

**California Regional Water Quality Control Board
San Diego Region**

Response to Comments Report

Tentative Certification No. R9-2013-0050

***Tentative Clean Water Act Section 401 Water Quality
Certification and Waste Discharge Requirements for
Discharge of Dredged and/or Fill Materials for the San
Luis Rey Mitigation Bank Project***

August 13, 2014

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

2375 Northside Drive, Suite 100, San Diego, California 92108

Phone • (619) 516-1990 • Fax (619) 516-1994

<http://www.waterboards.ca.gov/sandiego>

Documents are available at: <http://www.waterboards.ca.gov/sandiego>

**California Regional Water Quality Control Board
San Diego Region**

Henry Abarbanel, *Chair*
Gary Strawn, *Vice Chair*
Eric Anderson
Tomas Morales
Sharon Kalemkarian
Stefanie Warren
Vacant

David W. Gibson, *Executive Officer*
James Smith, *Assistant Executive Officer*

Catherine Hagan, *Senior Staff Counsel, Office of Chief Counsel*

This report was prepared under the direction of

David T. Barker, *P.E., Supervising Water Resource Control Engineer, Surface Water Basins Branch*

By

Kelly Dorsey, *P.G., Senior Engineering Geologist*
Alan Monji., *Environmental Scientist*

This Page Intentionally Left Blank

Introduction

This report contains responses to written comments received on *Tentative Clean Water Act Section 401 Water Quality Certification No. R9-2013-0050 and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials* (Tentative Certification) for the San Luis Rey Mitigation Bank Project (Project). The Tentative Certification was available for public review and comment for 21 days, with the comment period ending on July 3, 2014.

Written comments were received from:	Table Page No.
Wildlands	2

Comments and Responses

The written comments and staff responses are in the table that follows. The table indicates if the Tentative Certification was revised in response to the comment.

No.	Comment	Response	Action Taken
Wildlands			
1	<p>Tentative Certification section IV.B, Post Construction Best Management Practices.</p> <p>Section IV.B. <i>“The project must be designed to comply with the most current Standard Urban Storm Water Mitigation Plan for the City of Oceanside”</i>. The BMP discussions over the past year centered on the fact that standard BMPs designed for urban areas will not work in an agricultural setting, and therefore the BMPs were designed, and documented as approved by Dave Gibson’s May 30th email, using CASQA guidelines as a basis. This wording concerns us that it would be interpreted to include additional BMPs to comply with the SUSMP. We suggest deleting the first sentence and leave the remainder of IV.B. as is written.”</p>	<p>The San Diego Water Board has modified section IV.B of the Tentative Certification as follows to address this comment and update the title and date of the storm water mitigation plan:</p> <p>B. Post-Construction BMP Design. The Project must be designed to comply with the most current Standard Urban Storm Water Mitigation Plan for the all City of Oceanside storm water requirements. Post-construction BMPs are described in the <i>Priority Development Project Storm Water Mitigation Plan for San Luis Rey Mitigation Bank Storm Water Mitigation Plan for San Luis Rey Mitigation Bank, Soil Placement Sites 1, 2, 4, 5, and 7 (SWMP) dated April 29, July 18, 2014</i> (and any subsequent versions reviewed and approved by the City of Oceanside).</p> <p>Additionally, the following sentence was removed from the Project Description section of the Tentative Certification:</p> <p>These BMPs will be designed, constructed, and maintained to meet City of Oceanside County’s Low Impact Development (LID) Capture Volume and hydromodification treatment requirements.</p>	<p>Tentative Certification section IV.B has been revised.</p>
2	<p>Tentative Certification section V.H., Long Term Management and Maintenance.</p> <p>Section V, Paragraph H states that <i>“The restoration site must be managed, protected and maintained, in perpetuity, in conformance with the long term management plan and the final ecological success performance standards identified in the Development Plan (Section G.2, Monitoring and Success Criteria).”</i> We fully concur with this statement. However, some of the</p>	<p>The conditions in Tentative Certification section V.H are standard requirements included in all San Diego Water Board water quality certifications. These standard requirements adequately address the long term management and maintenance of the Project and are consistent with previous certifications issued for other projects in the San Luis Rey River watershed. No change to section V.H of the Tentative Certification is recommended.</p>	<p>None necessary.</p>

