



Los Angeles Regional Water Quality Control Board

October 2, 2015

Mr. Wayne Fishback
3106 Calusa Avenue
Simi Valley, CA 93063

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7014 2120 0004 7561 9980

Mr. Charles Lee
Cepheid V, LLC
37 W. Delta Green Street
Port Hueneme, CA 93041

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7014 2120 0004 7561 9997

Alpha Bravo Coca Waste Management, Corp
3106 Calusa Avenue
Simi Valley, CA 93063

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7014 2120 0004 7562 0009

DRAFT CLEANUP AND ABATEMENT ORDER NO. R4-2015-XXXX - BARTON W. FISHBACK, CEPHEID V LLC, CHARLES LEE, AND ALPHA BRAVO COCA WASTE MANAGEMENT, CORP, SIMI VALLEY, FOR PARCELS 2821-002-023, 2821-002-25, 2821-009-030, AND 2821-009-031, LOCATED IN LOS ANGELES COUNTY, CALIFORNIA (FILE NO. 13-116)

Dear Sirs:

Enclosed is a Draft Cleanup and Abatement Order (Order) No. R4-2015-XXXX (CAO), that the Regional Board intends to issue pursuant to California Water Code section 13304, directing you to assess, cleanup waste, or abate the effects of discharges of waste caused by waste disposal and construction activities at Los Angeles County Assessor's Parcels 2821-002-023, 2821-002-025, 2821-009-030, and 2821-009-031, located in Ybarra Canyon and Devil's Canyon in Los Angeles County, California ("Site"). Cepheid V LLC and Mr. Lee are required to comply with the CAO only with respect to activities on Parcel 2821-009-031 and Mr. Fishback and Alpha Bravo Coca Waste Management Corp are required to comply with respect to Parcels 2821-002-023, 2821-002-025, 2821-009-030, and 2821-009-031.

You are hereby invited to submit written comments and/or evidence regarding this Draft CAO. Written submission pertaining to this Draft CAO must be received by Regional Board staff no later than 5:00 p.m. on October 19, 2015. Thereafter, staff will prepare a response to comments, recommend appropriate modifications to the Draft CAO, and

Mr. Barton W. Fishback
Mr. Charles Lee
Alpha Bravo Coca Waste Management, LLC

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October 2, 2015

submit the materials to the Executive Officer for his consideration. Oral hearings are rarely convened to consider CAOs. Therefore, please ensure that all evidence and comments that you wish staff and/or the Executive Officer to consider are included in your timely submittal.

If you have any questions regarding this CAO, please contact Dr. Enrique Casas (Regional Board Project Manager) at (213) 620-2299 or Enrique.casas@waterboards.ca.gov, Dr. L.B. Nye, Chief of TMDLs and Standards Unit, at (213) 576-6785 or LB.nye@waterboards.ca.gov.

Sincerely,


Samuel Unger, PE
Executive Officer

Enclosures: Cleanup and Abatement Order (CAO) No. R4-2015-XXXX

MAILING LIST

cc: [via e-mail only]

Mr. David Coupe, Office of Chief Counsel, State Water Resources Control Board
Ms. Lauren Gallant, District Director, Office of Senator Fran Pavley
Mr. Antal Szijj, U.S. Army Corps of Engineers, Regulatory Branch, Ventura Field Office
Ms. Betty Courtney, California Department of Fish and Wildlife
Mr. Glenn Young, California Department of Resources, Recycling and Recovery
Mr. Gerry Villalobos, County of Los Angeles Department of Health Services
Mr. Chris Mastro, County of Los Angeles Department of Health Services
Mr. Michael Harmon, County of Los Angeles, Department of Public Works
Mr. Iheanacho Ofo, County of Los Angeles, Department of Public Works
Mr. Paul Edleman, Santa Monica Mountains Restoration Conservation Authority
Mr. Tony Scattaglia, Santa Monica Mountains Restoration Conservation Authority
Ms. Melissa Scianni, U.S. Environmental Protection Agency, Region 9
Ms. Elizabeth Goldmann, U.S. Environmental Protection Agency, Region 9
Mr. Jeff Humble, California Department of Fish and Wildlife

