ATTACHMENT 7

SUPPORTING DOCUMENT # 6

RESPONSE TO COMMENTS

I. SUMMARY OF COMMENTS RECEIVED

As of November 9, 2009 the Regional Board has received approximately 1793 comments from the public; all but two of which are in opposition to the proposed landfill or landfill with bridge. After the close of the comment period, the Board received one additional written comment letter.

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A. Form Letter Comments.

Of the 1794 comments received, all but twenty consisted of the same form letter, e-mailed by multiple individuals. These emails were generated from the NRDC website (https://secure.nrdconline.org/site/Advocacy?cmd=display&page=UserAction&id=1621). Each email has different senders and shows their respective residential addresses from all over California, the United States, and the world. The form email is titled, "Protect the San Luis Rey River and San Diego County's drinking water". The Regional Board has contacted the NRDC and requested a list of all the e-mail signatories from their database. The emails are stored on the Regional Board email server. If the public wishes to view the individual emails in person, an appointment can be arranged by calling 858-467-2952.

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The form letter did not address specific surface water quality issues from the proposed bridge project or any issues with the proposed bridge. Below is a summary of the general comments received in the form letter.

1. Authors request denial of the water quality certification for the proposed landfill project.
2. Authors request a public meeting regarding this issue.
3. Authors fear leachate from the proposed landfill will contaminate ground water.
4. Authors state that regional water supplies are scarce and will become scarcer due to climate change and that drinking water sources must be protected at all costs.
5. Authors state the proposed landfill will threaten Native American lands.

B Non-Form Letter Comments.

The Regional Board received twenty additional comment letters, not generated by the NRDC website. Individual comment letters were received from the following individuals:

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1. Ms. Pam Slater-Price, Vice Chairwoman, Supervisor, Third District, San Diego County Board of Supervisors (dated October 2, 2009).
2. Mr. Edward Kimura, Chair, Water Committee, Sierra Club, San Diego Chapter (e-mailed and dated October 6, 2009).
3. Mr. Ken Weinberg, Director of Water Resources, San Diego County Water Authority (dated October 7, 2009).
4. Mr. George Courser, Director and Ms. Bonnie Gendron, Coordinator, Back Country Coalition (dated October 7, 2009).
5. San Luis Rey Band of Luiseno Mission Indians, by the California Indian Legal Services (Mark A. Vezzola, Staff Attorney) (dated October 8, 2009).
6. Ms. Larriann Musick, Tribal Chairperson, La Jolla Band of Luiseno Indians (dated October 8, 2009).
7. Pala Band of Mission Indians, by the law firm of Procopio, Cory, Hargreaves, and Savitch (attorney Walter E. Rusnick) (dated October 9, 2009).
8. Ms. Angela Veltrano, Chairman, Rincon Culture Committee, Rincon Tribe (dated October 9, 2009).
9. Ms. Mona M. Sespe, Pala Tribal Member (dated October 14, 2009).
10. Pala Band of Mission Indians, by the law firm of Procopio, Cory, Hargreaves, and Savitch (attorney Walter E. Rusnick) (dated October 23, 2009).
11. Ms. Nadine L. Scott, Attorney at Law, Friends of Loma Alta Creek (email received October 31, 2009).
12. Ms. Ruth Harber, RiverWatch, (dated November 5, 2009)
13. Pala Band of Mission Indians, by the law of firm Procopio, Cory, Hargreaves, and Savitch (attorney Walter E. Rusnick) (dated November 9, 2009).
14. Mr. Damon Nagami, Staff Attorney, Natural Resources Defense Council (dated November 9, 2009).
15. Mr. Robert Simmons (dated November 9, 2009).
16. Mr. Larry Purcell, Water Resources Manager, San Diego County Water Authority (dated November 9, 2009).
17. Ms. Lenore Lamb, Director of Environmental Services, Pala Band of Mission Indians (dated November 9, 2009).
18. Ms. Lani Lutar, President & CEO, San Diego County Taxpayers Association (dated November 9, 2009).
19. Mr. Edward Kimura, Chair, Water Committee, Sierra Club, San Diego Chapter (dated November 9, 2009).
20. Mr. Gary Stephany, former Director of EHS and CAO for County of San Diego (received November 12, 2009).

