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6 VENTURA COUNTY WATERSHED
PROTECTION DISTRICT
7

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
11

12 In the Matter of the Ventura County Watershed
13 Protection District's Petition for Review of
Action by Regional Water Quality Control Board,
14 Los Angeles Region, in Adopting Investigative
Order No. R4-2011-0147.

SWRCB/OCC File No. _____

VENTURA COUNTY WATERSHED
PROTECTION DISTRICT'S PETITION
FOR REVIEW AND STATEMENT OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF
[Wat. Code, § 13320]

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16
17 Ventura County Watershed Protection District ("the District" or "Petitioner") submits this
18 Petition for Review and Statement of Points and Authorities (Petition) to the State Water
19 Resources Control Board (State Water Board or Board) in accordance with Water Code
20 section 13320. The District respectfully requests that the State Water Board review the Los
21 Angeles Regional Water Quality Control Board's (Los Angeles Water Board) actions related to
22 its Executive Officer's issuance of Investigative Order No. R4-2011-0147¹ (Order). The Order
23 requires the District to submit three extensively detailed plans regarding the Piru Dump site (Site)
24 in Piru, California. Concurrent with this Petition, Petitioner requests that the Petition be placed
25 into abeyance in accordance with section 2050.5(d) of title 23 of the California Code of
26 Regulations.

27 ¹ The Order itself was designated "Investigative Order No. R4-2001-0147," but the cover letter transmitting the Order
28 refers to it as "Investigative Order No. R4-2011-0147." (Emphasis added.)

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7 **2. THE SPECIFIC ACTION OF THE LOS ANGELES WATER BOARD WHICH**
8 **THE PETITIONER REQUESTS THE STATE WATER BOARD TO REVIEW**

9 The District petitions the State Water Board to review the issuance of the Order by the
10 Los Angeles Water Board's Executive Officer. In particular, the District seeks review of the
11 Order's requirements for the District to submit three plans pursuant to Water Code section 13267:
12 (1) A surface water protection monitoring plan; (2) A preliminary waste characterization study
13 plan; and (3) A long-term plan of uses and goals for the site. The Order describes the extensive
14 detail that these three plans must contain and establishes a deadline of November 25, 2011, for
15 their submittal.²

16 The Executive Officer issued the Order based on the Los Angeles Water Board's authority
17 under Water Code section 13267. (Order at p. 2.) Water Code section 13267 authorizes the
18 Los Angeles Water Board to require the submittal of technical or monitoring reports where it:
19 (1) Explained in writing the need for the reports; (2) Identified the evidence that supports
20 requiring the reports; and (3) Determines that the burden of providing the reports bears a
21 reasonable relationship to the need for, and benefits to be obtained from, the reports. (Water
22 Code, § 13267(b)(1).) The District submits that the Los Angeles Water Board did not comply
23 with the second and third requirements of Water Code section 13267. Specifically, the Executive
24 Officer did not identify the evidence that supports requiring the plans, and the burden on the
25 District to provide the plans does not bear a reasonable relationship to the need for, and benefits
26 to be obtained from, the plans.

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² By letter dated November 2, 2011, to Samuel Unger, Executive Officer to the Los Angeles Water Board, the District requested a one-year extension of the November 25, 2011 deadline. On November 8, 2011, the District received a letter from the Los Angeles Water Board granting an extension to comply with the Order by May 25, 2012.

1 **3. THE DATE ON WHICH THE LOS ANGELES WATER BOARD ACTED**

2 The Los Angeles Water Board’s Executive Officer issued the Order on October 11, 2011.

3 **4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR**
4 **IMPROPER**

5 As explained in more detail in the Points and Authorities attached, the information
6 required by the Order exceeds the scope of the Los Angeles Water Board’s authority under Water
7 Code section 13267. In particular, the Los Angeles Water Board failed to identify the evidence
8 that supports requiring the three plans, and the burden of providing the plans is not reasonably
9 related to the need for, or benefits of, the information.

10 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

11 The District is aggrieved in having to spend significant staff time, monies and other
12 resources to develop three plans that constitute overly burdensome regulatory requirements under
13 Water Code section 13267. As described in the Points and Authorities below, the requirement to
14 prepare the three plans as described in the Order bears no reasonable relationship to the need for
15 the plans or the benefits to be obtained from the plans. Also explained below, the District has
16 already expended substantial resources to protect water quality as related to the Site and in
17 responding to a prior investigative order issued by the Los Angeles Water Board’s Executive
18 Officer on March 1, 2011 (Investigative Order No. R4-2011-0041 or “March Order”).³ Finally,
19 the District (previously known as the Ventura County Flood Control District) contends that it
20 alone is not solely liable or responsible for alleged concerns contained in the Order, to the extent
21 that the allegations are upheld by the State Water Board.