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

CLEANUP AND ABATEMENT ORDER NO. R4-2015-XXXX
REQUIRING

BARTON W. FISHBACK, ALPHA BRAVO COCA WASTE MANAGEMENT, CORP, CEPHEID
V LLC, AND CHARLES LEE

TO CLEAN UP AND ABATE WASTE DISCHARGED TO
WATERS OF THE STATE AND WATERS OF THE UNITED STATES
PURSUANT TO CALIFORNIA WATER CODE SECTION 13304

FOR THE PROPERTIES LOCATED IN:

YBARRA CANYON AND DEVIL'S CANYON, PARCEL NUMBERS 2821-002-023, 2821-002-
025, 2821-009-030, and 2821-009-031, LOS ANGELES COUNTY, CALIFORNIA

This Cleanup and Abatement Order No. R4-2015-XXXX (hereafter "Order") is issued pursuant to California Water Code sections 13304 and 13267 and requires Barton W. Fishback, Alpha Bravo Coca Waste Management Corp, Cepheid V LLC, and Charles Lee ("Responsible Parties"), to clean up waste and abate the effects of waste discharges from the Responsible Parties' waste disposal and construction activities at parcels 2821-002-023, 2821-002-025, 2821-009-030, and 2821-009-031, located in Ybarra Canyon and Devil's Canyon, Los Angeles County, California ("Site"). The Responsible Parties have discharged waste into Waters of the State of California (hereafter "waters of the State"), deposited waste where it probably will be discharged into waters of the State, and created or threatens to create, a condition of pollution or nuisance.

The California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") herein finds:

BACKGROUND

1. **Responsible Parties:** The Responsible Parties are developing an area of Ybarra Canyon, including ravines tributary to Devil's Canyon. The Responsible Parties' activities include alteration of the natural land surface in the area, large scale earthwork activities such as cutting and filling stream courses, and disposal of construction wastes consisting of sediment, asphalt, concrete, ceramic, and related materials. Parcels in Los Angeles County that have been impacted include 2821-002-023, 2821-002-025, 2821-009-030, and 2821-009-031 (the Site).
2. Land with the Los Angeles County Assessor's Parcel Numbers 2821-002-023, 2821-002-025 and 2821-009-030 is owned, used and/or controlled by Barton W. Fishback. Barton W. Fishback has been identified by the Los Angeles County Department of Public Health Cease And Desist And Corrective Action Order dated February 25, 2015 as the legally responsible

party for the disposal of solid waste and/or the deposition of fill on the Los Angeles County Assessor's Parcel Numbers 2821-002-023 and 2821-002-025 observed on August 29, 2014, September 30, 2014, October 9, 2014, and December 19, 2014. Barton W. Fishback has been identified by the Los Angeles County Department of Public Health Cease And Desist And Corrective Action Order dated April 30, 2015 as the legally responsible party for the disposal of solid waste and/or the deposition of fill on the Los Angeles County Assessor's Parcel Number 2821-009-030 observed on February 26, 2015. Mr. Fishback and Alpha, Bravo, Coca Waste Management Corp. are also subject to a complaint filed by the People of the State of California by and through the County of Los Angeles (*People of the State of California et al. v. Barton Wayne Fishback et al.*, Superior Court for the County of Los Angeles, North Valley District, Case No. PC056481) filed on July 6, 2015. According to the California Secretary of State's website, Mr. Fishback is the agent for service of process for Alpha, Bravo, Coca Waste Management Corp. Mr. Fishback and Alpha, Bravo, Coca Waste Management Corp. knows, or should know, of the discharge of waste and have the legal ability to control it.

