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Attorneys for Petitioner
Foothill/Eastern Transportation Corridor Agency



**BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Petition of:

THE FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY
FOR REVIEW OF ACTION, AND FAILURE
TO ACT, BY THE CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, SAN DIEGO REGION, IN
CONNECTION WITH WASTE DISCHARGE
REQUIREMENTS, TENTATIVE ORDER
NO. R9-2103-0007

**PETITION FOR REVIEW AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

1 Pursuant to Water Code section 13320 and California Code of Regulations, title 23,
2 section 2050, the Foothill/Eastern Transportation Corridor Agency (“F/ETCA”) hereby petitions
3 the State Water Resources Control Board (“State Board”) for review of certain actions, and
4 failure to act, by the California Regional Water Quality Control Board for the San Diego Region
5 (“Regional Board”). F/ETCA seeks review of the Regional Board’s June 19, 2013 denial of
6 Waste Discharge Requirements (Tentative Order No. R9-2013-0007) (“Revised Tentative
7 Order”) for the Tesoro Extension Project (“Project”) – a 5.5 mile extension of State Route 241
8 (“SR 241”) in Orange County. In denying the Revised Tentative Order, the Regional Board
9 abused its discretion and otherwise failed to act in accordance with law. More specifically, the
10 Regional Board violated mandatory requirements of the California Environmental Quality Act
11 (“CEQA”) applicable to responsible agencies, failed to adopt any findings in violation of law,
12 acted in excess of its jurisdiction because it denied the Revised Tentative Order for reasons
13 wholly unrelated to water quality, and relied upon irrelevant and incompetent information.

14 **1. CONTACT INFORMATION FOR PETITIONER:**

15 F/ETCA’s mailing address, telephone number and email address are as follows:

16 Robert D. Thornton
17 Nossaman LLP
18 18101 Von Karman
19 Suite 1800
20 Irvine, CA 92620-1047

21 Phone: (949) 833-7800
22 Email: rthornton@nossaman.com

23 **2. SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD THAT THE
24 STATE BOARD IS REQUESTED TO REVIEW:**

25 F/ETCA brings this petition to request review and reversal of the Regional Board’s final
26 decision to deny the Revised Tentative Order relating to the Project. A copy of the Revised
27 Tentative Order recommended for adoption by the Regional Board staff is attached hereto as
28 Exhibit 1.

1 **3. DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT:**

2 By a three-to-two vote, the Regional Board denied the Revised Tentative Order at a
3 public hearing on June 19, 2013.

4 **4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR**
5 **FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:**

6 As more fully set forth in F/ETCA's Memorandum of Points and Authorities below, in
7 denying the Revised Tentative Order, the Regional Board abused its discretion and otherwise
8 failed to act in accordance with governing law, failed to adopt written findings as required by
9 law, and exceeded the Regional Board's jurisdiction. Specifically, but without limitation, the
10 Regional Board:

- 11 a. Violated section 21167.3 of the Public Resources Code which requires the Regional
12 Board to assume that the environmental documentation for the Project complies
13 with CEQA;
- 14 b. Violated section 15050 of the Guidelines for the Implementation of the California
15 Environmental Quality Act (Cal. Code Regs., tit. 14, § 15000 *et seq.*; hereinafter
16 "CEQA Guidelines") *which* provides that the CEQA determinations of the lead
17 agency are final and conclusive on the Regional Board;
- 18 c. Failed to comply with applicable law requiring the Regional Board to make
19 findings describing the facts relied upon by the Regional Board to support its
20 decision, and explaining the factual and legal basis of the Regional Board's
21 decision;
- 22 d. Exceeded the Regional Board's statutory authority because it denied the Revised
23 Tentative Order for reasons wholly unrelated to the Regional Board's water quality
24 jurisdiction; and
- 25 e. Relied upon incompetent and irrelevant information.

26 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**

27 F/ETCA is a Joint Powers Agency formed by the County of Orange and 12 cities in the
28

1 County to plan, finance, design, construct and operate a toll highway system in Orange County,
2 California. The F/ETCA Board Members are all elected officials who collectively represent 1.8
3 million people. F/ETCA has proposed the Project, a 5.5 mile long extension of the existing
4 SR 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of
5 SR 74 in Orange County. The purpose of the Project is to reduce existing and forecasted
6 deficiencies and congestion on Interstate 5 and the arterial network in southern Orange County.
7 F/ETCA is the CEQA lead agency for the proposed Project.

8 The Regional Board's denial of the Tentative Order prevents the timely implementation
9 of the Project, which is an element of the Southern California Regional Transportation Plan, and
10 the general plans of the County of Orange and of every city in south Orange County. The
11 Regional Board's decision also adversely impacts implementation of the South Coast Air Quality
12 Management Plan which identifies the Project as a Transportation Control Measure necessary for
13 Southern California to reduce air emissions and comply with state and federal air quality laws.
14 The Regional Board's decision will result in an increase in the severe and unsafe congestion on
15 Interstate-5 and local arterials in south Orange County, adversely impact air quality, and
16 adversely impact the public health and safety of the 1.8 million people represented by the
17 F/ETCA Board Members and the residents of Southern California generally.

18 **6. THE SPECIFIC ACTION THE PETITIONER REQUESTS:**

19 F/ETCA requests that the State Board adopt the Revised Tentative Order recommended
20 by the Regional Board staff. In the alternative, F/ETCA requests that the State Board reverse and
21 remand the Regional Board's decision to deny the Revised Tentative Order, with instructions to
22 comply with applicable law and adopt the Revised Tentative Order.

23 **7. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
24 **ISSUES RAISED IN PETITION:**

25 Please see F/ETCA's Memorandum of Points and Authorities below and incorporated by
26 reference as if fully set forth herein.

1 **8. STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**
2 **APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT**
3 **THE PETITIONER:**

4 A true and correct copy of this Petition and Memorandum of Points and Authorities with
5 attached Exhibits was mailed to the Regional Board via First Class mail on July 18, 2013.

6 **9. STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE**
7 **PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD**
8 **ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT**
9 **RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD:**

10 As more fully set forth in F/ETCA's Memorandum of Points and Authorities below, the
11 Regional Board denied the Revised Tentative Order against the recommendation of the Regional
12 Board staff, without adopting a resolution, and without making any findings identifying the facts
13 relied upon by the Regional Board or explaining the factual or legal basis for its decision. As
14 such, F/ETCA was unable to raise certain substantive issues or objections before the 30-day
15 deadline to petition the State Board pursuant to Water Code section 13320, subdivision (a).

16 Otherwise, to the extent possible, the substantive issues and objections raised herein were
17 presented to the Regional Board. Specifically, F/ETCA submitted extensive documentation in
18 support of the Revised Tentative Order including, but not limited to, written comments dated
19 March 29, 2013 and June 7, 2013, and oral testimony before the Regional Board during public
20 hearings on March 13, 2013 and June 19, 2013.

21 DATED: July 18, 2013

Respectfully Submitted,

NOSSAMAN LLP

By: 

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DAVID J. MILLER

Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

3 The Foothill/Eastern Transportation Corridor Agency (“F/ETCA”) petitions the State
4 Water Resources Control Board (“State Board”) pursuant to Water Code section 13320 and
5 California Code of Regulations, title 23, section 2050 for review of certain actions, and failure to
6 act, by the California Regional Water Quality Control Board for the San Diego Region
7 (“Regional Board” or “Board”) in connection with Waste Discharge Requirements (Tentative
8 Order No. R9-2013-0007) (“Revised Tentative Order”) for the Tesoro Extension Project
9 (“Project” or “Tesoro Extension”).

10 The Regional Board staff determined that the Revised Tentative Order complied with all
11 applicable water quality standards and recommended that the Regional Board approve the
12 Revised Tentative Order. Nevertheless, without issuing any written findings, the Regional Board
13 rejected the Regional Board staff recommendations and denied the Revised Tentative Order on
14 June 19, 2013. In doing so, the Regional Board ignored mandatory requirements of the
15 California Environmental Quality Act (“CEQA”) applicable to responsible agencies, exceeded
16 the Regional Board’s jurisdiction under the California Water Code, failed to make any written
17 findings as required by law, abused its discretion, and otherwise acted in violation of law. The
18 Regional Board denied the Revised Tentative Order based on irrelevant and incompetent
19 information not properly before the Board and entirely unrelated to the water quality jurisdiction
20 of the Regional Board. The State Board should adopt the Revised Tentative Order, or in the
21 alternative, reverse and remand the Revised Tentative Order to the Regional Board with
22 instructions to adopt the Revised Tentative Order.

23 **2. FACTUAL BACKGROUND**

24 **A. The Tesoro Extension Project**

25 The Tesoro Extension is an approximately 5.5 mile long extension of existing State Route
26 (“SR”) 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of
27 SR 74 in Orange County (“County”), California. The location of the Project is shown below.
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not to scale

Project Area

Approved RMV Development Area

TESORO EXTENSION PROJECT
Site Vicinity Map

Figure 1

(Exhibit 2, p. 52.)