22 **6. THE SPECIFIC ACTION REQUESTED BY THE PETITIONER**

23 The District requests that the State Water Board rescind the Order or remand the matter to
24 the Los Angeles Water Board to do the same. In the alternative, if the State Water Boards finds

25 ³ The District responded to the March Order on April 12, 2011, with a letter to Samuel Unger, California Regional
26 Water Quality Control Board, Los Angeles Region (April 2011 Letter), and provided 129 supporting documents with
27 the April 12, 2011 letter. The District also included a matrix of the 129 documents, assigning each document a
28 number and relating each document to the March Order request. References herein to the documents provided with
 the April 12, 2011 letter shall be referred to as “Attachment” along with the document number assigned in the matrix.
 The District hereby incorporates by reference the District’s response to the April 2011 Letter and the 129 supporting
 documents into the record for this Order.

1 that requiring any of the plans is appropriate, the District respectfully requests that the State
2 Water Board find that the scope of any appropriate plan is excessive, resulting in unreasonably
3 high costs. In such a case, the District requests that the State Water Board design, or direct the
4 Los Angeles Water Board to design, a narrower, less expensive plan or set of plans.

5 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
6 **ISSUES RAISED IN THIS PETITION**

7 As required by title 23, section 2050(a)(7) of the California Code of Regulations, the
8 District includes a statement of points and authorities in support of this Petition beginning on
9 page 6.

10 **8. A STATEMENT THAT THIS PETITION WAS SENT TO THE LOS ANGELES**
11 **WATER BOARD**

12 In accordance with title 23, section 2050(a)(8) of the California Code of Regulations, the
13 District mailed true and correct copies of this Petition by First Class mail on November 10, 2011,
14 to the Los Angeles Water Board. The address to which the District mailed the copies to the
15 Los Angeles Water Board is:

16 Samuel Unger, P.E. Executive Officer
17 Los Angeles Regional Water Quality Control Board
18 320 W. 4th Street, Suite 200
19 Los Angeles, CA 90013

20 Sarah Olinger
21 Staff Counsel
22 c/o State Water Resources Control Board
23 P.O. Box 100
24 Sacramento, CA 95812-0100

25 Petitioner is the discharger. Therefore, the District did not mail a separate copy of this
26 Petition to the discharger.

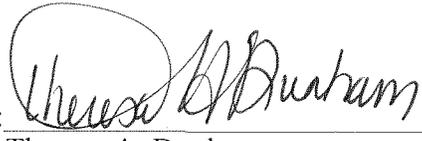
27 **9. A STATEMENT AS TO WHETHER THE PETITIONER RAISED THE**
28 **SUBSTANTIVE ISSUES OR OBJECTIONS IN THE PETITION TO THE**
LOS ANGELES WATER BOARD

Because the Order was issued by the Los Angeles Water Board's Executive Officer under
his delegated authority, there was no formal opportunity to provide written or oral comments
directly to the Los Angeles Water Board. The District's only remedy is to directly petition this

1 Board. (See Order at p. 3, ¶ 14.) Regardless, the District timely raised its concerns and
2 objections with the Order to the Los Angeles Water Board Staff in telephone conference calls.

3
4 SOMACH SIMMONS & DUNN
A Professional Corporation

5
6 DATED: November 10, 2011

7 By: 
8 Theresa A. Dunham
9 Attorneys for Ventura County Watershed
10 Protection District

11
12 **STATEMENT OF POINTS AND AUTHORITIES**

13
14 The Los Angeles Water Board's Executive Officer issued the Order on October 11, 2011.
15 The Order requires the District to provide to the Los Angeles Water Board three extensively
16 detailed plans to monitor and evaluate the potential threats to surface water and groundwater from
17 the Site in Piru, California. The three plans consist of: (1) A surface water protection monitoring
18 plan; (2) A preliminary waste characterization study plan; and (3) A long-term plan of uses and
19 goals for the Site. (Order at pp. 3-5.) The Order describes what these three plans must contain
20 and establishes a deadline of November 25, 2011, for the District to submit the plans. (*Ibid.*)

21 As explained in more detail below, the Order's requirements run afoul of Water Code
22 section 13267. In particular, the burden of providing the three plans as described in the Order
23 bears no reasonable relationship to the need for, and benefits to be obtained from, the plans. (See
24 Wat. Code, § 13267.) The burden is compounded by the fact that the District has already
25 expended significant resources to protect water quality at the Site and in responding to the March
26 Order issued by the Los Angeles Water Board's Executive Officer.

27 The District files this Petition in accordance with title 23, section 2050(a) of the California
28 Code of Regulations. The District requests the opportunity to file a supplemental or reply

1 memorandum when the Petition is actually considered, and after receipt of the administrative
2 record and Los Angeles Water Board's response or any other interested party's response. This
3 Petition incorporates by reference all of the District's comments and other evidence in the record.

4 **I. FACTUAL BACKGROUND**

5 The Site lies approximately one mile south of the community of Piru, California and is
6 adjacent to the northwest back of the Santa Clara River in Ventura County, California.⁴ The Site
7 occupies a footprint of approximately 7.5 acres of a 10.6-acre parcel, and approximately one acre
8 of the parcel occupies part of the Santa Clara River bottom. (Attachment 127.) The Site sits on
9 an alluvial floodplain of the Santa Clara River⁵ and is within the 100-year floodplain as defined
10 by the Federal Emergency Management Agency. Since 1951, the Site has been exposed to
11 numerous flood events. In January 1969, the Site withstood a 100-year flood event (as defined by
12 the United States Army Corps of Engineers) without significant damage to the Site or exposure of
13 its contents.