3. Land with the Los Angeles County Assessor's Parcel Number 2821-009-031 is owned, used and/or controlled by Cepheid V LLC and Charles Lee. Cepheid V LLC and Charles Lee have been identified by the Los Angeles County Department of Public Health Cease And Desist And Corrective Action Order dated April 30, 2015 as the legally responsible party for the disposal of solid waste and/or the deposition of fill on the Los Angeles County Assessor's Parcel Number 2821-009-031 observed on February 26, 2015. Cepheid V LLC and Charles Lee are also subject to a complaint filed by the People of the State of California by and through the County of Los Angeles (*People of the State of California et al. v. Barton W. Fishback et al.*, Superior Court of the County of Los Angeles, North Valley District, Case No. PC056481) filed on July 6, 2015. Cepheid V LLC is an active limited liability corporation licensed in the State of Wyoming and with a principal office and mailing address of 37 W. Delta Green, Port Hueneme, California 93041. Charles Lee is listed as a party associated with Cepheid V LLC. At this time, the Los Angeles Water Board has been unable to find any record of Cepheid V LLC's registration with the California Secretary of State. Cepheid V LLC and Charles Lee know, or should know, of the discharge of waste and have the legal ability to control it.
4. **Pollutant/Waste Sources:** Sources of pollutants and wastes from activities in the area include discharges of sediment, asphalt, concrete, and other waste. The Responsible Parties have not applied for, and the Regional Board has not issued, a Clean Water Act Section 401 Water Quality Certification for the dredge and fill activities in Waters of the United States, nor Waste Discharge Requirements under the California Water Code for discharges of waste that could impact Waters of the State. The Responsible Parties have not enrolled in, nor complied with, the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ (Construction General Permit), as required by the Clean Water Act prior to initiating construction activities that discharge waste. The Responsible Parties have not submitted a report of waste discharge as required by California Water Code section 13260 prior to initiating construction activities and the discharge of waste at all, or portions of, the Site. The Permittee has also failed to obtain a permit that authorizes operation of a waste disposal facility from the California

Department of Resources Recycling and Recovery (CalRecycle) and the Local Enforcement Agency, Los Angeles County.

Mr. Fishback and Mr. Lee submitted Reports of Waste Discharge/Notices of Intent to comply with State Water Board Waste Discharge Requirements Order No. 2003-003-DWQ for small inert solid waste disposal operations, for the placement of inert solid wastes and uncontaminated rock and soil, as part of terracing activities at the Site and on November 3, 2013 requested a letter of exemption for WDRs for the project. On March 4, 2014, the Regional Board accompanied by representatives of the U.S. Army Corps of Engineers (USACE) and the California Department of Fish and Wildlife (DFW), conducted inspections of the proposed areas to be terraced on Parcels 2821-009-030 and 2821-009-031 (Attachment 2).

In letters dated October 20, 2014, the Regional Board informed Mr. Fishback and Mr. Lee that the USACE indicated that no permit was required for those areas under Clean Water Act section 404, and thus no water quality certification was necessary under Clean Water Act section 401. The Regional Board also informed Mr. Fishback and Mr. Lee that the activities were exempt from the need for waste discharge requirements based on the activities as proposed by Mr. Fishback in his letter to the Los Angeles Regional Water Quality Control Board dated April 30, 2014. DFW also determined that no streambed alteration agreement was necessary under the California Fish and Game Code. These permit exemptions were conditional as described in the letters. The USACE representative confirmed that Ybarra Creek is a Water of the United States. Ybarra Creek is also a Water of the State.

On April 30, 2015, the Los Angeles County Department of Public Health Solid Waste Management Program, acting as local enforcement agency (LEA) to the California Department of Resources Recycling and Recovery (CalRecycle), issued a Cease and Desist Order and Corrective Action Order to Mr. Fishback and Mr. Lee for the disposal of solid waste without proper permits.

During a Site inspection on May 4, 2015, the Regional Board observed that grading and inert material reuse/disposal activities on the properties were significantly in excess of the limits and volumes specified in the Notice of Intent (Attachment 3). In a letter to Mr. Fishback and Mr. Lee, dated May 12, 2015, the Regional Board revoked the exemptions and informed Mr. Fishback and Mr. Lee that permits may be required.

In follow up inspections, as described below, the Regional Board observed that Mr. Fishback continued to conduct activities outside the scope of the exemptions. According to records obtained from the Los Angeles County Assessor's Office, Mr. Fishback is responsible for compliance with this Order by virtue of his ownership of, and activities upon, Parcel Numbers 2821-009-023, 2821-009-25, and 2821-009-030, and by virtue of activities conducted on Parcel 2821-009-030. Cepheid V, LLC and Mr. Lee are responsible for compliance with this Order by virtue of their ownership and/or activities on Parcel 2821-009-031.

