

PETITIONS OF CYNTHIA GRIMES, JOHN BRUNOT, AGUA DULCE NEIGHBORS, AND SUSAN TURNER FOR REVIEW OF WATER QUALITY ORDER NO. R4-2022-066, WASTE DISCHARGE REQUIREMENTS FOR THE AGUA DULCE RESIDENTIAL DEVELOPMENT PROJECT, AGUA DULCE, COUNTY OF LOS ANGELES; ISSUED BY THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD: SUBMISSION OF COMPLETE PETITION SWRCB/OCC FILE A-2784(a-e)

1. Petitioner Contact Details

Name: John Brunot
Address: 10535 Darling Road, Agua Dulce, CA 91390
Telephone Number: 818 262 9305
Email: jbrunot@gmail.com

Name: Cynthia Grimes
Address: 33411 Tyndall Road, Agua Dulce, CA 91390
Telephone Number: 213 503 2135
Email: cgtymes2@aol.com

Name: Susan Turner
Address: 10535 Darling Road, Agua Dulce, CA 91390
Telephone Number: 818 262 8117
Email: susan@burbankcasting.com

Name: Marcy Winter
Address: 9210 Yucca Hills Road, Agua Dulce, CA 91390
Telephone Number: 310 619 6777
Email: adneighbors2021@gmail.com

2. Action requested for review

The action that is requested for review is the approval of Water Quality Order No. R4-2022-066 by the Los Angeles Regional Water Quality Control Board. A copy of the Water Quality Order No. R4-2022-066 Waste Discharge Requirements is attached.

3. The date on which the action occurred

Water Quality Order No. R4-2022-066 Waste Discharge Requirements was approved on February 10th 2022 during the regularly scheduled meeting of The California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board).

4. Reasons the action was inappropriate/improper

The action was taken to approve the order in contravention of the California Environmental Quality Act Section 15378 and the Project requires a Supplemental Environmental Impact Report pursuant to the California Environmental Quality Act Section 15162 in order to develop the Project as described by staff and the discharger during the February 10th meeting before the Los Angeles Water Board.

The discharger's application for the order was taken prematurely in light of the project description and the conditions contained in the approved 2007 Supplemental Environmental Impact Report ('SEIR') for the project TR50385 ('Project') that require the discharger to submit approved plans for the construction of a wastewater treatment plant, a key and necessary Project facility, on the as yet unrecorded portion of the Project site that will serve all dwellings to be built on all phases the Project **instead of** the previously contemplated on-site septic systems for the first three phases and off-site wastewater treatment plant that was described in the 1994 Environmental Impact report. The California Environmental Quality Act Section 15378 contains a clearly understood definition as to what constitutes a project specifically designed to avoid this type of piecemealing of a project whereby subsets of a project are considered individually instead of considering the project as a whole.

The action was taken based on incorrect interpretations of the approved documents by agency staff and misrepresentations by the discharger's legal counsel before the Board concerning the discharger's entitlement to construct the 68 dwellings on the first three phases of the Project with on-site septic systems and that the Project will rely exclusively on imported water and not draw upon the local groundwater supply. These misinterpretations and misrepresentations are outside the scope, and conflict with the terms of the approved EIR and SEIR and in turn led to Board members approving the order based on false assumptions and conclusions regarding the Project when a 'No Action' decision would have otherwise been the appropriate decision.

The Board staff have duty to evaluate and describe the Project accurately within the scope of the approved planning documents and consequently, by approving the order, the Board has acted illegally as a responsible agency pursuant to CEQA.

The misrepresentations of the content of the approved planning documents relate to the following matters that fall within the authority of the Board:

- The impact of the proposed wastewater treatment, a key environmental consideration necessary for the operation of the Project, on the community of Agua Dulce's groundwater supply and the potential of the Project to impair the ground water supply if constructed with on-site septic systems as proposed
- The availability of sufficient groundwater locally in the Acton Agua Dulce groundwater basin to sustain the projected potable and, as yet unquantified, wastewater treatment needs of the Project
- The absence of a wastewater treatment entitlement that permits the Project to be implemented as presently contemplated by the discharger and misrepresented by agency staff during the meeting
- The absence of an approved final plan for the onsite wastewater treatment plant, a key facility necessary for the operation of the Project, to be sited on an unrecorded portion of the Project site for which the unrecorded map expires in October 2022

Pursuant to the California Environmental Quality Act ('CEQA'), the Board is required to assume that the previously approved Environmental Impact Report ('EIR') and Supplemental Environmental Impact Report are valid. This was acknowledged by counsel for the Board and counsel for the discharger during the meeting. The previously approved EIR and SEIR do not support the implementation of the first three phases of the Project as was incorrectly described by staff and the discharger's representatives to the Board during the meeting. These misrepresentations became an intrinsic part of the Board's understanding of the Project and their subsequent decision to approve the order when a 'No Action'

decision would have otherwise been the appropriate decision to reach. The Board has acted based on material mis-statements about the Project that contradict the content of the Project's approved documents prepared under CEQA thereby approving an order based on purported entitlements and unmitigated environmental impacts that are inconsistent with those described and required in the approved environmental documents for the Project.

5. The manner in which the petitioner is aggrieved

The Project is located within the boundaries of the community of Agua Dulce. All the residents of Agua Dulce rely on private water wells that deliver potable water from the Acton Agua Dulce groundwater table. Like the thousands of residents of Agua Dulce, the petitioner relies on the local groundwater table to provide potable water to their home.