1 The purpose of the Project is to provide a transportation facility that will reduce existing
2 and forecasted deficiencies and congestion on Interstate 5 (“I-5”) and the arterial network in the
3 southern portion of the County. The Project will serve both local (existing and future) and intra-
4 and inter-regional trips. The Project is a component of the Southern California Regional
5 Transportation Plan and Regional Transportation Improvement Program, and the general plans of
6 the County of Orange and every city in south Orange County. The Project is identified as a
7 Transportation Control Measure in the South Coast Air Quality Management Plan – an air quality
8 measure adopted by the South Coast Air Quality Management District to comply with state and
9 federal air quality requirements.

10 The Project includes four general-purpose travel lanes, two in each direction, and a state-
11 of-the-art water quality treatment system and other water quality protection measures. The
12 Project will be owned and operated by the California Department of Transportation (“Caltrans”)
13 upon opening of the roadway to traffic. The toll collection facilities will be operated by F/ETCA.

14 The Project is situated within an unincorporated portion of the County, within Rancho
15 Mission Viejo (“RMV”). The Regional Board approved a section 401 water quality certification
16 for Cow Camp Road. The first phase of Cow Camp Road is constructed and the second phase is
17 scheduled for completion in 2014. The Project is almost entirely within the RMV Ranch Plan
18 area. RMV has obtained approvals for development of the Ranch Plan from the County, the U.S.
19 Fish and Wildlife Service, and the California Department of Fish and Wildlife. The U.S. Army
20 Corps of Engineers (“USACOE”) approved a Special Area Management Plan regarding the
21 Ranch Plan under the federal Clean Water Act. In a settlement agreement with the County and
22 RMV, several environmental groups (including members of the Save San Onofre Coalition
23 [“Coalition”]) agreed to the residential and commercial development in the Ranch Plan,
24 including roads and utilities in substantially the same location as the Project.

25 The existing SR 241 is a tolled highway owned and maintained by Caltrans, with
26 F/ETCA operating the toll collection facilities. SR 241 extends for approximately 25 miles
27 within the eastern portion of the County. Beginning at its north-end at SR 91 within the City of
28 Anaheim, SR 241 travels south/southeast through unincorporated areas of the County and the

1 cities of Irvine, Lake Forest, and Mission Viejo, and then terminates to the south at Oso Parkway.
2 SR 241 is the only regional north-south alternative to I-5 in southern Orange County.

3 **B. Overview of California Environmental Quality Act Review**

4 F/ETCA is the CEQA lead agency for the proposed Project.¹ The Project is substantially
5 the same as alignments previously evaluated between Oso Parkway and Ortega Highway in prior
6 final environmental impact reports certified by F/ETCA pursuant to CEQA. Although the
7 current planning and environmental review effort for the Project has been underway for
8 approximately four years, planning for a transportation corridor in South Orange County began
9 over 30 years ago. In 1981, the County certified Environmental Impact Report (“EIR”) 123,
10 which analyzed the establishment of a transportation corridor in the southeast portion of the
11 County and added the Foothill Transportation Corridor (now designated as SR 241) to the
12 County Master Plan of Arterial Highways. In 1991, F/ETCA certified EIR No. 3 analyzing
13 alignment alternatives for the extension of SR 241. In February 2006, F/ETCA certified the
14 South Orange County Transportation Infrastructure Improvement Project (“SOCTIIP”) Final
15 Subsequent Environmental Impact Report (“FSEIR”) which described and analyzed extensions
16 of SR 241 of varying lengths and connections, along with non-corridor alternatives such as
17 widening the I-5 freeway. F/ETCA approved the “Green Alignment” alternative for the
18 SOCTIIP connecting SR 241 with I-5 south of San Clemente. In February 2008, the California
19 Coastal Commission (“CCC”) denied F/ETCA’s request for a consistency determination for
20 SOCTIIP with regard to impacts in the coastal zone which is ten miles south of the Project.
21 (Exhibit 2, pp. 1-3.) F/ETCA appealed the decision to the U.S. Secretary of Commerce, which
22 upheld the CCC’s decision in December 2008. (*Ibid.*) In 2009, F/ETCA began exploring
23 possible modifications to SOCTIIP.

24
25
26 ¹ Public Resources Code section 21067 defines a lead agency as “the public agency which has
27 the principal responsibility for carrying out or approving a project which may have a significant
28 effect on the environment.” F/ETCA is a Joint Powers Agency formed by the County and 12
cities in the County to plan, finance, design, construct and operate a toll highway system in
Orange County, California. (See Gov. Code, § 66484.3.) Thus, F/ETCA is the agency with the
authority and responsibility to carry out the Project.

1 The Project is a modification of the SOCTIIP.² The SOCTIIP Preferred Alternative was
2 approximately 16 miles long, from Oso Parkway to I-5. With minor design adjustments, the
3 Project follows the alignment of the Green Alignment between Oso Parkway and Cow Camp
4 Road analyzed in the FSEIR. (Exhibit 2, p. 2-1.) The primary design alterations include a slight
5 shift to the east to avoid impacts to an existing irrigation reservoir currently utilized for ranching
6 activities in RMV. (*Ibid.*) In addition, an alignment shift to the west near the southerly terminus
7 of the Project will avoid impacts to an earthen streambed, thereby reducing impacts to surface
8 waters of the State. (*Ibid.*) These shifts in alignment are also designed to avoid all discharge of
9 dredged or fill material to waters of the United States. (*Id.*, p. 3-1.) In a letter dated November 5,
10 2012, the USACOE determined that Project activities will not occur within waters of the United
11 States, that the Project is not subject to USACOE jurisdiction under Section 404 of the Clean
12 Water Act (“CWA”), and that a Section 404 permit is not required for the Project. However, the
13 Project has minor impacts to ephemeral waters of the State, as defined by section 13050 of the
14 Water Code.

15 F/ETCA prepared an Addendum to the FSEIR in February 2013 (“Addendum”) (attached
16 hereto as Exhibit 2) to evaluate whether the modifications proposed by the Project required the
17 preparation of a subsequent or supplemental EIR.³ The Regional Board received the Addendum,
18 on February 15, 2013, provided public notice of the Addendum and solicited public comment.
19 The Regional Board conducted a day-long public hearing on the Addendum and Tentative Order
20 No. R9-2013-0007 on March 13, 2013 hearing. The Regional Board provided an additional
21 opportunity for written public comment on the Addendum and the F/ETCA compliance with
22 CEQA through June 7, 2013. The Regional Board then allowed for an additional opportunity for
23 public comment on the Addendum at the June 19, 2013 hearing. The Addendum concludes that

24 _____
25 ² For a full legal analysis supporting F/ETCA’s determination that the Project is a modification
26 of SOCTIIP, please see its March 29, 2013 letter to the Regional Board (attached hereto as
Exhibit 3).

27 ³ On April 18, 2013, the F/ETCA Board of Directors adopted Resolution 2013F-005 approving
28 the Addendum and a conceptual design for the Project. F/ETCA filed a Notice of Determination
regarding the adoption of the Resolution with the State Clearinghouse on April 19, 2013.

1 the Project will not have any new significant impacts, or more severe significant impacts, that
2 were not addressed in the 2006 SOCTIIP FSEIR.

3 **C. The Tentative Order**

4 On August 10, 2012, F/ETCA submitted a Report of Waste Discharge (“ROWD”) to
5 construct the Project. (Wat. Code, § 13260, subd. (a).) F/ETCA submitted additional
6 information to complete the ROWD application on October 4, 2012 and November 8, 2012. The
7 Regional Board deemed the ROWD complete on November 14, 2012. F/ETCA proposes to
8 discharge fill material into waters of the State in association with construction activities at the
9 Project site. The Project will result in the discharge of fill in a total of 0.64 acre of waters of the
10 State, including 0.40 acres (5,297 linear feet) of permanent impacts and 0.24 acres (1,819 linear
11 feet) of temporary impacts into jurisdictional waters in the Mission Viejo Hydrologic Area
12 (901.20) in the San Juan Hydrologic Unit (901.00).

13 The Regional Board released Tentative Order No. R9-2013-0007, *Waste Discharge*
14 *Requirements for the Foothill/Eastern Transportation Corridor Agency, Tesoro Extension*
15 *(SR 241) Project, Orange County*, for public review and comment on January 17, 2013
16 (“Tentative Order”). The Regional Board subsequently extended the deadline for comments on
17 the Tentative Order from February 18 to February 25, 2013, and conducted a day-long public
18 hearing on March 13, 2013.