5. **Site Location and Description:** The Site is located in Los Angeles County adjacent to and generally south and west of Antonovich Regional Park. The site is largely in Ybarra Canyon with the northern portion of the Site reaching into a ravine tributary to Devil's Canyon and above the confluence of Ybarra Creek and Devil's Canyon Creek. Below the confluence of Ybarra Creek and Devil's Canyon Creek, the creek continues as Devil's Canyon Creek and joins Browns Canyon Creek just north of the 118 Freeway. Browns Canyon Creek is a tributary of the Los Angeles River. The Site and properties owned by other individuals adjacent to the Responsible Parties' properties are open land and undeveloped. Hiking trails and equestrian trails crisscross these undeveloped lands, Antonovich Regional Park and other open space and parkland in the area. Some property owners in the area maintain small numbers of livestock on their properties.
6. **Drainage Description:** Storm water from the Site drains to Ybarra Creek which is tributary to the Los Angeles River. Storm water in the northern portion of the Site drains to both Ybarra Creek and Devils Canyon Creek.

7. **Watershed:**

The Site is located in the Los Angeles River Watershed, specifically in Ybarra Canyon and Devil's Canyon and above the confluence of Ybarra Creek and Devil's Canyon Creek. Below the confluence of Ybarra Creek and Devil's Canyon Creek, the creek continues as Devil's Canyon Creek and joins Browns Canyon Creek. Browns Canyon Creek joins other tributaries and becomes Browns Canyon Wash, which enters the Los Angeles River in Reach 6, approximately three miles below the confluence of Bell Creek and Chatsworth Creek, the headwaters of the Los Angeles River. The Los Angeles River flows 51 miles from the western end of the San Fernando Valley to the Queensway Bay and the Pacific Ocean, and is a navigable water of the United States. Ybarra Creek, Browns Canyon Creek, Browns Canyon Wash and the Los Angeles River provide numerous beneficial uses, including aquatic and wildlife habitat and recreational uses¹. The Los Angeles River and its tributaries also serve as an area where water contact and non-contact recreational activities occur. Some of those activities involve wading, fishing, and picnicking, sunbathing, hiking or as an aesthetic enjoyment, among others. Water quality degradation or pollution has prompted the Regional Board to add much of the river and many of its tributaries to the state/federal list of impaired water bodies, the Clean Water Act §303(d) list, and the Regional Board has adopted a number of total maximum daily loads (TMDLs) to address these water quality impairments, including TMDLs for trash, metals, nitrogen compounds and bacteria.²

EVIDENCE OF WASTE DISCHARGE AND BASIS FOR SECTION 13304 ORDER

8. The term "waste" is defined in Water Code section 13050, subdivision (d) to include "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with

¹ Water Quality Control Plan Los Angeles Region. Chapter 2: Beneficial Uses. Available at:
http://www.waterboards.ca.gov/rwqcb4/water_issues/programs/basin_plan/basin_plan_documentation.shtml

² Clean Water Act Section 303 (d). Available at: <http://water.epa.gov/lawsregs/guidance/303.cfm>

human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." The materials deposited and moved at the Site constitute "waste" as defined in Water Code section 13050, subdivision (d).

9. **Basis of Order:** On August 4 and 5, 2015, Regional Board staff performed an inspection on lands adjacent to the Site and on August 10, and September 17 and 18, 2015, Regional Board staff performed inspections at the Site (Attachments 4, 5, and 6). During these inspections, Regional Board staff observed wastes placed in areas where they may be discharged to, and impact the beneficial uses of, Ybarra Creek. Waste has been placed in areas where it threatens to discharge from the Site into waters of the United States and waters of the State. Regional Board staff observed conditions of loose fill throughout the Site. Portions of the access roads and the terraced areas contained four to six inches of loose, silty fill material that may be discharged to, and impact the beneficial uses of, Ybarra Creek. Staff also observed cutting, filling, stockpiling and terracing operations that will likely cause sediments to discharge to Ybarra Creek and impact the quality of waters of the State.
10. Regional Board staff also observed that the Responsible Parties were moving waste without the implementation of appropriate best management practices (BMPs). Dust control operations observed by Regional Board staff during onsite inspections appeared grossly inadequate, consisting, at most, of one water truck to cover construction areas over the entire Site including the long stretches of interconnecting haul roads. In addition, all other disturbed slopes, fill areas and access roads observed during the inspections were unprotected with no BMPs or preventative measures to eliminate or reduce the discharge of sediment from the Site to waters of the State.
11. On August 10, 2015, Regional Board staff observed one disturbed slope with an under-sized detention basin at its base and with a large amount of loose fill only feet from Ybarra Creek (Figure 5, Attachment 5).
12. In addition, on August 10, 2015, Regional Board staff observed that the Responsible Parties constructed an unpermitted Arizona crossing³ of Ybarra Creek (Figure 4, Attachment 5). The Arizona crossing is a discharge of waste to Waters of the United States and Waters of the State, which requires a permit pursuant to Clean Water Act section 404 from the USACE and Water Quality Certification pursuant to Clean Water Act section 401 from the Regional Board.
13. On September 17 and 18 2015, Regional Board staff observed work had been conducted in Ybarra Creek. Regional Board staff observed wide tire tracks in the sediment and soil of Ybarra Creek (Photos 10 and 11, Attachment 6), and a "catch basin" built upon waste materials, which included rebar-embedded concrete that spills into a trail that is within or immediately adjacent to Ybarra Creek, (Photos 1, Attachment 6). In addition, Regional Board

