

**BANKING INSTRUMENT
PILGRIM CREEK MITIGATION BANK**

This Banking Instrument regarding the establishment, use, operation, and maintenance of Pilgrim Creek Mitigation Bank (hereinafter, the Bank), is made and entered into by and among the Department of Transportation (Caltrans), hereinafter, the Sponsor; San Diego Association of Governments (SANDAG), the Credit Owner; the U.S. Army Corps of Engineers (Corps); the California Department of Fish and Game (CDFG); the U.S. Environmental Protection Agency (EPA); and the U.S. Fish and Wildlife Service (FWS), with reference to the following:

I. PREAMBLE

- A. Purpose: The purpose of this Banking Instrument is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable impacts to Waters of the United States including wetlands which result from activities authorized under Section 404 of the Clean Water Act and Section 1601 of the CDFG Code provided such use has met all applicable requirements and is authorized by the appropriate authority.
- B. Location and Ownership of Parcel: Whereas, the Sponsor owns 121 acres of land at Douglas Drive (Exhibits A-1 & A-2), and has developed a mitigation plan to establish and/or maintain 49.8 acres of riparian habitat.
- C. Project Description: Whereas, under this Banking Instrument, the Sponsor will establish and/or maintain 19.2 acres of aquatic habitat in accordance with the provisions of this Banking Instrument and the Bank Development Plan (Exhibit B), and shall then maintain the Bank in such condition until December 31, 2001 or until success criteria are fulfilled. This parcel is in the process of being transferred to CDFG, who will manage the site in perpetuity. The Bank area shall consist of a total of 19.2 acres and includes restoration of riparian floodplain wetlands suitable for occupation by the Federally-listed endangered least Bell's vireo. This parcel will be transferred to CDFG to be conserved and managed as open space in perpetuity. All monitoring commitments will be completed by the Sponsor. Sale of credits will be managed by SANDAG.
- D. Baseline Conditions/Existing Functions and Values of the Mitigation Area:

Previous to this restoration, this parcel was a fallow agricultural field. A large strip of southern willow scrub occurs adjacent to Douglas Drive along Pilgrim Creek, which flows southwest from Camp Pendleton. Additional areas of southern willow scrub are present along the southern portion of the site. The southern willow scrub on-site is 9.5 acres in area and is dominated by trees and large shrubs including black willow, arroyo willow, mulefat, and wild rose. Interspersed with the southern willow scrub are pockets of freshwater marsh dominated by cattails and bulrush. Some debris was dumped on-site, and the banks of the creek were diked to prevent flooding of the adjacent land. This habitat has water quality functions including groundwater recharge, flood flow alteration, and sediment stabilization. It provides habitat for the least Bell's vireo, yellow-breasted chat, yellow warbler, and several birds-of-prey (raptors). The willow flycatcher has been observed downstream of the site. There are no known recreational uses of this area. Less than 0.5 acre of the site is within the large alkali marsh adjacent to Pilgrim Creek and southwest of the site. This plant community is dominated by pickleweed; other species present include hard-stem bulrush, saltgrass and bristly ox-tongue. This area most likely provides water quality functions including groundwater recharge, nutrient removal and sediment stabilization. As part of the adjacent marsh and tributary, this area is used by both mammals and birds.

Approximately 18.6 acres of coastal sage scrub is present on-site. It occurs on moderate to steep slopes and is dominated by California sagebrush, buckwheat, and coast encelia. Other shrubs include bladderpod, shore cactus, white sage, cholla, prickly pear cactus, and elderberry. Patches of coastal sage scrub vary in their level of disturbance, although most patches are of fairly good quality. Large patches of this vegetation community exist on the adjacent properties to the west and north.

The remaining areas are comprised primarily of non-native grasses and ruderal vegetation. Dominants within these areas include riggut grass, black mustard, sweet fennel, wild lettuce, bristly ox-tongue, wild oat, coast goldenbush, horseweed and ryegrass.

