



**DEPARTMENT OF THE ARMY**  
**LOS ANGELES DISTRICT, CORPS OF ENGINEERS**  
**SAN DIEGO FIELD OFFICE**  
**16886 WEST BERNARDO DRIVE, SUITE 300A**  
**SAN DIEGO, CALIFORNIA 92127**

REPLY TO  
ATTENTION OF

October 28, 2004

Office of the Chief  
Regulatory Branch

Gregory Canyon, Ltd.  
Attention: Jerry Riessen  
c/o OLS Energy  
3 Embarcadero Center, Suite 2360  
San Francisco, California 94111

Dear Mr. Riessen:

Reference is made to your consultant's letter (No. 982007000-RRS) dated May 18, 2004 for a Department of the Army Permit jurisdictional determination (JD) in the San Luis Rey River near Pala, San Diego County, California. Reference is also made to the Field Report to map potential waters of the United States for the Gregory Canyon Landfill Project as prepared by URS and dated May 18, 2004 (Report).

Based on the information furnished in your letter, we have determined that your proposed project does discharge dredged or fill material into a water of the United States or an adjacent wetland. Therefore, the project is subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is required from our office. We have also reviewed the Report and concur with its conclusions. This JD is valid for five years from the date of this letter

If you have any questions, please contact Robert Revo Smith Jr. of my staff at (858) 674-6784.

Sincerely,

Aaron O. Allen, Ph.D.  
Acting Chief, Regulatory Branch



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325

Received  
11/29/05

REPLY TO  
ATTENTION OF:

November 9, 2005

Office of the Chief  
Regulatory Branch

Chairman Smith  
Pala Band of the Mission Indians  
12196 Pala Mission Road  
Pala, California 92059

Dear Chairman Smith:

Reference is made to your letters dated May 18, 2005 and October 13, 2005 concerning the application for Department of the Army authorization to temporarily impact 0.36 acres and permanently impact 0.01 acres of waters of the United States (including 0.37 acres of wetlands) for the construction of a bridge associated with the Gregory Canyon Landfill in the San Luis Rey River near Pala, San Diego County, California (Corps File No. 9820070-RRS).

In your letters you expressed concerns regarding the technical basis for the Corps October 28, 2004 jurisdictional determination and a recent State Superior Court decision that required additional environmental analysis under the California Environmental Quality Act (CEQA). Based on information provided by the Huffman-Broadway Group in your May 18, 2005 letter, the Corps has completed a rigorous technical review of our October 28, 2004 jurisdictional determination for the project area and required the applicant to provide updated hydrologic information for the large storm events in January of 2005. Based on all the above information, the Corps has determined that our October 28, 2004 jurisdictional determination for the project area is accurate concerning the extent of waters of the United States and the large peak flows observed in Gregory Canyon in January 2005 represent a storm with a return period of approximately 25 years, which is not indicative of an ordinary storm event. For detailed information regarding the review of our October 28, 2004 jurisdictional determination, please reference the enclosed documents.

In your letter you also requested that the Corps suspend processing of the Section 404 application for the proposed Gregory Canyon Landfill Bridge until an adequate Final Environmental Impact Report is completed pursuant to CEQA. Under our federal regulations at 33 CFR Part 320 to 330, the Corps has limited ability to suspend processing of a permit application and because a CEQA document is not a requirement for a complete application, as defined at 33 CFR Part 325, the Corps is unable to comply with your request. However, as part of our review of the submitted application, the Corps will ensure that the any permit decision complies with all applicable federal regulations including the National Environmental Policy Act, Section 401 of the Clean Water Act, the federal Endangered Species Act and Section 106 of the National Historic Preservation Act.

We appreciate your concern and involvement with the above permit application and, if you have any questions regarding this letter, please call me at (213) 452-3406 or Mr. Robert Smith of my staff at (858) 674-6784.

