

Memorandum

To: Bill Hutton, Law Offices of E. William Hutton, P.C., (818) 936-3480

From: Bill Magdych, Ph.D., Bill Magdych Associates, 858-412-7601

Date: 7/26/2011

Re: Review of July 8, 2011 U.S. Army Corps of Engineers Revised Jurisdictional Determination

The technical memorandum is written to assess the impacts from the revised Jurisdictional Determination issued by the U.S. Army Corps of Engineers (Corps) on July 8, 2011.

The Corps has stated to Gregory Canyon Limited (GCL) that there has been no change from its prior jurisdictional determination on January 13, 2010. However, there appear to be minor changes at the location of landfill access road bridge from the Corps' 2010 jurisdictional determination with an increase in the acreage of waters of the U.S. subject to temporary impact from construction of the landfill access road bridge. GCL is coordinating with the Corps to determine whether or not a change did occur; however, this technical memo assumes that there is an increase in the boundary drawn for waters of the U.S. at the landfill access road bridge.

2010 Addendum

On May 7, 2010, the Director of the San Diego County Department of Environmental Health (DEH) approved an Addendum to the Revised Final Environmental Impact Report (EIR) (2010 Addendum), which addressed changes in the estimates of federal and state jurisdictional waters that would be within the 308.6 acre project area (project area), from those identified and analyzed in the 2003 Draft EIR and previously updated in the Revised Final EIR. The basis for those revised estimates were set forth in page 4 of the 2010 Addendum, and included a January 13, 2010 Jurisdictional Determination by the Corps.

The scope of federal and state jurisdictional waters were set forth in a revised Table 4.9-5 in the 2010 Addendum, which is set forth below.

Table 4.9.5

**Potential Impacts To Jurisdictional Areas
for the Gregory Canyon Landfill Project
(Values rounded to the higher one-tenth of an acre)**

U.S. Army Corps of Engineers - Clean Water Act Section 404

Waters of the U.S.*	Permanent (acres)	Temporary (acres)	Total (acres)
San Luis Rey River Bridge	<0.1**	0.7	<0.8
Gregory Canyon	0.5	0	0.5
Total	<0.6	0.7	<1.3

*Acreages are subject to final confirmation from the agency

**<0.1 acres of Federal wetland

Regional Water Quality Control Board - Clean Water Act Section 401 and Porter Cologne

Waters of the State (Subject to Section 401 Certification)*	Permanent (acres)	Temporary (acres)	Total (acres)
San Luis Rey River Bridge	<0.1**	0.7	<0.8
Gregory Canyon	0.5	0	0.5
Total	<0.6	0.7	<1.3

*Acreages are subject to final confirmation from the agencies

**<0.1 acres of Federal wetland

Riparian Vegetation and Other Habitats Subject to Porter Cologne*	Acres
Vegetated Surface Waters (Southern Willow Scrub)	0.4
Vegetated Surface Waters (Disturbed Southern Willow Scrub)	0.4
Vegetated Surface Waters (Cotton-Willow Riparian Forest)	0.2
Open Channel**	0.2
Total	1.2
*Overlaps with Waters subject to 401 Certification; Acreages are subject to final confirmation from the agency	
**Sandy habitat with sparse herbaceous cover	

Total Waters of the State (Exclusive of overlaps between presented Federal waters and riparian habitats)	Acres
Total	1.6

California Department of Fish and Game - Streambed Alteration Agreement
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Riparian Vegetation and Other Habitats	Acres
Vegetated Surface Waters (Southern Willow Scrub)	0.4
Vegetated Surface Waters (Disturbed Southern Willow Scrub)	0.4
Vegetated Surface Waters (Cotton-Willow Riparian Forest)	0.2
Open Channel*	0.2
CDFG Gregory Canyon Streambed**	<0.5***
Total	<1.7
*Sandy habitat with sparse herbaceous cover	
**Includes Gregory Canyon main thalweg plus other CDFG streambed	
***Acreages are subject to final confirmation from the agency	

The first two charts in Table 4.9-5, which identify waters for Clean Water Act Section 404 and 401 permitting purposes, are directly related to the extent to federal jurisdiction over waters within the project area. Both tables included a notation that the acreages presented were subject to final confirmation by the agency. This provided an express recognition that the acreages might change, and this was considered in both the impacts analysis and the conclusion reached.