14 From 1951 to 1971, the County of Ventura operated the Site as a small burn dump that
15 accepted Class III refuse generated in the Piru area (e.g., decomposable household wastes and
16 spoiled citrus fruit from neighboring farmers). The County then closed the dump site in
17 accordance with applicable law. (Attachments 25, 100, and 127; see also Attachments 20 and
18 45.) From 1972 to 1985, the Ventura Regional Sanitation District operated the Site as a solid
19 waste transfer station to accept residential refuse. (Attachments 5, 25 and 127.) The transfer
20 station received various wastes, such as dead animals; discarded furniture and appliances; leaves
21 and clippings; and lumber, tires and other bulk items. (Attachments 5 and 6.) The transfer station
22 was closed in 1985. (Attachment 6.)

23 Since 1974, the District has leased the Site from the County of Ventura for use as a
24 temporary storage area for clean fill material from the District's various debris cleanout projects.
25 (Attachments 41, 45, and 58.) The full and expressed use of the facility was for "the storage of

26 ⁴ The Assessor's Parcel No. for the Site is 057-0-050-095. (Attachments 15, 25, and 127.)

27 ⁵ Between 85 feet to 200 feet of alluvium underlies the Site. (Attachment 20.) Groundwater levels vary locally from
28 20 feet below surface during wet periods to more than 160 feet below surface during extended dry periods.
(Attachment 20.)

1 equipment and material, including but not limited to the stockpiling of rock, gravel, sand and
2 other earthen materials.” (Attachment 41 at Item #2.) As a part of the lease agreement, the
3 District conducts periodic Site maintenance activities. (Attachments 41 and 46.) The cover
4 material used at the Site consists of the native alluvial soils. (Attachment 20.) There is no
5 vegetation on a majority of the Site.

6 In 1990, a Solid Waste Assessment Test (SWAT) was completed for the Site. (Order at
7 p. 2, ¶ 7.) Based on the SWAT results, the Los Angeles Water Board required the County to
8 conduct additional groundwater monitoring. (Order at p. 2, ¶ 7.) To comply, the County
9 conducts periodic groundwater monitoring at the Site. By letter dated March 1, 2000, the
10 Los Angeles Water Board staff concluded that the additional monitoring demonstrated that the
11 Site was not adversely impacting groundwater quality. (Order at p. 2, ¶ 7.)

12 In 2005, a 30-year storm event caused Santa Clara River waters to reach the Site, eroding
13 its banks, exposing waste and raising regulatory compliance concerns. (Attachments 44, 58
14 and 100; see, e.g., Attachment 46 [storm events caused concerns regarding compliance with
15 Title 27 of the California Code of Regulations].) Governor Schwarzenegger declared Ventura
16 County and six others a Disaster Area. President Bush followed with a federal disaster
17 declaration. Effective emergency measures were implemented following the storms to protect the
18 Site from further erosion. (Attachment 100.) The erosion resulted in the loss of approximately
19 60,000 cubic yards of fill material along the Santa Clara River side of the embankment and
20 approximately 40 percent of the waste material in the landfill. (Attachment 58.)

21 On March 7, 2005, the Ventura County Environmental Health Division (Division) issued
22 a notice of violation to the County upon observing exposed debris during a post-storm inspection.
23 (Order at p. 1, ¶ 2.) In response, the County covered the exposed materials and placed between
24 40 and 60 feet of fill on the southern boundary of the Site to further buffer against erosion from
25 the Santa Clara River. (Order at p. 1, ¶ 2.) The Division approved the corrective measures.
26 (Order at p. 1, ¶ 2.)

27 In 2005, the County initiated a “Repair Project” to segregate the Site from the Santa Clara
28 River via a rock revetment wall. The repair project was designed to protect the site from

1 additional flooding, scouring and exposure of Site materials, and to prevent the discharge of
2 waste material to the river. (Attachments 59, 88, 104 and 127.) Initial planning and permitting of
3 the Repair Project by the County involved coordination with the appropriate regulatory agencies,
4 including the Los Angeles Water Board, California Department of Fish and Game, Army Corp of
5 Engineers, National Oceanic Atmospheric Administration, and United States Fish and Wildlife
6 Service. (Attachment 57.) In 2010, the County requested the District undertake and complete the
7 Repair Project, including completing the coordination of permitting with the above agencies.
8 Throughout the Repair Project, the District maintained communication with these agencies
9 regarding Repair Project changes and associated regulatory concerns. (Attachment 100.)

