

EXECUTIVE OFFICER SUMMARY REPORT  
August 13, 2014

ITEM:	10
SUBJECT:	Clean Water Act Section 401 Water Quality Certification for the San Luis Rey Mitigation Bank Project (Tentative Certification No. R9-2013-0050) ( <i>Alan Monji</i> ).
PURPOSE:	To consider adoption of Tentative Certification No. R9-2013-0050.
RECOMMENDATION:	Adoption of Tentative Certification No. R9-2013-0050 is recommended.
KEY ISSUES	<ol style="list-style-type: none"><li>1. The Tentative Certification authorizes permanent impact to 4.96 acre (1,850 linear feet) and temporary impact to 0.21 acre (100 linear feet) of wetland waters of the United States and/or State.</li><li>2. The Tentative Certification authorizes the restoration and re-establishment of 53.84 acres of riparian floodplain forest on the San Luis Rey River by the removal of fill from an existing farm field that is within the historic San Luis Rey River streambed.</li><li>3. Soil excavated from the farm field will be transported to adjacent agricultural fields and re-graded to approved specifications.</li><li>4. Post-construction best management practices (BMPs) are required to manage and control runoff from the soil placement areas on the adjacent agricultural fields.</li></ol>
PRACTICAL VISION	The Tentative Certification was developed with the San Diego Water Board's Practical Vision entitled <i>Healthy Waters, Healthy People</i> in mind. Clean Water Act section 401 Certification (Water Quality Certification), such as the Tentative Certification, is the chief regulatory tool traditionally relied on by the State of California to: 1) control the discharge of dredged or fill material into surface waters of the United States and/or State and 2)

set requirements for the amount of compensatory mitigation needed to offset adverse impacts of such discharges on the function and values of aquatic resources, including wetlands. Consistent with the mission of the *Recovery of Streams, Wetlands and Riparian Systems* chapter of the Practical Vision, the Tentative Certification establishes conditions for an environmentally sound project to return approximately 53.84 acres of agriculture farmland and modified river channel in the historical San Luis Rey River bed to streambed and riparian habitat. In doing so the project will restore and reconnect an upstream portion of the San Luis Rey River with the historical channel and flood plain. The Tentative Certification is also consistent with the *Proactive Public Outreach and Communication* chapter of the Practical Vision in that it addresses the regulated community's expressed need for expanded compensatory mitigation opportunities to offset adverse impacts of other projects in the vicinity of the San Luis Rey River. This is accomplished by providing Water Quality Certification to Wildlands for the construction of a mitigation bank site where wetlands and/or other aquatic resources are created, restored, enhanced, and preserved expressly for the purpose of providing compensatory mitigation in advance of other authorized projects that impact similar resources.

DISCUSSION:

**Project Location and Purpose**

Wildlands (hereinafter Applicant), a habitat development and land management company, submitted an application dated February 21, 2013, for Water Quality Certification pursuant to Clean Water Act section 401 for discharges of dredge or fill material associated with the construction of the San Luis Rey Mitigation Bank Project (Project). The Project is located within the City of Oceanside, San Diego County, California at 5780 Mission Avenue between North River Road and Mission Avenue (State Route 76) and Melrose Drive and Singh Way (**see Supporting Document No, 1**).

The Applicant proposes to create, operate, and maintain the San Luis Rey Mitigation Bank (Mitigation Bank) pursuant to a federal and State approved bank enabling instrument (BEI). The Mitigation Bank will re-establish, rehabilitate, and permanently protect at least 45.25 acres of riparian wetland waters and approximately 8.59 acres of riparian floodplain and upland buffer habitats in the San

Luis Rey River streambed and banks. The Mitigation Bank will provide for purchase of compensatory mitigation credits in accordance with BEI requirements to off-set unavoidable authorized adverse impacts to wetland, streambed, and other aquatic habitat within waters of the United States and/or State. The mitigation credits may be purchased and used by other project applicants to satisfy compensatory mitigation requirements set as a condition of dredge and fill permits and approvals issued by federal, State, and local agencies.

### **Project Description**

In the past, the San Luis Rey River streambed within the San Luis Rey Mitigation Bank Project limits was channelized and the adjacent floodplain was filled to accommodate agricultural production. The San Luis Rey Mitigation Bank Project proposes to remove approximately 684,000 cubic yards of fill material from agricultural fields within the historic San Luis Rey River bed, excavate the restoration areas down to match adjacent riverbed/floodplain elevations, and plant a mosaic of native wetland riparian plants. The re-established San Luis Rey River corridor will support wetland and riparian habitat and will create a connection with a restoration project located immediately upstream of the Project site. The property on which the Project will occur is approximately 56.54 acres in size; of that area, restoration will occur on approximately 53.84 acres.