19 Pursuant to Water Code section 13263, subdivision (a), the Regional Board must
20 prescribe WDRs regarding the nature of any proposed discharge, existing discharge, or material
21 change in an existing discharge. Such WDRs must implement any relevant water quality control
22 plans, taking into consideration beneficial uses to be protected, the water quality objectives
23 reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and
24 the provisions of Water Code section 13241. As applied to the Project, the Water Quality
25 Control Plan for the San Diego Basin, adopted on September 8, 1994 as amended, designates
26 existing and potential beneficial uses for surface and ground waters within the San Diego region.
27 (Exhibit 1, pp. B-6 – B-10.) The plan also establishes water quality objectives for surface waters
28 and ground waters within the Mission Viejo Hydrologic Area (901.20). (*Ibid.*) The basin plan

1 states “certification [of WDRs] is dependent upon the assurances that the project will not reduce
2 water quality below applicable standards” including the “the water quality objectives established
3 and the beneficial uses which have been designated for the surface waters.” (*Id.*, p. B-10.)

4 The Tentative Order’s requirements included:

- 5 • Requirements that addressed effects on, and threats to, applicable water quality
6 standards resulting from discharges attributed to the Project.
- 7 • Requirements to ensure beneficial uses are maintained or enhanced through
8 mitigation and monitoring requirements for impacts to waters of the State.
- 9 • The establishment of compensatory mitigation requirements which offset adverse
10 water quality impacts attributed to the Project in a manner that protects and
11 restores the abundance, types, and conditions of aquatic resources and supports
12 their beneficial uses, in order to meet the objectives of the “No Net Loss Policy”
13 for wetlands (Executive Order W-59-93).
- 14 • Requiring that F/ETCA comply with the requirements of State Water Resources
15 Control Board Water Quality Order No. 2009-0009-DWQ, NPDES
16 No. CAS000002, *General Permit for Storm Water Discharges Associated with*
17 *Construction and Land Disturbance Activities*.
- 18 • Requiring that water quality objectives applicable to the unnamed tributaries of
19 Cañada Gobernadora and Cañada Chiquita Creeks not be exceeded.

20 (*Id.*, pp. 8-16.)

21 The Tentative Order concluded that, as regulated by the WDRs, the discharge of fill as
22 the result of the Project would not reduce water quality below these applicable standards. (See
23 *id.*, p. 8 [staff conclusion that “[t]hrough compliance with the waste discharge requirements of
24 [the] Order, the Project will not result in State water quality standards being violated.”].)
25 Specifically, the Tentative Order requires, among other things, implementation of BMPs during
26 construction and post-construction, compensatory mitigation measures, establishment of
27 conservation easements, and compliance with reporting requirements. At the March 13, 2013
28 hearing, Regional Board staff testified regarding the Tentative Order, including explaining the

1 compensatory mitigation and BMPs proposed for the Project. Regional Board staff commended
2 F/ETCA for its compensatory mitigation strategy, stating:

3 To compensate for permanent impacts to waters of the State, the
4 tentative order requires 20.31 acres of establishment, restoration
5 and enhancement of aquatic resources. This includes
6 approximately 10,000 linear feet of mitigation. In addition, the
7 tentative order requires 13.55 acres of upland buffer restoration.
8 ***This amount of mitigation acreage is substantially higher than
9 what's typically required for similar projects.*** At a minimum,
10 4.05 acres of wetlands will be established, ***which represents a
11 mitigation ratio of over 15 to 1 for wetland impacts. By
12 comparison, mitigation ratios for similar projects are typically
13 around 3 to 1.*** The mitigation ensures no net loss and overall net
14 gain of wetland acreage, which is required by the 'no net loss'
15 policy. Given the comprehensive approach and large mitigation
16 ratios, it is anticipated that the proposed mitigation will adequately
17 compensate for impacts to water[s] from the State associated with
18 the discharge of fill material.

12 (See Transcript Excerpts from March 13, 2013 Hearing, pp. 22-23, emphasis added (attached
13 hereto as Exhibit 4).) Regional Board staff further commented that F/ETCA had proposed a
14 "[gold] standard of mitigation" for the Project. (*Id.*, pp. 31-32.)

15 At the conclusion of the proceedings, the Regional Board continued the public hearing to
16 June 19, 2013 to allow staff and counsel adequate time to (1) evaluate the comments submitted
17 on CEQA compliance, (2) prepare responses to remaining issues, and (3) draft revised conditions
18 and/or additional findings for inclusion in the Tentative Order. (*Ibid.*) The Regional Board staff
19 subsequently propounded four questions to F/ETCA and the Coalition. F/ETCA and the
20 Coalition responded to the questions on March 29, 2013. (See F/ETCA response, Exhibit 3.)

21 **D. Revised Tentative Order**

22 On June 19, 2013, the Regional Board held its second hearing on the Tentative Order
23 relating to the Project. Regional Board staff opened the hearing with its presentation regarding
24 the Revised Tentative Order. Among other things, Regional Board staff testified how the
25 Tentative Order had been revised since the March 13, 2013 hearing, including, but not limited to:

- 26 • Addition of monitoring and reporting requirements to ensure that the
27 compensatory mitigation strategy for the Project is successful, to assess the
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- effectiveness of BMP strategies in protecting water quality, and to monitor compliance with the receiving water limitations of the Revised Tentative Order;
- Additional requirements regarding the establishment, restoration, and enhancement of 21.27 acres of waters of the State and 13.55 acres of upland watershed buffer restoration;
 - Requiring that the Runoff Management Plan for the Project be in conformance with the statewide storm water NPDES permit for Caltrans, Order No. 2012-0011-DWQ, NPDES No. CAS000003;
 - Requiring F/ETCA to implement all post-construction BMPs described in the RMP to be installed and functional within 30 days of Project completion and prior to any authorized use of the Tesoro Extension; and
 - Requiring F/ETCA to submit the results of the receiving water monitoring in an Annual Monitoring Report, due prior to December 1st of each year, with such receiving water monitoring reporting to continue for at least five years following Project construction completion.

(See Exhibit 1, pp. 7-26; see also Transcript from June 19, 2013 Hearing, pp. 18-22 (attached hereto as Exhibit 6); June 19, 2013 Executive Officer Summary Report, pp. 3-4 (attached hereto as Exhibit 7).)

Regional Board staff testified that the revisions to the Regional Board addressed the Coalition’s comments regarding potential effects on the supply of sediment bed material to Chiquita Creek, Gobernadora Creek and San Juan Creek, as well as comments regarding the timing of the Regional Board’s approval of certain monitoring and mitigation plans. (Exhibit 6, pp. 17-20.) Regional Board staff further testified that, with these revisions, the mitigation in the Tentative Order “meets the mitigation requirements of CEQA and adequately addresses impacts to waters of the State.” (*Id.*, p. 20.) Regional Board staff concluded: “[The] Order contains waste discharge requirements to ensure beneficial uses are maintained or enhanced through mitigation and monitoring requirements for impacts to waters of the State. The waste discharge

1 requirements are designed to ensure and verify that the highest level of water quality is
2 maintained consistent with the maximum benefit to the people of the State.” (Exhibit 1., p. 9.)

3 Regional Board staff also testified:

4 The San Diego Water Board, as a responsible agency under CEQA,
5 has relied on TCA's environment[al] impact report and
6 subsequently approved addendum as required by CEQA. The San
7 Diego Water Board, as a responsible agency, has made findings for
8 impact[s] to resources within its responsibility and has incorporated
9 mitigation measures and a monitoring and reporting plan in the
10 order. The mitigation measures for the Tesoro Extension Project
11 will reduce impacts to resources that are within the board's purview
12 to [a] less than significant level. San Diego Water Board counsel
13 has reviewed the information submitted in the responses to the
14 board CEQA question and considered the findings and conclusions
15 of the resolution adopted by [the] TCA board of directors. Based
16 on these and other considerations, San Diego Water Board counsel
17 has concluded that the CEQA documentation provided by TCA is
18 adequate for the San Diego Water Board, as a responsible agency,
19 to rely upon in considering adoption of the revised tentative order.

20 (Exhibit 6, pp. 16-17.) After noting that impacts to waters of the State “will be mitigated at a
21 very high ratio to establishment and restoration projects consistent with and exceeding water
22 board standards,” Regional Board staff recommended adoption of the Tentative Order. (*Id.*,
23 p. 27.)

24 In the Response to Comments Report, Revised Tentative Order No. R9-2013-0007,
25 Regional Board staff addressed opponents’ comments regarding potential hydromodification
26 impacts. Specifically, Regional Board staff noted that a Model Water Quality Plan (“MWQP”)
27 and HMP had been developed in response to permit requirements from the Regional Board in
28 Order R9-2009-0002 and the “MS4” permit. The MWQP and HMP are specific to the south
Orange County watershed management area and contain structural best management practice
 (“BMP”) requirements designed to protect receiving waters in the area from the effects of
 hydromodification. Regional Board Staff testified that the Tentative Order specifically required
 F/ETCA to submit and implement a Runoff Management Plan that clearly indicates compliance
 with all of the requirements in the HMP, including those regarding coarse bed material sediment
 supply.