II. REGIONAL BOARD RESPONSES

The following table contains a summary of the comments received in order of frequency, with the most common comments first, followed by the Regional Board's response:

Comment #	Generalized Comment:	Comment submitted by:	Response:
1	The location of the proposed landfill is not appropriate next to the San Luis Rey River.	All commenters.	This certification is for the Gregory Canyon Bridge, and therefore does not evaluate the suitability of the proposed landfill location. In evaluating this certification, staff has considered the location of the bridge impacts, with regards to possible alternative sites for the bridge in that area, and finds it to be in a location that sufficiently minimizes impacts to Waters of the United States.
2	The proposed landfill can cause degraded surface and/or ground water quality from leaking leachate.	Supervisor Slater-Price, San Luis Rey Band, La Jolla Band, Ms. Veltrano, Ms. Sespe., Pala Band.	This certification is for the Gregory Canyon Bridge, and therefore does not evaluate the likelihood of leachate releases from the proposed landfill. Comments on the landfill will be evaluated and responded to by the Regional Board prior to issuance of Waste Discharge Requirements for the proposed landfill.
3	Issuance of the certification infringes on rights of Native Americans, and impacts cultural resources being desecrated and/or ignored from the proposed landfill over sacred areas.	Supervisor Slater-Price, San Luis Rey Band, La Jolla Band, Ms. Veltrano, Ms. Sespe, Pala Band.	According to the application, the Gregory Canyon bridge site does not impact any known cultural resources. Further, the Regional Board as a responsible agency under CEQA is only required to consider the impacts to water quality, not impacts caused by or operation the proposed

Comment #	Generalized Comment:	Comment submitted by:	Response:
			landfill.
4	The application for Water Quality Certification should be denied because (a) bridge permitting should not be separated from landfill permitting, (b) water quality issues, and (c) concerns about Native American rights and their sacred places.	Supervisor Slater-Price, San Luis Rey Band, La Jolla Band, Ms. Sespe, Back Country Coalition.	Comment noted. At the November 18, 2009 hearing, the Regional Board will have the option to direct the Executive Officer to amend, certify, deny or postpone this certification, as drafted, based on evidence received.
5	Issuance of this certification without concurrent review and issuance of the Waste Discharge Requirements for the proposed Gregory Canyon Landfill would be "piece-mealing" of permits for the proposed landfill project that originally contained a bridge component.	Sierra Club, San Diego County Water Authority, Back Country Coalition, San Luis Rey Band, Ms. Scott, RiverWatch.	The applicant, Gregory Canyon, Ltd., LLC requested that the proposed bridge permitting be separated from the proposed landfill permitting. The issue of "piece-mealing" relates to CEQA. The County of San Diego, the lead agency under CEQA, certified a final Environmental Impact Report (EIR) for the entire project that includes an evaluation of the environmental impacts of the landfill, the bridge, and other issues. The Regional Board, as a responsible agency under CEQA, is not required to act on all applications it receives in one action; it can consider the Waste Discharge Requirements and CWA 401 Water Quality Certification independently, so long as the CEQA

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			document it relies on is suitable for its purposes. At the November 18, 2009 hearing, the Regional Board will have the option to amend, certify, deny or postpone this certification, as drafted, based on evidence received.
6	The Regional Board cannot take an action on the application for Water Quality Certification for the proposed bridge because the CEQA process is not complete due to water supply problems for the operation of the proposed landfill and pending an appeal in the Fourth District Court of Appeals.	Back Country Coalition, Pala Band, San Diego County Water Authority, Ms. Veltrano, RiverWatch	Regional Board understands the CEQA review process to be complete for the Regional Board's action; but subject to appeal. As a Responsible Agency, not Lead Agency, under CEQA the Regional Board is only required to consider the CEQA document with respect to the portions of the project it is approving and only those impacts within its jurisdiction. With respect to the proposed bridge, the Regional Board need only consider the impacts to water quality, not impacts caused by or operation of the proposed landfill. Further, as a responsible agency, the Regional Board is required to presume that the CEQA document is valid for its purposes unless the CEQA document is