The petitioner is concerned that if the Project is delivered as incorrectly contemplated by Board staff and the discharger during the meeting that the Project will result in contamination of the local groundwater supply with excessive levels of nitrates and chlorides as acknowledged in the EIR and SEIR. The first phase of the Project sits within Significant Ecological Area 23 of the Upper Santa Clara River watershed according to the approved planning documents.

The petitioner is concerned that since it was stated in the 1994 EIR that the Project would only rely on local ground water only during what constituted as drought years (in 1994), that the Project will rely substantially on an already depleting local groundwater supply since the local area and the State of California has been in an extended drought for the past several years resulting in many local homeowners needing to increase the depth of their private water wells. The State Water Project, that will provide some of the potable water to the Project, has restricted allocations to nearby local water agencies due to the increasing drought and it cannot be guaranteed that the State Water Project will be able to provide sufficient water for the Project to the Project's wholesaler and local municipal water district.

It is likely that the Project rely excessively on the local groundwater supply for potable water during drought years as previously noted. This will likely result in nearby homeowners and the petitioner losing the water supply in their private wells, thereby affecting the petitioner's property value and quality of life.

Arsenic is present in the groundwater table in the community of Agua Dulce. When the groundwater table is depleted, testing of local wells shows that the concentration of arsenic that is present in the groundwater is increased. The petitioner is concerned that the Project will deplete the groundwater table as previously explained leading to an increase arsenic levels present in the petitioner's and other private wells beyond safe levels.

By allowing the petitioner to perform grading before the previously agreed requirements of the approved planning documents have been applied for and secured, the petitioner is concerned that the discharger may subsequently abandon the Project if these requirements cannot be obtained for any reason, resulting in the permanent destruction of ephemeral streams on the Project site and the unrecoverable grading of undisturbed rural hillsides and vistas.

The petitioner also objects to the Board taking actions based on a Project description that falls outside the scope of the approved planning documents and approving an order in contravention of the prevailing CEQA laws that the Board is required to observe as a responsible agency.

6. The specific action requested by the petitioner

The petitioner is requesting that the state and regional board immediately rescinds and cancels the previous approval of Water Quality Order No. R4-2022-066 Waste Discharge Requirements and advises the discharger that they are required to observe the terms of the approved planning documents for the Project as further explained in this petition.

Since the requirement to develop and secure approval of a set of plans for the onsite wastewater treatment plant, which is a necessary facility of the Project, has been a known to the discharger to be a pre-requisite for the recording of the tentative vesting tract map for the Project since the 2007 SEIR was approved, it is not believed that this is an unreasonable encumbrance on the discharger to undertake the required steps prior to applying for the appropriate Water Quality Order for Waste Discharge Requirements for the Project once the approved wastewater treatment plans have been approved and the underlying map where the plant is sited on the Project has been recorded.

7. Statement of Points and Authorities

Time code references in this section within square parentheses [at n:n] are references to the approximate time codes of supporting commentary made during the February 10th 2022 regularly scheduled meeting of The California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board). The video used for these references is available at: https://cal-span.org/meeting/rwqcb-la_20220210/

Planning documents for Tract 50385 including the approved EIR and SEIR referenced in this section can be downloaded from the Los Angeles County Department of Regional Planning website at: <https://planning.lacounty.gov/case/view/tr50385>

Reference to the Written Comments refers to the document titled 'Comment Summary and Responses TENTATIVE WASTE DISCHARGE REQUIREMENTS FOR THE AGUA DULCE RESIDENTIAL DEVELOPMENT PROJECT (FILE NO 20-105) Comment Due Date: January 21, 2022' that was part of the package of information distributed in response to the application prior to the February 10th Los Angeles Water Board Meeting.

Reference to Verbal Comments are to those made by participants during the February 10th 2022 meeting with suitable timecode references to the above referenced video.

7.1 The adequacy of the 1994 EIR and the 2007 SEIR

Pursuant to CEQA Section 15231, a final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082.

This was acknowledged by staff during the February 10th meeting [at 51:45] and by counsel for the Board [at 2:52:25] and by counsel for the discharger [at 2:58:24].

As such, the content of the approved EIR and SEIR for TR50385 are clearly understood to govern the scope of the decisions that responsible agencies, including the Los Angeles Water Board, can make.

7.2 A wastewater treatment facility has been a necessary facility of the Project since the 1994 EIR

Due to the reliance of the local community of Agua Dulce on private water wells, development of subdivision dwellings of the density involved in this Project have raised concerns over increasing the amount of wastewater contaminants in the groundwater supply including total dissolved solids and nitrates produced by individual septic systems needed for each dwelling.

Consequently, the approved 1994 EIR for TR50385 describes the following wastewater entitlement:

- The construction of the first three phases (a total of 68 dwellings commonly referred to as Phase 1) with onsite septic systems covered by a septic permit (Order No. 91-94, CI No. 7185, Global ID. WDR 10000261, WDID NO. 4A196500013) that was issued by the Los Angeles Water Board.
- An obligation to construct Phase 1 with dry sewers and to abandon the on-site septic systems within six months of the connection to the offsite wastewater treatment plant being established.
- The entitlement to only construct phases 4-12 of the Project dependent on a connection being made to an offsite wastewater treatment plant to be built by another developer at a nearby project called the Rio Dulce Project (Tract 50259).
- An obligation to connect the 61 dwellings of the adjacent Sierra Colony project (Tract 48786) to the sewer system to allow the wastewater from Sierra Colony to be processed at the offsite wastewater treatment plant located at Tract 50259. Due to concerns over groundwater contamination, the Tract 48786 Sierra Colony project had been approved conditioned on the connection to an offsite wastewater treatment plant and the abandoning of the onsite septic systems similar to the approval of Phase 1 of this Project.
- An obligation to operate and maintain the onsite septic systems according to a series of mitigation measures tied to septic permit WDR 10000261).

