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April 10, 2012

Mr. Samuel Unger
Executive Officer
Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, California 90013
VIA ELECTRONIC MAIL: losangeles@waterboards.ca.gov

RE: Tentative Waste Discharge Requirements including Clean Water Act Section 401 Water Quality Certification for: Newhall Land & Farming Company, Proposed Management and Development Plan and Spineflower Conservation Plan, Santa Clarita, Los Angeles County (File No. 11-168)

Dear Mr. Unger:

On behalf of the Wishtoyo Foundation and its Ventura Coastkeeper program ("VCK") and over 700 of our members who desire an ecologically healthy Santa Clara River with unpolluted water that supports a variety of recreational, spiritual, and aesthetic uses, thank you for the opportunity to comment on the Tentative Waste Discharge Requirements including Clean Water Act Section 401 Water Quality Certification for: Newhall Land & Farming Company, Proposed Management and Development Plan and Spineflower Conservation Plan, Santa Clarita, Los Angeles County (File No. 11-168) ("Newhall WDR").

In 2005, the Santa Clara River was named the "10th Most Endangered River" in the Country by American Rivers due to anthropogenic impacts, such as land use changes and pollution. Flowing approximately 116 miles from the headwaters of the San Gabriel Mountains to the Pacific Ocean through a 1,600 square mile watershed, the Santa Clara River is southern California's last naturally flowing major river system. In addition to being the largest wild river remaining in southern California, the Santa Clara River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat for endangered and rare species. It is home to as many as 17 species listed as threatened or endangered by state and federal governments, and includes critical habitat for many species including the endangered Southern California Steelhead, Santa Ana Sucker, Tidewater Goby, Unarmored Threespine Stickleback, Pacific Lamprey, California Red-Legged Frog, Arroyo Toad, and Least Bell's Vireo. A ecologically healthy unpolluted Santa Clara River from Santa Clarita through Piru, Fillmore, Santa Paula, Saticoy, Ventura, and Oxnard provides unmatched recreational, cultural, aesthetic, and spiritual opportunities and resources in the

region. In addition, the ecosystem services provided by the Santa Clara River, as recognized by the Regional Board's Water Quality Control Plan for the Los Angeles Region ("Basin Plan") include agriculture supply, groundwater recharge, freshwater replenishment, water contact recreation, non-contact water recreation, cold freshwater habitat, warm freshwater habitat wildlife habitat, rare, threatened, or endangered species, wetland habitat, estuarine habitat, migration of aquatic organisms, and spawning, reproduction and development. *See* Basin Plan, pp. 2-1 - 2-5.

For all these reasons, it is imperative that Santa Clara River's water quality, cultural uses, aesthetics, and aquatic ecosystem functions are adequately protected through the conditions in the Newhall WDR and Clean Water Act §401 Water Quality Certification.

VCK opposes the tentative Newhall WDR and Clean Water Act §401 certification, and requests that the Regional Board deny the issuance of the Clean Water Act §401 Certification and Newhall WDR unless stronger requirements are placed on the Project to adequately protect the ecological integrity and water quality of the Santa Clara River and its tributaries as outlined in this letter. We thus respectfully request the following modifications to the Newhall WDR and Clean Water Act §401 certification to ensure that the beneficial uses of the Santa Clara River are protected, to ensure that the Project does not cause or contribute to violations of water quality standards, and to prevent the ecological, physical, and chemical degradation of the Santa Clara River:

1.) Low Impact Development Performance Standards

While the Newhall Ranch development subject to the Newhall WDR ("Project") lies in Los Angeles County, the project lies in the Santa Clara River watershed, abutting the Santa Clara River immediately upstream from Ventura County line. Thus, we request that the Region Board condition the Newhall WDR to contain LID and hydromodification provisions that are at least as protective of water quality and the ecological integrity of the Santa Clara River as the Ventura County Ms4 Municipal Stormwater Permit ("Ventura County Ms4 Permit").[1] At the very least, the Project should abide by the LID performance standards and hydromodification standards for new green field developments in the Ventura County Ms4 Permit, as the Ventura County Ms4 permit was designed to protect the Santa Clara River from new development, and §401 of the Clean Water Act requires the Regional Board to condition the Army Core's §404 permit to ensure that the beneficial uses of the Santa Clara River are maintained and protected from the Project.

