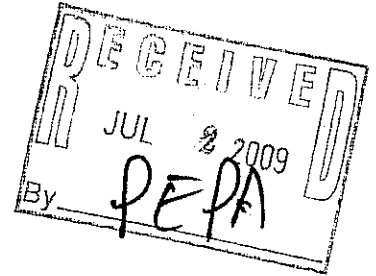


UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS  
Southern California Agency  
1451 Research Park Drive, Suite 100  
Riverside, California 92507-2154  
Telephone (951) 276-6624 Telefax (951) 276-6641

IN REPLY REFER TO:  
Water Resources

JUL - 1 2009



San Diego Regional Water Quality Control Board  
9174 Sky Park Ct. Suite 100  
San Diego, CA 92123-4340

Attention: Mr. Richard Wright, Chairman

Subject: Comment Letter for Tentative Order No. R9-2009-0004, Waste Discharge Requirements for the Gregory Canyon Landfill, San Diego County California

Dear Mr. Wright,

This letter is provided by the U.S. Bureau of Indian Affairs Southern California Agency, (BIA), to review and comment on Tentative Order No. R9-2009-0004, Waste Discharge Requirements, (WDR), for the Gregory Canyon Landfill, located in the County of San Diego, California. It is BIA understanding that the California Regional Water Quality Control Board, San Diego Region, (Regional Board), is considering adoption of waste discharge requirements, (WDR), for the proposed Landfill. The following letter documents BIA's overall standpoint regarding this proposed project. Selected comments on the WDR for the proposed Gregory Canyon Landfill are tabulated in Enclosure 1.

The BIA is the oldest bureau of the United States Department of the Interior. Established in 1824, the BIA provides services to approximately 1.7 million American Indians and Alaska Natives. Among the many duties of the BIA, as established by the United States Congress, is to serve as an advocate for the sovereignty and rights of tribes in dealing with other governmental entities and, to fulfill and execute the Federal Government's trust responsibility to American Indian Tribes. *All federal agencies share in this trust responsibility.*

Gregory Canyon is south of the San Luis Rey River and State Highway 76, it is located in an area of great natural beauty which is the entrance to the Pala Indian Reservation as well as six other Native American tribal reserves located along this State Highway. It would be a shame to approve a municipal landfill at the gateway to one of the last historical strongholds of Native American Population in Southern California.

The portion of Gregory Canyon where the proposed Municipal Waste Landfill, (MWLF), is planned, is not part of the Pala Indian Reservation, it is however, located adjacent to sacred Indian Cultural sites of great significance both to Indian and scientific communities in the region.

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IN AMERICA 

We share concern along with the Pala Band of Mission Indians that obvious issues regarding the location of this MWLF are being masked by the land owner. By continuing to seek permit approval to operate a MWLF from various federal, state and local authorities, the land owner is avoiding the fact that the proposed location has cultural, biological, geological, hydrological, environmental and sociological significance to the communities that reside in Northern San Diego County. The issue of this landfill being proposed in Gregory Canyon is inappropriate for both state and federally recognized governments. The BIA would like to clarify our position; we believe that utilizing unrelated permit approval processes and ultimately submitting these permits as a means to gain acceptance from the Regional Board, segments consideration for environmental impacts. Furthermore; it avoids consideration of the cumulative impacts the proposed municipal solid waste landfill will have on the environment and the local communities.

Gregory Canyon drains into the San Luis Rey River which is part of the San Luis Rey Watershed, one of the major watershed river systems in San Diego County. The portion of the San Luis Rey River that abuts the mouth of Gregory Canyon is owned by the Pala Band of Mission Indians. Existing water ponds formed by previous sand mining operations are now present. It is the contention of the BIA that these ponds as presently occurring are aiding in the replenishment of the San Luis Rey Watershed and Pala Sub-Basin, as well as becoming a wetlands area providing significant relief to the local wildlife and ecological habitat of northern San Diego County. The close proximity of the proposed MWLF poses an imminent risk to the fragile ecological river system which supports both human and environmental needs.