- E. Establishment and Use of Credits: Whereas, in accordance with the provisions of this Banking Instrument and upon satisfaction of the success criteria contained herein, a total of 19.2 credits will be available to be used as mitigation in accordance with all applicable requirements (Exhibits C-1 & C-2).
- F. Whereas, the Mitigation Banking Review Team (MBRT) consists of :
 - 1. U.S. Army Corps of Engineers
 - 2. U.S. Environmental Protection Agency
 - 3. U.S. Fish and Wildlife Service
 - 4. California Department of Fish and Game
- G. Disclaimer: Whereas, this Banking Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties.
- H. Exhibits: Whereas, the following Exhibits are incorporated as appendices to this Banking Instrument:
 - 1. "Exhibits A-1&A-2", 1-Bank location and service area; 2-Pilgrim Creek parcel
 - 2. "Exhibit B", Bank Development Plan (Pilgrim Creek Habitat and Monitoring Proposal)
 - 3. "Exhibits C-1&C-2", 1-Crediting and Debiting Procedure for the Bank;2-Success Criteria
 - 4. "Exhibit D", Wetland Delineation Report
 - 5. "Exhibit E", Real-Estate Provisions
 - 6. "Exhibit F", Transfer MOA
 - 7. "Exhibit G", Sample Account Statement

The Pilgrim Creek parcel is in the process of being transferred to CDFG. The Transfer Memorandum of Agreement (signed March 22, 1999) includes an endowment which provides funding for CDFG to manage the site in perpetuity. SANDAG will continue to manage the sale of bank credits until all credits have been sold.

II. AUTHORITIES

The establishment, use, operation and maintenance of the Bank is carried out in accordance with the following authorities:

- A. Federal:
 - 1. Clean Water Act (33 USC 1251 et seq.)
 - 2. Rivers and Harbors Act (33 USC 403)
 - 3. Fish and Wildlife Coordination Act (16 USC 661 et seq.)
 - 4. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-330)
 - 5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230)

6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
 7. Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 F.R. 58605 et seq.)
 8. Federal Endangered Species Act
- B. State:
1. 1601 of the Department of Fish and Game Code (Chapter 6, Section 1601)
 2. 2050 of the California Department of Fish and Game Code (California Endangered Species Act)

NOW, THEREFORE, the parties agree to the following:

III. ESTABLISHMENT OF THE BANK

- A. The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Banking Instrument, to establish and maintain 19.2 acres of aquatic habitat, as shown in Exhibit B, until it is demonstrated to the satisfaction of the agencies represented on the MBRT (acting through the Chair) that the project complies with all conditions contained herein, or until all credits are sold, whichever is later. Work shall include implementing the Bank Development Plan (Exhibit B).
- B. Caltrans will obtain all appropriate environmental documentation, permits or other authorizations needed to establish and maintain the Bank. This Banking Instrument does not fulfill or substitute for such authorization.
- C. Establishment of the Bank will be performed in one phase as described in the Pilgrim Creek Habitat and Monitoring Proposal (Exhibit B), and the credits will become available in accordance with the schedule specified in Part IV, Sections D through G of this Banking Instrument. In the event the Sponsor determines that modifications must be made in the Bank Development Plan to ensure successful establishment of habitat within the Bank, the Sponsor shall submit a written request for such modification to the MBRT, through the Chair, for approval. Documentation of implemented modifications shall be made consistent with Part III, Section F infra.
- D. Financial Assurance Requirements: An endowment is included with the transfer of this parcel to CDFG. The endowment will be earmarked for the management of 11 parcels (including the Pilgrim Creek parcel) in perpetuity.
- E. Real Estate Provisions: The Sponsor shall provide a copy of the title transfer.
- F. The Sponsor agrees to submit an as-built report for the Bank 60 days following completion of the establishment of that phase of the bank. The as-built report will describe in detail any deviation from that described in the mitigation plan (Exhibit B), and a plan showing finish grades, and surface and groundwater elevations, as appropriate.

