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OF ORIGINAL FILED
Los Angeles Superior Court

SEP 10 2009

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

7 Attorneys for Plaintiffs, the People of the State
8 of California, *ex rel.*, California Regional
Water Quality Control Board, Los Angeles
9 Region

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12
13 THE PEOPLE OF THE STATE OF
CALIFORNIA, *ex rel.*, CALIFORNIA
14 REGIONAL WATER QUALITY CONTROL
BOARD, LOS ANGELES REGION,

15 Plaintiffs,

16 v.

17 SOUTHERN CALIFORNIA GAS
COMPANY, a California Corporation;
18 COUNTY OF LOS ANGELES, a political
subdivision of the State of California; AND,
19 DOES 1 through 10, inclusive,

20 Defendants.

CASE NO.

BC421492

COMPLAINT FOR CIVIL LIABILITY,
PENALTIES, AND INJUNCTIVE RELIEF

21
22 Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA, EX. REL., CALIFORNIA
23 REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION are informed
24 and believe and based thereon allege:
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PARTIES TO THE ACTION

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2 1. The California Regional Quality Control Board, Los Angeles Region (Regional
3 Board) is a public agency of the State of California organized and existing pursuant to the Water
4 Code sections 13000 et seq. The Regional Board is the principal State agency responsible for the
5 coordination and control of water quality in the Los Angeles Region. Defendants' acts that are
6 the subject of this lawsuit all occurred within Los Angeles County, and fall under the
7 responsibility of the Regional Board. The Regional Board, as part of its legislatively mandated
8 duties, is required to administer Water Code sections 13000 et seq. for the Los Angeles Region,
9 including Los Angeles County.

10 2. Southern California Gas Company (SoCal Gas) is a California corporation
11 authorized to do business in the County of Los Angeles, California, with its principal place of
12 business in San Diego, California. SoCal Gas owns and operates a gas pipeline in Sullivan
13 Canyon, located in the Brentwood District of the City of Los Angeles. SoCal Gas owns a portion
14 of the property on which the access road in Sullivan Canyon, which runs from Queensferry Road
15 to its gas pipeline valve station (Access Road) lies, which is the subject of this case.

16 3. The County of Los Angeles (County) is a charter County and a body corporate, a
17 legal subdivision of the State of California charged with governmental powers and organized
18 under the Constitution and laws of the State of California. Among the departments of the
19 County is the Department of Public Works (DPW), which conducts or conducted the operations
20 of the Los Angeles County Flood Control District ("District") and the former Los Angeles
21 County Road Department, among other operations.

22 4. The true names and capacities, whether individual, corporate, associate or
23 otherwise, of the defendants sued in this Complaint under the fictitious names of Does 1 through
24 10, inclusive, are unknown to the Regional Board who therefore sues each such defendant by
25 such fictitious names. These defendants are named as Doe defendants pursuant to Code of Civil
26 Procedure section 474. The Regional Board will ask leave of court to amend this complaint to
27 show the true name and capacity of each defendant when these facts are discovered.
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JURISDICTION AND VENUE

5. The Superior Court has jurisdiction of this matter under Article VI, § 10 of the California Constitution, under the Water Code sections 13385 and 13386 and under the Code of Civil Procedure section 410.10. Pursuant to the Water Code sections 13385, subdivision (b), and 13386, the Regional Board requested that the Attorney General commence this action in Superior Court in Los Angeles County.

6. Venue is proper in the County of Los Angeles under Water Code section 13361 because the discharges and violations described herein occurred in the County of Los Angeles.

INTRODUCTION

7. This is a civil action by the People of the State of California, ex rel. Regional Board. The Regional Board is a public agency of the State of California and was established and authorized by the Porter-Cologne Water Quality Control Act, Water Code sections 13000 et seq. Within the Los Angeles Region, which includes the County of Los Angeles, the Regional Board is responsible for the control of water pollution.

