

AGUA DULCE TOWN COUNCIL

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October 24, 2022

Executive Officer Renee Purdy
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Via Email to: renee.purdy@waterboards.ca.gov

RE: Agua Dulce Town Council concerns on financial assurance instrument used for Order No. R4-2022-066 Section 13.J

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Dear Ms. Purdy:

We are writing to you to raise our concerns over the recent decision by the Los Angeles Regional Water Quality Control Board to utilize the July 11th irrevocable standby Letter Of Credit ("LOC") between the Los Angeles County Department of Public Works and RTG Investment Limited to meet the financial assurance conditions of Order R4-2022-066 imposed by the Board at the 650th Regular Board Meeting held on February 10th, 2022.

As you are aware, there was public comment prior to the February 10th meeting as well as discussion about this topic by the Board members during the meeting that resulted in the inclusion of the new Section 13.J of the Order that reads:

J. Financial Assurances "Failure to put in place appropriate BMPs and/or replant poses a potential nuisance and/or threatened discharge to waters of the state. The Permittee shall submit to the Los Angeles Water Board evidence of financial assurance sufficient to ensure that any maintenance, restoration, mitigation, monitoring and reporting, and other obligations related to mitigation and stormwater controls imposed by this Order, shall be supported by a demonstration of financial assurance. The financial assurance may be in the form of a performance bond, escrow account, letter of credit or other appropriate instruments, subject to the approval of the Executive Officer."

1. Lack of standing to receive payment under the Letter of Credit

Having reviewed the Letter of Credit that was attached to the email sent on October 4th 2022 by Celine Gallon to Council member Chris Yewdall, the Agua Dulce Town Council is of the view that the letter of credit provides no assurances whatsoever to the Los Angeles Regional Water Quality Control Board and therefore does not meet the criteria of Section 13.J of the Order.

The LOC notes that the named beneficiary is Department of Public Works County of Los Angeles, 900 South Fremont Avenue, Alhambra, CA 91803 and that the LOC covers work performed under the grading permit GRAD200218000115.

In view of the fact that the Los Angeles Regional Water Quality Control Board is not a named Beneficiary in the LOC and that the LOC does not cover work performed under Order R4-2022-066, it is the Council's view that it would be impossible for the Los Angeles Regional Water Quality Control Board to make any valid financial claim against the LOC and therefore the LOC does not serve the purpose described in Section 13.J.

This is further compounded by the fact that the Los Angeles Regional Water Quality Control Board is a division of the State of California Water Quality Control Board and the named Beneficiary, The Los Angeles County Department of Public Works, is a local agency in Los Angeles County with no direct linkage between the two agencies sufficient to extend coverage under the terms of the LOC.

2. Conflict with prior statements made by the Los Angeles Regional Water Quality Control Board

On April 15th, Ms. Gallon provided a copy of the draft Letter of Credit in response to a Public Records Request for financial assurances related to the Order. Mr. Yewdall then asked whether the Los Angeles Regional Water Quality Control Board was proposing to use the Department of Public Works Letter of Credit to satisfy the requirements of Section 13.J.

On April 18th, Ms. Gallon replied that "The letter of credit prepared for the County cannot be used to fulfill Water Board's requirements. The financial assurance mechanism specific to the Water Board should be in place in the next couple of weeks."

Notably, this reply from Ms. Gallon was copied to Tamarin Austin, an attorney working in the Office of the Chief Counsel (who was in attendance at the February 10th Board meeting and spoke in support of the Order) and there was no subsequent correction to Ms. Gallon's statement.

The Order was approved on February 10th 2022 and the Letter of Credit did not become effective until July 11th 2022. At no point in this four month period did the applicant seek to revise the terms of the draft Letter of Credit such that the Los Angeles Regional Water Quality Control Board would be a beneficiary or that the terms of the Order would be a payment condition.

3. The risk of unforeseen issues related to this project is significant due to geopolitical issues

As was noted in the public comments provided prior to and during the February 10th meeting, the developer appears to have strong links to the Russian Federation. Specifically, Vinette Trading Company, the stated holding company of Wyoming registered RTG Investment LLC (as shown in the LOC) also has an office in Moscow, Russia at Olympic Plaza, Prospekt Mira 33, Moscow, Russia 129110.

The address of Vinette Trading Company in Russia is identical to that of Rutsog Invest, a Russian construction holding company of which Mr. Ruben Grigoryan is the President. Mr. Grigoryan is the Applicant named on the Order R4-2022-066 and also the Chief Executive Officer of RTG Investment LLC.

Staff of the Los Angeles Regional Water Quality Control Board are in possession of the November 17th 2021 correspondence between Ms. Rosalyne Yamada, legal counsel for RTG Investment LLC and the California Department of Fish and Wildlife related to the Bill of Sale and Payment Receipt for proof of purchase of credits from Petersen Ranch Mitigation Bank referenced in the Order. In this email, Ms. Yamada indicates that RTG Investment will send a fully executed Sale agreement "once it is executed by our principal in Moscow".

In recent months, various Executive Orders have been enacted by the Biden administration that significantly limit the services that can be provided by US individuals and organizations directly or indirectly to individuals and organizations that are based in the Russian Federation.

The Congressional representative for Agua Dulce has been tracking this project for the past several months and shares the community's concerns about some aspects of this project. More recently, the project has been referred to various agencies within the Federal Government for investigation.

Since the authority of the Federal Government is presently far reaching, it is not inconceivable that issues could arise that may require the remediation of the site. As such, the Council's concern about the inability of the Los Angeles Regional Water Quality Control Board to make any financial claim under the terms of the LOC is not an unfounded concept.

4. Summary

During the February 10th meeting, Board member David Nahai stated that he felt that the Los Angeles Regional Water Quality Control Board “owes it to the community to keep very close vigilance on how this project is progressing” and the decision to accept a third party’s financial assurance that has no direct benefit to the Board is completely inconsistent with this sentiment.

In light of this situation, the Council respectfully requests that the water Board observe the requirements of the Order and seek a financial assurance that meets the requirements of Section 13.J. Until such time as this is in place and the terms of Section 13.J are adequately addressed, the Council also respectfully requests that the Board issues a stay on the Order.

Respectfully,

Don Henry

Don Henry, President
Agua Dulce Town Council – 2022

cc: LARWQCB Acting Chair James Stahl
LARWQCB Member David Nahai
Ms. Tamarin Austen, LARWQCB Counsel
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