10 During excavation for the Repair Project, burn debris and ferrous waste was encountered
11 inside and outside of the Repair Project boundary. (Attachments 104 and 127.) As a result, the
12 District temporarily halted the Repair Project revetment excavation during the summer of 2010 to
13 quantify the waste; estimate the cost of relocating the waste to an approved area within the Repair
14 Project boundary; study whether groundwater would be encountered during the Repair Project
15 and relocation activities; and prepare a work plan for the relocation effort. (*Ibid.*) The survey
16 commissioned by the District determined that approximately 1,800 cubic yards of waste material
17 was located outside the Repair Project boundaries. (Attachments 88 and 104.) The waste
18 delineation work and work plan for relocating the waste were completed by November 2010.
19 (Attachment 127.) This enabled the Repair Project work to restart in tandem with the
20 commencement of the relocation activities. (*Ibid.*) The relocation activities were completed on
21 March 1, 2011, in accordance with the Division's requirements. (*Ibid.*)

22 On March 1, 2011, Samuel Unger, P.E., Executive Director of the Los Angeles Water
23 Board issued Investigative Order No. R4-2011-0041 (March Order) seeking all relevant
24 information regarding the history and maintenance of the Site and construction of the revetment
25 wall. The March Order consisted of 12 requests⁶ broad in scope, and some of the requests sought

26 ⁶ The 12 requests involved: history of the Site; regulatory agency approvals; field investigations related to waste;
27 groundwater and surface water at the site; post-closure maintenance activities; bank stabilization project reports
28 related to waste; record of waste exposure or release; history of bank stabilization project; waste relocation;
corrugated metal pipeline; mitigation and monitoring status; and U.S. Army Corps of Engineers reports. (March
Order at pp. 2-3.)

1 information or records regarding the Site when it was not being used by the District. (April 2011
2 Letter at p. 1; Order No. R4-2011-0041 at p. 1.) In the interest of cooperation, the District
3 expended significant staff time and other resources to compile an extensive and thorough
4 response to the March Order. To the extent possible, the District obtained available records from
5 the County of Ventura. On April 12, 2011, after a diligent search of the information requested,
6 the District submitted thousands of pages of responsive documents in satisfaction of the March
7 Order. (Attachments to April 2011 Letter.) The District included a master index of the
8 documents submitted and indicated the request(s) to which each document was responsive. (The
9 master index was entitled, “Investigative Order No. R4-2011-0041 Matrix of Attached
10 Documents.”)

11 On October 11, 2011, Executive Officer Samuel Unger issued the Order that is the subject
12 of this Petition.

13 **II. ARGUMENT**

14 The Order requires the District to develop and submit to the Los Angeles Water Board
15 three detailed plans to monitor and evaluate any potential threats to surface water and
16 groundwater from the Site: (1) A surface water protection monitoring plan; (2) A preliminary
17 waste characterization study plan; and (3) A long-term plan of uses and goals for the Site. (Order
18 at pp. 3-5.) The Order describes in great detail what the three plans must include. (*Ibid.*) The
19 authority cited in the Order for this requirement is Water Code section 13267. (Order at p. 3.)
20 The District submits that the Order fails to comply with Water Code section 13267 in that the
21 Order fails to identify the evidence that supports requiring the plans, and because the burden on
22 the District to provide the plans bears no reasonable relationship to the need for, and benefits to
23 be obtained from, the plans. Further, the scope of the Order is overly broad in that it suggests the
24 District is solely responsible for all activities at the Piru dump site, including activities prior to its
25 occupancy and for activities that may occur in the future.

26 **A. The Order Fails to Identify Supporting Evidence for Requiring the Three Plans**

27 Water Code section 13267 authorizes the Los Angeles Water Board to “investigate the
28 quality of any waters of the state within its region.” (Wat. Code, § 13267(a).) In doing so, the

1 Los Angeles Water Board may require dischargers or potential dischargers to furnish “technical
2 or monitoring program reports.” (Wat. Code, § 13267(b)(1).) However, the Los Angeles Water
3 Board’s authority to require such reports is not without limits. The Los Angeles Water Board
4 must explain in writing the need for the reports and identify the evidence that supports requiring
5 the reports. (Wat. Code, § 13267(b)(1).)

6 Moreover, “[t]he burden, including costs, of these reports shall bear a reasonable
7 relationship to the need for the report and the benefits to be obtained from the reports.”⁷ (Wat.
8 Code, § 13267(b)(1); see *City of Arcadia v. State Water Resources Control Bd.* (2006)
9 135 Cal.App.4th 1392, 1413; *In the Matter of Pacific Lumbar Co., etc.* (Oct. 18, 2001), State
10 Water Board Order No. WQ 2001-14 (Order No. WQ 2001-14) at pp. 9-10.) The State Water
11 Board has referred to the reasonable relationship requirement as a “balancing test” that
12 necessarily requires consideration of the relevant facts on a case-by-case basis. (*In the Matter of*
13 *Petitions of the County of Santa Clara, etc.* (May 5, 1986) State Water Board Order No. WQ 86-8
14 (Order No. WQ 86-8) at p. 20; see Order No. WQ 2001-14 at p. 2, fn. 2.) Among other factors,
15 the Los Angeles Water Board is to consider the costs to the District in providing the information
16 (including monitoring costs) as compared to the need for, and benefits of, the information being
17 sought. (Order No. WQ 86-8 at pp. 19-20; see *In the Matter of the Petition of Sacramento County*
18 (Sept. 16, 2003) State Water Board Order WQO 2003-0014 at p. 4, fn. 11, 10; *In the Matter of*
19 *Petition of Greenbelt Alliance, et al.* (Oct. 19, 1989) State Water Board Order No. WQ 89-19 at
20 p. 7.)