8. This action is brought against the County and SoCalGas (collectively Defendants), pursuant to Water Code sections 13385, subdivision (b), and 13386. Water Code section 13385, subdivision (b), authorizes the Attorney General, upon request of the Regional Board, to commence an action in superior court to impose liability of up to \$25,000 per day for each violation of the enumerated provisions of section 13385. Water Code section 13386 authorizes the Attorney General, upon request of the Regional Board, to petition the appropriate court for the issuance of a permanent injunction to restrain any continuing violations of Water Code section 13385.

9. Defendants discharged pollutants, including but not limited to, soil, rock, and sediment, to Sullivan Canyon Creek (Creek), a "Water of the United States," without the proper waste discharge requirements (WDR) or Federal Water Pollution Control Act (Clean Water Act) permits, and without the proper water quality certification from the Regional Board. Further, persons employed by the County's DPW and DPW contractors stockpiled pollutants in and around the Creek and discharged pollutants to the Creek in violation of the water quality

1 certification and WDR. In addition, these pollutants are continuing to be discharged to the Creek.
2 These acts are all violations of Water Code section 13385.

3 10. By this action, the Regional Board seeks: (1) civil penalties from Defendants for
4 past and continuing violations of Water Code section 13385, subdivision (b); (2) an injunction
5 pursuant to Water Code section 13386 to restrain the Defendants from continuing to violate
6 Water Code section 13385; and, (3) pursuant to Code of Civil Procedure section 1021.8, an award
7 of attorneys' fees and costs incurred by the Regional Board.

8 STATUTORY FRAMEWORK

9 11. Water Code section 13385 imposes liability on any person, including corporations
10 and the County, who violates Water Code section 13376, the Clean Water Act section 301, any
11 WDR issued pursuant to Division 7 of the Water Code, or any water quality certification issued
12 pursuant to Water Code section 13160 and Clean Water Act section 401.

13 12. Water Code section 13376 prohibits "[t]he discharge of pollutants or dredged or
14 fill material" into Waters of the United States "by any person except as authorized by waste
15 discharge requirements." "Waters of the United States" includes all tributaries to the Santa
16 Monica Bay, a territorial sea. The discharge of pollutants into Waters of the United States
17 includes the discharge of soil, sand, rock, sediment, and other debris. (33 U.S.C. § 1362.)

18 13. Clean Water Act section 301, subdivision (a), prohibits the discharge of pollutants
19 to Waters of the United States except in compliance with a proper permit and water quality
20 certification from the State in which the discharge will occur.

21 14. Water Code section 13386 provides that upon "any threatened or continuing
22 violation of any of the requirements listed in paragraphs (1) to (6), inclusive, of subdivision (a) of
23 Section 13385 . . . the Attorney General, upon the request of the state board or regional board
24 shall petition the appropriate court for the issuance of a preliminary or permanent injunction"
25 restraining that person from continuing the violation. The Regional Board has requested the
26 Attorney General to apply to the superior court for an injunction to restrain the Defendants from
27 continuing these violations.

FACTUAL ALLEGATIONS

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2 15. On January 24, 2004, the DPW received water quality certification No. 02-144 for
3 proposed debris maintenance projects in Los Angeles County, including the Sullivan debris basin
4 in Sullivan Canyon (the Project). When acting pursuant to the water quality certification, the
5 DPW was required to follow thirty-six conditions provided in the certification.

6 16. The Project was also subject to WDR No. 2003-0017-DWQ, which required
7 compliance with all thirty-six conditions of the water quality certification.

8 17. The Regional Board's water quality certification No. 02-144 did not include or
9 even contemplate enlarging or grading the Access Road that was wholly unrelated to the Project.
10 The DPW already had an access road for the removal of the debris, which it had previously used
11 for this purpose and for removal associated with the Project.

12 18. On or about March 18, 2005, the Regional Board received notification from DPW
13 that it began the Project on or before March 14, 2005.