Subsequently, the Rio Dulce Project (Tract 50259) was abandoned where the offsite wastewater treatment plant was to be located. Since the lead agencies remained concerned about the level of wastewater contaminants contributed by the Project to the local groundwater supply, the then developer of the Project, was required to revise the Project design to create an on-site wastewater treatment plant to serve all dwellings of the Project.

Consequently, the SEIR was published in 2006 that described the inclusion of a 'conceptual' reverse-osmosis wastewater treatment plant within the Project site that would have the capacity to treat the wastewater of all dwellings within the Project and that of the adjacent Sierra colony project.

The SEIR for TR50385 approved in 2007 describes the following wastewater entitlement for the Project:

- The construction of an onsite wastewater treatment plant located in Phase 2 of the Project **instead of** the previously planned onsite septic systems and offsite wastewater treatment plant.
- Following the recording of the Phase 2 map, the construction of the onsite wastewater treatment plant in parallel with the first three phases (Phase 1).

- An obligation to connect the by now constructed 61 dwellings of the adjacent Sierra Colony (Tract 48786) to the Project's sewer system to allow the wastewater from Sierra Colony to be processed at the onsite wastewater treatment plant.

Pursuant to CEQA 15378, the EIR and the SEIR form part of a singular project description for the Project and do not operate independently of each other.

7.3 The construction of the wastewater treatment plant approved in the 2007 SEIR is to be used for wastewater treatment instead of the previously planned onsite septic systems

At the time that the 2007 SEIR was approved, no construction had been undertaken on the Project site, despite the recording of the Phase 1 map in 2002.

The document set that forms part of the final 2007 SEIR for the project clearly and unambiguously state that the onsite wastewater treatment plant was being proposed instead of both the previously proposed onsite septic systems and the offsite wastewater treatment plant as noted below:

- *2006 Supplemental EIR Notice of Preparation – Page 2 ‘Project Background’*
“The revision entails providing an on-site water reclamation facility instead of the previously planned septic systems for the 68 residential lots and the previously-planned off-project water reclamation facility for the remaining residential lots.”
- *March 2007 Staff report to planning commission – Page 1 ‘Project overview’*
“Water Reclamation: Previously, an offsite water reclamation facility was approved for the project. The revised map proposes an onsite water reclamation facility in lieu of the previously planned septic systems for the 68 residential lots and offsite water reclamation facility.”
- *April 2007 Final Bound SEIR – Page 2-2 ‘Grading and Construction Program’*
“The wastewater reclamation facility, which can begin operation with a service area of 50 homes, would begin as soon as Phase 2 of tract 50385 is approved and recorded. Development of the homes will begin in June 2008, with buildout estimated for June 2014. Construction of the recorded portion of the site could occur at any time; however, as connection to the wastewater treatment plant is now proposed, this supplemental EIR assumes that portion will be constructed within the same timeframe as Phase 2 of Tract 50385.

Since the 1994 EIR had already approved the installation of dry sewers on the 68 dwellings of Phase 1 of the Project, this revised wastewater entitlement in the 2007 SEIR did not result in a revision to the Phase 1 map (that was recorded in 2002) since the sewer infrastructure to carry the wastewater from the 68 dwellings in Phase 1 was already included in the 1994 project description.

The purpose of the project description in a CEQA document is to allow the document preparer to analyze the impacts of the proposed project, and thus allow the reader to understand the types and intensities of the project's environmental effects. When word like ‘instead of’ and ‘in lieu of’ are used in the 2007 CEQA document set, the plain meaning is that the options described are exclusive, not inclusive, and the author did not mean ‘as well as’.

The effect of the approval of the 2007 SEIR was to change the wastewater entitlement for all recorded and unrecorded phases of the entire Project which is collectively referred to as Tract 50385. The Department of Public Health clearly acknowledged this in their January 9th 2007 letter (2007 SEIR Approval Package page 77) which states: “The County of Los Angeles Department of Public Health has no objection to Revised **Tract Map 50385**. The following conditions still apply and are in force: 1. Potable water will be supplied by a public water system, which guarantees water connection and service to all lots. 2. Sewage disposal will be provided through the public sewer and wastewater treatment facility as proposed.”

Notably the Department of Public Health letter references Tract Map 50385 (all 12 phases of the Project inclusive) and contains no reference to the continued use of septic systems for any part of Tract 50385 which is consistent with what was expressed in the related 2007 planning documents that the onsite wastewater treatment plant would be used instead of the previously planned onsite septic systems.

The public comments made prior to the meeting highlighting the conflicts between the perceived entitlement to treat wastewater using onsite septic systems versus the actual entitlement to treat wastewater using an onsite wastewater treatment plant were acknowledged during the presentation by staff member Gallon [at 47:34]. This was raised in the Written Comment 4.1 which stated that the Project cannot move forward without a wastewater treatment plant.

Staff member Gallon also incorrectly represents to the Board during the meeting that the SEIR does not apply to Phase 1 [52:56] when the 2007 SEIR for Tract 50385 in fact restates the wastewater entitlement for all phases of the Project, including Phase 1. This statement clearly conflicts with the intent of CEQA 15378. As discussed in detail in Section 7.5 below, CEQA Section 15378 does not permit environmental documents to be used to describe subsets of a project independently of each other and therefore the 1994 EIR and the 2007 SEIR relate to the entire Project as a whole.

During the meeting, a Verbal Comments outlining these concerns were made by Justine Turner [at 1:06:49] and Lynn Plambeck [at 1:24:50].