21 In some cases, the State Water Board has determined that evidence in the record supported
22 requiring a report under Water Code section 13267, but that the investigative order’s scope was
23 overreaching upon considering the balancing test. For example, in State Water Board Order
24 No. WQ 82-8, the State Water Board found that a study pursuant to Water Code section 13267

25 ⁷ Water Code section 13267(b)(1)’s reasonableness requirement is consistent that of Water Code section 13000,
26 which states that “activities and factors which may affect the quality of the waters of the state shall be regulated to
27 attain the highest water quality which is *reasonable*, considering all demands being made and to be made on those
28 waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.”
(Emphasis added.) The facts supporting that the Order contravenes Water Code section 13267 also support that the
Order contravenes Water Code section 13000’s reasonableness requirement.

1 was appropriate. (*In the Matter of the Petitions of the City of Pacific Grove* (July 15, 1982) State
2 Water Board Order No. WQ 82-8 at p. 5.) However, the State Water Board also found: “[T]he
3 scope of the study is excessive resulting in unreasonably high costs. A narrower, less expensive
4 study should be designed and . . . implemented.” (*Ibid.*) The State Water Board further found
5 that results comparable to those sought by the regional water quality control board could be
6 obtained by alternatives measures. (*Id.* at p. 7.)

7 Similarly, in State Water Board Order No. WQ 2001-14, the State Water Board concluded
8 that changes to the monitoring program specified in the regional water quality control board’s
9 order were appropriate. (Order No. WQ 2001-14 at pp. 29-30.) For example, the State Water
10 Board found that the monitoring of turbidity would provide sufficient information and that
11 monitoring for suspended sediment in addition to turbidity was unnecessary. The State Water
12 Board also found that because no evidence was presented to suggest water temperature was a
13 problem, the requirements to collect data on water temperature were unnecessary. In both
14 instances, the State Water Board eliminated the requirement. (*Id.* at p. 30.) The costs of
15 complying with the investigative order were important considerations in making the revisions.
16 (See *id.* at pp. 41-43.)

17 Further, the Los Angeles Water Board authority is limited to those parties who have
18 discharged, are suspected of discharging, or proposing to discharge. (Order No. WQ-2001-14.)
19 Accordingly, the technical and monitoring reports being required must also bear a reasonable
20 relationship to the discharge, or suspected discharge by the party or parties to whom the order is
21 issued. (*Id.* at p. 10.) The Order alleges that the need for the plans is to determine whether the
22 District’s activities at the Site have caused releases to groundwater and/or the Santa Clara River.
23 (Order at p. 3.) However, other than giving a general history of activities associated with the Site,
24 the Order fails to identify specifically the evidence that supports requiring the District to provide
25 the plans. (Order at pp. 1-3.)

26 Further, the Order requires the District to include in the plans very specific information
27 with no evidence to suggest that the District has ever been or would be responsible for the
28 suspected discharges to surface or groundwater from the activities identified. To the contrary, the

1 Order clearly recognizes evidence that shows the District's involvement and activities associated
2 with this Site as being limited in nature. For example, the Order requires the District to submit a
3 "Preliminary Waster Characterization Study" (PWCS). (Order at p. 4.) The PWCS is required to
4 evaluate "the post-closure threat to ground water from the unlined burn dump." (Order at p. 4.)
5 Included in that is a requirement to define "the spatial extent of wastes, debris and burn dump
6 materials" that would have been deposited when the Site was a burn dump. (Order at p. 4.)
7 However, the Order itself recognizes that the District did not operate the Site as a burn dump.
8 (Order at p. 1.) Accordingly, the Los Angeles Water Board has no evidence to support the
9 requirement for a PWCS.

10 In another example, the Order would require the District to submit a "long-term plan of
11 uses and goals for the site." (Order at p. 4.) As already stated, the District leases the Site and is
12 not the landowner. (Order at p. 1.) The Los Angeles Water Board has provided no evidence to
13 suggest that the District is the proper entity for developing long-term plans for the Site. Further,
14 the Order fails to identify the beneficial uses for which it is seeking to protect, and fails to specify
15 any evidence that would suggest the beneficial uses are affected by the District's activities. (See,
16 e.g., Order No. WQ-2001-14 at pp. 23-25.)

17 Where the State Water Board determines that an order of a regional water quality control
18 board issued under Water Code section 13267 is inappropriate in some respect, the State Water
19 Board may remand the action to that board, refer the matter to another state agency with
20 jurisdiction or take appropriate action itself. (Order No. WQ 2001-14 at p. 10.) In reviewing an
21 order issued under Water Code section 13267, the State Water Board is vested with all the powers
22 of a regional water quality control board under the Porter-Cologne Water Quality Control Act
23 (Wat. Code, § 13000 et seq.). (Wat. Code, § 13320(c); Order No. WQ 2001-14 at p. 10.)
24 Because the Order is not properly supported by the evidence, the State Water Board should
25 rescind the Order in its entirety. In the alternative, the State Water Board should revise the Order
26 to narrow its scope to only include monitoring and technical reports that are directly related to the
27 District's use of the Site.