1 **E. The Regional Board’s Decision**

2 Despite its staff’s recommendation, in a three-to-two decision, the Regional Board denied
3 the Revised Tentative Order. Notably (and against advice of its counsel), the Regional Board did
4 not issue written findings regarding its decision. (*Id.*, p. 206.) Nor did the Regional Board
5 assume that the Project’s CEQA documentation was adequate, as required by law, which
6 Regional Board staff explained and acknowledged. (*Id.*, p. 206). Instead, as evidenced by the
7 Board Members’ comments during deliberations, the Regional Board made its decision based on
8 extra-record evidence not properly before the Board and entirely unrelated to water quality.

9 During deliberations on the Revised Tentative Order, Board Member Kalemkiarian –
10 referring to the May 23, 2013 Attorney General complaint described above—stated “I guess
11 what’s most persuasive to me . . . was reading through the attorney general’s complaint or writ,
12 actually, because ***I do not believe that the project is Tesoro, and I think that the project [that]***
13 ***has been presented is the entire [SOCTIIP] highway.***” (Exhibit 6, p. 198, emphasis added.)
14 Ms. Kalemkiarian conceded that, with respect to the Project before the Board, “the water quality
15 standards will be met.” (*Id.*, pp. 204-205; see also *id.*, p. 198 [stating “I don’t question the staff’s
16 conclusion that this segment meets water quality standards”].) Nonetheless, she explained that
17 after reading the Attorney General’s complaint, she was able to identify her concerns about the
18 Project, which related to the project description. (*Id.*, pp. 204-205). After reading portions of the
19 complaint aloud, Ms. Kalemkiarian stated: “This is not an adequate project description . . . I do
20 not believe that the project description is genuine.” (*Id.*, p. 205.)

21 Following Ms. Kalemkiarian’s comments, Mr. Abarbanel stated: “I think the project
22 that’s in front of us is actually pretty clear. It’s the [SOCTIIP] project that was presented here in
23 2008 Some people might say I made up what the project is, but I went to the website of the
24 Transportation Corridor Authority and it shows the project going all the way through Interstate 5,
25 somewhere kind of in San Diego County. I don’t know if that’s where they’re going to do it. But
26 that’s the goal of their project and they’re asking us to support that, and I cannot.” (*Id.*, pp. 201-
27 202.) Similarly, Regional Board Chair Morales stated, “As I see it, the project as envisioned may
28

1 end up [south of San Clemente]; may not. I don't know. I do think it's more than five and a half
2 miles though." (*Id.*, p. 203.)

3 The above statements constitute *the only grounds* cited by the Regional Board majority
4 for its decision. The majority did not to cite to any facts at all regarding water quality issues to
5 justify the decision. The majority did not attempt to offer any explanation for the rejection of the
6 Regional Board staff's findings that the Project complied with all applicable water quality
7 standards. And the Regional Board majority failed to explain why the majority chose to ignore
8 the Regional Board counsel's conclusion that Public Resources Code section 21167.3 imposed a
9 mandatory obligation to assume that F/ETCA's CEQA documentation regarding the Project
10 complied with CEQA.

11 3. ARGUMENT

12 A. Standard of Review

13 The State Board reviews the denial of the Tentative Order by the Regional board *de novo*.
14 Water Code section 13320, subdivision (b), provides that "[t]he evidence before the state board
15 shall consist of the record before the regional board, and *any other relevant evidence* which, in
16 the judgment of the state board, should be considered to effectuate and implement the policies of
17 this division." (Emphasis added.) Moreover:

18 The state board may find that the action of the regional board, or
19 the failure of the regional board to act, was appropriate and proper.
20 Upon finding that the action of the regional board, or the failure of
21 the regional board to act, was inappropriate or improper, the state
22 board may direct that the appropriate action be taken by the
23 regional board, refer the matter to any other state agency having
jurisdiction, take the appropriate action itself, or take any
combination of those actions. *In taking any such action, the state
board is vested with all the powers of the regional boards under
this division.*

24 (*Id.*, subd. (c), emphasis added.) Before taking any such final action, the State Board "may, in its
25 discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or
26 both." (Cal. Code Regs., tit. 23, § 2052, subd. (c).)

1 Thus, in reviewing F/ETCA's petition challenging the denial of the Tentative Order, the
2 State Board is not required to defer to the findings of the Regional Board. Of course, here, the
3 Regional Board made no findings to which the State Board could defer.

4 **B. The Regional Board Violated Public Resources Code Section 21167.3 and**
5 **CEQA Guidelines⁴ Section 15050**

6 Based on the testimony of Board Members at the June 19, 2013 hearing, the Regional
7 Board appears to have denied the Tentative Order on the grounds that it believes the Project's
8 CEQA documents—specifically, the project description in the 2013 Addendum to the 2006
9 FSEIR and in F/ETCA's resolution adopting the Addendum — are inadequate. In making this
10 determination, the Regional Board violated section 21167.3 of the Public Resources Code.

11 Section 21167.3 provides:

12 In the event that an action or proceeding is commenced [alleging
13 that an EIR does not comply with CEQA] is commenced . . .
14 **responsible agencies shall assume that the [EIR] . . . does comply**
15 **with [CEQA]** and shall approve or disapprove the project
16 according to the timetable for agency action

17 (Pub. Resources Code, § 21167.3, subd. (b), emphasis added; see also Cal. Code Regs., tit. 14,
18 § 15233 ["If a lawsuit is filed challenging an EIR . . . for noncompliance with CEQA, responsible
19 agencies shall act as if the EIR . . . complies with CEQA".]) In other words, when, as here,
20 (1) an action challenging an EIR under CEQA has commenced and (2) no final determination has
21 been made on the issue of CEQA compliance, responsible agencies⁵ are **required** to assume that
22 an EIR complies with CEQA. (Pub. Resources Code, § 21167.3.)

23 Since the Project is a modification of SOCTIIP, F/ETCA prepared the Addendum to
24 determine whether there were changes in circumstances or new information of substantial
25 importance that would require preparation of a subsequent or supplemental EIR. (Pub.
26 Resources Code, § 21166; see also Cal. Code Regs., tit. 14, § 15162.) F/ETCA, as the lead

27 ⁴ As used herein, "CEQA Guidelines" refers to the Guidelines for the Implementation of the
28 California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15000 *et seq.*).

⁵ The Regional Board is a responsible agency under CEQA because it has discretionary approval
authority over WDRs. (Pub. Resources Code, § 21069; Cal. Code Regs., tit. 14, § 15381.)

1 agency, found that a supplemental or subsequent EIR was not required or authorized under
2 CEQA (Exhibit 2), and the F/ETCA Board of Directors approved the Addendum in April 2013.
3 (See Exhibit 1, p. 10.) Regional Board staff thereafter concluded: “The San Diego Water Board
4 has considered the environmental effects of the Project, as shown in the FSEIR and the changes
5 identified in the Addendum. The San Diego Water Board finds that since F/ETCA’s approval of
6 the Addendum on April 18, 2013, none of the conditions under CEQA Guidelines section 15162
7 trigger the need for the San Diego Water Board to prepare a subsequent or supplemental EIR in
8 its role as responsible agency under CEQA. Therefore, under CEQA Guidelines section 15050,
9 the decision of F/ETCA, as Lead Agency, is final and conclusive on all persons, including
10 responsible agencies.” (*Ibid.*) Accordingly, the Regional Board acted improperly when it failed
11 to assume that the Project’s FSEIR and Addendum—including the project description—comply
12 with CEQA. (Pub. Resources Code, § 21167.3.)

13 **(i) Pending Litigation**

14 As described in detail in Exhibit 3, at the time of the Regional Board’s decision, litigation
15 was pending concerning the FSEIR and the Addendum. (*California State Parks Foundation, et*
16 *al. v. Foothill/Eastern Transportation Corridor Agency*, Petition for Writ of Mandate, Nos. 06-
17 GIN051194, 06-GIN0513721 (S.D. Super. Ct. March 23, 2006); *People ex rel. Attorney General*
18 *Bill Lockyer and State Park and Recreation Commission v. Foothill/Eastern Transportation*
19 *Corridor Agency, et al.*, No. 06-GIN051371 (S.D. Super. Ct. March 23, 2006). On January 12,
20 2011, the Superior Court of San Diego County approved a stipulated order and settlement
21 agreement (attached hereto as Exhibit 8) regarding the litigation. Pursuant to the settlement, the
22 parties agreed to a dismissal without prejudice as a means of effectuating a stay of the
23 proceedings, and the Court expressly reserved jurisdiction to set aside the dismissal and reinstate
24 the proceedings upon the written request of a party. Specifically, the settlement agreement
25 provides:

26 The stay shall terminate and no longer be in effect upon the written
27 request filed in Court by any Petitioner is either of the consolidated
28 proceedings to set aside the dismissal and reinstate the proceedings,
following notice to all Parties hereto through their counsel of
record. Upon such request, the dismissal shall be set aside, and the

1 proceedings shall be reinstated without the necessity to refile the
2 pleadings or other papers filed in the proceedings prior to the
3 dismissal, all of which shall be deemed filed as of their original
4 filing dates.