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			finally adjudged in a legal proceeding not to comply with CEQA or a subsequent EIR is made necessary by Section 15162 of the CEQA guidelines. See Title 14 CCR Section 15231. In this case, the court concluded that the revised EIR complied with CEQA, and, therefore, the Regional Board must presume that the EIR is valid.
7	The proposed landfill would negatively affect flora and fauna.	Supervisor Slater-Price, San Luis Rey Band, La Jolla Band, Pala Band.	The Water Quality Certification for the proposed bridge authorizes 0.002-acre of permanent impacts to unvegetated waters. The Regional Board has conditioned the certification to include requirements that will mitigate for any proposed impacts to flora and fauna from the bridge project.
8	We request that the Regional Board not issue a separate Water Quality Certification for the proposed bridge because the existing draft Waste Discharge Requirements contains a Water Quality Certification section for the proposed bridge.	Back Country Coalition, Supervisor Slater-Price.	At the time that draft Waste Discharge Requirements were made public, it was the Regional Board's intent to issue the 401 certification, and condition impacts to non-federal waters of the State, with the issuance of the WDRs. Since that time, the Regional Board has determined that issuance of a 401 certification for impacts to Federal Waters can occur prior to the issuance of all other requirements. Draft Waste

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			Discharge Requirements for the proposed landfill project will need to be revised accordingly, but will still contain compliance conditions to address impacts to surface waters of the State from the Gregory Canyon landfill project area. Pursuant to 33 CFR, Section 325.29.IV.b.1, the Regional Board is required to act on applications for water quality certification within 60 days of receipt of the application unless an exception is granted by the Army Corps of Engineers. That period ends on December 12, 2009. Note, however, that the Regional Board may still issue waste discharge requirements for the activity even after the time to act on a 401 certification application has expired. The proposed water quality certification includes reopeners for changed circumstances, including changes in the jurisdictional determination, the proposed action, or applicable water quality standards. At the November 18, 2009 hearing, the Regional Board will have the option to

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			direct the Executive Officer to amend, certify, deny or postpone this certification, as drafted, based on evidence received.
9	Request that the comment period be extended.	Supervisor Slater-Price, San Luis Rey Band, Ms. Lamb, NRDC.	The public comment period for a Water Quality Certification is a minimum of 21 days. The Executive Officer or Regional Board can take action on that certification at any point after 21 days. (33 USC Section 1341; Sections 179, 183, 1059, and 13160, California Water Code.) On November 9, 2009 the close of written comments, the public will have been provided 53 days to submit comments on the proposed project. Additionally, oral comments may be received at the November 18, 2009 Regional Board Meeting for action on this Water Quality Certification.
10	The siting regulations for a new landfill were not being followed per CCR Title 27, Division 2, Subdivision 1, Chapter 3, Subchapter 2, Article 3.	La Jolla Band	This certification is for the Gregory Canyon Bridge, and therefore does not evaluate the suitability of the proposed landfill location. Comments on the siting regulations will be evaluated and responded to by the

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			Regional Board prior to issuance of Waste Discharge Requirements for the proposed landfill.
11	The integrity of the San Diego County Water Authority aqueduct pipelines under the San Luis Rey River could be jeopardized due to scour of the riverbed from alteration of the river from the proposed bridge and that a scour study should be performed.	SDCWA	On October 29, 2009 the Regional Board requested additional hydrology analyses from the applicant to evaluate this concern. On November 3, 2009 hydrology reports were received and shared with SDCWA. Hydrology reports state that no scour will occur.
12	There is no valid Clean Water Act section 404 application for proposed landfill and bridge because the Nationwide Permits under section 404 had expired in 2007 and the application was submitted in 2005.	Pala Band	Regional Board staff discussed this topic with the Army Corps of Engineers (ACOE). The ACOE stated that the application form received in 2005 is still valid. The proposed water quality certification includes reopeners for changed circumstances.
13	There is no valid Jurisdictional Determination (of Waters of the U.S.) under Clean Water Act section 404 since it had reached its 5-	Pala Band	According to the ACOE, the Jurisdictional Determination expired on October 28, 2009. The ACOE has conducted a new Jurisdictional Determination, and will convey the

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	year expiration date on October 6, 2009. Given that, the Regional Board cannot take an action on a pending application for Water Quality Certification section 401 - as the two permits are statutorily tied together.		results of this JD on November 15. Regional Board has asked ACOE how they should proceed in light of the possible outcomes, and is awaiting response.
14	More information is needed for the proposed use of the low-flow crossing downstream of the proposed bridge. Additional information needed includes how will the damaged low-flow crossing be repaired, permitted, or how endangered species and their habitats will be protected during repair of and use of the low-flow crossing.	Pala Band	Engineered drawings and additional details on the low-flow crossing were requested on October 19 and November 10, 2009. Staff will evaluate the information provided prior to issuance of this certification.
15	The section 404 Permit application contains erroneous information.	Pala Band	The Regional Board relies on the ACOE review of the 404 application to determine whether any of the information in the application is erroneous.
16	The Application does not provide sufficient information	Pala Band	The Regional Board can continue to ask for more information to determine project

