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By

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April 14, 2011

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

Re: Proposed Gregory Canyon Landfill

Dear Mr. Leary:

On March 3, 2011, the Pala Band of Mission Indians requested that the San Diego County Department of Environmental Health, acting as the local enforcement agency ("LEA") hold a hearing pursuant to Public Resources Code Section 44307. That hearing was requested to seek review of the LEA's decision that the permit application submitted for the proposed Gregory Canyon landfill was complete and correct. In accordance with state law, the LEA scheduled a hearing before a Hearing Panel for March 30, 2011.

But on the day before the scheduled hearing date, the hearing was cancelled when a member of the Hearing Panel suddenly claimed that he had a conflict of interest and could not participate. Although the County Ordinance establishing the Hearing Panel did not require that the hearing be cancelled, and although we agreed that the hearing could be held outside the 30-day period established in Section 44310 in order to allow an alternate member to be appointed to the Hearing Panel, the LEA claimed it had no authority to reschedule the hearing. The LEA took the position that the decision not to reschedule the hearing had been made solely by the Hearing Panel, although there was no evidence that the Hearing Panel ever met to make that decision. Consequently, although Section 44307 clearly requires that the LEA hold a hearing when it receives a request such as our March 3, 2011, request, the San Diego LEA has stated that it will not comply with the law.

Rather, the LEA, and the attorney from the San Diego County Office of County Counsel representing the Hearing Panel, both have stated that the only option for having a hearing on these issues would be for us to request a hearing before CalRecycle pursuant to Public Resources Code Section 45030. Because the time to file an appeal with CalRecycle is limited, this letter and the enclosed Statement of Issues provide the basis for our request for a hearing under Section 45030.

But the LEA's failure to comply with the law once again regarding this proposed permit should not be overlooked. This is not the first time where the LEA has taken such actions. In January of 2006, the San Diego Superior Court ruled that the Final Environmental Impact Report ("FEIR") for the proposed landfill was inadequate and that the solid waste facility permit issued by the LEA and supported by that FEIR also was invalid. The Court also enjoined activity at the site that could result in any change to the physical environment until these issues were resolved.

Even so, the LEA continued to treat the solid waste facility permit as if it was valid. The LEA conducted monthly "inspections" of the non-operating site, and it billed the applicant under Section 43213 more than $170,000 from 2005 to 2009, even though no permit existed and no activity was occurring at the proposed landfill. Then, in October of 2007, the LEA agreed to process a permit modification for the facility, even though there was no permit to modify.

Even when CalRecycle (at that time the Integrated Waste Management Board) confirmed that the LEA was wrong about the validity of the permit and other issues regarding the LEA's authority versus the Board's authority (in one letter to the LEA, Mr. Block, the CIWMB's Chief Counsel, was forced to state that the "CIWMB vigorously disputes your interpretation of state law), the LEA still refused to accept that the permit was invalid. The LEA's actions forced yet another round of litigation, and the Superior Court ruled in June of 2010 that the LEA's position that the permit still existed was wrong and was based on a "hyper-technical, and out-of-context, reading of a portion of the writ of mandate."

Given the LEA's decision to fight at all costs to defend its untenable position that the solid waste facility permit still existed, it is not surprising that when the application for a new permit was submitted on June 24, 2010, the LEA simply rubber-stamped it as complete and correct even though inadequacies in that application were apparent. For example, the evidence of financial assurance provided in the application consisted of a 2001 letter from the CIWMB confirming the existence of a trust agreement, hardly the "current" documentation required by law. Moreover, the trustee identified in that document no longer existed, and the amount of financial assurance identified on the trust agreement for closure, post-closure and corrective action costs was much smaller than the estimates in the Joint Technical Document ("JTD").

Similarly, the insurance policies provided as financial assurance to compensate third parties for bodily injury and property damage had expired, and were not even on the correct forms. The policies also listed additional insureds in violation of the law. In addition, neither the JTD nor the preliminary closure post-closure maintenance plan was properly certified.

It was only because we requested a hearing on the LEA's decision and pointed out these and other glaring problems that the applicant requested that the permit application be withdrawn. Once again, the LEA did not conclude that it had failed to properly review the application and take the action necessary to rescind its previous decision, it relied on instructions from the applicant.

These numerous questionable actions by the LEA raises serious questions about its ability to act as a regulator under state law and not as a project proponent. CalRecycle should consider the LEA's actions when assessing the LEA's performance under Sections 43214 and 43215, and the ability of this LEA to properly regulate solid waste facilities in San Diego County.