³ For purposes of this Order, an Arizona crossing is a river or stream crossing that is built at grade and allows the river or stream to run over the crossing. Arizona crossings are most often used in ephemeral or intermittent waterways and sometimes include culverts that allow low water to pass under the crossing. An Arizona crossing is a constructed road crossing that crosses Ybarra Creek.

staff observed that grading had been conducted in another tributary to Ybarra Creek, (Photos 2 through 9, Attachment 6). These activities are discharges of waste to Waters of the United States and Waters of the State, which requires a permit pursuant to Clean Water Act section 404 from the USACE and Water Quality Certification pursuant to Clean Water Act section 401 from the Regional Board.

14. The cutting, filling and grading activities observed on August 4, 5 and 10 and September 17 and 18 include an area that is greater than one acre, are not disturbances to land surfaces solely related to agricultural operations, and are therefore subject to the Construction General Permit (2009-0009-DWQ amended by 2010-0014 and 2012-0006-DWQ). Failure to enroll in and comply with the Construction General Permit prior to conducting the activities is a violation of the Clean Water Act.⁴ The Responsible Parties have also failed to comply with the Storm Water Pollution Prevention Plan (SWPPP) provisions of the Construction General Permit. In particular, the Responsible Parties have not implemented adequate preventative measures to eliminate and/or reduce the discharge of wastes to Waters of the State.
15. The Responsible Parties have also failed to submit a report of waste discharge for its disposal of waste at the Site as required by the Porter-Cologne Water Quality Control Act. Water Code section 13260 states in pertinent part that "a person discharging waste, or proposing to discharge waste, within any region that could affect the quality of waters of the state" ... "shall file with the appropriate regional board a report of the discharge."
16. **Adverse Impacts to Water Quality:** Surface soils in recently cut or filled areas and surface soils in areas newly graded are easily mobilized by storm events, will enter local waters, and may have strong detrimental impacts to local waters. These soils may cause an increase in turbidity and Total Suspended Solids (TSS). High turbidity and high concentrations of TSS can have deleterious effects on aquatic life and stream health. Elevated levels of turbidity and TSS can block light from reaching submerged vegetation, reducing photosynthesis, and reducing dissolved oxygen levels.
17. The decrease in water clarity caused by TSS can also affect the ability of fish to see and catch food. Suspended sediment can also clog fish gills, reduce growth rates, decrease resistance to disease, and prevent egg and larval development. When suspended solids settle to the bottom of a water body, they can smother the eggs of fish and aquatic insects, as well as suffocate newly hatched insect larvae. Settling sediments can fill in spaces between rocks which could have been used by aquatic organisms for habitation.
18. Wastes that are not cleaned up immediately after being released to the environment are easily carried by runoff from storm events, and pollutants associated with the wastes likely will continue to migrate and discharge to lower reaches and to the Los Angeles River and the Pacific Ocean.
19. Historical rainfall data from rain gauges in Chatsworth, Aliso Canyon, Cheeseboro, and Santa Susana, located between 4.8 and 12.4 miles from the Site have recorded peak rainfall events

⁴ In the letter dated October 20, 2014, described in Finding 11, the Regional Board informed Mr. Fishback that activities outside the scope of the exemption would likely be subject to the Construction General Permit.

from 10.38 to 21.59 inches, significantly greater than the rain event that occurred on September 15, 2015 as shown in the Table below. Soils in the recently graded areas may be mobilized by storm events, thereby causing or threatening to cause discharges of waste to waters of the state.