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	for the issuance of a water quality certification.		impacts after the certification is deemed statutorily complete; and have done so in this case. The certification will not be issued until the Regional Board staff has received sufficient information to determine whether the proposed project will negatively impact water quality.
17	Per 33 U.S.C., CCR §3831, and case law, the Water Quality Certification must consider the impacts of the activity allowed, not simply the fill activity.	Pala Band	"Water quality certification" means "a certification that any discharge or discharges to waters of the United States, resulting from an activity that requires a federal license or permit will comply with water quality standards." The application for water quality certification is related to the bridge project and impacts to jurisdictional waters. The proposed water quality certification imposes conditions to address all water quality impacts associated with the bridge project. The water quality impacts associated with the landfill will be considered when the Regional Board considers adoption of waste discharge requirements.
18	The Regional Board failed to public notice the September 28, 2009 application.	Pala Band	The Regional Board considers the application dated September 28, 2009 as supplemental to the original application received on September 17, 2009, and therefore has continued to

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			notice accordingly.
19	The new application is internally inconsistent and still does not provide sufficient information for the issuance of a water quality certification.	Pala Band	Staff continues to await information regarding the JD, the repair, use, and abandonment of the low-flowing crossing, and the request for an adequate bridge design that captures air-borne trash with fence. The Regional Board can continue to ask for more information to determine project impacts after the certification is deemed statutorily complete; and have done so in this case. The certification will not be issued until the Regional Board staff has received sufficient information to determine whether the proposed project will negatively impact water quality.
20	Not enough time was allowed to review the draft Water Quality Certification, and some of the supporting application materials.	Ms. Lamb, RiverWatch, NRDC, Pala.	It is not standard practice for the Regional Board to circulate application materials and Draft Certifications for public review, and there is no statutory requirement that entitles the public to a specified period of time for such review. The Regional Board made every effort to post relevant materials as soon as they were available. The Draft Certification was posted on the Regional Board website on November 5, 2009 (COB). The Gregory Canyon interested parties,

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			however, were not notified by e-mail of this posting until the morning of November 9, 2009. Nevertheless, the public retains the opportunity to submit oral testimony on the draft certification at the Regional Board hearing.
21	Support for the proposed landfill.	San Diego County Taxpayers Association, Mr. Simmons, Mr. Stephany.	Comments noted.
22	Processing the Certification as proposed would violate CEQA.	Pala Band	Comment noted, and will likely be addressed further at the Regional Board hearing.
23	Request the hearing be moved to December to allow San Diego County Water Authority's consultant enough time to evaluate the hydrology models prepared by proponent to determine if aqueduct pipelines are subject to riverbed scour due to the proposed bridge.	San Diego County Water Authority	Comment noted. At the November 18, 2009 hearing, the Regional Board will have the option to direct the Executive Officer to amend, certify, deny or postpone this certification, as drafted, based on evidence received.
24	Draft Certification does not address application inconsistencies and admits that more information is needed to process the application	Pala Band	It is not uncommon for the Regional Board to continue to request clarification on issues until such time that all issues have been resolved and the Board can proceed with certification. In cases where the application materials

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			are inconsistent, the Regional Board relies on the statements contained in the most current documents received. Where a discrepancy is significant enough to threaten the ability to certify a specified project, the Regional Board may also provide clarification through conditions contained in the certification.
25	Proposed bridge is longer than what was described in the Revised Final EIR.	Sierra Club	A longer bridge design would result in less impacts to the river.
26	There is concern over the stability of the piers in the alluvium.	Sierra Club	The Regional Board does not evaluate the geotechnical stability of proposed with respect to water quality certifications.
27	There is concern over the adequacy of post-construction BMPs from bridge runoff.	Sierra Club	There will be three layers of post-construction BMPs – street sweeping, media filtration, and infiltration. The Regional Board determines this to be sufficient for certification, and consistent with like-projects throughout the region.