Thank you for your attention to these matters. Please notify me by e-mail and hard copy regarding the date for the hearing to be scheduled on the permit issue.

Sincerely,

Walter E. Rusinek

WER

Enclosure (March 3, 2011 letter and attachments)

cc: (Enclosure previously provided)

Robert H. Smith, Chairman, Pala Band of Mission Indians
Ms. Shasta Gaughen, Director, Pala Environmental Services
San Diego County Board of Supervisors
Mr. Jim Wood, Mayor, City of Oceanside
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
Johnny Pappas, Surfrider Foundation
Everett L. DeLano III, Esq.

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March 3, 2011

VIA HAND DELIVERY

Jack Miller, Director
San Diego Local Enforcement Agency
5500 Overland Drive, Suite 110
San Diego, CA 92123

Re: Request For a Hearing on the Solid Waste Facility Permit Application for the Proposed Gregory Canyon Landfill

Dear Mr. Miller:

Pursuant to Public Resources Code sections 44307 and 44310(a)(1)(B), on behalf of our client, the Pala Band of Mission Indians, we hereby request that the Solid Waste Hearing Panel for the San Diego County Local Enforcement Agency hold a hearing to review the LEA's decision of February 1, 2011, that the solid waste facility permit application submitted by Gregory Canyon Ltd. ("GCL") for the proposed Gregory Canyon landfill was complete and correct. Enclosed with this request for a hearing is a Statement of Issues which identifies the deficiencies in that permit application.

As required by state law, within 15 days of this request please provide us with written notice of the date, time, and place of the hearing. Because state law requires that the hearing be held within 30 days of this request, your prompt attention to this matter is required.

Sincerely,

Walter E. Rusinek

Enclosure

cc: List of CCs on next page

cc: Robert H. Smith, Chairman, Pala Band of Mission Indians
Ms. Shasta Gaughen, Director, Pala Environmental Services
San Diego County Board of Supervisors
Mr. Jim Wood, Mayor, City of Oceanside
Mr. Spencer MacNeil, U.S. Army Corps of Engineers
Mr. Jared Blumenfeld, USEPA, Region IX
Ms. Michelle Moreno, U.S. Fish & Wildlife Service
Mr. Mark Leary, CalRecycle
Mr. David Gibson, Regional Water Quality Control Board
Mr. Stephen Moore, San Diego County Air Pollution Control District
Ms. Maureen Stapelton, San Diego County Water Authority
Damon Nagami, Esq., NRDC
Pamela Epstein, Esq., Sierra Club
Ms. Laura Hunter, Environmental Health Coalition
Johnny Pappas, Surfrider Foundation
Everett L. DeLano III, Esq.

STATEMENT OF THE ISSUES

Pursuant to Public Resources Code Section 44310(a)(1), the Pala Band of Mission Indians hereby provides the following Statement of Issues identifying why the LEA has failed to act as required by law or regulation and why this panel should direct the LEA to rescind its determination that the solid waste facility permit application ("SWFPA") for the proposed Gregory Canyon landfill was not complete and correct as required by law..

I. The LEA's Past Actions on the Solid Waste Facility Permit

This is yet another example of the failure of the LEA to act in accordance with the law. Briefly, in 2004, the LEA issued a solid waste facility permit for the proposed landfill. That action was rescinded by the LEA in February of 2006 in response to a writ of mandate issued by the San Diego Superior Court. The Court issued that order after finding that the Final Environmental Impact Report ("FEIR") prepared by the LEA was inadequate.

Even though the Court ordered the LEA to rescind the permit, the LEA continued to treat the permit as if it was still in existence and accepted an application from Gregory Canyon Ltd. ("GCL") to modify the permit. The LEA's action triggered yet another lawsuit, and in June of 2010, the Superior Court confirmed that there was no existing permit. The Court rejected the LEA's reliance on a "hypertechnical , and out-of-context, reading of a portion of the writ of mandate" to support its claim that the permit still existed.

In response, on June 24, 2010, GCL submitted a new permit application. Although the application was inadequate on its face, the LEA concluded it was complete and correct on July 23, 2010. But, in response to comments provided by the Pala Band dated July 29, 2010, pointing out the clear inadequacies of the application, GCL requested that the LEA rescind its "completeness" determination, which it did on August 5, 2011. Again, the LEA did not make that decision on its own but merely responded to GCL's request. That same day, GCL filed a new permit application designated as "incomplete." The allegedly complete application at issue here was submitted on January 26, 2011.