7.4 The permits for the use of onsite septic systems in Phase 1 were terminated in 2012

Consistent with the revised wastewater entitlement for the Project approved in 2007, in April 2012, the then developer/discharger, B&C Land and Water, wrote to the Los Angeles Regional Water Quality Board requesting termination of the previously issued septic permit (Order No. 91-94, CI No. 7185, Global ID. WDR 10000261) further underscoring that the septic systems were no longer required for the Agua Dulce Project. The 91-94 permit was extensively referenced in the onsite wastewater mitigation measures in the 1994 EIR and following termination of the permit, these mitigation measures and conditions no longer have an underlying reference permit.

Consequently, there are no longer any valid permits for the construction of onsite wastewater treatment systems for the first 68 dwellings. Written Comment 3.2 acknowledges the 2012 termination of the onsite septic permit. The need by the discharger to secure onsite septic permits from the Los Angeles County Department of Public Health was acknowledged by staff member Gallon at [59:20] and in the response to Written Comment 3.2.

By virtue of the approval of the 2007 SEIR, the wastewater entitlement for the entire Tract 50385 Project no longer contemplates the use of onsite wastewater treatment systems anywhere on the project in deference to the onsite wastewater treatment plant as noted in Section 7.3.

During the meeting, Chair Yee pondered the possibility that Los Angeles County Department of Public Health may not issue septic permits [at 59:20] and was advised by staff member Gallon that having discussed this with the County staff, the County will provide the permits for the septic systems as and when the discharger applies for them.

In light of the impact of the revised Project-wide wastewater entitlement that was approved in the 2007 SEIR, replacing the wastewater entitlement stated in the 1994 EIR, there would be no approved entitlement under which such onsite septic system permits could legally be issued by Los Angeles County Department of Public Health for any part of Tract 50385. In order to do so, a Supplemental Environmental Impact Report that considers the impact of installing onsite septic systems on the 68 dwellings planned for Phase 1 would need to be prepared and approved under CEQA 15162.

Notably, staff member Gallon states during the presentation [at 52:18] after considering the 1994 EIR and 2007 SEIR the Los Angeles Water Board in its capacity as a responsible agency, staff has concluded that no additional analysis is required. This conclusion is simply not supported by the intent expressed by the developer to build the first 68 dwellings with onsite septic systems in conflict with the approved 2007 wastewater entitlement that requires a wastewater treatment plant for the entire Project instead of the onsite septic systems.

During the meeting, a Verbal Comment was made by Jacqueline Ayer noting the expiration of the original septic permit in 2012 [at 1:43:02].

7.5 The order is based on piecemealing the Project in contravention of CEQA 15378.

The discharger has ‘cherry picked’ selected parts of the wastewater entitlement from the 1994 EIR (onsite septic systems) with the revised wastewater entitlement in the 2007 SEIR (onsite wastewater treatment plant instead of onsite septic systems), essentially creating a hybrid wastewater entitlement comprising onsite septic systems and an onsite wastewater treatment plant that is not part of any of the approved planning documents for the Project and is in direct conflict with the Project description in the 2007 SEIR. As previously noted, the language used in the 2007 SEIR document set indicates that the onsite septic systems approved in 1994 and the onsite wastewater treatment plant approved in 2007 are mutually exclusive and not inclusive as the discharger’s legal counsel stated during the meeting.

This wastewater treatment misconception as to the extent of the discharger’s entitlement to proceed with the construction of the Project after the approval of the order was then perpetuated by agency staff who failed to correctly interpret the planning documents [at 48:12] and further perpetuated by the discharger’s legal counsel [at 2:32:00].

Comments were made during the meeting that agency staff were effectively piecemealing the Project against the provisions of the California Environmental Quality Act by adopting this approach. This was denied by staff member Austin during the meeting at [2:43:26] in response to a view expressed by Chair Yee [at 2:41:40] that he felt that the board was looking at the Project in piecemeal fashion rather than in its entirety.

Section 15378 of the CEQA Guidelines provides the following definition of a project:

(a) “Project” means **the whole of an action**, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

- (1) An activity directly undertaken by any public agency including but not limited to public works construction and **related activities clearing or grading of land**, improvement to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.
- (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants subsidies, or other forms of assistance from one or more public agencies.
- (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

The term “project” refers to the whole of an action and to the underlying physical activity being approved. Under this doctrine, the 1994 EIR and 2007 SEIR must be considered to be part of a singular CEQA document set describing the Project as a whole, ensuring that lead agencies like the Los Angeles Water Board can rely on the CEQA report when granting later approvals like the order that is the subject of this petition.

CEQA case law has established the following general principles on project segmentation for different project types:

- For a phased development project, even if details about future phases are not known, future phases must be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts. *Laurel Heights Improvement Association v Regents of University of California* (1988) 47 Cal. 3d 376.
- For a linear project with multiple segments such as a highway, individual segments may be evaluated in separate CEQA documents if they have logical termini and independent utility. *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal. App. 4th 712.
- For a planning approval such as general plan amendment, the project description must include reasonably anticipated physical development that could occur in view of the approval. *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398.
- For a project requiring construction of offsite infrastructure (e.g., water and sewer lines), the offsite infrastructure must be included in the project description. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App. 4th 713.
- For modification of a permit for an existing facility, the scope of the project description can be limited to the scope of the permit modification and does not cover the entire facility. *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549.

Piecemealing or segmenting means dividing a project into two or more pieces and evaluating each piece in a separate environmental document, rather than evaluating the whole of the project in one environmental document. This is explicitly forbidden by CEQA, because dividing a project into a number of pieces would allow a lead agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact. Segmenting a project may also hinder developing comprehensive mitigation strategies.