28 ///

1 **B. The Burden on the District to Prepare and Submit the Plans Bears No Reasonable**
2 **Relationship to the Need For, or Potential Benefits of, Said Plans**

3 In issuing the Order requiring the three plans, the Los Angeles Water Board cited its
4 authority under Water Code section 13267. (Order at p. 3.) As mentioned, that section obligates
5 the Los Angeles Water Board to: (1) Explain the need for the plans; (2) Identify the evidence that
6 supports requiring the plans; and (3) Determine that the burden associated with providing the
7 plans bears a reasonable relationship to the need for, and benefits of, the plans. In issuing the
8 Order, and as discussed here, the Los Angeles Water Board did not satisfy the third requirement.

9 The Order fails to comply with Water Code section 13267 in that the District's burden in
10 providing the three plans does not bear a reasonable relationship to the need for, and benefits of,
11 the plans. As an initial matter, the monitoring costs are not justified. "Determination of the
12 reasonableness of monitoring costs necessarily involves consideration of the beneficial uses to be
13 protected and the potential harm to those uses that may be reduced through appropriate
14 monitoring." (Order No. WQ 2001-14 at p. 42.) The Order neglects to mention the beneficial
15 uses at issue, let alone the potential harm to beneficial uses that the monitoring seeks to avoid or
16 mitigate. (See Section A above.)

17 Further, the costs to the District to comply with the Order and its requirement are not
18 reasonable. For example, the extent of the monitoring being imposed is excessive, especially
19 given the lack of evidence supporting the need for the monitoring. Among other requirements,
20 the District would be required to develop a ground-water monitoring program to determine if
21 there are adverse impacts to groundwater in this post-closure period. (Order at p. 4.) However,
22 the Order identifies no specific evidence to suggest that the District's operations discharge or are
23 suspected of discharging waste to groundwater, and that such discharges are harming beneficial
24 uses. The Order also requires the District to develop a long-term plan of uses and goals for the
25 Site. However, as already indicated, the District is not the landowner but a lessee. Moreover,
26 the Los Angeles Water Board's authority is limited to protecting water quality from existing
27 discharges, suspected discharges or proposed discharges. (Wat. Code, § 13260.) Until future,
28 long-term uses are actively proposed, the Los Angeles Water Board has no authority over the

1 long-term plans for the Site. The “long-term plan of uses and goals” as included in the Order is
2 too speculative and the Los Angeles Water Board’s need for such information is tenuous.

3 Accordingly, the State Water Board must rescind the Order in its entirety because the
4 burden of preparing the plans on the District is not reasonable as compared to the Los Angeles
5 Water Board’s need for the information. At the very least, the State Water Board must narrow the
6 scope of the Order and the requirements being imposed on the District.

7 The burden is compounded by the fact that the District has already expended significant
8 resources to protect water quality with respect to the Site and in responding to the March Order
9 issued by the Los Angeles Water Board’s Executive Officer. (See Factual Background, section I,
10 *ante.*) Much of the information provided in response to the March Order was not within the
11 District’s control or possession, as the District has historically conducted limited operations at the
12 Site. Such limited control and activities further evinces the burden on the District in having to
13 provide the plans.

14 **III. CONCLUSION**

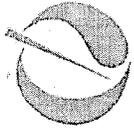
15 Based on this Petition and the evidence in the record, the District respectfully requests that
16 the State Water Board rescind the Order or remand the matter to the Los Angeles Water Board to
17 do the same. In the alternative, if the State Water Boards finds that requiring any of the plans is
18 appropriate, the District respectfully requests that the State Water Board find that the scope of any
19 appropriate plan is excessive, resulting in unreasonably high costs. In such a case, the District
20 asks that the State Water Board design, or direct the Los Angeles Water Board to design, a
21 narrower, less expensive plan or set of plans.

22 SOMACH SIMMONS & DUNN
23 A Professional Corporation

24 DATED: November 10, 2011

25 By: 
26 Theresa A. Dunham
27 Attorneys for Ventura County Watershed
28 Protection District

EXHIBIT A



**California Regional Water Quality Control Board
Los Angeles Region**



320 W. 4th Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • FAX (213) 576-6640
<http://www.waterboards.ca.gov/losangeles>

RECEIVED

Matthew Rodriguez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

October 11, 2011

Ms. Norma J. Camacho
County of Ventura
Watershed Protection District
800 S. Victoria Avenue
Ventura, CA 93009-1610

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7008 1140 0002 8671 8342

CALIFORNIA WATER CODE SECTION 13267 ORDER (NO. R4-2011-0147) TO SUBMIT INFORMATION – PIRU DUMP, PIRU, CALIFORNIA (FILE NOS. 51-053 AND 07-069; CI-0053)

Dear Ms. Camacho:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board), is the public agency with primary responsibility for the protection of ground and surface water quality within major portions of Los Angeles and Ventura Counties, including the referenced site. As part of our effort to protect water quality, pursuant to California Water Code (CWC) section 13267, the Regional Board is investigating surface and ground water impacts associated with the continued existence of the Piru Dump in the Santa Clara River, Piru, California.

On February 25, 2011, the Regional Board issued Investigative Order R4-2011-0051 to the County of Ventura Watershed Protection District (WPD) as part of our investigation of surface and ground water impacts associated with the continued existence of the Piru Dump.