IV. OPERATION OF THE BANK

- A. Service Area: The bank is established to provide mitigation to compensate for impacts to Waters of the United States including wetlands within northern San Diego County west of I-15 and north of the San Dieguito River, as shown in Exhibit A-1. Decisions authorizing use of credits from the Bank will be made by the appropriate authority on a case-by-case basis in accordance with applicable requirements.

- B. The Sponsor will allow, or otherwise provide for, access to the site by all signatory parties, as necessary, for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Banking Instrument. Inspecting parties shall provide reasonable notice, of not less than 24 hours, to the Sponsor, prior to inspection of Bank.
- C. Projects Eligible to Use the Bank. For projects requiring authorization under Section 404 and Section 10, the Corps, in consultation with the other regulatory and resource agencies, will determine the eligibility of projects to use the bank on a case-by-case basis. Other requirements include:

Projects using credits from the Pilgrim Creek Mitigation Bank for compensation of unavoidable impacts to Waters of the U.S. must be located within the boundaries of the northern half of Coastal San Diego County as shown in Exhibit A-1.

The Pilgrim Creek Mitigation Bank shall be used to compensate for unavoidable impacts, to Waters of the U.S. including wetlands. Credits from the Pilgrim Creek Mitigation Bank should be used to mitigate in-kind impacts to riparian and aquatic habitats.

The Pilgrim Creek Mitigation Bank shall not be considered for mitigation of unavoidable losses to unique wetlands such as, but not limited to, vernal pools, tidal wetlands, saltmarshes, seeps, or alkali marsh. The alkali marsh element on site is not a part of the bank being created as it is being used as mitigation for the State Route 76 project and is included in the 29.0 acres for that project.

The site is available for use as credit for impacts to endangered species, subject to approval from CDFG and FWS. Areas used for mitigation for non-404 related projects shall not be available for use as mitigation for 404 projects.

- D. Assessment Methodology: Credits and debits will be assessed as specified in Exhibit C.
- E. Success Criteria: The criteria are specified in Exhibit C-2.
- F. Schedule of Credit Availability: Upon submittal of all appropriate documentation by SANDAG (the Credit Owner) and subsequent approval from the Corps and CDFG, in consultation with the other members of the MBRT, it is agreed that credits will become available for use upon Corps' written approval of compliance with interim and ultimate success criteria.
- G. Provisions For Uses of the Mitigation Bank Area: The Sponsor shall NOT:
1. Grant additional easements, right of way, or any other property interest in or to the project areas without the written consent of the Corps, in consultation with the MBRT.
 2. Use or authorize the areas within the Bank for any purpose which interferes with its conservation purposes other than those specified below.

V. MAINTENANCE AND MONITORING OF THE BANK

- A. Maintenance Provisions: the Sponsor agrees to perform all necessary work to maintain the Bank consistent with the maintenance criteria established in the Bank Development Plan until December 31, 2001, or until the ultimate success criteria have been met. The Pilgrim Creek parcel is being transferred to CDFG. After the ultimate success criteria have been met (by written notification of the Corps), CDFG will be responsible for the maintenance on this site in perpetuity. Deviation from the approved Bank Development Plan is subject to review and written approval by MBRT.
- B. Monitoring Provisions: the Sponsor agrees to perform all necessary work to monitor the Bank until December 31, 2001, or until the ultimate criteria are met (Exhibits B, C-1 and C-2).
- C. Reports: The Sponsor shall submit to the Corps and CDFG, for distribution to the other members of the MBRT, a report describing the conditions of Bank and relating those conditions to the success criteria. The Sponsor will provide these reports to the Corps and CDFG until one year after the ultimate criteria have been met. Reports will be submitted by the first day of each calendar year and contain the following:
1. A U.S. Geological Survey map showing location of the Bank
 2. A detailed narrative summarizing the condition of the Bank and all regular maintenance activities.
 3. Appropriate topographic maps showing location of sampling plots, permanent photo points, location of transects
 4. Evaluation Criteria
- D. Accounting Procedure: SANDAG shall submit a statement to the Corps and CDFG each time credits are debited or additional credits are approved. If requested, the Corps will distribute the statement to other members of the MBRT. SANDAG shall submit an annual ledger to the Corps for distribution to all members of the MBRT, showing all transactions at the bank for the previous year. All transactions shall be reported using the format shown in Exhibit G.
- E. Contingency Plans/Remedial Actions: In the event the Bank fails to achieve the success criteria specified in Part IV, Section E of this Banking Instrument, the Sponsor shall develop necessary contingency plans and implement appropriate remedial actions (replanting, minor grading, debris removal) for the Bank in coordination with the MBRT. In the event the Sponsor fails to implement necessary remedial actions within 120 calendar days after notification by the Corps and CDFG of necessary remedial action to address any failure in meeting the success criteria, the MBRT (acting through the Chair) will notify the Sponsor and the appropriate authorizing agency(ies) and recommend appropriate remedial actions (as specified above).