Soil excavated from the wetland restoration area will be transported to adjacent agricultural fields for re-use at Soil Placement Sites 1, 2, 4, 5N, 5S, and 7. The excavated soil will be placed at the Soil Placement Sites and re-graded to approved specifications. After grading activities at the Soil Placement Sites are complete, the Sites will be returned to agricultural use.

### **Proposed Certification Action**

Tentative Certification No. R9-2013-0050 (**Supporting Document No. 2**) will, if adopted, serve as a Clean Water Act Section 401 Water Quality Certification and responds to the application for Certification for the Project submitted by the Applicant.

The California Code of Regulations (CCR), title 23, chapter 28, article 1, section 3831 provides that "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 and other appropriate requirements. The most common federal permit that requires a 401 certification is a Clean Water Act section 404 permit, most often issued by the United States Army Corps of Engineers (USACE), for the placement of fill in waters of the United States. The San Diego Water Board's issuance of the Tentative Certification will ensure water quality standards for all waters of the United States and/or State impacted by the Project are met. The conditions and requirements of the Tentative Certification will become conditions and requirements of the USACE Clean Water Act section 404 permit when it is issued to the Applicant later this year.

The Tentative Certification authorizes permanent impacts of 4.96 acre (1,850 linear feet) and temporary impacts of 0.21 acre (100 linear feet) to the San Luis Rey River streambed and riparian habitat. Projects receiving certification that authorize impacts to waters of the United States and/or State must demonstrate the Project design has avoided and minimized impacts to the maximum extent practicable. The Project impacts proposed by the Applicant cannot be avoided because existing berms and other structures in the San Luis Rey River channel must be removed in order to restore the river to historical elevations and connect the adjacent wetland and riparian mitigation areas to the river. Under the terms and conditions of the proposed BEI, mitigation credits created by restoration in areas of permanent impact to the San Luis Rey River can only be sold as wetland rehabilitation mitigation credits and may not be used for other types of mitigation credits. Based on these considerations and the Project's permanent restoration of wetland habitat in the San Luis Rey River, the Tentative Certification does not require additional compensatory mitigation to offset Project impacts.

The Tentative Certification requires the Applicant to implement post-construction best management practices (BMPs) to manage and control the runoff at the Soil Placement Sites including vegetated buffers, grade breaks, contour farming, deep tillage, irrigation management, and sediment basins. These BMPs will be designed, constructed, and maintained to meet the most recent *California Storm Water Quality Association*

(CASQA) guidance and other applicable City of Oceanside storm water requirements.

The Tentative Certification requires monitoring to assess the success of the Project. The assessment includes monitoring the ecological functions of the San Luis Rey River using the California Rapid Assessment Method (CRAM) and a benthic macroinvertebrates community analysis. Required post construction monitoring of the BMPs installed at the Soil Placement Sites includes sampling and analyzing the receiving water for dissolved oxygen, turbidity, temperature, and pH to ensure that runoff is managed and controlled.

The Tentative Certification was released for public review and comment pursuant to CCR, title 23, section 3858 on June 12, 2014 for a period of twenty-one days. The Applicant provided comments regarding the Tentative Certification via two separate email messages (**Supporting Document No. 3**). These were the only comment documents received. San Diego Water Board responses to these comments are provided in **Supporting Document No. 4**. Additionally, the Tentative Certification has been revised in redline strike-out format in response to these comments and a Revised Tentative Certification was posted for public review prior to today's meeting. The changes to the Tentative Certification are not substantive.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative Certification No. R9-2013-0050
3. Wildlands Comment E-mail
4. San Diego Water Board Response to Comments

PUBLIC NOTICE: On March 5, 2013, the San Diego Water Board provided public notice of the Project certification application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the San Diego Water Board's web site and providing a period of twenty-one days for public review and comment. No comments were received regarding the certification application. On June 12, 2014 notice of this public hearing and the Tentative Certification were provided to the Applicant and other interested parties via e-mail. The public hearing notice and Tentative Certification were also

posted on the San Diego Water Board website on June 12, 2014 for a period of twenty-one days for public review and comment. Notice was also provided in the Meeting Notice and Agenda for the August 13, 2014 Board meeting and posted on the San Diego Water Board website.