Rain Gauge Station	Distance from the Site	Peak Rainfall Event (measured in inches)	Rainfall on 9/15/15 (measured in inches)
Santa Susana	7.1 mi	10.38 ¹	1.11
Cheeseboro	12.4 mi	No Data	.77
Aliso Canyon	4.8 mi	21.59 ²	1.65
Chatsworth	4.8 mi	15.02 ³	No Data

¹ 2/26/1983 to 3/4/1983

² January 1969

³ February 1962

AUTHORITY - LEGAL REQUIREMENTS

20. Water Code section 13304, subdivision (a) of the Water Code provides that:

“(a) A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

21. Water Code section 13304, subdivision (c)(1) provides that:

“the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . . .”

22. Water Code section 13267, subdivision (b)(1) provides that:

“In conducting an investigation..., the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

23. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49, the “Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304”. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the “Statement of Policy with Respect to Maintaining High Quality of Waters in California”. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations (CCR), title 23, section 2550.4. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.
24. The Regional Board adopted the Water Quality Control Plan for the Los Angeles Region (Basin Plan), which identifies beneficial uses and establishes water quality objectives to protect those uses. As described in Findings 6 and 7, above, the Site drains to the Los Angeles River and to the Pacific Ocean. The existing and designated beneficial uses of Browns Canyon Creek, Browns Canyon Wash, the Los Angeles River and the Pacific Ocean as set forth in the *Water Quality Control Plan, Los Angeles Region* (Basin Plan) are⁵:

	Browns Canyon Creek	Browns Canyon Wash	Los Angeles River, Reach 6	Los Angeles River, Reaches 1-5	Los Angeles River Estuary	Pacific Ocean, Nearshore Zone
Municipal and Domestic Supply	P*	P*	P*	P*	--	--
Navigation	--	--	--	--	E	E
Commercial and Sport Fishing	--	--	--	--	E	E

⁵ Ybarra Creek and Devil’s Canyon Creek are assigned the same beneficial uses as Brown’s Canyon Creek because they are tributary to Browns Canyon Creek. In the table, the following abbreviations are used: P for Potential, I for Intermittent, and E for Existing. Water Quality Control Plan, Los Angeles Region. Chapter 2: Beneficial Uses.

Industrial Service Supply	--	--	P	P	E	E
Industrial Process Supply	--	--	--	P	--	--
Ground Water Recharge	I	I	E	E	--	N/A
Warm Freshwater Habitat	I	I	E	E	--	--
Estuarine or Marine Habitat	--	--	--	--	E	E
Wildlife Habitat	E	E	E	E/P	E	E
Preservation of Biological Habitat	--	--	--	--	--	E
Rare, Threatened or Endangered Species	--	--	--	E (Reach 1)	E	E
Migration of Aquatic Organisms	--	--	--	P (Reach 1)	E	E
Spawning, Reproduction and/or Early Development	--	--	--	P (Reach 1)	E	E
Shellfish Harvesting	--	--	--	P (Reach 1)	P	E
Wetland Habitat	--	--	E	E (Reaches 3-5)	E	--
Water Contact Recreation	I	I	E	E	E	E
Non-water contact Recreation	I	I	E	E	E	E

25. This Order conforms to and implements policies and requirements of (1) the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Water Board) and the Basin Plan adopted by the Regional Water Board including beneficial uses,

water quality objectives, and implementation Plans; and (4) applicable State Water Board policies and regulations.

LIABILITY OF RESPONSIBLE PARTIES

26. Based on the above findings, the Responsible Parties are subject to an order pursuant to Water Code section 13304 because the Responsible Parties have discharged or are discharging waste into the waters of this state and have caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged to waters of the state, and have created, or threaten to create, a condition of pollution or nuisance and in violation of the Construction General Permit and Clean Water Act section 401. The discharged wastes have resulted in unnecessary and avoidable adverse impacts to beneficial uses of waters of the state and of the United States in violation of the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. This Order, therefore, contains tasks requiring cleanup of the waste and abatement of the discharges of waste to address and prevent existing and future impacts to the Los Angeles River watershed.
27. This Order requires the Responsible Parties to submit various technical and monitoring reports pursuant to Water Code section 13267 because existing information about the Site indicates that waste has been discharged, is discharging, or is suspected of having discharged at and from the properties, where the Responsible Parties operate. The required reports are necessary to determine the extent of the wastes that have discharged from the Site to waters of the state or to areas where storm water likely carried, or threatens to carry, the wastes to waters of the state and United States. Therefore, the burden of these reports, including costs, is reasonable as they are necessary to achieve compliance with the applicable laws, regulations, and policies to protect the water quality of the state and United States.