As detailed in the August 31, 2011 U.S. Army Corps of Engineer ("ACOE") Record of Decision pages 21-22, Newhall Land agreed to LID measures that exceed current

[1] Waste Discharge Requirements for Storm Water (Wet Weather) and Non-Storm Water (Dry) Weather Discharges from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein ("Ventura County Ms4 Permit") (July 8, 2010) California Regional Water Quality Control Board Los Angeles Region, NPDES Permit No.: Order No. CAS004002; R4-2010-0108.)

requirements of the Los Angeles County stormwater permit.[2] However, these new measures, and the measures contained in the Newhall WDR, fall short of the ecological protections needed to protect the ecological integrity and water quality of the Santa Clara River.

We thus request that the Newhall WDR includes the following additional LID and hydromodification requirements that will provide the Santa Clara River with at least the protections in the Ventura Ms4 Permit and the minimal protections needed to protect and maintain the ecological integrity and water quality of the Santa Clara River:

a.) The Newhall WDR currently provides that infiltration BMPS (including bioretention (without an underdrain), permeable pavement, infiltration galleries, infiltration basins or trenches, or an equivalent infiltration BMP) are infeasible, and thus shall not be required to be used, if soil infiltration rates are at least 0.5 inches per hour for the runoff produced from the 0.75 inch storm from the developed area, if fill depth is less than 10 feet, and no other technical infeasibility concerns exist. However, the Ventura County Ms4 Permit and its Ventura County LID Manual (See Attached) to implement the Ventura County Ms4 permit for the Santa Clara River watershed specifically provides that for Greenfield developments, like the Newhall Project,:

Technical infeasibility may result from conditions including the following:

1) Locations where seasonal high groundwater or mounded groundwater beneath an infiltration BMP is within 5 feet of the bottom of the infiltration BMP.

2) Locations on the project site where soils are mapped with Ventura Hydrology Manual Soil Numbers 1-2 or site-specific analyses show that the soils have an infiltration rate less than 0.3 inches per hour.

3) Locations where soils are mapped with Ventura Hydrology Manual Soil Number 3, or where a site-specific analyses show that the soils have an infiltration rate of 0.3 to 0.5 inches per hour, and no other infiltration-related infeasibility criteria apply, shall use a Bioinfiltration BMP or Rainwater Harvesting (if feasible) to achieve the 5% EIA requirement.

Accordingly, VCK requests that paragraph 12.a. of section 3.0 is modified to read:

> a. If it is feasible to infiltrate all of the runoff produced from the 0.75 inch storm from the developed area (i.e., soil infiltration rates are at least **0.3** inches per hour; **locations where seasonal high groundwater or mounded groundwater beneath an infiltration BMP is within 5 feet of the bottom of the infiltration BMP**; and no other technical infeasibility concerns exist), infiltration BMPs shall be used. Infiltration BMPs include bioretention

[2] See August 31, 2011 U.S. Army Corps of Engineer ("ACOE") Record of Decision pages 21-22

(without an underdrain), permeable pavement, infiltration galleries, infiltration basins or trenches, or an equivalent infiltration BMP.

VCK's requests that "if fill depth is less than 10 feet" is not included as a determinant of infeasibility because its inclusion would seemingly provide a loophole that impermissibly excuses the implementation of infiltration BMPs needed to protect the Santa Clara River from the Project. In addition, supportable and reliable findings do not exist that demonstrate that infiltration BMPs are infeasible in areas where fill depth is less than 10 feet. LID with infiltration BMPs should be required in the portions of the Project area where fill is occurring, and the filling of Project area should not serve as a mechanism to avoid implementing infiltration BMPs.

b.) To ensure water quality and ecological protections that are at least on par with the requirements of the Ventura County Ms4 Permit, like the Ventura County Ms4 Permit, if the Newhall WDR permits biofiltration[3] to be utilized to achieve the 5% EIA standard if infiltration BMPs are technically infeasible, the biofiltration BMPs must include enhanced design storm sizing requirements for volume retention and pollutant load reduction that require the biofiltration BMPs to be sized to treat 1.5 times the volume and pollutant loads as infiltration BMPs would.