14 19. On or before March 24, 2005, Defendants agreed to stockpile some of the soil,
15 rock and other debris material from the Project for Defendants' use in enlarging and grading the
16 Access Road.

17 20. On or before March 24, 2005, Defendants began stockpiling some of the soil, rock,
18 and other debris material from the Project in and adjacent to the Creek in numerous locations.
19 Some of the stockpiles were as large as fifteen feet high.

20 21. On or before March 24, 2005, Defendants began enlarging and grading the Access
21 Road, using construction equipment, such as bulldozers, for their work. The DPW enlarged and
22 graded an approximately .39-mile section of the Access Road. The Defendants jointly enlarged
23 and graded an approximately .21-mile section of the Access Road. Finally, SoCal Gas enlarged
24 and graded an approximately .23-mile section of the Access Road.

25 22. On or before March 24, 2005, DPW crews created a diversion of the Creek
26 upstream of the Sullivan debris basin. Such diversion was not authorized by water quality
27 certification No. 02-144 or by the WDR.
28

1 23. On March 31, 2005, Regional Board staff visited Sullivan Canyon and the partially
2 constructed Access Road and for the first time observed and learned about stockpiles of soil and
3 sediment in the Creek, and adjacent to the Creek within vegetated areas, including areas with
4 mature sycamore trees. The enlarged Access Road covered the Creek at several locations, and
5 staff observed water from the Creek flowing through, over, and around the enlarged and graded
6 areas of the Access Road.

7 24. Regional Board staff noticed several places where the Creek had been diverted.
8 Diversion of the Creek was a possible violation of Fish and Game Code sections 1600 et seq., and
9 any entity seeking to divert the Creek needed to enter into a Streambed Alteration Agreement
10 with the Department of Fish and Game (Fish and Game), the agency responsible for enforcement
11 of that Code.

12 25. On April 4, 2005, Regional Board staff ordered that work on the Access Road be
13 stopped until further notice.

14 26. On April 5, 2005, Regional Board staff and Fish and Game staff met with
15 Defendants to discuss the Access Road construction and the stockpiles of sediment. At this
16 meeting the Regional Board and Fish and Game reiterated that all work be stopped until further
17 notice.

18 27. Starting on or before April 19, 2005, under Fish and Game's supervision,
19 Defendants moved the stockpiled material away from the Creek. Between April 21 and May 6,
20 2005, Defendants removed all but one stockpile of material. A final stockpile remained until
21 January 2006.

22 28. The DPW, on behalf of the District, and SoCal Gas separately entered into an
23 after-the-fact streambed alteration agreement with Fish and Game in late 2005 or early 2006,
24 which required the DPW and SoCal Gas to complete certain restoration work in Sullivan Canyon
25 by December 31, 2006.

26 29. On or about May 13, 2005, the Regional Board issued SoCal Gas a notice of
27 violation and requirement to submit information regarding the enlarging and grading of the
28 Access Road in Sullivan Canyon. The notice of violation noted SoCal Gas' illegal discharges of

1 fill material and sediment to the Creek in violation of Water Code sections 13376 and 13385 and
2 the Clean Water Act. It also noted the stockpiling of sediment and debris and construction
3 activities involving the Access Road, all in violation of Water Code sections 13376 and 13385
4 and the Clean Water Act.

5 30. Similarly, on or about July 26, 2005, the Regional Board issued the DPW a notice
6 of violation and requirement to submit information regarding the enlarging and grading of the
7 Access Road in Sullivan Canyon. The notice of violation noted DPW's illegal activities, such as
8 the stockpiling of sediment, construction work, and discharges of fill material and sediment in
9 violation of Water Code sections 13376 and 13385 and the Clean Water Act.

10 31. The Regional Board issued a second notice of violation and requirement to submit
11 information to DPW on or about February 9, 2006, seeking further information regarding these
12 violations.

