

Porter



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2009 OCT 19 A 10:00

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# LA JOLLA BAND OF LUISEÑO INDIANS

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

October 8, 2009

Dear Mr. Robertus:

The La Jolla Band of Luiseño Indians, in a letter dated June 25, 2009 and addressed to Dr. Richard Wright, Board Chairman for the San Diego Regional Water Quality Control Board, submitted comments opposing the permitting and construction of the proposed Gregory Canyon landfill along the San Luis Rey River in northern San Diego County.

Today, the La Jolla Band of Luiseño Indians again submits to you our strong opposition to the application for certification of the proposed Gregory Canyon landfill under Section 401 of the Clean Water Act. The Regional Board's certification, which is required for construction of the proposed landfill, would violate the Board's obligation under the Clean Water Act and state law to preserve and protect waters in the state. Allowing the proposed landfill to be built not only would threaten critical drinking water sources and the San Luis Rey River itself, but would cause significant impacts to important habitat for the numerous species of flora and fauna that are present on the site.

We also strongly oppose the proposed landfill because it would desecrate sacred Indian sites, including Gregory Mountain and Medicine Rock. This site and the surrounding area are sacred to the Luiseño Indian Tribes and to all Native Americans. While the Board is focused on considering the water quality aspects of the application it cannot simply ignore the religious and spiritual beliefs and interests of Native American Tribes in considering whether this proposed landfill should be constructed. Such an action would directly conflict with the Regional Board's continuing obligation to consider environmental justice issues when it takes permitting actions.



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We understand that the applicant is seeking Section 401 certification only for construction of the bridge needed to access the proposed landfill. However, we also understand that the Army Corps of Engineers is in the process of determining whether a Clean Water Act Section 404 permit also will be required to place fill in the creek in Gregory Canyon itself. Because the Army Corps has not resolved that issue, we feel it is improper for the Regional Board to issue an opinion regarding the Section 401 application at this time. We also feel that the project should not be broken down into small pieces and that the impacts of the entire project should be considered as a whole. When a project is piecemealed each piece seems to have a small impact while when they are considered as a whole the impact is very significant. This tactic should not be allowed.

While our position is that the Regional Board should deny the certification due to the significant negative impacts of the proposed project on water quality in the San Luis Rey Watershed, if the Regional Board decides to consider the Section 401 application further it should both extend the comment period on the certification to allow the public an opportunity to consider a complete application, and consider the certification at a regularly scheduled meeting of the entire Regional Board. The Regional Board properly made the decision to address the issue at a public meeting previously, and it should not reverse itself now due to the lobbying efforts of the project proponents.

A previous report issued by the Regional Board states that the proposed landfill would "...present a significant threat to water quality in the San Luis Rey River". The proposed site is within the 100-year floodplain and siting the landfill in this location would be in violation of the standards outlined in the California Code of Regulations, Title 27, Division 2, Subdivision 1, Chapter 3, Subchapter 2, Article 3, which give very specific siting requirements that the proposed location does not meet. 1. Section 20260 of the above referenced code, SWRCB -- Class III: Landfills for Nonhazardous Waste, specifies that MSW landfills "shall be sited where soil characteristics, distance from waste to groundwater, and other factors will ensure no impairment of beneficial uses of surface water or groundwater beneath or adjacent to the landfill".



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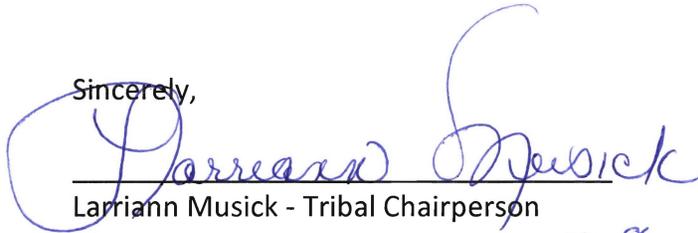
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Section (c) specifies that a landfill shall be “designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return period”. This location cannot assure that this will not happen and for this reason alone the Board should deny the certification. Section (d) specifies not siting landfills on a known Holocene fault and the proximity of this site to the Lake Elsinore fault is cause for great concern.

Gregory Canyon is simply the wrong place for a landfill.

Sincerely,

  
Larriann Musick - Tribal Chairperson

10-8-09