Accordingly, VCK requests that paragraphs 12.b. and 12.c. of section 3.0 of the Newhall WDR are modified to read:

12.b. If it has been demonstrated in the Project WQTR and Drainage Concept Report that the BMP strategy of a., above, is infeasible, and if the parcel has low soil infiltration rates or the seasonal high groundwater table is too high (i.e., the soil infiltration rate is less **than 0.3 inches per hour** or **high groundwater or mounded groundwater beneath an infiltration BMP is within 5 feet of the bottom of the infiltration BMPs**, but no other technical infeasibility concerns exist), bioinfiltration BMPs shall be used**, and the bioinfiltration BMPs must be sized to treat 1.5 times the volume not retained using infiltration BMPs**. Bioinfiltration facilities are similar to bioretention facilities with an underdrain, but they include storage below the underdrain to maximize the volume infiltrated. These facilities shall retain a portion of the runoff from the 0.75 inch design storm, then biofilter the remaining runoff from the 0.75 inch design storm.

[3] While VCK feels that biofiltration and bioinfiltration BMPs should not qualify as infiltration BMPs for purposes of achieving 5% EIA, and should not be allowed to be utilized for purposes of achieving 5% EIA unless a showing of infeasibility is demonstrated pursuant to the infeasibility determinations set forth Ventura County Ms4 Permit and its implementing LID Guidance manual, if the Newhall WDR allows biofiltration and/or bioinfiltration then VCK requests that the volume-based biofiltration and bioinfiltration BMPs are required to be sized to treat 1.5 times the volume not retained using Retention BMPs.

While VCK feels that biofiltration and bioinfiltration BMPs should not qualify as infiltration BMPs for purposes of achieving 5% EIA, and should not be allowed to be utilized for purposes of achieving 5% EIA unless a showing of infeasibility is demonstrated pursuant to the infeasibility determinations set forth Ventura County Ms4 Permit and its implementing LID Guidance manual, if the Newhall WDR allows biofiltration and/or bioinfiltration then VCK requests that the v**olume-based biofiltration and bioinfiltration BMPs are required to be sized to treat 1.5 times the volume not retained using infiltration BMPs.**

12.c. If it has been demonstrated in the Project WQTR and Drainage Concept Report that the BMP strategies of a. and b., above, are infeasible, and if infiltration is technically infeasible due to geotechnical hazards or a high ground water table, then biofiltration BMPs shall be used. These BMPs shall biofilter the runoff produced from the 0.75 inch design storm. **Volume-based biofiltration BMPs shall be sized to treat 1.5 times the volume not retained using infiltration BMPs.**

c.) The Newhall WDR must require discharges from EIA to meet the specific pollutant reduction standards contained in Attachment C Ventura Ms4 Permit for constituents such as copper, lead, and zinc. Because the Project is greater than 50 acres, the storm water runoff from the Project's EIA and developed pervious surfaces must also be required to be mitigated using Treatment BMPs and Control Measures that are properly sized to retain and treat, in accordance with the permit's specified pollutant removal performance standards in Attachment C, 80% of the average annual runoff volume as calculated using an appropriate public domain continuous flow model.

d.) The Newhall WDR must preclude the 5% EIA standard for the development to be artificially achieved by allowing portions of the Project Area not planned for development, such as the Salt Creek Area already designated as permanent open space, to contribute to the achievement of the 5% EIA performance standard;

e.) The Newhall WDR must contain at least as stringent Hydromodification (Flow/ Volume/ Duration) Control Criteria as the Ventura County Ms4 permit to protect the stream habitat of the Santa Clara River, tributaries, and drainages within the Project Area from erosion, incision, and sedimentation impacts that can occur as a result of flow increases from the Project's impervious surfaces. (Ventura Ms4 Permit Part 4. E. III., Attachment C).

In lieu of these specific requests for these additional LID and hydromodification requirements to be included in the Newhall WDR, if the LID requirements contained in the current tentative LA County permit to retain and infiltrate 100% of the 85th percentile storm is adopted in the LA County permit, VCK requests that the Newhall WDR adopts either the LID and hydromodification performance standards set forth in this letter as consistent with the Ventura County Ms4 Permit or the LID and hydromodification performance standards set forth the final LA County Permit (if the final permit requires the retention and infiltration of

the 100% of the 85th percentile storm), whichever is more protective of the Santa Clara River's water quality and ecological integrity.

