

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 18, 2009

- ITEM: **9**
- SUBJECT: Clean Water Act section 401 Water Quality Certification and enrollment in SWRCB GWDR Order No. 2003-017 DWQ: Gregory Canyon Bridge in Pala, unincorporated San Diego County. (Draft Certification No. R9-2009C-073). (Chiara Clemente)
- PURPOSE: To issue a Clean Water Act section 401 Water Quality Certification and enrollment in General Waste Discharge Requirements for the proposed Gregory Canyon Bridge.
- PUBLIC NOTICE: In accordance with requiring a minimum 21-day public notice prior to taking an action, the public was notified of Certification Application No. R9-2009C-073 via the Regional Board website on September 17, 2009.
- DISCUSSION: The Regional Board received an application for Water Quality Certification and Waste Discharge Requirements on September 17, 2009, on behalf of Gregory Canyon Ltd. LLC for the proposed construction of a bridge with three piers in the San Luis Rey River. The proposed bridge would allow construction and use of the proposed Gregory Canyon Landfill.
- The project will result in the discharge of waste, defined as the permanent placement of fill material (three concrete piers) into 0.002-acre of non-wetland waters (San Luis Rey River) of the United States and the State of California (State). The proposed project will restore and establish 2.79-acres of waters of the U.S. and State, consisting of riparia, as southern willow scrub, adjacent to and within the floodplain of the San Luis River, in the Pala portion of unincorporated County of San Diego.

Regional Board staff reviewed the initial application, and requested additional information on September 28, 2009. After receipt of additional information the application was deemed statutorily complete on October 13, 2009. Since that time, staff has continued to communicate with the applicant's representatives to obtain additional information necessary to condition and confirm the water quality certification accordingly.

As of November 2, 2009 the Regional Board received 1694 written comments. Of that number, 1683 comments were the same form letter, e-mailed by multiple individuals. These emails were generated from the NRDC website (<https://secure.nrdconline.org/site/Advocacy?cmd=display&page=UserAction&id=1621>). Each email has different senders and shows their respective residential addresses from all over California, the United States, and the world. The form email is titled, "Protect the San Luis Rey River and San Diego County's drinking water".

The remaining written comments were submitted by the following individuals from San Diego County:

1. Ms. Pam Slater-Price, Vice Chairwoman, Supervisor, Third District, San Diego County Board of Supervisors (dated October 2, 2009).
2. Mr. Edward Kimura, Chair, Water Committee, Sierra Club, San Diego Chapter (e-mailed and dated October 6, 2009).
3. Mr. Ken Weinberg, Director of Water Resources, San Diego County Water Authority (dated October 7, 2009).
4. Mr. George Courser, Director and Ms. Bonnie Gendron, Coordinator, Back Country Coalition (dated October 7, 2009).
5. San Luis Rey Band of Luiseno Mission Indians, by the California Indian Legal Services (Mark A. Vezzola, Staff Attorney) (dated October 8, 2009).
6. Ms. Larriann Musick, Tribal Chairperson, La Jolla Band of Luiseno Indians (dated October 8, 2009).

7. Pala Band of Mission Indians, by the law firm of Procopio, Cory, Hargreaves, and Savitch (attorney Walter E. Rusnick) (dated October 9, 2009).
8. Ms. Angela Veltrano, Chairman, Rincon Culture Committee, Rincon Tribe (dated October 9, 2009).
9. Ms. Mona M. Sespe, Pala Tribal Member (dated October 14, 2009).
10. Pala Band of Mission Indians, by the law firm of Procopio, Cory, Hargreaves, and Savitch (attorney Walter E. Rusnick) (dated October 23, 2009).
11. Ms. Nadine L. Scott, Attorney at Law, Friends of Loma Alta Creek (e-mailed and dated October 31, 2009).

All of the comments received were either in opposition to the proposed landfill and/or landfill with bridge.