The SEIR approved in 2007 modified some of the entitlements for the Project. By separating out parts of the 1994 EIR that were superseded by parts of the 2007 SEIR, the Los Angeles Water Board staff are essentially approving an order that when the Project is viewed as a whole, may result in a significant impact.

In this instance, the significant impacts would include:

- (i) The impact on the groundwater supply water quality by allowing the construction of the first 68 dwellings with onsite septic systems beyond the scope of the 2007 SEIR entitlement which no longer included the use of septic systems on the entire Tract 50385 Project.
- (ii) The potential that the discharger will abandon the unrecorded map for the Project (as they opined during the meeting) where the wastewater plant is to be sited leaving the dwellings at the Sierra Colony Tract 48786 and any dwellings eventually built on this Project without the requisite wastewater treatment plant which is a necessary facility of the entire Project.
- (iii) The impact of grading 1.9 million cubic yards of undeveloped rural hillsides containing ephemeral streams and wildlife habitat only to arrive at a point where the permits for the onsite septic systems cannot be issued by the Los Angeles County Department of Public Health due to a lack of an approved wastewater entitlement to do so.

The discharger's legal representative volunteered (in response to no specific question from the floor or the board during the meeting) that the discharger could elect to abandon the second phase of the Project if they so choose to [at 2:57:19]. Staff also acknowledged that comments had been received regarding the potential that the unrecorded phase of the project could be abandoned after grading [at 50:17].

On learning that agencies including the Los Angeles Water Board were issuing permits beyond the scope of the approved planning documents, The Agua Dulce Town Council wrote to the Director of Los Angeles County Regional Planning in May 2022 on behalf of the Council and the community of Agua Dulce formally withdrawing its previous support for the Project that was provided in 2007, citing the piecemealing of various planning documents and entitlements as a key reason.

Written Comment 8.5 notes the concerns that the Project may be abandoned after grading while Written Comment 11.10 notes the concern over lack of interagency communication leading to a piecemeal approach to the Project.

During the meeting, a Verbal Comments outlining these concerns were made by Justine Turner [at 1:08:03] and Jacqueline Ayer [at 1:43:53].

7.6 Constructing Phase 1 with onsite septic systems would require a Supplemental Environmental Impact Report pursuant to CEQA 15162

Despite the statements to the contrary made by staff members Gallon [at 52:21] and Austin [at 58:24] and [at 2:53:11] during the meeting, in light of the approval of the 2007 SEIR, construction of the first 68 dwellings with onsite septic systems is considered a substantial change to the previously approved 2007 SEIR wastewater entitlement since individual onsite septic systems were no longer part of the Project description in the SEIR that was adopted in 2007.

Section 15162 of the California Environmental Quality Act (CEQA) requires that:

(A) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

In this case, the 2007 SEIR reflects a wastewater treatment plant that will serve the entire Project instead of onsite septic systems that will be constructed in parallel with the first 68 dwellings that had been recorded. Since the project was approved in 1994 on the assumption that a wastewater treatment plant would be used for the entire Project and was a necessary facility for the Project, the approved EIR reflects an agreement between the Los Angeles Regional Water Quality Control Board and the Los Angeles County Department of Regional Planning that an in-depth study on the environmental impact of the onsite septic systems on the groundwater would not be required since the onsite septic systems were only considered a temporary measure for wastewater treatment.

During the meeting at [2:57:19], prior to the Board's vote to approve the order, the discharger's legal counsel volunteered that the discharger may 'let the map expire on the second phase.' Since the wastewater treatment plant is located on the unrecorded Phase 2 map that expires on October 11th 2022, this would leave the Project without any suitable wastewater treatment plant (a necessary facility of the Project) and the potential that, along with the septic systems of the Sierra Colony project that were also conditioned on being connected to the Project's wastewater treatment plant, the septic systems (if ever permitted) for the first 68 dwellings would also become permanent. The environmental impact of this eventuality on the groundwater supply has never been considered in any of the approved planning documents adopted for the Project. This concern was expressed in the Verbal Comments by Lynn Plambeck [at 1:25:58] and Glenn Winter [at 1:57:26].

Written Comment 9.3 raises concerns over lack of adequate consideration of the septic systems while Written Comment 9.2 raises concern over the adequacy of the CEQA documentation.

During the meeting, a Verbal Comments outlining these concerns were made by Justine Turner [at 1:07:09] and Macy Calnan [at 1:51:06].

7.7 The unrecorded map where the wastewater treatment plant is sited expires in October 2022

During the presentation, staff member Gallon confirmed that the tentative vesting tract map approved in the 2007 SEIR has not been recorded [at 56:19]. This unrecorded map includes the site for the wastewater treatment plant which is a necessary Project facility that is critical to achieving the approved wastewater treatment entitlement for the entire Project as outlined in the Project description.

The supplemental agenda for the January 6th 2015 meeting of the Department of Regional Planning and The Los Angeles County Regional Planning Commission (attached to this petition) confirms that the **final extension** to item 1(x) Project No. TR50385-(5), Item 1(y) Conditional Use Permit No. 2005-00171-(5) and item 1(z) Oak Tree Permit No. 2005-00062-(5) was approved from April 11, 2016 to April 11, 2021. This represents a period of 14 years of extensions that were authorized following the approval of the Tentative Vesting Tract Map in April 2007.

The minutes of the January 6th 2015 meeting (also attached to this petition) reflect that this extension was being requested under Section 66452.6E of the State of California Subdivision Map Act as well as under Section 21.40.180 of the Los Angeles County Code Title 21 in order to provide sufficient time for the plans for the onsite wastewater treatment plant to be prepared and approved by the LA County sanitation district. The extension would ensure that the map would not expire while the wastewater treatment project plans were being prepared and approved during the five year period that this was estimated to take by the LA County sanitation district.