II. Legal Standards for a Complete and Correct SWFPA

The CalRecycle rules specify what information must be included in an SWFPA for it to be deemed "complete and correct." (27 C.C.R. § 21570(e) (attached as Exhibit A).) The rules list the specific, but *minimum*, information that must be contained in the SWFPA. In relevant part, an SWFPA must include

(1) a determination by the LEA, the Regional Water Quality Control Board ("RWQCB"), and CalRecycle that the preliminary closure and post-closure plan for the facility is complete;

(2) evidence of compliance with the California Environmental Quality Act ("CEQA"); and

(3) a "complete and correct" Report of Disposal Site Information in the form of a Joint Technical Document ("JTD").

The CalRecycle 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).) The rules define 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 SWFPA 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).) Finally, the rules are clear that a complete and correct application "shall include, but not necessarily be limited to" the information listed in the rule. (*Id.* § 21570(f).)

These definitions demand that a "complete and correct" permit application contain a rigorous level of detail that this SWFPA sorely lacks. Because the rules state that the minimum required information may not be sufficient, a determination as to whether a SWFPA is "complete and correct" must be based on site-specific factors. In this case, significant detail is necessary because, the landfill is proposed to be located in a steep canyon that flows into the San Luis Rey River, and would be above fractured bedrock that the San Diego Regional Water Quality Control Board admits makes it "difficult to detect, delineate, and remediate" contamination leaking from the proposed site and that is interconnected with down-gradient alluvial aquifers which provide drinking water for individuals and municipalities, including the City of Oceanside.

Because the Gregory Canyon site is a uniquely complex project site, the lack of detail in the SWFPA and the JTD is another reason why the SWFPA is not complete and correct.

III. The SWFPA Was Not Complete and Correct

A. The SWFPA Did Not Provide Evidence That the Preliminary Closure/Post-Closure Maintenance Plan ("PCPCMP") Has Been Approved by the Regional Board and CalRecycle.

As noted above, the CalRecycle rules require that a complete and correct application include a determination by the LEA, the Regional Water Quality Control Board ("RWQCB"), and CalRecycle that the PCPCMP for a facility is complete. GCL addressed this issue in a cover letter from Bryan Stirrat dated January 13, 2011, by stating that the "PCPCMP is submitted as an integral part of the JTD and this SWFP application for your review and approval in accordance with 27 CCR, Section 21860." (*See* Exhibit B at pg. 3).

But that claim is not sufficient to comply with the CalRecycle rules governing the application process. Those rules explicitly state that for a disposal site such as the proposed landfill, a complete and correct application shall include a:

> *. . . completeness determination of Preliminary or Final Closure/Postclosure Maintenance Plan as specified in §§ 21780, 21865, and 21890 (Subchapter 4 of this Chapter); and [Note: The operator has the option of submitting the*

preliminary closure plan with the JTD, in which case the EA, RWQCB, and CalRecycle would review it at the same time. If deemed complete by the reviewing agencies, the permit application package could then be accepted for filing if all the other information in the JTD is accepted by the EA. . . .

(27 C.C.R. § 21570(f)(6) (italics in original, underline added).)

While this rule requires that the PCPCMP be approved by the Regional Board and by CalRecycle before the LEA can accept the application, GCL's statement quoted above does not indicate that such approval has occurred. GCL merely refers to Section 21860, which applies to final closure plans.

Given this clear violation of CalRecycle rules, the LEA should not have accepted the permit application package for filing, and the SWFPA was not complete and correct. The approval of the SWFPA as being complete and correct must be rescinded and the application not processed until this requirement is satisfied.

B. The Permit Application Erroneously Claims That There Has Been Compliance with the California Environmental Quality Act ("CEQA").

The claim in the application that there has been compliance with CEQA also is wrong. The discretionary action before the LEA is the consideration of a new solid waste facility permit, or in CEQA terms, consideration of an application for a new "project." Although this is a new project, the last public-comment period for most portions of the FEIR ended in 2001, nearly 10 years ago, and the public-comment period for the Revised FEIR closed in the summer of 2006, nearly five years ago.

In the interim, the County issued three Addendums, which it did not circulate for public comment. We provided comments on the December 2009 Addendum to the LEA identifying the inadequacies in that Addendum, and requesting the opportunity for wider public comment, which was denied. The failure of the LEA to circulate the Addendum for public comment violated CEQA.