Sincerely,

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

David J. Castanon  
Chief, Regulatory Branch

Enclosure(s)  
Copies furnished:  
URS Corporation (Attn: B. Magdych)

## MEMORANDUM FOR THE RECORD

SUBJECT: REVIEW OF THE JURISDCITION DETERMINATION FOR THE GREGORY CANYON LANDFILL PROJECT (CORPS FILE NUMBER 9820070)

1. On May 1, 2001, the Corps determined that the footprint for the proposed Gregory Canyon Landfill site supported approximately 1.03 acres of waters of the United States including 0.47 acres of wetlands (the above jurisdictional determination does not include acreage estimates for waters of the United States in open space areas within the entire project site). As part of the above jurisdictional determination, the Corps determined that San Luis Rey River, the main stem of Gregory Canyon and at least one tributary to Gregory Canyon exhibited sufficient evidence of an Ordinary Highwater Mark (OHWM) to meet the criteria for waters of the United States, as defined at 33 CFR Part 328.3. The above jurisdictional determination was based on information in a Jurisdictional Report completed by Helix Environmental Planning in February 2000 and site visits conducted by Mr. Terry Dean, a Corps Regulatory Project Manager. As part of the jurisdictional determination, Helix Environmental identified stream channels both in the main stem and in an unnamed tributary to Gregory Canyon that exhibited widths varying from a minimum of 6 inches to a maximum of 3 feet. At that time, both representatives from Helix Environmental and Mr. Terry Dean identified both strong and marginal physical evidence of an intermittent OHWM in Gregory Canyon and at least one unnamed tributary to Gregory Canyon within the footprint of the Gregory Canyon Landfill.
2. On October 28, 2004, the Corps determined that the footprint for the proposed Gregory Canyon Landfill site did not contain any waters of the United States and the only Corps jurisdiction that would be affected by the proposed project was located in the main stem of San Luis Rey River (the above jurisdictional determination does not include acreage estimates for waters of the United States in open space areas within the entire project site). As part of this jurisdictional determination, the Corps examined several canyons, including the main stem of Gregory Canyon, within the Gregory Canyon Landfill footprint, for physical evidence of an ordinary highwater mark (OHWM) and did not identify any canyon areas that exhibited sufficient evidence of an OHWM to meet the criteria for waters of the United states, as defined at 33 CFR Part 328.3. The above jurisdictional determination was based on information in a Jurisdictional Report completed by URS Corporation dated May 18, 2004 and site visits conducted by Mr. Robert Smith, a Corps Regulatory Senior Project Manager, in July 2004. At that time, both representatives from URS and Mr. Robert Smith identified only marginal physical evidence of surface flow in a few isolated locations in Gregory Canyon and unnamed side canyons, which was insufficient to meet the definition of waters of the United States (33 CFR Part 328.3).
3. In May of 2005, the Corps of Engineers received a letter, photographs and a report from the Huffman-Broadway Group, submitted on behalf of the Pala Band of Mission Indians, that reviewed the technical basis of the Corps October 28, 2004 jurisdictional determination for the Gregory Canyon Landfill site. In the report, the Huffman-Broadway Group took issue with the October 2004 jurisdictional determination for a variety of reasons including that it relied too heavily on hydrologic modeling and was inconsistent with the Jurisdictional Report completed by

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Helix Environmental in February 2000. In addition, the photographs provided by the Huffman-Broadway Group identified fairly substantial surface flow in the main stem of Gregory Canyon in early January 2005. To allow the applicant to respond to the above issues, the letter, report and photographs were provided to URS Corporation. On September 12, 2005, URS Corporation provided an initial response to the issues raised by the Huffman-Broadway Group and a final response was submitted by URS Corporation on October 31, 2005.