13 32. On March 12, 2008, Regional Board staff conducted an inspection of the Creek
14 and the Access Road. Staff concluded that Defendants' violations caused significant harm to
15 approximately 1.09 acres of the Creek and the Creek channel. The inspection found that the
16 materials used to enlarge and grade the Access Road remain within the Creek and Creek channel,
17 and, at the least, continue to enter the Creek through erosion and storm water runoff. Defendants'
18 actions, therefore, have resulted in continuing violations of Water Code section 13385. Each
19 continuing violation also subjects Defendants to injunctive relief pursuant to Water Code section
20 13386.

21 33. These past and continuing violations in and around the Creek are harmful to the
22 environment. They have led to significant harm to approximately 1.09 acres of stream habitat
23 along an approximately .83-mile section of the Creek. The grading activities destroyed existing
24 vegetation around the Creek bed, which had protected the water quality of the Creek and provided
25 habitat for wildlife in Sullivan Canyon. Defendants buried mature sycamore trees with stockpiled
26 materials reaching as high as five feet above the base of the trees. The grading of the road and
27 stockpiling of materials may impact animal species such as the pacific treefrog, California
28 treefrog, Anna's hummingbird and dusky-footed woodrat, among others. Moreover, diverting or

1 covering the Creek in several locations has degraded and continues to degrade the overall water
2 quality of the Creek. Diverting and covering the Creek has also created and continues to create
3 increased erosion problems in Sullivan Canyon and possible flooding due to sediment and debris
4 piling up in the Canyon and debris basin, and has buried organic matter used by the plant and
5 animal species in and around the Creek. The violations have also led to increased sediment
6 entering the Creek and the Santa Monica Canyon Channel.

7 **FIRST CAUSE OF ACTION**
8 **VIOLATIONS OF WATER CODE SECTIONS 13376 AND 13385**
9 **(against all Defendants)**

10 34. The allegations in paragraphs 1 through 33 are hereby incorporated by reference
11 as if fully alleged herein.

12 35. Water Code section 13376 prohibits “[t]he discharge of pollutants or dredged or
13 fill material” into Waters of the United States “by any person except as authorized by waste
14 discharge requirements.”

15 36. The discharge of pollutants into Waters of the United States includes the discharge
16 of soil, sand, rock, sediment and other debris. (33 U.S.C. § 1362.)

17 37. Sullivan Canyon Creek is a tributary to the Santa Monica Canyon Channel and the
18 Santa Monica Bay, and is, therefore, a Water of the United States.

19 38. On or before March 24, 2005, Defendants placed piles of soil, rock, sediment, and
20 other debris into the Creek and in numerous places along the Creek channel. The stockpiled
21 pollutants also discharged into the Creek through erosion and displacement during and after
22 construction activities. Defendants did not completely remove the stockpiled pollutants until
23 January 2006.

24 39. On or before March 14, 2005, the Defendants used the stockpiled pollutants and
25 other materials, including soil, rock, sediment and other debris, to enlarge and grade the Access
26 Road in Sullivan Canyon. Throughout the length of the Access Road, in numerous locations, the
27 material used to enlarge and grade the road was discharged into the Creek. The construction
28

1 vehicles, including bulldozers, also entered the Creek, and numerous locations throughout the
2 Creek channel.

3 40. No Defendant received a WDR to permit it to discharge pollutants to Sullivan
4 Canyon Creek.

5 41. Portions of the enlarged and graded Access Road remain in the Creek channel.
6 Portions of the Creek flow over the road in numerous locations. Pollutants from the road
7 continue to discharge to the Creek and Creek channel. Therefore, these violations are continuing
8 to this day.

9 42. Violations of Water Code section 13376 are also violations of Water Code section
10 13385.

11 43. Defendants are liable civilly under Water Code section 13385 for penalties up to
12 \$25,000 per day, per violation.

13 44. Each continuing violation also subjects Defendants to injunctive relief pursuant to
14 Water Code section 13386.