Historical events in the last 100 years have greatly altered the hydrology of the river, these anthropogenic actions include 1) the building of Lake Henshaw Dam, 2) the Canal Diversion to Escondido located ten miles below Lake Henshaw, 3) Imported Colorado River water, and 4) Increased salt loads entering the groundwater from storm water and agricultural irrigation runoff. Cumulative effects of these influences coupled with further industrial use by creating a MWLF will disrupt an already fragile natural resource and will be another item hindering recovery efforts being implemented by the San Luis Rey Resource Conservation District, the City of Oceanside, and other local, state and federal agencies.

Briefly, The BIA objects to the following methodology presented in the WDR:

- The Discharger being a Limited Liability Company.
- The lack of financial assurances for the project outlined in this document.
- The location of the proposed landfill.
- Non-compliance with federal requirements.
- No methodology regarding protecting significant cultural resources.
- No mention for removal or replacement or protection of existing oak trees located in Gregory Canyon.
- Generic construction requirements rather than being site specific.
- The containment structure in relation to site specific geology and topographic concern.
- Topographic concern regarding storm water run-off.
- The inadequately engineered proposed sub-drain system.

- The lack of geotechnical recommendations for removal and replacement of existing natural ground prior to artificial fill/ waste placement.
- The lack of commenting on existing terrain and topography regarding recommendations for engineering embankments.
- No Mention of cut/ fill transition zones or benching requirements.
- No Mention of blasting requirements.
- No Mention of oversize rock disposal generated from initial grading and/or blasting.
- No preliminary geotechnical information for either the proposed landfill or the borrow areas.
- Inadequate discussion on hydrology, the San Luis Rey River, or the drought crisis in San Diego County.
- The lack of information regarding the movement, chemistry and ultimate fate of contaminant plumes that will migrate through the alluvial and fractured rock aquifer systems beneath the landfill.
- The replacement water contingency plan.
- The lack of fill Material for the project
- The lack of gradational fill cover and bedding requirements.
- The lack of water for the project.
- Waste discharge requirements as relates to federal regulation.
- The illusion that this project will have no significant impact to the community or to the environment.

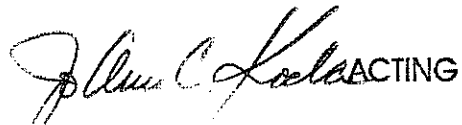
More explicit comments are detailed in Enclosure 1.

The BIA presents this letter not merely as comments to the Regional Boards WDR, but as a call to consider the inherent rights of the Native American population that make Northern San Diego County their home. These tribes are on par with the United States. That is, these tribes exercise inherent sovereign authority over their members and territories. This authority is not a delegation from the United States or any other government; rather it is founded by historical consequential status as independent nations. Within this authority tribes hold federally reserved rights to trust water, cultural, and natural resources. It is the responsibility, of all federal and state agencies to protect these sovereign trust resources for future generations to come, to be good stewards to the environment and to be good neighbors, not only for federal reserves but also for the state of California.

It is therefore; the intent of the BIA to be proactive with the Pala Band of Mission Indians, to stand by their side to voice concerns regarding this MWLF as it relates to the above mentioned topics, as well as; addressing federally reserved trust natural resources both from a quantitative and qualitative perspective.

If there are any questions or clarification needed regarding the content of this letter, please do not hesitate to contact Ms. Christina Mokhtarzadeh, Hydrologist Southern California Agency at (951) 276-6624 ext. 257 or Mr. James Fletcher, Superintendent at (951) 276-6624.

