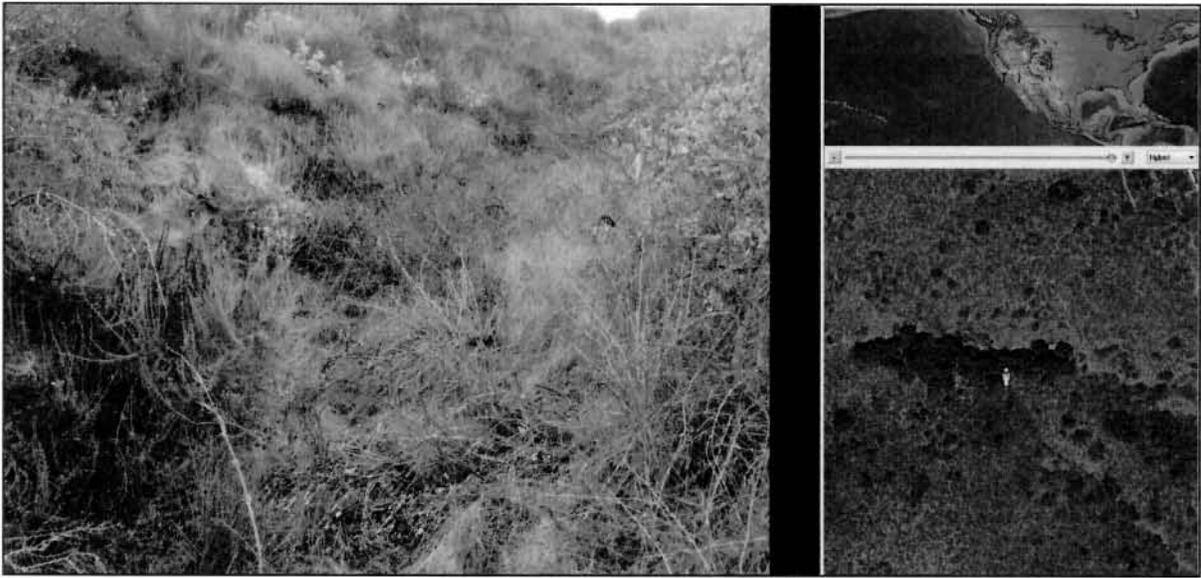


Figure 21. Drainage A2.



Figure 22. Drainage A3.