In addition, as pointed out in our comments on the Addendum, the LEA has violated CEQA by refusing to analyze the significant impacts that the proposed landfill would have on the environment due to the emission of greenhouse gases ("GHGs"). Data generated by GCL for show that GHG emissions after the first year of operations would be approximately 50,000 tons CO_2 equivalent ("CO_2e")[1] and that by the end of the assumed disposal period, those emissions would rise to 893,709 tons. (*See* Exhibit C).[2]

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[1] The United States Environmental Protection Agency ("EPA") has identified methane as being 21 times more potent GHG than carbon dioxide, methane emissions and it must be multiplied by that factor to calculate the CO_2e.

[2] The data are from Appendix J of the "Updated Air Quality Impact Analysis and Health Risk Assessment for the Proposed Gregory Canyon Landfill" dated September 14, 2010. That report is incorporated here by reference and a copy of the entire report can be provided upon request.

Critically, the data show that, even 66 years after the assumed end of operations in 2100, annual emissions of GHGs would still be 238,741 tons of CO_2e. Those GHG emissions would continue indefinitely long after any emissions controls are still operating.

These facts show that the LEA must analyze the direct and cumulative impacts of these emissions under CEQA. In 2010, the CEQA Guidelines were revised by the California Natural Resources Agency to confirm the need to analyze GHG-related impacts under CEQA. CEQA Guidelines Section 15064.4 identifies requirements for determining whether a project would cause significant impacts due to GHG emissions, new CEQA Guidelines Section 15126.4(c) addresses mitigation measures for GHG emissions, and Section 15130 discusses how the cumulative impacts of a project's GHG emissions must be assessed.

Given these significant emissions and the changes to the CEQA Guidelines, a subsequent or supplemental EIR must be prepared. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 384-84.) The fact that the original FEIR was certified nine years ago makes the need for review of the impacts of GHG emissions even more critical. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 143 (two-year delay after certification raised issue of need for subsequent or supplemental EIR).) Until this analysis is completed, there has no been compliance with CEQA.

C. GCL Has Not Shown That it Has Properly Protected the First San Diego Aqueduct to the Satisfaction of the San Diego County Water Authority.

One of the critical problems with the site for the proposed landfill is that the First San Diego Aqueduct pipelines, which supply critical imported water to San Diego County, run under the San Luis Rey River and through the site along the eastern edge of the proposed landfill footprint and through proposed Borrow Area B. (Exhibit D.) One of the critical problems with the SWFPA is that is does not address the protection of these pipelines as required by Proposition C.

Section D.5.5 of the JTD entitled "Aqueduct Relocation Option" (which is included with all other cited sections of the JTD as Exhibit E) previously stated that the First San Diego Aqueduct was "planned to be relocated" to the west away from the landfill footprint. But that section of the JTD now states that it is "possible" that the aqueduct "may be relocated further west of the landfill footprint." The issue is important because, in its current location, the pipelines could be impacted by the construction of the bridge, which could increase scour and impact the pipeline buried under the river, by the fact that all trucks entering and leaving the facility or accessing the borrow areas for dirt would have to drive over the pipelines, and by the blasting would be required to remove bedrock during construction.

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." Proposition C defined the term "Project" as being the proposed landfill described in the initiative and any modifications included in a site plan submitted to the LEA "as part of the solid waste facilities permit." Based on that language, 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 by the LEA and sent to CalRecycle.

But as the attached letters from the County Water Authority show, it repeatedly has raised concerns regarding impacts of the proposed project on the aqueduct, and GCL has failed to address those concerns. (Exhibit E.) Consequently, the County Water Authority's August 12, 2010, letter stated that the LEA should not issue the permit and forward it to CalRecycle "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." Given this situation, this panel should direct the LEA to rescind its determination that the SWFPA was complete and correct and require resolution of this issue before the permit can be sent to CalRecycle.

D. The JTD Does Not Provide Sufficient Information to Be Considered Complete and Correct.

The SWFPA also was not complete and correct because other section of the JTD did not include information in sufficient detail for a project of this complexity and sensitivity. Some of the deficient sections are discussed below. The relevant sections of the JTD are attached as Exhibit F.

Section B.4.4.4 – Inclement Weather Operations

The JTD fails to discuss contingencies if access to the landfill is precluded by high water in the San Luis Rey River for a period of time or if the bridge is damaged by a 100-year flood or greater, given that JTD acknowledges that a 100-year flood would only a 18 inches below the bridge. Even assuming that those calculations are correct (and that the level of the water will not actually be higher), the JTD should provide contingency measures describing when the access road and bridge would be closed for safety purposes, and describing what would occur if a larger storm event damaged the bridge. The JTD fails to address the risks created by building a landfill that can only be accessed by a bridge over the San Luis Rey River.