The 2010 Addendum, p. 16, concluded that the change in the acreage of jurisdictional waters did not create conditions requiring preparation of a Subsequent or Supplemental EIR. The reasons for this included:

- The 2003 Draft EIR noted that no impacts were identified or mitigations proposed related specifically to the scope of jurisdiction because “[t]hese impacts overlap with significant vegetation community impacts for which mitigation is proposed.” 2010 Addendum, p. 4, p. 6 and p. 9.
- Potential environmental impacts to jurisdictional waters within the project area would overlap potential environmental effects on sensitive species at the same locations on the landfill site. 2010 Addendum, p. 9.

- Following implementation of mitigation measures, potential impacts to vegetation communities and sensitive species would be less than significant. 2010 Addendum, p. 9.
- Any change in federal or state jurisdiction will not affect the acreage of land that will be disturbed in connection with the project. 2010 Addendum, p. 9.
- Potential impacts to hydrology and water quality would, after implementation of mitigation measures, be less than significant. 2010 Addendum, p. 10, p. 11-12
- Potential impacts to steelhead trout from the project are found to be less than significant, since impact to hydrology and water quality were less than significant. 2010 Addendum, p. 13-15.
- Potential impacts from litter would, following installation of a proposed litter fence, be less than significant. 2010 Addendum, p. 15.

July 8, 2011 Revised Jurisdictional Determination

In its January 13, 2010 Jurisdictional Determination, the Corps noted that its determination was partial, and was limited to the Gregory Canyon drainage area and the area of the proposed bridge crossing. The Corps noted that it would complete the wetland delineation for the remainder of the proposed project site. The July 8, 2011 Jurisdictional Determination represented the completion of the process.

In the cover letter to the July 8, 2011 Jurisdictional Determination, the Corps noted the prior focus on the Gregory Canyon drainage area and the area of the proposed bridge crossing, and presented a jurisdictional determination for the entire landfill property. The Corps included a series of graphics and supporting documentation identifying waters of the U.S., but did not provide any graphics showing those jurisdictional areas in relation to the 308.2 - acre project area or the 2010 jurisdictional determination.

In order to confirm Corps' statements to GCL that there has been no change from its prior jurisdictional determination, I undertook an investigation to determine whether impacts to jurisdictional waters within the 308.2 - acre project area might have changed in light of the revised jurisdictional determination. To do that, I prepared a series of graphics using Google Earth and other existing electronic files and printed maps showing the location of project components. It was possible to examine the printed maps in the July 8, 2011 jurisdictional determination relative to topographic contour lines and landmark features shown in aerial photos and draw in a close approximation of the boundary of the July 8, 2011 jurisdictional determination in Google Earth. A map showing the location of the access road bridge in relation to the waters of the U.S. shown in the Corps' graphics for the July 8, 2011 jurisdictional determination is included as Figure 1, and Figure 1 also includes the boundary previously determined for the January 13, 2010 jurisdictional determination.¹

Based on the mapping prepared by me, there was no change in impacts to jurisdictional waters in the Gregory Canyon drainage area. However, there would be an increase in impacts to jurisdictional waters and waters subject to Clean Water Act Section 401

¹ I have also requested the electronic mapping files used by the Corps, but those have not been received as of the date of this technical memorandum.

certification in the area of the proposed bridge crossing assuming that the boundary of jurisdictional waters has changed in this area. Four of the five permanent bridge pillars, rather than three of the five, would be within waters of the U.S., but the permanent impact acreage would remain <0.1 acres, as estimated in Table 4.9-5 of the 2010 Addendum. The acreage of temporary impact from bridge construction would increase by approximately 0.1 to 0.2 acres, or from a total of 0.7 acres to 0.8 to 0.9 acres. Therefore, the total impact to waters of the U.S. and waters subject to Clean Water Act Section 401 certification in the area of the bridge crossing would increase from <0.8 acres to <1.0 acres.