No.	Comment	Response	Action Taken
	<p>requirements that follow in the 401 are not consistent with the management or development plan pending IRT approval. As you are aware, through the banking process we have stringent maintenance, monitoring and success criteria within the negotiated Bank Enabling Instrument therefore, we believe the statement in Section H quoted above could simply stand on its own. Alternately, Section H should be modified to insert the specific Monitoring and Success Criteria contained in Section G.2 of the Development Plan.</p>		
3	<p>Tentative Certification section V.H.3, Long Term Management and Maintenance.</p> <p>Section V.H.3. contains exotic invasive species management requirements which are inconsistent with our management requirements of the Development Plan/Management Plan. As we discussed, it is impossible to keep a site “free” of perennial exotic plant species – and based on your clarifications of RWQCB intent, it appears we are close on this issue. In our Development Plan we have a 0% untreated requirement, but we anticipate (as you do), that from a biological perspective there will typically be some invasive species to treat/manage. Our requirement in the BEI, which we would like to see inserted into the 401, is as follows:</p> <p>Performance Standards for Invasive Exotic Species</p> <ul style="list-style-type: none"> • Years 1-5: Absolute cover of woody invasive exotics and large perennial grasses such as pampas grass and giant reed (rated as high on the Cal-IPC list) shall be minimal (less than 2%) with 0% untreated. 	<p>Section V.H.3 of the Tentative Certification is a standard requirement in all San Diego Water Board water quality certifications. This standard condition adequately addresses exotic invasive species management for the Project and is consistent with previous certifications issued for other projects in the San Luis Rey River watershed. No change to section V.H.3 of the Tentative Certification is recommended.</p>	None necessary.

No.	Comment	Response	Action Taken
	<ul style="list-style-type: none"> Years 1-5: Absolute cover of other herbaceous invasive exotics (rated as high on the Cal-IPC list) shall be less than 10%. 		
4	<p>Tentative Certification section V.I., Restoration Site Preservation Mechanism.</p> <p>A draft Conservation Easement has been submitted as Exhibit E-4 to the BEI, which meets these conditions. The CE will be recorded upon approval of the Bank. Can we clarify here that this draft CE meets this condition?</p>	<p>The San Diego Water Board has modified section V.I of the Tentative Certification as follows to address this comment:</p> <p>I. Restoration Site Preservation Mechanism. Within 60 days from the start of Project construction, <u>The Applicant must have</u> provided the San Diego Water Board with a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all restoration areas and their buffers in perpetuity.</p>	<p>Tentative Certification section V.I has been revised.</p>
5	<p>Tentative Certification section VI.C, Monitoring and Reporting Requirements.</p> <p>Section VI.C. Monitoring & Reporting Revisions - “The San Diego Water Board may make revisions to the monitoring program at any time during the term of this Certification and may reduce or increase the number of parameters to be monitored....” We understand this is a standard condition, but we request its scope be narrowed to be consistent with allowances for monitoring program revisions as spelled out in the BEI. We appreciate the flexibility to make revisions to the Monitoring and Reporting program, but we would like to see this described as a mutual effort, which will provide Wildlands with the ability to ensure our monitoring and reporting programs are consistent with site specific biological and hydraulic performance demands as required by the IRT.</p>	<p>This is a standard requirement in all San Diego Water Board water quality certifications and allows for adaptive management of the monitoring and reporting program. The San Diego Water Board’s authority to revise the monitoring program during the term of the Certification is not limited by the terms and conditions of the BEI. No change to section VI.C of the Tentative Certification is recommended.</p>	<p>None necessary.</p>