4. Based on all the above information, Gregory Canyon is a relatively small watershed encompassing 458 acres, with a maximum elevation of 1,844 feet above mean sea level (amsl), dropping to 320 feet amsl at the confluence of Gregory Canyon and the San Luis Rey River. Topographic maps for the Gregory Canyon area indicate that near the watershed interfluvial canyon areas are relatively steep and narrow; however, the lower portion of the watershed exhibits relatively broad valleys that can facilitate substantial infiltration and unconfined surface flow spreading out across the valley floor, depositing sediment on the valley floor during small to moderate storm events. In contrast, during larger, high velocity, peak flows, surface flow would proceed directly down slope, cutting small channels in the main stem and unnamed side canyons in Gregory Canyon. Estimated peak runoff in the main stem of Gregory Canyon ranges from a low of 0 cubic feet per second (cfs) during small to moderate storm events (1-2-year return interval) to approximately 105 cfs for a 50-year 24-hour storm (estimates of peak discharge vary substantially depending on the method used).

5. Based on the field information observed by the Corps in 2000 and 2004 as well as the photographs provided by the Huffman-Broadway Group, the Gregory Canyon area appears to exhibit stream channels and evidence of an OHWM after large storm events, such as the peak flows that occurred in February of 1998 and January of 2005. However, in the subsequent years following large storm events, it appears that small to moderate storm events result in surface flow spreading out across the valley floor, depositing sediment and eliminating physical evidence of the stream channels and leaving only marginal evidence of surface flow (as observed during site visits in 2004). Based on past field observations, the current physical evidence of surface flow in Gregory Canyon (January 2005) would be slowly eliminated by small to moderate storm events over the next two to three years, resulting in a lack of physical evidence of an OHWM until another large storm event occurs in the watershed. The above situation is fairly unusual for ephemeral streams in that the cycle of erosion and accretion that is typical of dryland fluvial systems does not usually result in the physical evidence of the channel and associated OHWM being almost completely eliminated during small/moderate storm events and/or extended dry periods (e.g. the stream channel exhibits accretion, but remains a channel with physical evidence of an OHWM). Although no detailed studies have been conducted, the relatively small watershed area and broad flat valleys in the lower sections of the basin are probably two important factors in the unusual cycle of erosion and accretion observed in Gregory Canyon.

6. Based on the above information, the Corps documented the lack of physical evidence of an OHWM in the field in July 2004 and the hydrologic analysis provided by URS to supplement the

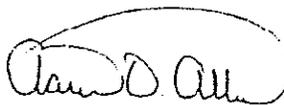
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field investigation corroborates the Corps October 28, 2004 jurisdiction determination. Photographs provided by the Huffman-Broadway Group shows stream flow in Gregory Canyon in January 2005; however, URS has provided rainfall data and gage date for the San Luis Rey River that clearly shows that there was very high antecedent soil moisture from almost 12 days of continuous rainfall, totaling over 8 inches and generating a peak discharge of 16,866 cfs in the San Luis Rey River on January 12, 2005 (approximately a 25-year return period storm event). As a result, the photographs and physical evidence of surface flow generated by the January 2005 storm events is not indicative of an "ordinary" storm event. As stated in the South Pacific Division Guidelines for Jurisdictional Determinations for Waters of the United States in the Arid Southwest dated June 2001:

When conducting jurisdictional determinations in arid areas, Regulators and environmental consultants should be cognizant of the above physical characteristics of dryland fluvial systems and insure that the horizontal extent of our jurisdiction includes small to moderate storm events, but is not so expansive that it incorporates field evidence from the 25-year, 50-year or 100-year storm event.

Therefore, the physical evidence present in Gregory Canyon in 2005, which is the result of an estimated peak flow from a storm event with a 27-year return interval (using the 1993 County Method 24-hour Storm Runoff), should not be characterized as OHWM as defined at 33 CFR Part 328.3. Based on the above, the Corps has determined that the photographs provided by the Huffman-Broadway Group are not indicative of the ordinary hydrologic condition for Gregory Canyon and, therefore, the Corps has determined that the October 28, 2004 jurisdictional determination letter represents the most accurate delineation of waters of the United States in the Gregory Canyon project area. If you have any questions regarding this memorandum, please contact me at (805) 585-2148.



Aaron O. Allen, Ph.D.  
Senior Project Manager