Based on my analysis and mapping, the revised jurisdictional determination did not result in a change in the previously-estimated impacts to total waters of the state of 1.6 acres, since that calculation considered both waters of the U.S., waters subject to Clean Water Act Section 401 certification, and riparian habitats subject to Porter Cologne, and was exclusive of overlaps. The increased area of temporary impacts within waters of the U.S. and waters subject to Clean Water Act Section 401 certification are entirely within riparian areas that would be impacted by bridge construction, which were already included within the 1.6 acres of total waters of the state.

Based on the revised jurisdictional determination, the first two charts in Table 4.9-5 would be revised as follows:

Table 4.9.5
Potential Impacts To Jurisdictional Areas
for the Gregory Canyon Landfill Project
(Values rounded to the higher one-tenth of an acre)

U.S. Army Corps of Engineers - Clean Water Act Section 404

Waters of the U.S.*	Permanent (acres)	Temporary (acres)	Total (acres)
San Luis Rey River Bridge	<0.1**	0.9	<1.0
Gregory Canyon	0.5	0	0.5
Total	<0.6	0.9	<1.5

*Acreages are subject to final confirmation from the agency

**<0.1 acres of Federal wetland

Regional Water Quality Control Board - Clean Water Act Section 401 and Porter Cologne

Waters of the State (Subject to Section 401 Certification)*	Permanent (acres)	Temporary (acres)	Total (acres)
San Luis Rey River Bridge	<0.1**	0.9	<1.0
Gregory Canyon	0.5	0	0.5
Total	<0.6	0.9	<1.5

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**<0.1 acres of Federal wetland

Potential Impacts

The 2010 Addendum concluded that the conditions requiring preparation of a Subsequent or Supplemental EIR did not exist even though the impacts to waters of the U.S. were subject to final confirmation and could change. I have evaluated potential impacts arising from the increase in temporary impacts to waters of the U.S. resulting from an apparent change in the boundary of the ordinary high water mark. Based on that evaluation, I conclude that it would not result in the identification of a new significant impact or an increase in a previously-identified significant impact, for the reasons set forth below.

- The area of increased temporary impacts to waters of the U.S. would overlap the significant vegetation community impacts for which mitigation is proposed, and that following implementation of mitigation measures would be reduced to less than significant.
- The area of increased temporary impacts to waters of the U.S. would overlap potential environmental effects to sensitive species for which mitigation is proposed, and that following implementation of mitigation measures would be reduced to less than significant.
- The area of increased temporary impacts to waters of the U.S. will not affect the acreage of land that will be disturbed in connection with the project.
- The area of increased temporary impacts to waters of the U.S. will not change potential impacts to hydrology and water quality which, after implementation of mitigation measures, will remain less than significant.
- The area of increased temporary impact to waters of the U.S. will not change potential impacts to steelhead trout, which will remain less than significant since impacts to hydrology and water quality will remain less than significant.
- The area of increased temporary impacts to waters of the U.S. will not change potential impacts from litter which, following installation of a proposed litter fence, would remain less than significant.
- There are no changes to previous estimates in the 2010 Addendum as to permanent impact to waters of the U.S. or waters subject to Clean Water Act Section 401 certification, or to total impact on waters of the state.

Each of the reasons cited by DEH to support its conclusions in the 2010 Addendum continues to apply with full force.

Conclusion

Based on my review, the slight increase in the temporary impact to waters of the U.S. and waters subject to Clean Water Act Section 401 certification resulting from an apparent change in the boundary of the ordinary high water mark does not change any of the technical conclusions regarding potential impacts made by DEH in the 2010 Addendum that supported its determination that the conditions requiring preparation of a Subsequent or Supplemental EIR did not exist.

The revised jurisdictional determination did not result in a change in the previously estimated impacts to total waters of the State of 1.6 acres. There are no changes in the potential impacts previously analyzed by DEH.



Figure 1. Relationship of 2010 and 2011 U.S. Army Corps of Engineers Jurisdictional Determinations at the Landfill Access Road Bridge crossing of the San Luis Rey River.