5 (Exhibit 8, ¶2.) On May 22, 2013, the petitioners in the above cases filed motions to reinstate the
6 litigation concerning the FSEIR. In doing so, the parties sought to reinitiate the 2006 challenge
7 to the FSEIR, as well as challenge the F/ETCA's Board of Directors approval of the Addendum
8 in April 2013. The California Attorney General filed similar papers on May 23, 2013. (*The*
9 *People of the State of California, ex rel. Attorney General Kamala D. Karris v. Foothill/Eastern*
10 *Transportation Corridor Agency, et al.*, No. 37-2013-00050001 (S.D. Super. Ct. May 23, 2013).)

11 Subsequently, certain of the petitioners in the 2006 cases also filed petitions for writs of mandate
12 challenging the F/ETCA's certification of the Addendum and approval of the Project.

13 (*California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency,*
14 *No. 37-2013-00049797 (San Diego Super. Ct.); The People of the State of California v.*
15 *Foothill/Eastern Transportation Corridor Agency, Case No. 37-2013-00050001-CU-WM-NC*
16 *(San Diego Super. Ct.)*.)

17 In sum, proceedings have been initiated to challenge both the FSEIR and the Addendum
18 under CEQA. As such, CEQA required the Regional Board to assume that the FSEIR and
19 Addendum for the Project comply with CEQA, and that the determinations of the F/ETCA
20 concerning the Project were "final and conclusive."

21 **(ii) Legal Standards**

22 The plain text of Public Resources Code section 21167.3 required the Regional Board to
23 assume that F/ETCA's CEQA documentation regarding the Project complied with CEQA. The
24 legislative history also makes it clear that Public Resources Code section 21167.3 was intended
25 to impose stringent limitations on the ability of responsible agencies to question the adequacy of
26 the lead agency's CEQA compliance where CEQA litigation is filed. In its report on the
27 proposed legislation, the Resources Agency opined on the following question: "Should the only
28 challenge of the lead agency's determination [of the adequacy of an EIR] be in court?" (Bill

1 Analysis, Natural Resources Agency, AB 884 (Apr. 29, 1977) (1977-78 Reg. Session).) In
2 supporting such a requirement, the agency noted “prohibiting responsible agencies from raising
3 the issue of adequacy at a later point in the process would be helpful to applicants and help
4 streamline the process” and “the responsible agencies would be freed [from] the costs of
5 litigation brought by other parties against them for using an inadequate EIR.” (*Id.*, p. 5.) Thus,
6 by electing to include such language, the Legislature sought not only to limit the susceptibility of
7 an EIR to legal challenge, but to ensure that such challenges were limited to the courts. (*Ibid.*;
8 see also Enrolled Bill Report, Dept. of Finance, AB 884 as amended on Aug. 31, 1977 (Sept. 23,
9 1977) [discussing the bill’s goal of limiting the susceptibility of EIRs to legal attack.]

10 As the Court of Appeal held in *City of Redding v. Shasta County Local Agency Formation*
11 *Commission*, (1989) 209 Cal.App.3d 1169, the Legislature enacted section 21167.3 to streamline
12 the CEQA process by designating one forum for challenges to an EIR. The court held:

13 The evident intent of section 21167.3 is to expedite CEQA review
14 where a lawsuit contesting CEQA documentation is pending by
15 designating **one forum** for resolution of claims of unlawful
16 documentation [i.e., a negative declaration or EIR] and by
17 requiring project review to proceed while the claims are resolved.
18 **That forum is the court.**

19 (*City of Redding, supra*, 209 Cal.App.3d at p. 1181, first emphasis in original, second emphasis
20 added.) The Court of Appeal recognized the intent of the Legislature to preclude a collateral
21 attack on the validity of CEQA documentation in two forums. Given that lawsuits have been
22 filed challenging the FSEIR and Addendum under CEQA and no final determination has been
23 reached in such lawsuits, the Regional Board is foreclosed from questioning the adequacy of the
24 FSEIR and Addendum in the WDR proceedings for the Project. That is, just as section 21167.3
25 barred the City of Redding from adjudicating the validity of the lead agency’s CEQA
26 documentation, it also bars the Regional Board from challenging the validity of the FSEIR and
27 Addendum and from questioning the adequacy of the Project description in the Addendum. In
28 addition, CEQA Guidelines section 15050 imposed an obligation on the Regional Board to treat
the F/ETCA’s determinations in F/ETCA’s Resolution approving the Addendum as “final and
conclusive.”

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(iii) The Regional Board’s Determination

As a responsible agency under CEQA, the Regional Board’s role is strictly limited. It is “responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve.” (Pub. Resources Code, § 21002.1, subd. (d).) In its limited role, and because litigation is pending regarding the Tesoro Extension, CEQA required that the Regional Board rely on the CEQA documentation approved by F/ETCA. (Pub. Resources Code, § 21167.3, subd. (d).)

Despite clear statutory mandates to the contrary, the Regional Board failed to assume that the CEQA documentation for the Project was adequate, and failed to treat F/ETCA’s determinations in F/ETCA’s resolution approving the Addendum as “final and conclusive.” During deliberations, Board Members Kalemkiarian, and Abarbanel and Regional Board Chair Morales relied on improper evidence in rejecting the Revised Tentative Order. Rather than rely on what was provided by F/ETCA, they all rejected the Project description as modified in the Addendum and relied on improper sources to conclude that the Project description was inadequate. This is a clear violation of Public Resources Code section 21167.3 and CEQA Guidelines section 15050.

Public Resources code section 21167.3 and CEQA Guidelines section 15050 were adopted to avoid the kind of collateral attack on the validity of the FSEIR and Addendum attempted here by the Regional Board.⁶ The Regional Board failed to assume that the FSEIR and the Addendum comply with CEQA and failed to treat F/ETCA’s determinations in the Addendum as “final and conclusive.” Thus, in light of the Legislature’s clear mandate in section 21167.3, CEQA Guidelines section 15050, and controlling case law, the Regional Board abused its discretion and acted improperly when it denied the Tentative Order and its decision should be reversed.

⁶ Notably, counsel for the Regional Board reminded the Board Members of section 21167.3, stating: “Essentially under CEQA the lead agency drives the process. And as a responsible agency, we are bound by the lead agency’s document even if litigation is filed challenging the lead agency’s approval.” (Exhibit 6, p. 36.)

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C. The Regional Board Failed to Make Written Findings to Support its Denial of the Tentative Order

An adjudicatory proceeding is defined as “an evidentiary hearing for determination of facts pursuant to which the State Board or a Regional Board formulates and issues a decision.” (Cal. Code Regs., tit. 23, § 648, subd. (a); Gov. Code, § 11405.20.) With limited exceptions, adjudicatory proceedings for the Regional Board are governed by article 2 of title 23 of the California Code of Regulations, chapter 4.5 of the Administrative Procedure Act (“APA”) (commencing with section 11400 of the Government Code), Government Code section 11513, and Evidence Code sections 801-805. (Cal. Code Regs., tit. 23, § 648, subd. (b).)

The Regional Board can choose to conduct either an informal (Gov. Code, § 11445.10-.60) or formal (Cal. Code Regs., tit. 23, § 648 *et seq.*) adjudicative proceeding. For an informal hearing, the notice of hearing must state that the Regional Board has elected to proceed in such a manner. (Gov. Code, § 11445.30.)

(i) The Regional Board Failed to Make Findings In Violation of Law

The notice of hearing related to the Regional Board’s consideration of the Tentative Order was issued on June 18, 2013 (attached hereto as Exhibit 9). The notice explains that matters before the Regional Board may be “quasi-legislative or quasi-judicial.” (Exhibit 9, p. 10.) Quasi-legislative matters are limited to rulemaking and informational proceedings. (*Id.*, p. 12.) Quasi-judicial proceedings, including formal and informal hearings, are considered adjudicative, and as described above, must comply with the rules governing adjudicatory proceedings. The notice further states that “adjudicative proceedings include hearings to receive evidence concerning the issuance of waste discharge requirements.” (*Id.*, p. 10.) As the Regional Board’s consideration of the Tentative Order was such a proceeding, it was subject to the rules governing adjudicatory proceedings.

Notably, the provisions that govern the Regional Board’s adjudicatory proceedings include the following:

“The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

1 ...
2 The decision *shall be in writing, be based on the record, and*
3 *include a statement of the factual and legal basis of the decision*
4 as provided in Section 11425.50.”