2.) Newhall WDR Prohibitions

We respectfully request the following modifications to Prohibition provisions of the Newhall WDR found in section 2.0 of the Newhall WDR to adequately protect the Santa Clara River from the Project.

a. Prohibition four should be modified to also prohibit unauthorized discharges. Thus, instead of just providing "This Order does not authorize the discharge by the Newhall Land for any other activity than specifically described in this WDR" discharge prohibition four should also provide that:

> "Discharges of water, materials, thermal wastes, elevated temperature wastes, toxic wastes, deleterious substances, or wastes other than those authorized by this Order to a storm drain system, the Santa Clara River, or other waters of the State, are prohibited."

b. Discharge prohibition five should be modified to include trash and debris. Ventura Coastkeeper's monitoring data has documented extensive quantities of trash in the Santa Clara River and along side its banks from the Project area to the Estuary.[4] Municipal areas constitute significant sources and threats of trash pollution in inland and coastal waterways. Thus, we request discharge prohibition five to be modified to read:

> "The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; e) adversely affect any designated beneficial uses; f.) cause or contribute to trash or debris pollution."

c. In addition, as consistent with other waste discharge requirements issued by the Regional Board these other discharge prohibitions need to be added to the Newhall WDR's list of Prohibitions to adequately protect the Santa Clara River from the Project:

   i. Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or a nuisance as defined by Section 13050 of the Water Code.
   ii. Wastes discharged shall not contain any substances in concentrations toxic to human, animal, plant, or aquatic life.

[4] See Ventura Coastkeeper's Watershed Monitoring Program data from 2009 - 9/2010 documenting trash pollution in the Santa Clara River Watershed. Ventura Coastkeeper's data from 10/2010 - 2012 documents similar trash impairments.

iii. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

3.) End of Pipe Effluent Limitations / Pollutant Reduction Standards.

a. As requested above in the LID performance standards section of this letter:

i. The Newhall WDR must require discharges from EIA and the project's developed pervious surfaces to meet the specific pollutant reduction standards contained in Attachment C Ventura Ms4 Permit for TSS, nitrate - nitrogen, copper, lead, and zinc;

ii. The Newhall WDR must require that the Project's Treatment BMPs and Control Measures to achieve these specified pollutant reduction standards for TSS, nitrate - nitrogen, copper, lead, and zinc as set forth in Attachment C Ventura Ms4 to be sized to treat 80% of the average annual runoff volume as calculated using an appropriate public domain continuous flow model;

b. The WDR must also include end of pipe numeric effluent limitations that apply to all discharge from all outfalls from the Project into the Santa Clara River and its tributaries. In addition, at the very minimum, these numeric limits must be equivalent to the specific pollutant reduction standards contained in Attachment C Ventura Ms4 Permit for TSS, nitrate - nitrogen, copper, and zinc and to the California Department of Fish and Game Resource Management and Development Plan and Spineflower Conservation Plan EIR's ("Newhall EIR") forecasted and promised concentrations of these constituents after the Project's implementation of BMPs and PDFs.

i. Thus, as provided for in Attachment C of the Ventra Ms4 Permit, the maximum effluent limit for total copper should be 15.9 micrograms per liter, the maximum effluent limit for total zinc should be 58.7 micrograms per liter, the maximum effluent limit for nitrate - nitrogen should be .66 micrograms per liter, and the maximum effluent limit for total suspended solids should be 27 milligrams per liter;

ii. In addition, as the Newhall EIR indicates that the Project's PDF's and LID BMPs will achieve for the concentrations of pollutants in the Project's stormwater discharges into the Santa Clara River and its tributaries[5]:

1. the maximum effluent limit for dissolved copper should be 8.3 micrograms per liter;

2. the maximum effluent limit for dissolved zinc should be 39 micrograms per liter;

[5] (See attached Table 4.4-41, page 4.4 150, RMDP-SCP Final EIS/EIR, November 2010)

3. the maximum effluent limit for total lead should be 6.3 micrograms per liter;

4. the maximum effluent limit for total aluminum should be 591 micrograms per liter;

5. the maximum effluent limit for chloride should be 15 milligrams per liter;

6. the maximum effluent limit for total phosphorous should be .26 milligrams per liter;

7. the maximum effluent limit for nitrogen should be 2.3 milligrams per liter;

The Newhall WDR's maximum effluent limit for dissolved copper also should not exceed 8.3 micrograms per liter, and should not exceed 15.9 micrograms per liter for total copper, as the Newhall EIR presented data that existing observed concentrations of dissolved copper in the Santa Clara River during storm events within the Project Area range between 3.3 to 22.6 micrograms per liter[6], which exceeds the steelhead smolt sub-lethal toxicity thresholds of .75 - 2.1 micrograms per liter as documented by a National Oceanic and Atmospheric Administration ("NOAA") published study. (See attached study.)

iii. **In addition:**

1. a numeric effluent limit for trash of 0 pieces of trash should be included in the Newhall WDR.