The passage of AB1561 had the effect of extending any unrecorded tentative vesting tract maps that were to expire prior to December 31st 2021 by 18 months. As such, the expiration date of the unrecorded tentative vesting tract map was extended until October 11th 2022 by virtue of AB1561.

When the 2007 SEIR was approved, the wastewater treatment plant was described as 'conceptual'. The 2007 SEIR includes the following comment from the Department of Public Works "It shall be noted that the Facility Report and the EIR *conceptually* describe the wastewater treatment and reclamation facilities. The final design, including selection/design of treatment equipment, sizing of tanks/reservoirs, layout of facilities, and design of the wastewater distribution/irrigation system, shall be designed during pre-design to the satisfaction of public works."

The Conditional Use Permit for the 2007 Supplemental EIR includes Condition 16 that states "Provide an acknowledgement letter from the developer stating due to an incomplete and inadequate Treatment Plant Feasibility Study and treatment plant plans, during the design stage review, additional requirements to the treatment plant facility, the treatment process, and/or methods of disposal may necessitate a change to the environmental documents and/or a revision to the tentative map."

In reality, as was confirmed by the discharger's legal counsel under oath at the meeting, no such wastewater treatment system planning work has been performed by the prior or current developer in the since the 2015 map extension approval and none is presently planned by the current developer due to the expense involved [at 2:31:39]. The discharger's legal counsel's response to Board member Nahai's

question related to this subject was [at 2:35] “For Phase 2, the permitting has not been achieved yet as you don’t apply for permits that you need too far in advance of when you are going to build the homes. For things like wastewater treatment plants and things of that nature, a substantial permitting effort [is required] **along with investment funding.**” and further [at 2:36:53] “This [the wastewater treatment plant planning] goes far beyond what we are talking about today. I honestly don’t know when that permit will be submitted to this board for consideration.” and finally [at 2:57:19] “the developer could let the map expire on the second phase. The immediately foreseeable project is what you are seeing before you. So they [the developer] could if they wanted to just abandon the second phase of the project if they presume to.”

During the January 2015 Regional Planning meeting, the Los Angeles County Sanitation District indicted that the wastewater treatment plans may take the final five year extension period to prepare and approve. In practice, in the more than 15 years since the 2007 SEIR was approved, no work has been done to prepare the wastewater treatment plant plans which, as previously noted, is a necessary facility for all phases of the Project. Furthermore, the Los Angeles County Department of Regional Planning appears to have exhausted all discretionary extensions for the unrecorded map under California Title 7, Div. 2, Ch. 2 Art. 2.

Should the unrecorded map for Phase 2 of TR50385 expire as scheduled in a matter of weeks from the date of this petition, the underlying conditional use permit approved in April 2007 will expire. The discharger would have to prepare a complete new set of environmental documents for the unrecorded portion of the Project, including the wastewater treatment plant.

Requiring the discharger to prepare the plans for the wastewater treatment plant upon that has been an intrinsic requirement of the Project since inception and upon which the recording of the Phase 2 map and the construction of the first 68 dwellings in Phase 1 is dependent is not something that should come as a surprise to the discharger. In the past 15 years that has been more than sufficient opportunity for the current discharger and the former owner of the Project to complete this.

While the discharger has the right to prepare a new set of environmental documents following the expiration of the recorded map, there can be no guarantee that such an environmental report would be approved in the future, particularly considering the significant environmental challenges that the State is now facing and the fact that similar rural subdivision development projects in very high fire hazard severity zones are being shut down by the State Attorney General on the grounds of public safety concerns.

During the meeting, a Verbal Comments outlining these concerns were made by Lynn Plambeck [at 1:25:58] and Glenn Winter [at 1:57:26].

7.8 The water for the Project will draw on the local groundwater

During the meeting, board member Christiansen [at 56:38] asked where the water was coming from. Staff member Gallon replied that it is coming from the State Water Project and not from the groundwater controlled by the board. Chair Yee reiterated this question [at 57:11] and board member Stahl responded that the water supply is coming from the State Water Project.

This assertion is not supported by the approved planning documents. In the 1994 EIR, in response to a question about the sufficiency of the water supply posed by the Agua Dulce Town Council, the Final 1994 EIR states “Due to increased availability of State Water Project Water, it is less likely, absent

another drought, that the proposed project will use significant amounts of groundwater associated with the water system.” (1994 Final EIR, Response to Written Comments P 4.3-24 Response to Comment 30).

In reality, the State of California has been in a worsening and persistent drought for the past decade and therefore it is reasonable to assume that the Project will draw on the local groundwater supply which is the responsibility of the Los Angeles Water Board.

The 1994 EIR estimates the potable water demand per household at 2,380 gallons/dwelling per day. The 1994 EIR quantifies the daily water needs for the entire project of 339 homes as 806,820 gallons per day or 2,380 gallons per day per home. Well before the meeting, the State Water Project had already indicated in late 2021 that due to the drought, no additional allocations were being awarded to water agencies around the state including those in adjacent jurisdictions to the project. Water board staff would also know that the County of Los Angeles is working towards a County Water Plan (CWP). In order to reduce reliance on imported water, the CWP will require that 70%-80% of water being used must come from the area it serves, likely limiting the state water available for the project to around 20-30% maximum. If 70-80% of the 806,820 gallons per day is required to come from local groundwater sources under the impending CWP, then the Acton Agua Dulce groundwater basin that is the responsibility of the board will need to yield as much as 20-23 million gallons (620-725 acre feet) of additional water per year to serve the project. Staff acknowledged the existence and applicability of the County Water Plan in the response to Written Comment 2.5. Staff further acknowledged the condition of the Acton Agua Dulce Groundwater basin in their response to Written Comment 2.4.