5 (Gov. Code, § 11425.10, subd. (a)(6), emphasis added; see also Gov. Code, § 11425.50 [“[t]he
6 decision shall be in writing and shall include a statement of the factual and legal basis for the
7 decision”].) The Regional Board entirely failed to comply with this requirement. Not only was
8 the Regional Board’s decision not in writing, but it was not based on the record and did not
9 include statements regarding the factual and legal basis for the decision. Indeed, the Regional
10 Board wholly failed to articulate any rational basis for its decision. Instead, Board Members
11 Kalemkiarian and Abarbanel and Regional Board Chair Morales simply determined, despite the
12 F/ETCA’s findings and the evidence in the record to the contrary, that the project under
13 consideration was not the 5.5 mile Tesoro Extension, but the 16-mile SOCTIIP highway. (See
14 Exhibit 6, pp. 198-205.) This determination entirely lacks a legal or factual basis. It is contrary
15 to the findings of Regional Board staff, who recommended adoption of the Tentative Order,
16 finding the conditions and mitigation measures in the WDR would protect water quality and
17 water resources. (*Id.*, p. 27.)

18 The Regional Board’s failure to make findings to support its decision to deny the
19 Tentative Order was contrary to law and an abuse of discretion. (Code Civ. Proc., § 1094.5.)
20 Four decades ago, the California Supreme Court made it clear that quasi-judicial decisions of
21 administrative agencies are required to be supported by written findings that identify the facts
22 relied upon by the agency and that explain the connection between such facts and the agency’s
23 legal conclusions. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11
24 Cal.3d 506.) In *Topanga*, a planning commission granted a zoning variance to an investment
25 company in Topanga Canyon in Los Angeles County. Local property owners unsuccessfully
26 appealed the decision to the county board of supervisors, and thereafter sought relief by means of
27 administrative mandamus in court. Among other things, the issue before the California Supreme
28 Court was whether the planning commission was required to render findings to support its

1 decision. (*Id.* at p. 510.) In holding that administrative agencies, including the planning
2 commission, were required to render such findings, the Court held that “[a]mong other functions,
3 a findings requirement serves to conduce the administrative body to draw legally relevant sub-
4 conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis
5 and minimize the likelihood that the agency will randomly leap from evidence to conclusions.”
6 (*Id.* at p. 516.) The Court continued, stating “[i]n addition, findings enable the reviewing court to
7 trace and examine the agency’s mode of analysis.” (*Ibid.*)

8 To support its decision, the Court explained that its analysis began “with consideration of
9 Code of Civil Procedure section 1094.5, the state’s administrative mandamus provision which
10 structures the procedure for judicial review of adjudicatory decisions rendered by administrative
11 agencies.” (*Id.* at p. 514.) It noted that section 1094.5 defined “abuse of discretion” as an order
12 or decision “that is not supported by the findings, *or* the findings are not supported by evidence.
13 (*Id.* at p. 515, emphasis in original.) The Court concluded:

14 [I]mplicit in section 1094.5 is a requirement that the agency which
15 renders the challenged decisions must set forth findings to bridge
16 the analytic gap between the raw evidence and ultimate decision or
17 order. If the Legislature had desired otherwise, it could have
18 declared as a possible basis for issuing mandamus the absence of
19 substantial evidence to support the administrative agency’s action.
20 By focusing, instead, upon the relationships between evidence and
21 findings and between findings and ultimate action, the Legislature
22 sought to direct the reviewing court’s attention to the analytic route
23 the administrative agency traveled from evidence to action. In
24 doing so, [the Court] believe[d] that the Legislature must have
25 contemplated that the agency would reveal this route.

21 (*Ibid.*) The court reasoned that the language in section 1094.5 requiring a court to compare the
22 evidence and ultimate decision to the “findings” left no room for the conclusion that speculation
23 as to the administrative agency’s basis for decision was acceptable. (*Ibid.*; see also *Sierra Club v.*
24 *City of Hayward* (1981) 171 Cal.3d 840, 858-62 [holding explicit findings are needed to
25 determine whether an administrative agency “strayed from the statutorily created pathway from
26 evidence to ultimate conclusion.”].)⁷

27
28 ⁷ The Regional Board’s failure to make findings to support its denial of the Tentative Order is

1 Here, the Regional Board entirely failed to make findings relating to its decision to deny
2 the Tentative Order; such failure was an abuse of discretion. Indeed, the Regional Board neither
3 provided a way to “trace and examine [its] mode of analysis,” nor explained “the relationships
4 between evidence and findings and between findings and ultimate action.” (*Topanga Assn. for a*
5 *Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at pp. 515-16.)

6 In sum, the Regional Board’s failure to make findings regarding its denial of the Revised
7 Tentative Order violated Government Code section 11425.10, is contrary to law, and constitutes
8 an abuse of discretion.

9 **(ii) The Regional Board Relied on Improper Evidence**

10 Government Code section 11425.50 requires the Regional Board’s decisions to “be based
11 exclusively on the evidence of record in the proceeding and on matters officially noticed in the
12 proceeding.” The Regional Board failed to comply with this requirement. To the extent the
13 Regional Board attempted to articulate a factual basis for its decision, its conclusions were
14 derived from extra-record evidence not properly before it. “Administrative tribunals exercising
15 quasi judicial powers which are required to make a determination after a hearing **cannot act on**
16 **their own information**. Nothing may be treated as evidence which has not been introduced as
17 such, inasmuch as a hearing requires that the party be apprised of the evidence against him in
18 order that he may refute, test and explain it.” (*La Prade v. Department of Water and Power of*
19 *the City of Los Angeles* (1945) 27 Cal.2d 47, 51-52, emphasis added.)

20 Indeed, Ms. Kalemkarian based her decision on allegations in a recently filed Attorney
21 General complaint, and Mr. Abarbanel based his on information found on the F/ETCA website.
22 (See Exhibit 6, pp. 198-205.) Allegations in a civil complaint are not evidence. (*Cassady v.*
23 *Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 241, citing *San Diego Police*
24 *Officers Assn. v. City of San Diego* (1994) 29 Cal.App.4th 1736, 1744 & fn. 8.) The use of the

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27 particularly egregious given its decision departed from the Regional Board staff’s
28 recommendations. (See Exhibit 7, p. 1; see also *Bam, Inc. v. Board of Police Commissioners*
(1992) 7 Cal.App.4th 1343, 1346 [noting that “where the decision of the hearing examiner is
rejected,” findings by the decision-maker are critical].)

1 website is a reliance on extrajudicial evidence, as its contents were never introduced into
2 evidence and F/ETCA was never afforded the opportunity to rebut or refute it. Such allegations
3 and information do not constitute evidence in quasi-judicial proceedings. In short, the Regional
4 Board violated Government Code section 11425.10 by failing to make written findings that,
5 based on the record, explained the factual and legal basis for its decision.

6
7 **D. The Regional Board Failed to Comply with Applicable Requirements
Regarding the Scope of its Jurisdiction**

8 It is well established that an “administrative agency may only exercise those powers
9 conferred on it by statute.” (*City of Lodi v. Randtron* (2004) 118 Cal.App.4th 337, 359, citing
10 *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d
11 384, 390-392.) Actions outside the scope of those authorized by statute “must be considered
12 void.” (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38
13 Cal.3d at p. 391 [holding administrative acts not authorized by the Legislature are void].) In
14 other words: “Administrative bodies and officers have only such powers as have expressly or
15 impliedly been conferred upon them by the Constitution or by statute. [Citations]. In the
16 absence of valid statutory or constitutional authority, an administrative agency may not . . .
17 substitute its judgment for that of the Legislature. Administrative [actions] in conflict with
18 applicable statutes are null and void. [Citations.]” (*Cal. State Restaurant Assn. v. Whitlow*
19 (1976) 58 Cal.App.3d 340, 346–347, citing *Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96,
20 103.)

21 The Legislature has prescribed the jurisdiction of the Regional Board. That is, the
22 authority of the Regional Board is limited to those activities set forth in applicable statutes,
23 including the Porter-Cologne Water Quality Control Act (“Porter-Cologne”), Water Code,
24 § 13000 *et seq.* Specifically, Water Code section 13263 provides that, after the necessary
25 hearing, the Regional Board “shall prescribe requirements as to the nature of any proposed
26 discharge, existing discharge, or material change in an existing discharge, . . . with relation to the
27 conditions existing in the disposal area or receiving waters upon, or into which, the discharge is
28 made or proposed.” In prescribing these requirements, the Regional Board “shall implement any

1 relevant water quality control plans that have been adopted, and shall take into consideration the
2 beneficial uses to be protected, the water quality objectives reasonably required for that purpose,
3 or other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.”
4 (*Ibid.*) Water Code section 13241 provides that the Regional Board ”shall establish such water
5 quality objectives in water quality control plans as in its judgment will ensure reasonable
6 protection of beneficial uses and the prevention of nuisance”

7 These provisions set the limits on the Regional Board’s scope of review. Nowhere does
8 the Water Code provide any other basis for a Regional Board decision on waste discharge
9 requirements. Indeed, applicable regulations confirm that the scope of the Regional Board’s
10 review is limited to water quality. Specifically, “when acting as a responsible agency, [the
11 Regional Board] may prohibit, postpone, or condition the discharge of waste . . . or other
12 entitlement for use for any project subject to CEQA to protect against environmental damage to
13 water resources, to minimize adverse environmental impacts on water resources, or to ensure
14 long-term protection of water resources, or if the information required [for a waste discharge
15 report] has not been timely submitted to the board.” (Cal. Code Regs., tit. 23, § 3742, subd. (a).)
16 “The board’s authority under . . . subdivision [(a)] *is limited to the protection of water resources*
17 *within its purview.*” (*Ibid*, emphasis added; see also Pub. Resources Code, § 21002.1 [stating a
18 “responsible agency shall be responsible for considering only the effects of those activities
19 involved in a project which it is required by law to carry out or approve”].)