Section B.5.1.3.1 (pg. B.5-12) – Groundwater Monitoring Well Locations

The JTD claims that "additional groundwater monitoring wells have been proposed to reflect Dr. Huntley's recommendations (Appendix C-2), and the revised workplan is included in Appendix G-2." Dr. Huntley's June 24, 2009, Technical Memorandum identified a number of inadequacies in the groundwater monitoring system and described the additional work he believed was necessary to address those inadequacies, including the installation of two additional groundwater monitoring wells and the completion of additional studies to identify locations for more wells at the mouth of the canyon. (Exhibit G.)

In response, GCL prepared a 19-page workplan, which was included as Appendix G-2 of the JTD. The workplan states that, following its approval, five additional groundwater wells would be drilled, borehole logging and aquifer testing would be conducted, the wells would be developed and sampled, and a final report would be prepared. But the JTD does not state whether the workplan was approved (or by what agency), or if it was implemented, and the JTD does not include a copy of the report that was to be prepared.

Instead, the JTD admits that the groundwater wells described in the workplan and in the Technical Memorandum have not been installed, even though it is 20 months since the Technical Memorandum was prepared. Also, there is no evidence that the proposed locations for the wells satisfy the requirements in the Technical Memorandum. This is clear evidence that the JTD and the SWFPA are not "complete and correct." This panel should direct the LEA to require that the workplan be implemented before it accepts the SWFPA for processing.

Section B.5.1.7 (pg. B.5-24) - Estimated Cost for Mitigating a Reasonably Foreseeable Release

CalRecycle rules require that an applicant demonstrate financial responsibility for initiating and completing all "known or reasonably foreseeable corrective action" at a facility. (27 C.C.R. § 22221(a).) But in calculating the cost for addressing the "known or reasonably foreseeable corrective action" at the facility, the JTD states that corrective action financial assurance analysis is based on the costs associated "with a release to the underlying bedrock as described in Section B.5.1.6.4 above."

The failure to estimate the costs of mitigating contamination to the alluvial aquifer means that the JTD and the financial assurance calculations are inadequate. There is no dispute that groundwater in the fractured bedrock system flows into the alluvial aquifer, so it is reasonably foreseeable that corrective action in the alluvial aquifer also would be needed. Without an analysis of how that remediation would occur and its costs, the JTD is incomplete. For example, a pump and treat system designed for the fractured bedrock might not be sufficient to handle the greater amount of water in the alluvial aquifer.

Section B.5.3.5 (pg. B.5-40) - Fire Control

The JTD does not adequately explain how fires that begin on the site or threaten the site from outside would be handled. The on-site fire-fighting capabilities of the operator are not described, and thus the claim that "additional fire suppression forces are available from the California Department of Forestry (CDF) station" begs the question as to what on-site "forces" those CDF capabilities would supplement. The JTD should identify the location of the CDF station and provide written confirmation that the CDF will provide fire-protection services. The statement that the "San Diego County Fire Authority operates a fire station in the general vicinity of the landfill property, and it is expected that the Authority will be constructing a fire station at a location close to the landfill property" is not sufficient and speculative at best.

This issue of fire protection is critical given that the proposed facility would be located in an area designated as a very high fire hazard severity zone by the California Department of Forestry. That designation applies in part because the site is susceptible to Santa-Ana-wind-driven fires such as the Rice Canyon fire which burned thousands of acres nearby.

The JTD also does not discuss the fact that nearly 800,000 tons of material would need to be blasted to construct the proposed landfill, requiring up to 88 blasts a year and that a single blast could consist of up to eight tons of a mixture of ammonium nitrate and fuel oil ("ANFO"). Given this significant blasting, the lack of any discussion of blasting in the context of fire safety is inexcusable. There also should have been some discussion of Section 96.1.3301.2 of the 2009

County Consolidated Fire Code, which describes specific permitting and inspection requirements for such major blasting.

The only source of water to fight fires would be groundwater wells and any remaining water stored in the 20,000-gallon water tank. But that is a small amount of water and the JTD does not describe how the water would be used to fight a fire, including what equipment would be available for fire-fighting purposes. The fact is that a fire on the site could severely damage the facility, including the liner, the bridge, the hazardous waste storage area, and all the structures in the facilities area. In addition, a fire at the proposed landfill could increase the risk to neighboring properties given that tires and hazardous waste would be stored on the site and there may be fuel storage for dispensing to trucks at the site. Without a better discussion of these risks and of the operator's fire-fighting capabilities, the SWFPA is not complete and correct.