2. In addition, the end of pipe - outfall effluent limitations should include numeric limits for COD at 120 milligrams per liter, BOD at 30 milligrams per liter, and Oil & Grease at 15 milligrams per liter to reasonably protect the Santa Clara River from the Project.

4.) Reduction in number of storm water outfalls to the Santa Clara River and its Tributaries The Newhall WDR states that Newhall Land is authorized to construct 35 outlets to and in the Santa Clara River. This quantity of outlets presents enormous monitoring and end of pipe treatment control challenges that would be overcome by limiting the number of outfalls to the Santa Clara River and its tributaries. VCK requests that the WDR limit the amount of outlets/outfall from the Project to the Santa Clara River to a maximum of 10 outfalls.

5.) Project Biologist and Restoration Biologist: VCK requests that the non profit public interest community commenting on the WDR nominate and select the Project and Restoration Biologists as provided for in paragraphs four and five of the Provisions section of the Newhall WDR, and that the Regional Board Executive Officer retains the authority to approve the section of these biologists. The WDR should also provide that Newhall Land Co. will be responsible for funding the biologists according to current market rates.

[6] See attached Table 4.4-43, page 4.4 152, RMDP-SCP Final EIS/EIR, November 2010

6.) Storm Drain and Receiving Water Quality Monitoring

a. VCK requests that the Newhall WDR requires:

i. That end of pipe storm drain/channel outfall monitoring is conducted from every storm drain/channel from the Project to the Santa Clara River and its tributaries by Newhall during two storm events per wet season, as defined as from September 1 to June 1;

ii. That end of pipe storm drain/channel outfall monitoring is conducted during the first rain event of every wet season, and during the first hour of the storm in which sampling takes place so as to capture the concentrations of pollutants discharged from the Newhall Project during the first flush;

iii. That the two dry weather storm channel/drain outfall monitoring events are conducted twice per year at every project outfall;

iv. That visual observations are conducted at all outfalls during all monitoring events and at least during one storm event per month, and that the visual observations record the presence of trash, debris, floatables, sewage, odors, discoloration, or other visible pollutants in discharges from the Project's outfalls to the Santa Clara River.

7.) Reporting

a. VCK requests that the annual reports, monitoring reports, reports of violations of the Newhall WDR, and reports of exceedences of the WDR effluent limits or discharge prohibitions include the monitoring information/results listed in section 6.) above for all the constituents mentioned;

b. VCK requests that the results of the visual observations are included in all annual reports, monitoring reports, reports of violations of the Newhall WDR, and reports of exceedences of the WDR.

8.) Enforceability

a. VCK requests that a clause be inserted in the Newhall WDR that clarifies that a violation of the Newhall WDR is a violation of the Clean Water Act and Porter-Cologne Water Quality Control Act.

Please note that VCK concurs with the positions in the joint Newhall WDR letter submitted by Friends of the Santa Clara River, SCOPE, and Center for Biological Diversity. In addition, VCK concurs with the requests in Heal the Bay's ("HTB") Newhall WDR letter including:

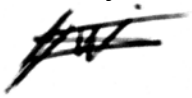
- The enhanced hydromodification mitigation measures requested in the HTB letter;
- That a 500-foot riparian buffer should be required for all portions of the Newhall development;

- That no portion of the development should be placed in the 100 year floodplain;
- That a mitigation ratio of 3:1 should be employed for disturbance to habitat caused by the Project that can absolutely not be avoided; and a mitigation ratio of 4:1 should be employed for the Project's impacts to wetlands;
- Additional requirements to control invasive aquatic species as set forth in the HTB letter should be implemented;
- The WDR should not cover the entire Newhall Ranch Project, and should only be issued for the various phases after their EIRs are approved;
- BMPs should be maintained and monitored in perpetuity.

VCK opposes the Newhall WDR as proposed, and requests that the Regional Board deny the Clean Water Act §401 Water Quality Certification unless the changes to the WDR and §401 Water Quality Certification that are suggested and requested in this letter are adopted. These modifications are needed to adequately protect the ecological integrity and water quality of the Santa Clara River from this Project.

Thank you for your consideration. Please feel free to contact us with any questions.

Sincerely,



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