20 In short, the role of the Regional Board is to ensure that applicable water quality
21 standards are met. Notably, Regional Board staff concluded that the Project would satisfy such
22 standards and recommended adoption of the Revised Tentative Order. Specifically, staff found
23 that “[t]hrough compliance with the waste discharge requirements of [the] Order, the Project will
24 not result in State water quality standards being violated.” (Exhibit 1, p. 8.) Staff further found:
25 “[The] Order contains waste discharge requirements to ensure beneficial uses are maintained or
26 enhanced through mitigation and monitoring requirements for impacts to waters of the State.
27 The waste discharge requirements are designed to ensure and verify that the highest level of
28 water quality is maintained consistent with the maximum benefit to the people of the State.” (*Id.*,

1 p. 9.) Nothing presented at the June 19 hearing nor discussed by the Regional Board contradicts
2 these findings. Indeed, no other state highway has been required to satisfy such rigorous water
3 quality standards. (*Id.*, p. 7.)

4 Opponents made only one assertion related to water quality issues. The opponents of the
5 Project claimed that the Project would adversely impact coarse bed material supply to San Juan
6 Creek. (See March 13, 2013 Executive Officer Summary Report (attached hereto as Exhibit 5).)
7 Opponents' testimony, however, relied on a report that contained "gross inaccuracies" that
8 rendered their conclusions "completely unreliable." (Exhibit 4., p. 46.) Indeed, the report
9 focused on Wagon Wheel Canyon as a purported example of how the project will have an impact
10 on the supply of coarse sediment to receiving waters. (*Ibid.*) The problem with their report,
11 however, as documented in the testimony of Dr. Paul Bopp, was that the "Tesoro Extension
12 Project is *not* located within Wagon Wheel Canyon." (*Id.*, p. 47, emphasis added.) Rather, the
13 Tesoro Extension is actually located completely within an area slated for future development as
14 part of the RMV Plan. (*Id.*, p. 48.) Opponents' own consultant previously concluded in studies
15 concerning the Ranch Mission Viejo Ranch Plan development that the area of the Project is an
16 appropriate location for roads. (*Id.*, p. 49.) Dr. Paul Bopp testified that "mislocating the project
17 effectively makes the conclusions of the [opponents' expert] highly suspect, considering the
18 impact identified in Wagon Wheel Canyon are nonexistent" (*Ibid.*) Regional Board Staff
19 concurred that the Project was not located in Wagon Wheel Canyon and thus completing
20 undermining the opponents' claim regarding potential hydromodification impacts.

21 Despite the complete absence of any evidence contradicting the findings of the Regional
22 Board staff, the Regional Board denied the Revised Tentative Order. The three members of the
23 Regional Board who voted to deny approval of the Tentative Order failed to articulate a single
24 fact related to water quality impacts to support their decision. Throughout the course of the
25 March 13 and June 19 hearings, the Regional Board majority asked questions regarding, among
26 other things, greenhouse gas emissions (Exhibit 6, pp. 45, 75), impacts on farmland (*id.*, p. 61),
27 impacts on cultural and archaeological resources (*id.*, p. 136), and matters of transportation
28 policy (*id.*, pp. 76-77). Not one of these issues is within the jurisdiction of the Regional Board.

1 In fact, Regional Board staff reminded Board Members of this when questioned about air quality
2 impacts: “We didn’t evaluate findings for air quality impacts because [. . .] those findings are
3 within the responsibility of the lead agency. And as the responsible agency, with our task of
4 protecting water quality, we don’t make findings regarding air quality impacts, unless we are the
5 lead agency, which we aren’t.” (*Id.*, p. 47).

6 The Regional Board resolutely disregarded guidance from staff and counsel regarding the
7 limits on the Regional Board’s jurisdiction. For example, in response to questions from Board
8 Member Abarbanel regarding impacts from the Project compared to impacts from SOCTIIP,
9 counsel for the Regional Board explained: “Our authority, as you know, is to protect water
10 quality and water resources. And staff has made the determination that the documentation
11 submitted by TCA and the project description and approval that they have made for this
12 extension with the mitigation measures that we have included in our order address all those
13 impacts to water quality. So we’re not making any specific findings with respect to any other
14 impacts to other resources or other future potential segments.” (Exhibit 6, p. 35.) Yet,
15 Mr. Abarbanel denied the Revised Tentative Order on the grounds that he believes the scope of
16 the Project is improper—a determination not within the Regional Board’s authority and wholly
17 unrelated to water quality concerns.⁸ (*Id.*, p. 202; see also *id.*, pp. 201-202 [testimony of
18 Ms. Kalemkarian that the project description is improper]; *id.*, p. 203 [testimony of Mr. Morales
19 that the Project is more than 5.5 miles].)

22 ⁸ During the March 13, 2013 hearing, Board Member Abarbanel disclosed that he is a member of
23 the Sierra Club. (Exhibit 4, p. 14.) The Save San Onofre Coalition (“Coalition”) includes the
24 Sierra Club, and was designated as an interested party for purposes of the June 19 hearing. (See
25 Exhibit 9 [describing rules applicable to interested parties].) This means that the Coalition—and
26 therefore the Sierra Club—was afforded the same rights and privileges as F/ETCA at the hearing,
27 including having the same amount of time to present oral testimony. (See Exhibit 6.) Put
28 another way, this means that Board Member Abarbanel was a member of one of the parties in the
proceeding over which he presided. Further, the Sierra Club engaged in a public relations
blitzkrieg against the Project and urged its members to “take action” against the Project on June
17, 2013—two days prior to the June 19 hearing. (See
http://angeles2.sierraclub.org/take_action/blog/2013/06/take_action_stop_toll_road_again.) Mr.
Abarbanel failed to disclose any *ex parte* communications with the Sierra Club in violation of
Regional Board rules governing *ex parte* communications.

1 The Regional Board does not have the authority to question the F/ETCA definition of the
2 Project. As described in the provisions above, the Regional Board's authority is limited to
3 rendering decisions on whether the F/ETCA complied with water quality standards applicable to
4 the Revised Tentative Order. It is the role of lead agency here to determine the scope of the
5 project. (See Pub. Resources Code, §§ 13260, 13263 [explaining that a person who proposes to
6 discharge waste must file a report with the Regional Board; the Regional Board then makes a
7 decision based on that report].) Here, as the lead agency, F/ETCA was authorized to determine
8 the scope of the Project, and did so pursuant to applicable law. (See Exhibit 2.) Thus, not only is
9 it improper for the Regional Board to question F/ETCA's determination regarding the Project
10 scope, but it does not have the authority to do so.

11 Pursuant to the Porter-Cologne Act and other applicable laws, the Regional Board is
12 authorized to issue waste discharge requirements to comply with applicable water quality
13 standards. Despite Regional Board staff's expressly finding that the Project, as conditioned in
14 the Revised Tentative Order, complied with all applicable water quality standards, the Regional
15 Board denied the Revised Tentative Order. In doing so, the Regional Board exceeded its statutory
16 authority and abused its discretion. As such, the Regional Board's denial of the Revised
17 Tentative Order should be reversed.

18 **4. CONCLUSION**

19 As described above, the Regional Board abused its discretion and violated applicable law.
20 The Regional Board (i) failed to make the findings required by law, (ii) violated Public
21 Resources Code section 21167.3 requiring the Regional Board to assume that the F/ETCA
22 complied with CEQA, (iii) violated CEQA Guidelines section 15050, (iv) abused its discretion
23 and exceeded its jurisdiction by basing its decision on matters unrelated to water quality, and (v)
24 ignored the findings of Regional Board Staff in the Revised Tentative Order that the F/ETCA
25 complied with applicable water quality standards.

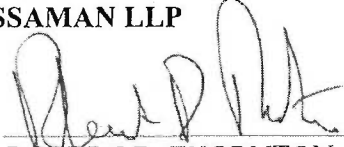
26 For the foregoing reasons the State Board should adopt the Revised Tentative Order, or in
27 the alternative, reverse and remand the Tentative Order to the Regional Board with instructions
28 to adopt the Revised Tentative Order.

