

CALIFORNIA INDIAN LEGAL SERVICES

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October 8, 2009

John Robertus
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: *Water Quality Certification 09C-073 for the Proposed Gregory Canyon Landfill*

Dear Mr. Robertus:

These comments are submitted by California Indian Legal Services on behalf of the San Luis Rey Band of Luiseño Mission Indians (“San Luis Rey Band” or “Tribe”), regarding the proposed Gregory Canyon Landfill Project. The San Luis Rey Band is a San Diego County Tribe whose traditional territory includes the current cities of Oceanside, Carlsbad, Vista, Escondido and Bonsall, among others. The San Luis Rey Band is concerned about the preservation of cultural, archaeological and historical sites within the area affected by the proposed Project.

The San Luis Rey Band also strongly opposes the application for certification of the proposed Gregory Canyon land under Section 401 of the Clean Water Act because it would desecrate sacred Indian sites, including Gregory Mountain and Medicine Rock. The Band is also concerned about the proper and lawful treatment of Native American human remains and sacred items likely to be uncovered in the course of project development. The Assessment Plan does not discuss cultural resources, even though it does briefly mention the historical use of the area by Native Americans. As such, the Plan fails to address what, if any impacts the project will have on cultural resources.

To ensure the proper treatment of any cultural resources or Native American human remains that are uncovered during the course the development, the San Luis Rey Band formally requests that Fish & Game agree to return these items to the Tribe if any are discovered. Any plans to curate any such items would disregard the respect due to these cultural resources. Instead, any such items or remains should be returned to the San Luis Rey Band. This project is located within the traditional and aboriginal territory of the Band.

The Regional Board cannot simply ignore the religious and spiritual beliefs and interests of Native American tribes in considering whether this proposed landfill should be constructed. Such an action would directly conflict with the Regional Board’s continuing obligation to consider environmental justice issues when it takes permitting actions.

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The Band also opposes the application on environmental grounds pertaining to our most precious resource – water. The Regional Board’s certification, which is required for construction of the proposed landfill, would violate the Board’s obligation under the Clean Water Act and state law to preserve and protect waters in the state. Allowing the proposed landfill to be built not only would threaten critical drinking water sources and the San Luis Rey River itself, but would cause significant impacts to important habitat for the endangered and other species present on the site.

We understand that the applicant is seeking Section 401 certification only for construction of the bridge needed to access the proposed landfill. However, we also understand that the Army Corps of Engineers is in the process of determining whether a Clean Water Act Section 404 permit also will be required to place fill in the creek in Gregory Canyon itself. Because the Army Corps has not resolved that issue, we question why the Regional Board is even considering the Section 401 application at this time. Even if it was determined that a Section 404 fill permit only was needed to construct the bridge, that should not limit the scope of the Regional Board’s review of the project. Without that bridge, the proposed landfill could not be constructed so the Regional Board has both the authority and the obligation under Section 401 to consider the water quality impacts of the entire project, not merely the impacts of the construction of the bridge.

Again, our position is that the Regional Board should deny the certification because the project would threaten the San Luis Rey River and other important sources of drinking water, would impact endangered species, and would desecrate sacred Native American sites. But, if the Regional Board decides to consider the Section 401 application further, it should both extend the comment period on the certification to allow the public an opportunity to consider a completed application, and consider the certification at a regularly scheduled meeting of the entire Regional Board. The Regional Board properly made the decision to address the issue at a public meeting previously, and it should not reverse itself now due to the lobbying efforts of the project proponents.

Simply put, Gregory Canyon is simply the wrong place for a landfill, as evidenced by the many difficult issues that various agencies have been forced to address. This Regional Board has not allowed a landfill to be built immediately adjacent to a river, and it should not do so now. We urge the Regional Board to not let a bad decision on the proposed landfill be its legacy.

Sincerely,

CALIFORNIA INDIAN LEGAL SERVICES

Mark A. Vezzola
Attorneys for the San Luis Rey Band

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cc: Melvin Vernon, Tribal Captain
Carmen Mojado, Secretary of Government Relations