We are in receipt of your response dated April 12, 2011, to Investigative Order R4-2011-0051.

The Regional Board requires the additional information as set forth in the attached Investigative Order No. R4-2011-0147 to evaluate potential threats to surface and ground water, including revetment performance and surface water movement on site.

If you have any questions regarding this matter, please call Dr. Enrique Casas, project manager, at (213) 620-2299.

Sincerely,


Samuel Unger, P.E.
Executive Officer

Enclosure: Investigative Order No. R4-2011-0147

California Environmental Protection Agency

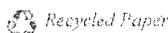


EXHIBIT A

Ms. Norma J. Camacho
Piru Dump
CWC Section 13267 Order

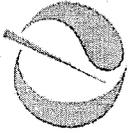
- 2 -

October 11, 2011

cc: Bill Stratton, County of Ventura Environmental Health Division
Bill Orme, State Water Resources Control Board
John Markham, United States Army Corps of Engineers
Eric Raffini, United States Environmental Protection Agency
Wayne Fishback, Simi Valley

California Environmental Protection Agency

 Recycled Paper



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board Los Angeles Region

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Edmund G. Brown Jr.
Governor

INVESTIGATIVE ORDER NO. R4-2001-0147

TO PROVIDE A TECHNICAL OR MONITORING REPORT ON

CALIFORNIA WATER CODE SECTION 13267

DIRECTED TO THE COUNTY OF VENTURA WATERSHED PROTECTION DISTRICT

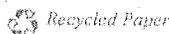
PIRU DUMP

TORREY ROAD (NORTH OF THE SANTA CLARA RIVER), PIRU, CALIFORNIA
(FILE NOS. 51-053 AND 07-069; CI-0053)

The Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267.

1. The Piru Dump (Landfill) was operated between 1951 and 1972 as a burn dump permitted by the County of Ventura. When disposal operations ceased, the Landfill was closed to State minimum standards for closed, abandoned, and inactive landfills, consisting of an earthen cover over wastes. After closure, the Landfill was converted to a transfer station that was operated until 1985. In December 1974, the Ventura County Watershed Protection District (Discharger), or a predecessor agency, leased a portion of the Landfill site for storage of equipment and materials ("rock, gravel, sand and other earthen materials") derived from Discharger-operated debris basins.
2. On March 7, 2005, the Ventura County Environmental Health Division (EHD), acting as local enforcement agency for the California Integrated Waste Management Board (now CalRecycle), issued a notice of violation after observing exposed waste debris during an inspection of the Landfill site following a large winter storm. The notice of violation required the Discharger to initiate and complete corrective action to bring the Landfill into compliance with State minimum standards. By June 2006, the Discharger had covered exposed wastes and placed between 40 and 60 feet of fill on the southern boundary of the Landfill site to further buffer against erosion from the Santa Clara River. EHD determined that these measures complied with requirements of their NOV. EHD approved the corrective measures and forwarded recommendations from CalRecycle staff to the Discharger for increased flood protection to provide long-term protection of public health, safety and the environment. The recommendations from CalRecycle staff appear to be the basis for the design and construction of a revetment wall project.
3. On November 30, 2010, Regional Board staff inspected the Site in response to a complaint from a private citizen that the Discharger had exposed potentially hazardous burn dump wastes at the Site. On December 7, 2010, staff from the Regional Board and U.S. Army Corps of Engineers conducted a joint site inspection of the Site to assess potential permitting violations associated with the bank stabilization project. During the inspections, staff observed ponding of storm water at top deck of the closed landfill, which may percolate through wastes entombed under the final cover and leach pollutants to ground and surface waters, and relocation of waste to an area

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outside of the existing landfill foot print, which should have been, but was not, regulated under waste discharge requirements adopted by the Regional Board.

4. On March 1, 2011 the Regional Board issued Investigative Order No. R4-2011-0051, pursuant to CWC section 13267, to the Discharger requiring submittal of information relating to the revetment wall construction project. To comply with the Investigative Order the Discharger submitted a letter, with supporting materials, to the Regional Board on April 15, 2011.
5. Based on the Discharger's response to Investigative Order No. R4-2011-0051 submitted on April 12, 2011, Regional Board staff has determined that there is a potential for discharge of waste to surface waters through wind and water erosion of the Landfill site. Regional Board staff has also determined that the Discharger's post-closure operations allowed contact between surface waters and burn dump wastes that potentially could percolate to ground water.
6. At least three exposures of debris and burn dump materials from the Piru Dump in the Santa Clara River have been documented in the last 13 years. In 1998, solid waste was found exposed (see Cleanup and Abatement Order No. 98-090 for Piru Dump). In 2005, high waters exposed debris and lead to the need for an emergency permit as documented in the Discharger memorandum of January 21, 2005). In 2010, debris was exposed in the river during the construction of the revetment (as documented in the Discharger letter to Army Corp of Engineers of January 14, 2011. Large storms and high waters contribute to the risk.
7. Ground water quality at the Piru Dump was assessed during the Solid Waste Assessment Test (SWAT) completed in 1990. On January 18, 1994, Regional Board staff summarized the results of the initial SWAT analysis, finding that (1) soil sampled beneath refuse exceeded the Total Threshold Limit Concentration (TTLC) for arsenic, (2) testing methods for some pesticides and metals, including arsenic, did not allow for evaluating their concentration levels, and (3) some results for well P2 indicated a potential release of pollutants to ground water. The Discharger was required to complete additional monitoring. In a letter dated March 1, 2000, Regional Board staff determined that the site was not adversely impacting ground water quality. Since completion of SWAT monitoring, routine ground water monitoring has not been implemented during postclosure development of the Piru Dump as a stockpile/staging area for soils excavated from area flood control basins. Of specific concern is whether the stockpiling/staging of soils has been conducted in a manner to limit the percolation of surface waters into underlying burn dump wastes. Contact between surface waters and burn dump wastes was observed by Regional Board staff during inspections conducted as part of the revetment wall construction project.
8. CWC section 13267(b)(1) states, in part: *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.*