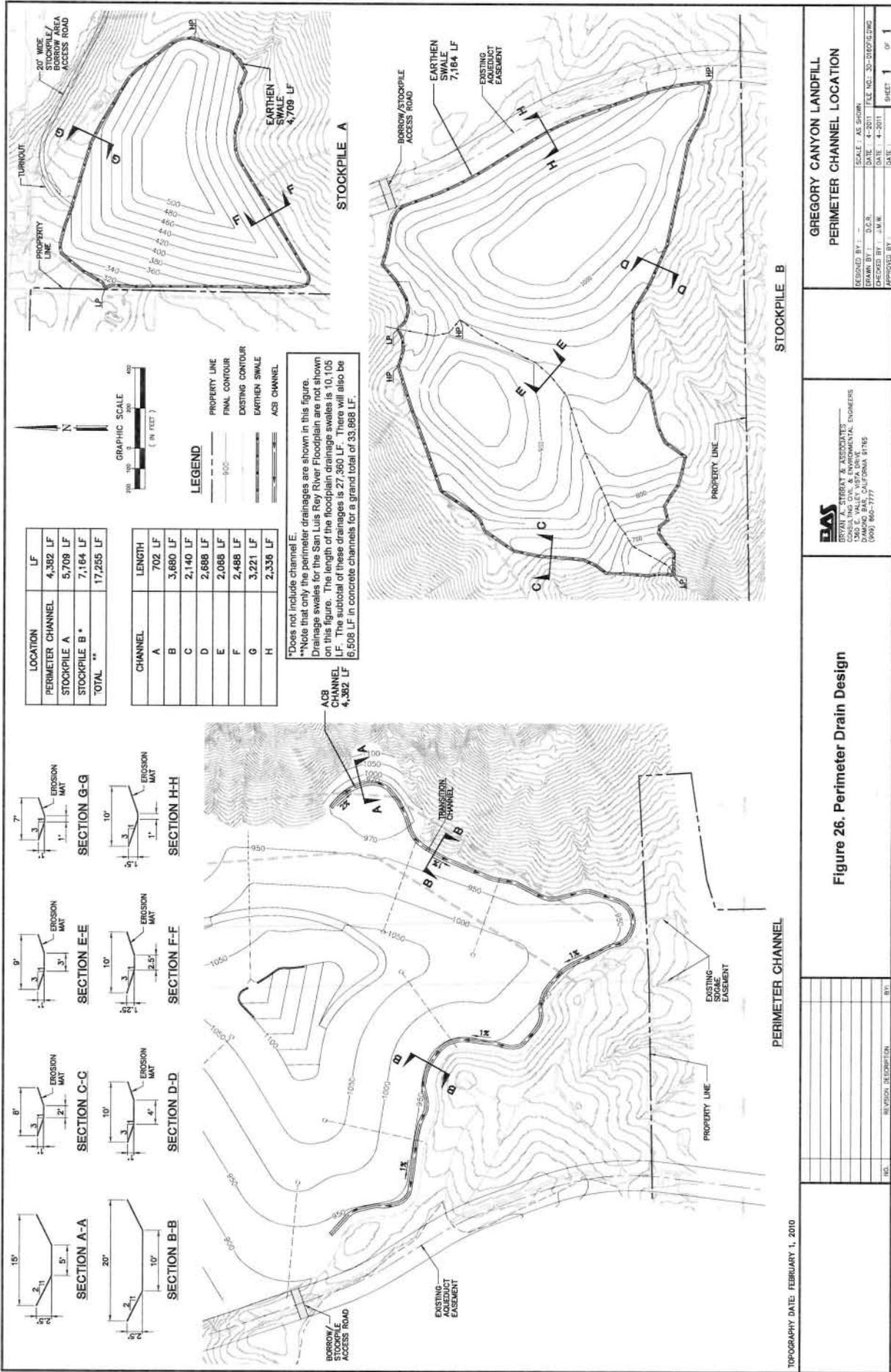
Figure 23. Drainage A4.



Figure 24. Drainage C.



Figure 25. Perimeter drainages and drainage swales.



LOCATION	LF
PERIMETER CHANNEL	4,352 LF
STOCKPILE A	5,709 LF
STOCKPILE B *	7,164 LF
TOTAL **	17,255 LF

CHANNEL	LENGTH
A	702 LF
B	3,680 LF
C	2,140 LF
D	2,688 LF
E	2,088 LF
F	2,488 LF
G	3,221 LF
H	2,338 LF

*Does not include channel E.
 **Note that only the perimeter drainages are shown in this figure. Drainage swales for the San Luis Rey River Floodplain are not shown on this figure. The length of the floodplain drainage swales is 10,105 LF. The total of these drainages is 27,360 LF. There will also be 6,508 LF in concrete channels for a grand total of 33,868 LF.

GREGORY CANYON LANDFILL
PERIMETER CHANNEL LOCATION

DESIGNED BY: ———
 SCALE: AS SHOWN
 FILE NO.: 30-DEDFG10G
 DRAWN BY: D.C.R.
 DATE: 4-2011
 CHECKED BY: J.M.W.
 DATE: 4-2011
 APPROVED BY: ———
 DATE: ———

DAS
DAVID R. ANDERSON & ASSOCIATES
 CONSULTING CIVIL & ENVIRONMENTAL ENGINEERS
 1340 E. VALLI VISTA DRIVE
 SAN ANTONIO, TEXAS 78204
 (949) 864-7777

Figure 26. Perimeter Drain Design

NO.	REVISION DESCRIPTION	BY