APPLICABLE PLANS, POLICIES AND REGULATIONS

28. **California Environmental Quality Act:** This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act (CEQA) according to California Code of Regulations, title 14, sections, 15061(b)(3), 15307, 15308, and 15321.. If implementation of any work plan subject to this Order may result in significant adverse physical impacts to the environment that may need to be evaluated under CEQA, the appropriate lead agency will address CEQA requirements prior to the Responsible Parties implementing the work plan. The Regional Board may require the Responsible Parties to provide necessary information and pay for the costs of preparing any required CEQA documentation.
29. **Cost Recovery:** The Responsible Parties are and shall be liable, pursuant to Water Code section 13304, to the Regional Board for all reasonable costs actually incurred by the Regional Board and associated agencies to investigate unauthorized discharges of waste

and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, review of reports and correspondence submitted pursuant to this Order, work to complete the directives specified in this Order, and communications between Regional Board staff and parties associated with the cleanup and abatement of the discharged waste, including the Responsible Parties, interested members of the public, and other regulatory agencies.

30. **State Water Board Petition:** Any person aggrieved by this action of the Regional Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon the date of signature.

REQUIRED ACTIONS

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code sections 13304 and 13267, that the Responsible Parties shall clean up the waste and abate the effects of the waste forthwith from the Responsible Parties' waste disposal and construction activities at parcels 2821-002-023, 2821-002-025, 2821-009-030, and 2821-009-031, located in Ybarra Canyon and Devil's Canyon, Los Angeles County. "Forthwith" means as soon as reasonably possible, but in any event no later than the compliance dates below. More specifically, the Responsible Parties shall:

A:

1. **Immediately** cease all unauthorized earthwork activity on the Site, including cutting and filling of stream courses, disposal of construction wastes that include unconstrained sediment, asphalt, concrete, and other waste or waste material in violation of the Porter-Cologne Act and the Clean Water Act, and other applicable laws.
2. **Immediately** obtain and comply with all applicable permits, including those required by the Clean Water Act, the Porter-Cologne Act, and the Fish and Game Code for activities that may impact the waters of the state and of the United States at the Site and on any other properties under your control within the Ybarra Creek watershed or Devil's Canyon Creek watershed.
3. **Immediately** implement all BMPs necessary to ameliorate the threat or discharge of any waste from the Site from being discharged or deposited into the waters of the state.

4. Within **30 days of the issuance of this Order**, submit a work plan, to the Regional Board for the Executive Officer's approval for, and implement immediately upon approval, removal of the Arizona crossing located in the area of Parcel 2821-009-031.
 5. Within **120 days of the issuance of this Order**, submit a final report addressing all the actions taken to complete the tasks listed above. Include photos of BMPs that have been implemented, and that show what corrective actions have been implemented. Include copies of all applicable permits and obtain in response to item 1 above, to include those required by the Clean Water Act, the Porter-Cologne Act, and the Fish and Game Code for activities that may impact the waters of the state and of the United States at the Site and on any other properties under your control within the Ybarra Creek or Devil's Canyon Creek watersheds.
 6. Public Participation: Within 60 days of the issuance of this Order, the Responsible Parties shall submit to the Regional Board, information and take actions addressing public participation requirements of CWC sections 13307.5 and 13307.6, including, but not limited to:
 1. Baseline community assessment: Provide information that describes current land use and demographic information near the site and surrounding area within a one-mile radius.
 2. Interested persons contact list: Identify a notification area within a 500-foot radius of the Site so that a fact sheet may be distributed to all property owners, residents, affected and potentially affected and interested persons within the area. Provide a list of names and addresses for all property owners, and a list of addresses in the above-delineated groups. A list of contacts for other interested persons, such as local, state and federal public agencies, environmental groups and community groups should also be provided.
 3. Draft factsheet: Should include, for example, the description of the site, including history, known discharges of waste, site investigation and cleanup activities to date, and a description of any proposed/planned site activities. The fact sheet should include an illustrative map of the site, activities and details of the surrounding areas. The Responsible Parties shall submit the Draft factsheet with the first Quarterly Report.
- B. Submission of Workplans and Reports:** Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals experienced in the design, inspection and repair of on-site systems, surface and ground water investigation and remediation. All workplans and reports submitted to the Regional Board shall be signed and stamped by a registered and/or licensed professional.

