

California Regional Water Quality Control Board Santa Ana Region

March 16, 2012

ITEM: 11

SUBJECT: In Lieu Fee Enabling Instrument between Riverside-Corona Resource Conservation District and the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, the California Department of Fish and Game, and the Santa Ana Regional Water Quality Control Board

The Executive Officer is proposing to be a signatory to the In Lieu Fee Enabling Instrument ("Instrument") on behalf of the Regional Board. The Instrument sets forth the agreement of the parties regarding the establishment, use, operation, and maintenance of the Riverside-Corona Resource Conservation District's ("RCRCD") in lieu fee program to compensate for the impacts of discharges of dredge or fill to waters of the United States and waters of the State.

For over a decade, RCRCD has accepted and expended environmental mitigation fees for both public and private development projects in the Santa Ana Region. RCRCD uses these funds to carry out habitat restoration and enhancement projects, and has accepted conservation easements (and in some cases, fee title) over properties, associated with mitigation that the Regional Board has required for impacts to waters of the State.

The sale of mitigation credits has occurred under informal agreements between Regional Board staff and staff of RCRCD in response to conditions in Clean Water Act Section 401 Water Quality Standards Certifications and the provisions of waste discharge requirements. Due to a lack of resources, the Regional Board has never developed a formal agreement addressing the sale of mitigation by RCRCD.

RCRCD has initiated obtaining approval of the Instrument by the U.S. Army Corps of Engineers ("Corps") pursuant to regulations promulgated in 2008, referred to as the Mitigation Rule. The regulations are enforced by the Corps and require certain elements in the Instrument, such as a formal implementation strategy, accounting of funds, regular reporting, and the use of objective performance standards. Many of these elements have already been implemented informally by RCRCD to varying degrees and will be memorialized in the Instrument.

The regulations are intended, in part, to level the playing field between sometimes competing mitigation banks and in-lieu fee program operators, in the sale of mitigation credits. However, in the Santa Ana Region, there are no mitigation banks and few in-lieu fee programs, from which credits can be purchased to compensate for impacts to waters of the U.S. and the state, so competition is limited. For the Regional Board, the Instrument will serve principally to allow the sale of mitigation credits under a formal, unified agreement, and create a more transparent process for all of the participating agencies and the public.