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9. This Order identifies the Discharger as the party responsible for the suspected discharge of waste identified in Paragraphs 3, because it leases the property and caused the potential discharge of waste through its operations.
10. This Order requires the persons named herein to prepare and submit technical reports to develop a surface water protection monitoring plan, develop a waste characterization study, develop a long-term plan of uses and goals for the Landfill site during post-closure maintenance.
11. The Regional Board needs this information in order to determine whether a release to ground water from the Landfill has occurred resulting from the Discharger's activities at the site and to protect the Santa Clara River from a release of wastes to surface water from the Landfill.
12. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is necessary to assure adequate cleanup of the Landfill site, which was described in Investigative Order No. R4-2011-0051, incorporated herein by reference, poses significant threats to public health and the environment.
13. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), chapter 3, title 14 of the California Code of Regulations (CCR). This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the work plans are not yet known. It is unlikely that implementation of the work plans associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.
14. Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC section 13320 and CCR, 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.

THEREFORE, IT IS HEREBY ORDERED that County of Ventura Watershed Protection District, pursuant to section 13267(b) of the CWC, is required to submit the following:

By **November 25, 2011**, provide three plans to monitor and evaluate the potential threats to surface water and ground water from the Piru Dump.

1. Submit a surface water protection monitoring plan. Address the following elements in the plan:
 - a. Monitoring of revetment wall performance and potential for the wall to cause erosion to downstream river bank;

California Environmental Protection Agency

- b. Monitoring of debris and burn dump materials exposure or potential for debris and burn dump materials exposure considering the depth of the debris and burn dump materials and potential for wind and water erosion;
 - c. Monitoring of storm water movement on the site. Monitoring should determine how the surface of the site drains (directly to the River, or to agricultural ponds) and if storm water is managed to minimize percolation of wastes. Monitoring should include evaluation of the performance and maintenance of storm water BMP;
 - d. Monitoring of the function of the corrugated metal pipe (CMP) to the east of the site in diversion of waters from the site;
 - e. Schedule for implementation of the plan.
2. Submit a Preliminary Waste Characterization Study (PWCS) plan consistent with the methodology contained in "Protocol for Burn Dump Site Investigation and Characterization," State of California Environmental Protection Agency - Department of Toxic Substances Control, dated June 30, 2003. The PWCS shall evaluate the post-closure threat to ground water from the unlined burn dump and address the following elements in the PWCS:
- a. Define the spatial extent of wastes, debris and burn dump materials, for the Piru Dump and the composition of burn ash wastes. The potential for a release to ground water is poorly known because the extent and volume of burn ash wastes is poorly defined given the absence of record keeping during the period when the Piru Dump was active and because only localized investigations have been conducted since to determine the extent or presence of deposited wastes;
 - b. Develop a ground water monitoring program to determine whether the site is adversely impacting ground water quality during the post-closure period. The ground water monitoring program shall be capable of determining ground water quality in areas upgradient and downgradient of deposited wastes, as identified through the PWCS. In addition to general chemistry constituents in ground water, the program shall monitor for contaminants of concern identified during the waste characterization completed as part of the PWCS; and
 - c. Include a schedule for implementation of the PWCS. The PWCS will require Executive Officer approval prior to implementation.
3. Submit a long-term plan of uses and goals for the site, including:
- a. Agricultural uses and the lease of lands for agricultural uses;
 - b. Operation as a transfer station;
 - c. Storage and distribution of materials from debris basin cleanouts;
 - d. Permanent storage or application of materials from debris basin projects; and

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e. All other uses.

Pursuant to 13268(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b)(1) of the CWC, failure to submit the required technical report described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the technical report is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The State Board adopted regulations (CCR, title 23, division 3, chapter 30 and CCR, title 27, division 3) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found at http://www.waterboards.ca.gov/ust/electronic_submittal.

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the site. However, we may request that you submit hard copies of selected documents and data to the Regional Board in addition to electronic submittal of information to GeoTracker.

For your convenience, the GeoTracker Global ID for this site is L10008883979.

The Regional Board, under the authority given by CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized representative for the County of Ventura Watershed Protection District (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty 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 submitting false information, including the possibility of fine and imprisonment for knowing violations."

SO ORDERED.



Samuel Unger, P.E.
Executive Officer

California Environmental Protection Agency