Sincerely;

  
James J. Fletcher  
Superintendent

Enclosure:

Cc: Chief of Division of Environmental, Cultural Resources Management & Safety, Pacific Region  
Deputy Superintendent of Trust Services, Southern California Agency, Pacific Region  
Environmental Protection Specialist, Southern California Agency, Pacific Region  
Regional Geo-Hydrologist, Pacific Region, Bureau of Indian Affairs  
Regional Water Rights Specialist, Pacific Region, Bureau of Indian Affairs  
Chairperson, Pala Band of Mission Indians  
Regional Solicitor, U.S. Department of the Interior  
California Department of Water Resources  
U.S. E.P.A., Tribal Water Protection Enforcement Manager  
Hydrologist, U.S.G.S., WR, SW, WRD  
District Commander, U.S. Army Corps of Engineers, Los Angeles District



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**ENCLOSURE 1:**

**COMMENTS & QUESTIONS:**

**Tentative Order No. R9-2009-004, Waste Discharge Requirements for Gregory Canyon Ltd., Gregory Canyon Landfill San Diego County**

**A. Page 1, item 1, Discharger:**

Gregory Canyon Limited a California Limited Liability Company is the Discharger and assumed to be the Property Owner of Gregory Canyon. Why is the land owner a limited liability company? What limits does this company have regarding waste discharge requirements for the proposed landfill and what assurances are being presented to eliminate the obvious risk to the environment, particularly to the watershed?

**B. Page 1, item 2, Facility Location:**

This paragraph is misleading. Gregory Canyon borders the Pala Indian Reservation.

**C. Page 1, item 2, Threat to Water Quality:**

How can the Discharger being a limited liability company give any assurance to the surrounding community that municipal solid wastes can be managed properly to protect the water ways of the United States. More specifically how is the Discharger addressing potential contamination of adjacent groundwater supply to current water supply wells north and northeast of the project in the Pala Sub-Basin. Principally, the impacts produced by reversed groundwater flow gradients during times of drought.

**D. Page 1, item 2, Legal Authority:**

The Bureau of Indian Affairs does not believe that the Discharger complies with the Code of Federal Regulation, Title 40, Part 258, (hereinafter, CFR Title 40, Part 258) as follows:

1. **§ CFR Title 40, Part 258.13 Fault Areas-** The Discharger has not demonstrated that the structural design of the proposed landfill will protect the environment namely the San Luis Rey Watershed,
2. **§ CFR Title 40, Part 258.14 Seismic Impact Zones-** design criteria of the MWLF units do not take into consideration the topography of the terrain coupled with the Elsinore/ Laguna Salada fault system in relation to structural design. Environmental protection controls and the potential stability of the liner system have not been demonstrated.

3. **§ CFR Title 40, Part 258.15 Unstable Areas-** The design criteria of the MWLF units does not demonstrate the stability of the project. Given the steep topography and geomorphology of Gregory Canyon as well as the canyon out-letting to the lip of the San Luis Rey River poses concern for the placement of nonstructural waste materials in the volumes presented for this project. The discharger has not demonstrated structural stability of the proposed embankments. Based on these factors, there is a high probability of differential settlement between the bedrock contacts and artificial fill /waste materials planned to be placed.
4. **§ CFR Title 40, Part 258.20 Procedures for Excluding the Receipt of Hazardous Waste-** Procedures for commercial waste, industrial wastes and construction waste disposal are not adequate given the sensitivity of the surrounding ecological system and San Luis River Watershed.
5. **§ CFR Title 40, Part 258.27 Surface Water Requirements-** Gregory Canyon is a tributary which is susceptible to flash flooding. Given the close proximity to the San Luis Rey River, discharge to the waters of the United States including wetlands violates any requirement of an area-wide or State-wide water quality management plan that has been approved under section 208 319 of the Clean Water Act, as amended.
6. **§ CFR Title 40, Part 258.40 Design Criteria-** The following factors have not been considered adequately addressed.
  - The hydro-geological characteristics of surrounding lands;
  - The quantity, quality, and direction of flow of groundwater;
  - The proximity and withdrawal rate of the ground-water users;
  - The availability of alternative drinking water supplies, particularly for the Pala Indian reservation who's sole source of potable water comes from the Pala Sub-Basin.
  - The existing quality of the ground water, including other sources of contamination and their cumulative impacts, and whether the ground water is currently used or reasonably expected to be used for drinking water; It should be noted the Pala Sub-Basin is the sole source of potable drinking water for the Pala Indian Reservation. And;
  - Public Health Safety and Welfare effects.
7. **§ CFR Title 40, Part 258.50 Applicability-** Resource values of the underlying and down gradient aquifer system including proximity, groundwater quality and quantity, as well as current and future use of the aquifer system has not been considered.