No.	Comment	Response	Action Taken
6	<p>Tentative Certification section VI.E, Monitoring and Reporting Requirements.</p> <p>Section VI.E.– We have already completed a pre-project CRAM assessment, and are required to complete post-construction CRAM assessments on Year 1, 3, & 5 as part of the requirements for our Development Plan. Can we modify this condition to be consistent with the Development Plan requirements?</p>	<p>The San Diego Water Board has modified section VI.E of the Tentative Certification as follows to address this comment:</p> <p>CRAM monitoring must be conducted prior to the start of Project construction authorized under this Certification and annually in <u>years 1, 3, and 5</u> following construction completion for a period of five (5) years at the stations outlined in VI.F.5 below.</p>	<p>Tentative Certification section VI.E has been revised.</p>
7	<p>Tentative Certification section VI.F, Monitoring and Reporting Requirements.</p> <p>VI.F. The San Luis Rey is not always flowing during May – July index period. Therefore, if not flowing during this index period, we understand that in these instances, no sampling will be required. Can we clarify this here?</p>	<p>The Applicant must follow the <i>Standard Operating Procedures for Collecting Benthic Macroinvertebrate Samples and Associated Physical and Chemical Data for Ambient Bioassessments in California</i> (SOP, Ode 2007) or any updates of these methods (Tentative Certification section VI.F.3). If field conditions do not meet the requirements of the SOP, Wildlands should contact the San Diego Water Board for a variance as required in section VI.F of the Tentative Certification.</p>	<p>None necessary.</p>
8	<p>Tentative Certification section VI.F.5, Monitoring and Reporting Requirements.</p> <p>VI.F.5 Monitoring Sites - We do not have access to a downstream location as is required under VI.F.5 for monitoring. As a part of our IRT process, we obtained permission from the Singh's to use their upstream restoration site as a reference site. The downstream property is under different ownership and we have not obtained this permission; therefore we would like to see the requirement for a downstream CRAM assessment removed from this section.</p>	<p>The applicant must attempt to gain access to a downstream monitoring location. San Diego Water Board staff will work with the Applicant, as needed, to facilitate access to downstream properties for monitoring purposes.</p>	<p>None necessary.</p>

No.	Comment	Response	Action Taken
9	<p>Tentative Certification section VI.F.6, Monitoring and Reporting Requirements.</p> <p>VI.F.6. May 1 due date for the annual report: The Benthic Index period for Benthic Macroinvertebrates doesn't appear to start until May and other monitoring will also likely still be occurring. We understand the May due date reflects submittal of previous year monitoring data, not data from the monitoring which would be continuing during the reporting period.</p>	<p>The San Diego Water Board has modified sections VI.I and VI.K of the Tentative Certification to clarify that the monitoring period for each report is January 1st to December 31st of each year. Additionally, the due date of each report was listed at May 1st of each year in error. The due dates for these reports have been corrected to March 1st of each year in all areas of the Tentative Certification. The March 1st due date provides 90 days for report preparation and allows the San Diego Water Board to receive and respond to issues listed in the monitoring reports in a timely manner.</p>	<p>Tentative Certification sections VI.I and VI.K have been revised.</p>
10	<p>Tentative Certification section V.H.3, Long Term Management and Maintenance.</p> <p>We have compared invasive species language in the currently proposed 401 Cert with the language in the Restoration Project Development Plan & Long-term Management Plan ("Restoration Plan") and are sending along excerpts for background. Full sets of the Restoration Plan documents are in Alan's files, but we cut/paste specific sections in the attached two files for ease of review.</p> <p>As you are aware, we have significant oversight on the biological performance of this Project which is hard to distill into a quick permit line item, so after giving it further thought, it may be more pertinent to reference the actual Restoration Plan documents governing the Project.</p> <p>For your consideration:</p> <p>V.H.3. The restoration site must be maintained, in perpetuity, free of <u>untreated perennial</u> exotic plant species as defined in the <u>San Luis Rey Restoration Project Development Plan & Long Term Management Plan</u>.</p>	<p>See response to Comment No. 3.</p>	<p>None necessary.</p>

No.	Comment	Response	Action Taken
	including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species must not occupy more than 5 percent of the restoration site(s);		