15 **SECOND CAUSE OF ACTION**
16 **VIOLATIONS OF WATER CODE SECTION 13385, SUBDIVISION (A)(5)**
17 **(against all Defendants)**

18 45. The allegations in paragraphs 1 through 44 are hereby incorporated by reference
19 as if fully alleged herein.

20 46. Clean Water Act section 301, subdivision (a), prohibits the discharge of pollutants
21 to Waters of the United States except in compliance with a proper permit and water quality
22 certification from the State in which the discharge will occur.

23 47. On or before March 24, 2005, Defendants placed piles of soil, rock, sediment, and
24 other debris into the Creek and in numerous places along the Creek channel. The stockpiled
25 pollutants also discharged into the Creek through erosion and displacement during and after
26 construction activities. Defendants did not completely remove the stockpiled pollutants until
27 January 2006.
28

1 56. The Project in Sullivan Canyon was also subject to WDR No. 2003-0017-DWQ,
2 which required compliance with all thirty-six conditions of the water quality certification.

3 57. The Regional Board's water quality certification and WDR did not include or
4 contemplate enlarging or grading the Access Road in Sullivan Canyon, because DPW employees
5 already had and used another access road for the removal of the debris. The Access Road was
6 solely for the purposes of SoCal Gas' gas pipeline maintenance activities, and was, therefore,
7 unrelated to the Project.

8 58. The Regional Board's water quality certification and WDR did not include or
9 contemplate the diversion of the Creek above the Sullivan debris basin.

10 59. To the extent that the County, through the DPW, was acting pursuant to the water
11 quality certification for the Project and the general WDR for discharges that have received water
12 quality certification, then the County violated that certification and WDR, in violation of Water
13 Code section 13385, subdivision (a)(2).

14 60. On or before March 24, 2005, the County, through the DPW, violated conditions,
15 including but not limited to, Nos. 4, 5, 6, 10, 13, 14, 15 and 28 of the water quality certification,
16 attached as Exhibit A hereto, and WDR No. 2003-0017-DWQ, which required compliance with
17 all conditions of the water quality certification.

18 61. Portions of the enlarged and graded Access Road remains in the Creek channel.
19 Portions of the Creek flow over the road in numerous locations. Pollutants from the road
20 continue to discharge to the Creek and Creek channel. Therefore, these violations are continuing
21 to this day.

22 62. The violations of the water quality certification and WDR are also violations of
23 Water Code section 13385.

24 63. The County is liable civilly under Water Code section 13385 for penalties up to
25 \$25,000 per day, per violation.

26 64. Each continuing violation also subjects the County to injunctive relief pursuant to
27 Water Code section 13386.

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PRAYER

1
2 WHEREFORE, the Regional Board prays for judgment against all Defendants, and each
3 of them, as follows:

4 1. Pursuant to Water Code section 13385, subdivision (a)(1), the court assess a civil
5 penalty not to exceed \$25,000 per day, for each violation of Water Code section 13376, by the
6 combined efforts of the Defendants, or by the distinct acts by the County and SoCal Gas
7 individually and separately, according to proof;

8 2. Pursuant to Water Code section 13385, subdivision (a)(5), the court assess a civil
9 penalty not to exceed \$25,000 per day, for each violation of the Clean Water Act section 301, by
10 the combined efforts of the Defendants, or by the distinct acts by the County and SoCal Gas
11 individually and separately, according to proof;

12 3. Pursuant to Water Code section 13385, subdivision (a)(2), the court assess a civil
13 penalty not to exceed \$25,000 per day, for each violation by the County of its water quality
14 certification or their WDR, according to proof;

15 4. Pursuant to Water Code section 13386, the court issue an injunction to restrain the
16 Defendants from continuing to violate Water Code section 13385;

17 5. Pursuant to Code of Civil Procedure section 1021.8, the court grant to the Regional
18 Board all its costs, including reasonable attorneys' fees, for investigating and prosecuting this
19 action; and,

20 6. For all other relief as the court deems just and proper.
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Dated: September 12, 2009

Respectfully submitted,

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