**E. Page 2, item 6 Local Hydrology:**

The description of the existing hydrogeology is inadequate upon which to analyze the project and address significant impacts.

**F. Page 2, item 7 Groundwater Use:**

This paragraph is misleading. There is no mention of the Pala Sub-Basin which is the sole source of potable water to the Pala Reservation.

**G. Page 2, item 8, Compliance with Federal Siting Requirements:**

The Bureau of Indian Affairs does not believe that the discharger complies with the Code of Federal Regulation, Title 40, Part 258, Subparts B, D, and E as follows:

- **§ CFR Title 40, Part 258.11 Flood Plains-** The discharger has not demonstrated washout risk of solid waste into the San Luis Rey Flood Plain which poses hazard to human health and the environment.
- **§ CFR.12 Title 40, Part 258.12 wetlands-** No mention of section 404 of the Clean Water act is presented regarding discharging into the Waterways of the United States, namely the San Luis Rey River. The portion of the river at the lip of Gregory Canyon is owned by the Pala Band of Mission Indians. Existing water ponds formed by previous sand mining operations are now present. It is the contention of the Bureau of Indian Affairs that these ponds as presently occurring are aiding in the replenishment of the San Luis Rey Watershed and Pala Sub-Basin as well as becoming a wetlands area providing significant relief to the local wildlife and ecological habitat of northern San Diego County. The close proximity of the proposed MWLF has not demonstrated requirements set forth in this section as relates to the San Luis Rey River or the Federal Reserve held in Trust by the United States for the Pala Band of Mission Indians.

**H. Page 3, item 10, Containment Structure:**

The Containment Structure is considered inadequate from the perspective of the above mentioned comments. The design does not take into account the geotechnical consideration for the local topography, the steep sloping terrain occurring on the sidewalls of the canyon, the presence of the Elsinore/ Laguna Salada Fault System, the potential for structural failure of the MWLF due to differential settlement where the liner will be installed and the cumulative impact these risks pose to the San Luis River Watershed system.

**I. Page 4, item e, Sub-drain System:**

The Sub-drain system for the proposed MWLF is considered inadequate from a geotechnical perspective. There is no mention of back drains, or slope drains tying into the sub-drain system. In the areas of bedrock and artificial waste fill contact, there is no mention of water compromising the integrity of the containment structure by sub-surface intrusion, or mitigation methods designed to prevent flow of water away from these sensitive areas. Sub-drain foundation requirements are not specified. Filter material, filter fabric and schedule pipe requirements for the drain system is not listed. There are no standard details listed to understand how this drain system will be required to be installed or what type of ground the system will be placed.

**J. Page 5, item 12, Borrow/Stockpiled Soils:**

It is understood that Borrow/ Stockpile "A" will utilize materials to cap the MWLF at the end of the life of the project. Furthermore, it is our understanding that approximately 1.3 million cubic yards of material will be excavated, and stockpiled prior to use. The borrow site is planned for excavations ranging from ten to sixty-five feet below existing ground surface.

There is no preliminary geotechnical evaluation, boring logs, test pit logs or soil sampling analysis presented to demonstrate that the planned materials are suitable for its intended use.

There is no mention of excavation activity for Borrow/Stockpile "B". It is assumed that imported soils will be stockpiled and no excavation will be used as capping material for the MWLF.

**K. Page 6, item 13, Alternative Cover:**

This paragraph is ambiguous, it is not understood how the owner has come up with 8.4 million cubic yards of material to be generated on site. It is unclear why the site will be short 4.3 million cubic yards and why is the project short of capping material if the facility is stockpiling 1.3 million cubic yards as explained in item 12.

**L. Page 6, item 14, Contingency Water Treatment System:**

A permit under section 404 of the Clean Water act should be obtained to discharge effluent into the San Luis Rey River. The disposal facility for brine disposal should be listed.