Draft Water Quality Certification No. R9-2009C-073 contains standard conditions to ensure that the proposed project complies with the applicable provisions of the Clean Water Act. This includes conditions for compliance with the statewide NPDES Industrial Storm Water Permit, post-construction Best Management Practices (BMPs) to cleanup storm water and non-storm water urban runoff, compensatory mitigation for unavoidable impacts to waters of the U.S. and State, regular monitoring and reporting until certain milestones are reached, and transfer of responsibilities language.

Impacts to any Federal or non-Federal Waters of the State that would result from the construction of a landfill would be conditioned through a subsequent certification and/or Waste Discharge Requirements.

KEY ISSUES:

The Army Corps of Engineers' Jurisdictional Determination (JD) expired on October 28, 2009. The new JD is expected to be released on November 15, 2009. This draft certification is brought before the Board on the assumption that there will be little to no changes to the amount of area identified as waters of the U.S. that would be impacted by the bridge construction. If the new JD identifies significant

increases in the area of waters of the U.S. that could be impacted by the proposed project, the Regional Board will evaluate what additional conditions are necessary to protect water quality.. The proposed water quality certification contains reopeners to address changed circumstances, including changes to the jurisdictional determination, the project, or the applicable water quality standards.

Several comments were received that separating bridge and landfill permitting is improperly “piecemealing” the project and the Regional Board should not do that. It is well established CEQA prohibits piecemeal environmental review by dividing a large project into smaller projects – each with a minimal potential impact on the environment- which cumulatively may have adverse environmental consequences. The Regional Board is not piecemealing the environmental review by segmenting its permitting decisions on the proposed Gregory Canyon Bridge and the proposed Gregory Canyon landfill into two separate actions. The applicant, Gregory Canyon, Ltd., LLC requested that the proposed bridge permitting be separated from the proposed landfill permitting. The County of San Diego, the CEQA lead agency, prepared an environmental impact report (EIR) under CEQA that addresses the entire project and includes an evaluation of the environmental impacts of the landfill, the bridge, and other issues. The Regional Board is a responsible agency under CEQA, not the lead agency, and may act on applications it receives as long as it makes appropriate CEQA findings. The Regional Board relies on the EIR prepared by the lead agency, County of San Diego, but makes its own determination that as to whether and with what conditions to approve the project, taking into account the information provided in the lead agency’s EIR.

The Regional Board is required to act on applications for water quality certification within 60 days of receipt of a complete application (CFR 33 §325.29.IV.b.1). The Regional Board is not precluded from issuing waste discharge requirements if it fails to act on an application for water quality certification during the required period. The Regional Board is not required to

act on all applications it receives in one action; it can consider the Waste Discharge Requirements and CWA 401 Water Quality Certification independently, so long as the CEQA document it relies on is suitable for its purposes

By directing the Executive Officer to approve draft Certification R9-2009C-073 with enrollment in SWRCB GWDR Order No. 2003-017-DWQ, the Board is determining that the project will result in compliance with water quality standards and will adequately mitigate for the potential impacts to water quality and beneficial uses caused by the Gregory Canyon Bridge.

LEGAL CONCERNS:

The Regional Board may act on the application for water quality certification separate from the proposed waste discharge requirements for the landfill.

The proposed water quality certification contains reopeners for changed conditions or standards.

Any remaining legal issues have been addressed in key issues, above, and in the responses to comments.

SIGNIFICANT
CHANGES:

None.

SUPPORTING
DOCUMENTS:

1. Draft CWA section 401 Water Quality Certification and enrollment in SWRCB GWDR Order No. 2003-017-DWQ for Gregory Canyon Bridge in unincorporated San Diego County.
2. Application materials and Regional Board letters can be viewed at:
http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/projects/gregory_canyon_bridge/gregory_canyon_bridge.shtm
!
3. Comment letters received prior to November 2, 2009.

RECOMMENDATION: A recommendation will be made after the close of the hearing.