If the authorizing agency(ies) determines that the Bank is operating at a deficit, debiting of credits will immediately cease, and the authorizing agency(ies), in consultation with the MBRT and the Sponsor, will determine what remedial actions are necessary to correct the situation. As determined by the Chair in coordination with the MBRT and the Sponsor, if conditions at the bank site do not improve or continue to deteriorate within a reasonable time frame from the date that the need for remediation was first identified in writing to the Sponsor by the Chair of the MBRT, the Contingency Funds and the long-term management funds shall be transferred to CDFG to undertake corrective measures.

At the request of the Sponsor, the MBRT will perform a final compliance visit to determine whether all success criteria have been satisfied. Upon satisfaction of the success criteria, any remaining credits will be released for SANDAG to sell.

- F. Long-Term Management: Upon execution of the Agreement of Transfer of Control and Possession of State Owned Real Property, CDFG will be responsible for management activities on the Pilgrim Creek parcel. The Sponsor will provide an endowment in the amount of \$4,865,292 with the Mitigation Parcel Transfer Memorandum of Agreement. The endowment is specified for the conservation and maintenance of the 11 mitigation parcels (including Pilgrim Creek) that are being transferred to CDFG. Management activities may include, but are not limited to: fencing and signs needed for the protection of the Property; biological monitoring; patrolling; measures to determine the most efficient control of invasive exotic species when feasible; interaction with local and state individuals and organizations working with similar species and land holdings and conducting research; reporting; management of equipment access including vehicles; and removal of trash and such other items as determined.

VI. RESPONSIBILITIES OF THE MBRT

- A. The agencies represented on the MBRT agree to provide appropriate oversight in carrying out provisions of this Banking Instrument.
- B. The agencies represented on the MBRT agree to review and provide comments on all project plans, monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank in a timely manner. Comments on the monitoring reports and credit review reports will be reviewed within 30 calendar days from the date of complete submittal, except for good cause.
- C. The agencies represented on the MBRT agree to review and confirm reports on evaluation of success criteria prior to approving credits within the bank.
- D. The agencies represented on the MBRT shall conduct compliance inspections, as necessary, as determined by the Corps in consultation with the Sponsor, to verify credits available in the mitigation bank, recommend corrective measures (if any), until the terms and conditions of the Bank Development Plan have been determined to be fully satisfied or until all credits have been sold, whichever is later.

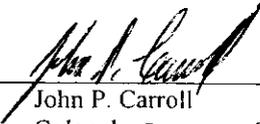
VII. OTHER PROVISIONS

- A. Force Majeure: The Sponsor will not be responsible for Bank failure that is attributed to natural catastrophes such as flood, drought, disease, regional pest infestation, etc., that the MBRT, acting through the Chair, determines is beyond the control of the Sponsor to prevent or mitigate.
- B. Dispute Resolution: Resolution of disputes about application of this Banking Instrument shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 F.R. 58605 et seq., November 28, 1995).
- C. Validity, Modification, and Termination of the Banking Instrument: This Banking Instrument will become valid on the date of the last signatory's signature. This Banking Instrument may be amended or modified with the written approval of all signatory parties. Any of the MBRT members may terminate their participation upon written notification to all signatory parties. Participation of the MBRT members will terminate 30 days after written notification.

SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS

DATED: 000112



John P. Carroll

Colonel, Corps of Engineers

District Engineer, Los Angeles District

CALIFORNIA DEPARTMENT OF TRANSPORTATION

DATED: 6-24-99



Gary L. Gallegos
District Director

U.S. ENVIRONMENTAL PROTECTION AGENCY

DATED: _____

Alexis Strauss

Director, Water Management Division

U.S. FISH AND WILDLIFE SERVICE

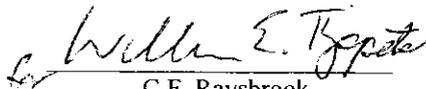
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Ken Berg

Field Supervisor

CALIFORNIA DEPARTMENT OF FISH AND GAME

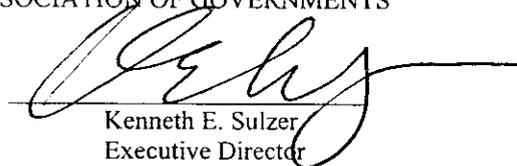
DATED: 9/17/99



C.F. Raysbrook
Regional Manager

SAN DIEGO ASSOCIATION OF GOVERNMENTS

DATED: 9/20/99



Kenneth E. Sulzer
Executive Director

AMENDMENT

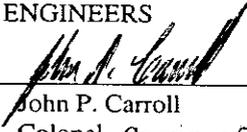
IV. OPERATION OF THE BANK

A. Service Area: The Bank is established to provide compensatory mitigation for impacts to Waters of the United States including wetlands within the San Luis Rey Watershed (primary Service Area). Compensatory mitigation for impacts to Waters of the U.S. occurring in watersheds south of San Luis River watershed (northern San Diego County west of I-15 and north of San Dieguito River (secondary Service Area)) may be allowed within the bank once the project has conducted a 1:1 (acreage) mitigation within the watershed of impact. Decisions authorizing use of credits from the Bank will be made by the appropriate authority on a case-by-case basis in accordance with applicable requirements.

SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS

DATED: 00/1/12

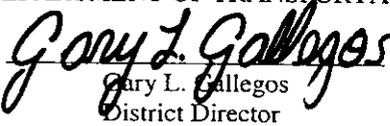

John P. Carroll

Colonel, Corps of Engineers

District Engineer, Los Angeles District

CALIFORNIA DEPARTMENT OF TRANSPORTATION

DATED: 2-1-2000


Gary L. Gallegos

District Director

U.S. ENVIRONMENTAL PROTECTION AGENCY

DATED: _____

Alexis Strauss

Director, Water Management Division

U.S. FISH AND WILDLIFE SERVICE

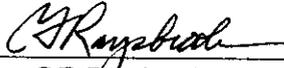
DATED: _____

Ken Berg

Field Supervisor

CALIFORNIA DEPARTMENT OF FISH AND GAME

DATED: 02/29/00

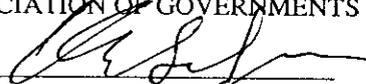


C.F. Raysbrook

Regional Manager

SAN DIEGO ASSOCIATION OF GOVERNMENTS

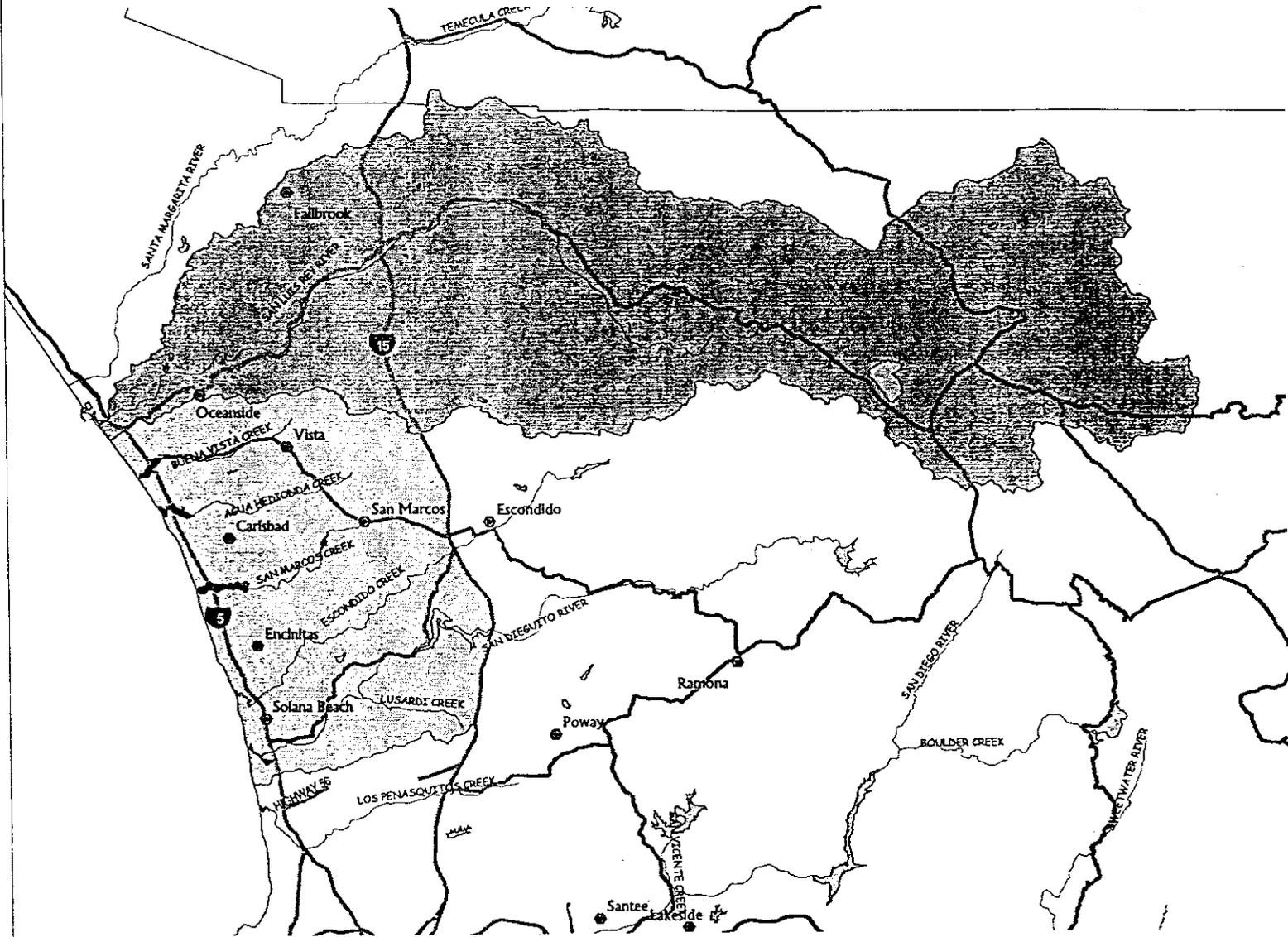
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Kenneth E. Sulzer

Executive Director

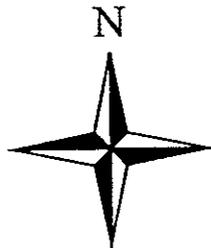
Pilgrim Creek Mitigation Bank Service Areas



Legend

- Cities
- ▲ Streams
- ◻ Lakes
- ◻ Lagoons
- ▲ Fwy
- Service Areas
- ◻ Primary Service Area
- ◻ Secondary Service Area
- ◻ San Diego County

0 5 10 15 20 Miles



This map was generated by the Regulatory Branch of the United States Army Corps of Engineers, Los Angeles District using data from SANDAG.

The map was generated on December 8, 1999.

EXHIBIT A-1