It should be noted that these water estimates do not include any consideration of the water that will be needed to operate the onsite reverse osmosis wastewater treatment system. As previously noted, the discharger has not completed the required planning documents to meet the conditions of the approved 2007 SEIR and the daily/monthly/annual water requirements for the wastewater treatment plant are as yet unknown since they were not part of the 1994 EIR or the 2007 SEIR.

Written Comment Section 2 notes the concerns that the Project may compromise the local groundwater basin for which the Los Angeles Regional Board is responsible.

During the meeting, a Verbal Comments outlining these concerns were made by Lynn Plambeck [at 1:24:05], John Bruno [at 1:33:55], Stuart Souki [at 1:34:55], Pris Tisza [at 1:40:31], Marcy Winter [at 1:46:00] and Marcy Calnan [at 1:49.38].

7.9 The board members were uncertain how to vote based on the information presented

During the meeting, Chair Yee [at 2:41:40] and board members Nahai [at 2:47:18], Munoz [at 2:05] and Christiansen were struggling with the decision whether to approve the order. Indeed board member Christiansen voted against the order.

Had the correct information about the requirement to build the wastewater treatment plant on the unrecorded portion of the Project to serve all dwellings been properly explained by staff along with the discharger's lack of entitlement to construct the first 68 dwellings with onsite septic systems, the appropriate decision would have been to take 'No Action' until such time as the discharger completes the plans for the wastewater treatment as required in the approved 2007 SEIR. The wastewater treatment plant is a necessary facility for the entire Project, clearly described as such in the Project description of the approved planning documents. Doing so would then allow the tentative vesting tract map to be recorded following which grading of the Project site could commence.

Due to the manner in which the meeting was structured, there was no opportunity for the members of the public who were present to correct the record and rebut the testimony of the discharger's legal representative despite still being present at the meeting and capable of doing so. Indeed, board member Nahai commented [at 3:07] that he was disappointed that members of the Los Angeles County agencies were not present to explain what they were doing to meet their responsibilities laid out in the approved documents. This sentiment was echoed earlier by Chair Yee [at 2:45:52].

7.10 The Project has been referred to the Federal Government for investigation

The Written Comments Section 11.11 raised a number of concerns regarding the domicile and background of the discharger. Subsequently, in April 2022, staff from the Los Angeles Water Board provided a copy of an October 2021 draft Irrevocable Standby Letter of Credit between the discharger and Los Angeles County Department of Public Works that had been provided to staff by the discharger.

The draft Letter of Credit reveals an unusual ownership structure whereby the discharger's US company is owned by a company in Nicosia, Cyprus that draws upon funds from a bank account in Switzerland on behalf of the US company's obligations. The name of the Cyprus company also returns to an address in Moscow in the Russian Federation. The CEO of the company in Moscow, Rutsog Invest, has the same name, Ruben T. Grigoryan, as is shown on the order.

After bringing this to the attention of Congressman Mike Garcia, the representative for the district in which the Project is located, Congressman Garcia's staff confirmed that he shared similar concerns over the project as the community of Agua Dulce and that it has been referred by his office to the appropriate departments within the Federal Government for Investigation.

This information contained in the draft Letter of Credit was apparently in the possession of the Los Angeles Water Board staff ahead of the meeting however it was not known to the community at the time of the meeting and therefore could not be introduced to further evidence the issues raised in the Written Comments 11.11.

7.11 Summary of statement of points and authorities

It would be insufficient and unreasonable for the Los Angeles Water Board to argue that none of the points raised in this petition are directly related to the Dredge and Fill WDR that was approved in the order.

It is the duty of the Los Angeles Water Board staff and other agencies to correctly interpret and convey the content of the approved planning documents and that clearly didn't happen in this instance.

The simple fact is that the approved planning record shows that the discharger has been obliged to complete the plans for an onsite wastewater treatment plant situated on the presently unrecorded portion of the Project since the adoption of the SEIR in 2007. The approved project description clearly confirms that the wastewater treatment plant will be built in parallel with the first 68 dwellings in the presently recorded portion of the Project instead of the previously planned onsite septic systems. Applying for the order was premature given the lack of progress made by the developer towards securing a recorded Project map with an approved onsite wastewater treatment plant and the potential that the unrecorded map and underlying conditional use permit will expire in October 2022.

CEQA requires that the Los Angeles Water Board, as a responsible agency, considers the 1994 EIR and the 2007 SEIR together as part of a singular CEQA Project document.

Despite reviewing the approved planning documents [at 52:21, at 58:24 and at 2:53:11] staff failed to correctly represent the scope of critical potable water and wastewater aspects the project to the Los Angeles Water Board. When taken in conjunction with the reservations expressed by several board members during the meeting, it is clear that the decision to approve the order was taken based on misrepresentations by Los Angeles Water Board staff and the developer's legal counsel about the need for key facilities of the Project described in the approved planning documents. The misrepresentative comments were considered as a priority to any opposing statements made prior to and during the meeting on the assumption that staff had exercised an appropriate level of diligence in reviewing the approved documents. Perhaps if staff had actually read the documents as opposed to simply 'looking at them' [at 2:05] they would have appreciated the concerns that had been expressed prior to and during the meeting. The revised wastewater entitlement and Project description appear within the first few pages of the approved 2007 document set and the need for a wastewater treatment plant for the Project being the essence of the Project are writ large on the 1994 and 2007 documents. As noted in section 7.5 above, this approach to treat parts of the Project separately as opposed to as one single Project is not allowed under the provisions CEQA, which the Los Angeles Water Board is legally obliged to observe. Therefore the board acted illegally under CEQA to approve the order.