Section C.2.1 (pg. C.2-1) – Design Features

The JTD admits that the engineering drawings and designs supporting the SWFPA are "conceptual" in nature. That is not the level of detail required by law for this proposed project because the detail is not adequate enough "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).) While final drawings may not be required, conceptual designs are not sufficient. Construction designs must be provided in greater detail to ensure that the true costs of the project and the problems that may be encountered in the field are assessed so that unforeseen economics of the project do not become the driving force in its final design and construction. Even a permit to remodel a private residence would require more than "conceptual" designs.

For example, the JTD states that storm water falling on the steep sides of Gregory Canyon would be controlled by the construction of perimeter storm drain ("PSD") channels. The only design for these PSD channels are shown on Figure 19 of the JTD (identified as "PCC"), which simply show that the channels will be three or four foot wide trapezoidal channels. (Exhibit H). Although the eastern PSD channel would be located on the slopes of Gregory Mountain high above the bottom of the canyon, the JTD contains no discussion or figures showing how this PSD channel would be constructed on the side of the mountain or how it would be anchored to ensure that it would be able to properly perform its water-collection functions. More construction details of these PSD channels and other landfill features are needed before the LEA can approve the SWFPA as complete.

Section C.2.5.4 (pg. C.2-12) – Leachate Control and Recovery System ("LCRS")

Federal and state regulations require that the entire waste unit be underlain by an LCRS, but the JTD admits there would not be an LCRS on the landfill slopes. (27 C.C.R. § 20340.) The JTD does not identity the regulatory exemption from those requirements or to discuss in detail how the proposed system would be protective of human health and the environment or describe in detail how leachate collected in slope areas would be managed. A proper analysis of this alternative design is critical given that approximately 90% of the leachate generated by the proposed landfill would be generated on the side-slope areas. (Exhibit I, FEIR at pg. 4.3-21-22).

Section C.2.8.3.4 - Storm Water Desilting Basin

The JTD fails to provide a rationale for using a 10-year, six-hour rainfall event to size the desilting basins, given that the JTD claims that the perimeter piping which will discharge into those basins will be sized to carry water from a 100-year, 24-hour storm event. There is no discussion of what will happen to those desilting basins when larger events occur.

The JTD states that the desilting basins were designed to the 10-year storm event based on the 2003 California Stormwater Best Management Practices Handbook published by the California Stormwater Quality Association ("CASQA"). But the CASQA website states that it no longer supports the 2003 Handbook because of the new general stormwater permit. The JTD should be updated to reflect current regulatory standards. In addition, given the amount of sediment that would be collected in the perimeter drainage channels, any water in those channels should be directed to the desilting basins and not discharged to "infiltration" areas as proposed. The desilting basins should be resized to handle those additional flows.

In addition, as shown in the letter report prepared by Dr. Richard Horner and attached as Exhibit J, the modeling which formed the basis for designing all of these stormwater control systems is flawed and needs to be reevaluated. As his report shows, the claim that infiltration or percolation areas could be used to control runoff from the perimeter storm drain channels is not supported by sufficient analysis of infiltration rates and other critical factors.

Section D.2.3 – Floodplain

The JTD fails to mention that the eastern desilting basin, infiltration area and potentially part of the facilities area, including the proposed flare station, are within the 100-year floodplain shown on Figure 30B attached as Exhibit K. That figure shows the where the floodplain area is located and Figure 9 shows that same area on the left along the property line. Because no analysis of the impacts of this construction on the floodplain has been conducted and no approvals from FEMA have been obtained, the SWFPA is not complete and correct.

Section D.4.7 - Geologic Hazards Due to Surface and Near-Surface Processes

The JTD concludes that "there is clear evidence that rock falls have occurred at the site" and that "construction of a 'catching' wall or other diversion structure near the edge of the landfill is recommended to effectively mitigate the risk of rock fragments rolling onto the landfill." But, there is no further discussion regarding the specifications or location of this "catching" wall. The JTD also does not consider the impact of falling boulders on the integrity of the eastern PSD channel, and does not identify where this "catching wall" would be located in relation to the PSD channel. Construction in these open space areas is not allowed and the need for these structures should be determined now and the impacts analyzed.

IV. Conclusion

For all these reasons, the SWFPA was not complete and correct and the LEA should be directed to rescind that determination and not to accept any subsequent document until these deficiencies are remedied and the application complies with the law.