C. Certifications: All reports shall contain a completed perjury statement, signed by the Responsible Parties (or a duly authorized senior representative) and not by a consultant.

The Perjury statement shall be in the following format:

"I [NAME], certify under penalty of perjury of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitted false information, including the possibility of fine and imprisonment for knowing violations."

D. This Order is not intended to stop or redirect any investigation, cleanup, or remediation programs ordered by this Board or any other local or public agency.

E. As noted above, issuance of this Order is being taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b) (3), 15307, 15308, and 15321. This Order generally requires the the Responsible Parties to submit plans for approval prior to implementation of cleanup activities at the Park. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Responsible Parties' proposed remedial activities and possible associated environmental impacts. If the Regional Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Regional Board will conduct the necessary and appropriate environmental review prior to Executive Officer's approval of the applicable plan. The Responsible Parties will bear the costs, including the Regional Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Responsible Parties and a consultant acceptable to the Regional Board shall enter into a memorandum of understanding with the Regional Board regarding such costs prior to undertaking any environmental review.

F. Time Schedule: The Responsible Parties shall submit all required work plans and reports and complete work within the time schedule listed in Attachment 1, attached hereto and incorporated herein by reference, which may be revised by the Executive Officer without revising this Order.

G. Authority to Modify: The Regional Board, through its Executive Officer, may revise this Order as additional information becomes available. Upon request by the Responsible Parties, and for good cause shown, the Executive Officer may defer, delete, or extend the date of compliance for any action required of the Responsible Parties under this Order.

- H. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request and may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality
- I. **Extension:** In the event compliance with this Order cannot be achieved within the terms of this Order, the Responsible Parties have the opportunity to request to the Executive Officer of the Regional Board, in writing, an extension of time. The extension request shall include an explanation why the specified date could not or will not be met and justification for the requested period of extension. Any extension request shall be submitted as soon as the situation is recognized and not on the compliance date or later than the compliance date. Extension requests not submitted in writing to the Executive Officer of the Regional Board will be denied.
- J. **No Limitation of Regional Board Authority:** This Order in no way limits the authority of the Board, as contained in the Water Code, to institute additional enforcement actions or to require additional investigation and cleanup. The Executive Officer may revise this Order as additional information becomes available.
- K. **Enforcement for Noncompliance with this Order:** If, in the opinion of the Regional Board or its delegate, the Responsible Parties fail to comply with the provisions of this Order, the Regional Board may pursue further enforcement action. The Executive Officer or Assistant Executive Officer or other delegate may issue a complaint for administrative civil liability, or take any other applicable enforcement action. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$1,000 per violation per day, pursuant to Water Code section 13268; and/or \$5,000 per violation per day, pursuant to Water Code section 13350. In addition, the Regional Board may also request the United States Attorney, appropriate county District Attorney, or City Attorney to seek criminal prosecution as may be warranted. Any such penalties are in addition to any penalties that may otherwise be assessed for violation of waste discharge requirements or other applicable orders or prohibitions.
- L. Consistent with Water Code section 13304, the Regional Board's authorized representative(s) shall be allowed:
1. Entry upon premises where a regulated facility or activity is located, conducted, or where records are stored, under the conditions of this Order;
 2. Access to copy any records that are stored under the conditions of this Order;

3. Access to inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
4. The right to photograph, sample, and monitor for ensuring compliance with this Order, or as otherwise authorized by the Water Code.

M. Notification for Planned Changes: The Responsible Parties shall submit 30-day advance notice to the Regional Board of any planned changes in name or ownership of the contractor or subcontractors and notice of any planned physical changes that may affect compliance with this Order. In the event of a change in ownership or operator, the Responsible Parties shall also provide 30-day advance notice, by letter, to the succeeding owner/operator of the existence of this Order, and shall submit a copy of this advance notice to the Regional Board.

N. This Order is effective upon the date of signature below.

Ordered by:

Samuel Unger, PE
Executive Officer

Date: _____

- Attachment 1: Time Schedule
- Attachment 2: March 4, 2014 Inspection Report
- Attachment 3: May 4, 2015 Inspection Report
- Attachment 4: August 4 and 5, 2015 Inspection Reports
- Attachment 5: August 10, 2015 Inspection Reports
- Attachment 6: September 17 and 18, 2015 Inspection Reports