The board members appear to have also arrived at their decision based on the assumption that the potable water was coming exclusively from sources for which the board is not responsible. This is not supported by the approved planning documents and likely influenced the board members' decision to approve the order when, like the community members, they too were concerned about this issue in light of the current drought.

By taking the decision to approve the order, the board has created a potential outcome whereby the discharger proceeds to dredge and fill the ephemeral streams within the project area, then proceeds to grade up to 1.9 million cubic yards of undisturbed rural hillside. The discharger may not be able to secure the necessary septic system permits from Los Angeles County Department of Public Health since the wastewater entitlement to build the first 68 homes with onsite septic systems no longer exists by virtue of the approval of the revised Project wide wastewater entitlement described in the 2007 Supplemental Environmental Impact Report. Should the unrecorded map where the required wastewater treatment facility is located expire, there can be no guarantee that the discharger will be able to secure a renewed map due to the prevailing environmental considerations that will apply to such a new application. This has profound environmental impacts on the community of Agua Dulce and would result in the permanent destruction of the ephemeral streams located on the Project site covered by the order.

In this scenario, the community of Agua Dulce, of which the petitioner is part, are left with permanently scarred rural hillsides and vistas resulting from the grading performed to create the pads, storm drains and streets for the first 68 dwellings that cannot be restored.

Were the correct facts about the Project conveyed by staff to the board during the meeting, the board members are likely to have realized this entirely avoidable outcome over an aspect of the Project for which the board is responsible and directed staff to wait until the unrecorded map with the onsite wastewater treatment plant required in the 2007 SEIR for all the dwellings on all phases of the Project

was recorded so that the ephemeral streams and other undisturbed hillsides could be preserved in the near term.

During the meeting, a Verbal Comments outlining the concerns about this order enabling the continuation of the issuance of other permits for the Project were made by Lynn Plambeck [at 1:24:26], Marcy Winter [at 1:47:08], Marcy Calnan [at 1:51:02] and Glenn Winter [at 1:57:03].

8 Petitioner's statement regarding distribution of the petition

The petition has been sent by email to waterqualitypetitions@waterboards.ca.gov along with the Los Angeles Regional Water Quality Control board in care of Renee Purdy, Executive Officer renee.purdy@waterboards.ca.gov.

A copy of the petition has been distributed to the discharger by email at the contact email info@rtginvest.com shown on the discharger's website rtginvestment.com. A copy of the petition has also been sent by United States Postal Service to the discharger's mailing address at 655 N Central Avenue, Suite 1760, Glendale, CA 91203.

9 Petitioner's statement regarding substantive issues and objections

As noted in Section 7 of this petition, the substantive issues and objections were raised in (i) the discrepancy between the staff's verbal and written testimony and the approved planning documents published by Los Angeles County Department of Regional Planning for Tract 50385, (ii) the public comments submitted to the Los Angeles Water Board prior to the February 10th 2022 meeting and (iii) during verbal comments made before the Los Angeles Water Board during the February 10th meeting.

Where applicable, citations to the planning record, and written and verbal public comments and statements made during the hearing have been included in Section 7.

cc: [via email and U.S. Mail]
Ruben Grigoryan
RTG Investments, LLC
655 N Central Avenue, Suite 1760
Glendale, CA 91203
info@rtginvest.com

[All via email only]
Renee Purdy, Executive Officer
Los Angeles Regional Water Quality
Control Board
Los Angeles, CA 90013
Renee.Purdy@waterboards.ca.gov

Jenny Newman, Assistant Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Jenny.Newman@waterboards.ca.gov

Adriana Nunez, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Adriana.Nunez@waterboards.ca.gov

Bonnie Rogers
SWCA Environmental Consultants
51 W. Dayton Street
Pasadena
CA 91105
Bonnie.Roqers@swca.com

Jennifer L. Fordyce, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Jennifer.Fordyce@waterboards.ca.gov

Hugh Marley, Assistant Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Hugh.Marley@waterboards.ca.gov

Sophie Froelich, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 2nd Floor (95814)
P O Bo 100, Sacramento, CA 95812-0100
Sophie.Froelich@waterboards.ca.gov

Amelia Carder, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 2nd Floor (95814)
P O Box 100
Sacramento, CA 95812-0100
Amelia.Carder@waterboards.ca.gov

Valerie Carrillo Zara, P.G.
Engineering Geologist
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Valeria.Zara@waterboards.ca.gov

Tamarin Austin, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Tamarin.Austin@waterboards.ca.gov

[All via email only continued]

Emel Wadhvani, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Emel.Wadhvani@waterboards.ca.gov

Philip Wyels, Esq.
Office of Chief Counsel
State Water Resource Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Philip.Wyels@waterboards.ca.gov

Elizabeth Sablad, Chief Permits Office
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Sablad.Elizabeth@epa.gov

Eric Magnan, Chief Clean Water Compliance (NPDES)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Magnan.Eric@epa.gov

John Brunot
10535 Darling Road
Agua Dulce, CA 91390
jbrunot@gmail.com

Cynthia Grimes
33411 Tyndall Road
Agua Dulce, CA 91390
cgtymes2@aol.com

Susan Turner
10535 Darling Road
Agua Dulce, CA 91390
susan@burbankcasting.com

Marcy Winter
9210 Yucca Hills Road
Agua Dulce, CA 91390
adneighbors2021@gmail.com