**M. Page 6, item 15, Industrial and Construction Storm Water Discharges:**

The Bureau of Indian Affairs will comment on this section when the amendment becomes available.

**N. Page 6, item 16, Storm Water Conveyance System:**

There is no mention of the quantity of surface water anticipated to be generated during storm events or the impact to down stream communities. It is unclear if the designed surface water drainage system is adequate.

**O. Page 7, item 19 Replacement Water Contingency Plan:**

San Diego County has limited groundwater storage capacity. The San Luis Rey Watershed is one of the major water bearing aquifer systems in the county. Only 16 percent of potable water comes from the region, leaving 84 percent of potable water being imported from outside sources. The State of California is currently planning for decreased water supply due to changing weather patterns and is seeking alternative source solutions to the realization of decreased water availability. It is misleading to assume that the Discharger will be able to supply private and public well owners and other parties with a contingency water supply. It is also misleading to assume that an accurate detection monitoring unit can be installed to identify leaks for a MWLF placed on a fractured Igneous intrusive bedrock formation located in the Elsinore/Laguna Salada Fault system.

**P. Page 8, Item 22 California Environmental Quality Act:**

A permit under section 404 of the Clean Water act should be obtained to discharge effluent into the San Luis Rey River. The BIA Respectfully disagrees with the statement the project will not have a significant impact on water quality.

**Q. Page 9, item 23 Financial Assurances, and item 24 Annual Fees:**

There is no mention of posting Bonds, Letters of Credit or any other financial method to assure proper remediation in case of landfill failure or closure and post closure requirements being accomplished. The BIA respectively disagrees with waiving any environmental code requiring financial assurance that the MWLF will be maintained and closed to the highest standard for protecting the watershed.

**R. Page 9 through 12, item 25, Water Quality Certification:**

The BIA respectfully disagrees with the methodology presented in this section of the Waste Discharge Requirements. Even though it has been interpreted that the MWLF is physically outside the limit of Federal US Surface Waters, The MWLF will eventually have to discharge into U.S. surface waters and therefore; should be required to comply with federal law. Construction of a road across the San Luis River is just one facet of the total construction as well as industrial operation for the MWLF. This section misleads the reader into believing that all environmental regulation has been complied with.

**S. Page 12, Item 28, Water Resource Factors:**

The BIA does not agree that all water resource factors have been considered and respectively request the Regional Board to reconsider this order.

**T. Pages 13 & 14, item A, Prohibitions, and Pages 14 & 15 item B, General Discharge Specifications:**

There is no mention of federal requirements.

**U. Pages 15 through 21, Discharge requirements for Specific Types of Waste:**

No mention of the location of discharge into the San Luis Rey River or the cumulative effects this discharge will have with other concerns of the region. The federal regulation of the Clean Water Act as defined in section 404 is not addressed for surface water ways of the U.S.

**V. Pages 21 through 24, Landfill Operation Specifications:**

The content of this subsection is generic and not site specific. This section does not address concerns of the region or the specific engineering requirements necessary to construct artificial embankments that will protect the surrounding lands in north County. This section should also be updated to reflect recent changes in state law.

Paragraph g. of this section does not address where the sediment will be transported for disposal or standard testing methods to be conducted on desiltation materials for assurance of non-hazardous classification once removed from the desiltation basins constructed for the project. If Hazardous classification of these materials is determined, the Discharger should list facilities these materials will be transported to and list standard methods required for transporting such materials.

Item 7. Of this section the BIA will comment on when the amendment becomes available. As discussed on page 6 item 15 section for- "Industrial and Construction Storm Water Discharges".

**W. Pages 25 through 31, Landfill Construction Specifications:**

- **Item 2 Subdrain-** Please see item "I". of BIA Comments and item "5" of this section.
- **Item 3, Liner Materials-** No mention of specification of liners or how they will be sealed to prevent leaks. Please note that these liners will be placed on a subdrain system that is not defined. The Gregory Canyon is founded on a fractured bedrock structure which local residence depends on for potable water.
- **Item 4 Slope Stability-**
  - A. Standards for slope stability should be listed as to what requirements will be followed.
  - B. All interim Cut/Fill slopes should be designed, constructed and approved by a registered Engineering Geologist **and** registered Civil engineer certified in the State of California
  - C. All temporary Slopes should be treated as in the above stated requirement for slopes.
  - D. Waters of the U.S. should also be included in this paragraph.
  - E. All interim Cut/Fill slopes should be designed, constructed and approved by a registered Engineering Geologist **and** registered Civil engineer certified in the State of California. Fill slopes should be designed not to exceed horizontal-to- vertical ration of 2:1, without benching, maximum height should not exceed 30 feet without benching and slope drains should be designed by the proper authorities for the project. Cut slopes and temporary cutbacks have not been addressed.
  - F. This paragraph is ambiguous, it should be re-written to incorporate the above comment.
- **Item 5 Foundation Sub-grade-** Foundation sub-grades should have cut/ fill and blasting recommendations and requirements set forth by a registered Geotechnical Engineer certified in the state of California. Perforated sub-drains should be placed only on bedrock basement materials to prevent saturation of underlying topsoil/ alluvium/ colluviums soils which should **not** be left in situ. This section should be rewritten to address the specific requirements of the area. Greater thought should be given for the protection of natural resources in the area. Removal criteria should be presented in a three dimensional format. No mention of benching back into the sidewalls of this extremely steep canyon or recommendations to prevent slippage of the linear, waste and artificial fill which will be used to construct the final embankment has been presented. There are no

general details to aid the reader and more importantly the Discharger to construct the MWLF.

- **Item 6 Liner System-**

There is no mention of how this liner system will be sealed. It is assumed that the discharger intends to simply overlay the liner panels which the BIA feels is not adequate for a MWLF being located in such an environmentally sensitive area.

- **Item 7 Construction quality Assurance/Quality Control**

The Waste Management Unit should be designed and constructed by both a registered civil engineer and certified engineering geologist. It is felt that leak detection surveys are inadequate for the intended use of this project. The liner panels are not specified to be sealed and the MWLF will be constructed on a fractured bedrock geologic structure. The potential for major subsurface contamination is imminent.

- **Item 8 Leachate collection and removal system**

There are no standard or general details to aid the reader and more importantly the Discharger to construct the collection and removal system.

- **Item 10 Landfill Cover**

There are no gradational or compaction requirements for land fill cover presented. It is recommended that specific recommendation be included for this project. It is also assumed that the discharger does not have enough cover to complete this project, it is therefore requested that the discharger provide alternative source location for suitable imported materials.

**X. Pages 31 through 33, Fill Specification:**

There is no mention of fill specification in this section. It is unclear why this section is labeled "Fill Specifications".

**Y. Pages 34, 35, PROVISIONS:**

This section seems grossly inadequate for the purpose of insuring this MWLF meets with requirements to protect the environment. There is no mention of Bonding for this work. Financial Assurance should be provided before the WDR is approved. The costs lined out within this section seems small, there is no detailed cost analysis to determine if these costs are relevant.

**Z. Page 35, item 6, Revision of Waste Discharge Requirements:**

This section is written in a fashion to give the discharger a way out of the WDR, it appears the Regional Board is not protected.

**AA. Page 36, item 9 Entry and Inspection:**

The Regional Board should be allowed to enter inspect, the premises at anytime they think fit or have reason to believe an inspection is necessary.

**BB. Page 37, item 12, Replacement Water for Supply Wells:**

The State of California is currently planning for decreased water supply due to changing weather patterns and is seeking alternative source solutions to the

realization of decreased water availability. It is misleading to assume that the Discharger will be able to supply private and public well owners and other parties with a contingency water supply.

**CC. Pages 39 through 41, Section 401 Water Quality Certification:**

No mention of section 404 of the Clean Water act is presented regarding discharging into the Waterways of the United States, namely the San Luis Rey River. The Code of Federal Regulations should be included in this section.

**DD. Page 44, item 3, Preliminary Design:**

The Preliminary design should be prepared and reviewed prior to the WDR being approved.