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DATED: July 18, 2013

Respectfully Submitted,

NOSSAMAN LLP

By: 

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MARY LYNN COFFEE
ASHLEY J. REMILLARD
DAVID J. MILLER

Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

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LIST OF EXHIBITS

- Exhibit 1: California Water Quality Control Board, San Diego Region, Item No. 9, Revised Tentative Order No. R9-2013-0007 Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (June 19, 2013)
- Exhibit 2: Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report (SCH #2001061046), Tesoro Extension Project, prepared by the Foothill/Eastern Transportation Corridor Agency (February 2013)
- Exhibit 3: Correspondence from Robert D. Thornton, Nossaman LLP on behalf of Foothill/Eastern Transportation Corridor Agency to Darren Bradford, California Regional Water Quality Control Board Re: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County; Response to Questions for Written Response on Tentative Order No. R9-2013-0007 (March 29, 2013)
- Exhibit 4: Reporter's Partial Transcript of Proceedings, California Regional Water Quality Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory Committee, Item No. 8 Water Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County (March 13, 2013)
- Exhibit 5: California Regional Water Quality Control Board Item No. 9, Executive Officer Summary Report, Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (March 13, 2013)
- Exhibit 6: Reporter's Partial Transcript of Proceedings, California Regional Water Quality Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory Committee, Item No. 9 Water Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County (June 19, 2013)
- Exhibit 7: California Regional Water Quality Control Board Item No. 9, Executive Officer Summary Report, Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (June 19, 2013)
- Exhibit 8: *California State Parks Foundation v. Foothill/Eastern Transportation Corridor Agency*, San Diego Superior Court Case No. GIN051194 and GIN051371 (Consolidated) Stipulated Order Approving Interim Settlement with Tolling Agreement and Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce Interim Settlement (filed January 12, 2011)
- Exhibit 9: California Regional Water Quality Control Board, San Diego Region, Revised Meeting Notice and Agenda for June 19, 2013.**

EXHIBIT 1

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

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353
 Phone (858) 467-2952 · Fax (858) 571-6972
www.waterboards.ca.gov/sandiego

REVISED TENTATIVE ORDER NO. R9-2013-0007

**WASTE DISCHARGE REQUIREMENTS
 FOR
 FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY**

**TESORO EXTENSION (SR 241) PROJECT
 ORANGE COUNTY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 1. Discharger Information

Discharger	Foothill/Eastern Transportation Corridor Agency
Name of Project	Tesoro Extension (SR 241)
Project Address	125 Pacifica #120, Irvine, CA 92618
CIWQS Party Number	536510

Discharges by the Foothill/Eastern Transportation Corridor Agency from the discharge points identified below are subject to the waste discharge requirements set forth in this Order:

Table 2: Discharge Location

Discharge Point	Discharge Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
1	Clean Fill	33.532853° N	-117.600563° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
2	Clean Fill	33.536310° N	-117.596573° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
3	Clean Fill	33.548477° N	-117.596190° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
4	Clean Fill	33.553264° N	-117.595168° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek

Table 2: Discharge Location Continued

Discharge Point	Discharge Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
A2	Clean Fill	33.542563° N	-117.594252° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
A3	Clean Fill	33.544166° N	-117.594145° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
F	Clean Fill	33.539938° N	N -117.597137° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
G	Clean Fill	33.547330° N	-117.593120° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
H	Clean Fill	33.551465° N	-117.594385° W	Unnamed waters of the State tributary to Cañada Gobernadora Creek
J	Clean Fill	33.581497° N	-117.609899° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
K	Clean Fill	33.581031° N	-117.608638° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
L	Clean Fill	33.581565° N	-117.607591° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
T5	Clean Fill	33.563031° N	-117.605581° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
T6A	Clean Fill	33.565526° N	-117.608472° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
T6E	Clean Fill	33.563933° N	-117.608397° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
T7C	Clean Fill	33.568236° N	-117.611080° W	Unnamed waters of the State tributary to Cañada Chiquita Creek
T8	Clean Fill	33.577195° N	-117.609911° W	Unnamed waters of the State tributary to Cañada Chiquita Creek

Table 2: Discharge Location Continued

Discharge Point	Discharge Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
IW1 (wetland)	Clean Fill	33.574888° N	-117.612536° W	Isolated Wetland
T6W (wetland)	Clean Fill	33.562923° N	-117.608649° W	Wetland feature-unnamed waters of the State tributary to Cañada Chiquita Creek

Table 3: Administrative Information

This Order was adopted by the California Regional Water Quality Control Board, San Diego Region on:	June 19, 2013
This Order shall become effective on:	June 19, 2013

I, David W. Gibson, Executive Officer, do hereby certify that this order is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Diego Region, on June 19, 2013.

Tentative _____
 David W. Gibson
 Executive Officer

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ATTACHMENT A: PROJECT SITE MAPS
ATTACHMENT B: INFORMATION SHEET
ATTACHMENT C: MITIGATION SITE MAPS
ATTACHMENT D: NON-FEDERAL WATERS OF THE STATE
**ATTACHMENT E: TREATMENT CONTROL BEST MANAGEMENT PRACTICE
PLAN**
ATTACHMENT F: CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT

I. PROJECT INFORMATION

The following Project is subject to waste discharge requirements as set forth in this Order:

Table 4. Project Information

Discharger	Foothill/Eastern Transportation Corridor Agency
Name of Project	Tesoro Extension (SR 241)
Project Address	Terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 east of San Juan Capistrano, Orange County, CA
Project Contact, Title, and Phone	Valerie McFall, Director, Environmental Services (949) 754-3475
Mailing Address	125 Pacifica #120, Irvine, CA 92618
Type of Project	Transportation
CIWQS Place Number	785677
WDID Number	9000002505

II. FINDINGS

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board) finds:

- A. **Report of Waste Discharge.** The Foothill/Eastern Transportation Corridor Agency (hereinafter Discharger or F/ETCA) is a Joint Powers Agency created by the California State Legislature to plan, finance, design, construct and operate a toll highway system in Orange County, California. The F/ETCA submitted a Report of Waste Discharge (ROWD) to construct the Tesoro Extension (SR 241) (Tesoro Extension or Project), located in Orange County on August 10, 2012. Additional information to complete the ROWD application was received on October 4, 2012 and November 8, 2012. The ROWD was deemed complete on November 14, 2012. The Discharger proposes to discharge fill material to waters of the State associated with construction activity at the Project site.
- B. **Project Location.** The Project is an approximate 5.5 mile long extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. The Project is located within an area shown on the Cañada Gobernadora and San Clemente US Geological Survey 7.5-minute quadrangle maps. Attachment A of this Order provides the location of the Project and mitigation sites.
- C. **Receiving Waters.** The Project Study Area contains a total of 16.01 acres and 28,747 lineal feet of surface waters of the State and/or waters of the United States, of which a total of 14.35 acres constitute wetlands pursuant to federal Clean Water Act guidance in the United States Army Corps of Engineers (USACOE) Wetlands Delineation 1987 Manual and Supplements, and Title 33, Code of Federal Regulations, Part 328 (33 CFR 328). The receiving waters in

the vicinity of the Project are Cañada Gobernadora Creek and Cañada Chiquita Creek. The Project area lies within the Mission Viejo Hydrologic Area. Individual hydrologic subareas (HSA) defined in the Mission Viejo Hydrologic area include Oso; Upper Trabuco; Middle Trabuco; Gobernadora; Upper San Juan; Middle San Juan; Lower San Juan; and Ortega. Lands within the Project watersheds are largely undeveloped, and the majority of the terrain is natively vegetated or used for rangeland or agricultural purposes.

- D. **Project Description.** The purpose of the Project is to provide a transportation facility that will reduce existing and forecasted deficiencies and congestion on the I-5 freeway and the arterial network in southern Orange County. The Project will serve both local (existing and future) and intra- and inter-regional trips. F/ETCA is the Project sponsor overseeing construction and is also the California Environmental Quality Act (CEQA) lead agency for the proposed Project. Upon opening of the Tesoro Extension roadway, the California Department of Transportation (Caltrans) will assume ownership of the roadway facility and responsibility for roadway maintenance. F/ETCA will be the toll operator for the roadway and maintain tolling equipment.

The Project includes four general-purpose travel lanes, two in each direction. The center median from Oso Parkway to the Cow Camp Road will be revegetated with a native seed mix and will include drainage improvements, similar to the median along the existing SR-241. The median offers future opportunities for bus rapid transit, light rail, or additional lanes as traffic conditions warrant. Cow Camp Road will be constructed by Rancho Mission Viejo and the County of Orange prior to, or concurrent with, the construction of the Tesoro Extension Project. An interchange at "G" Street and SR-241 will be constructed 0.6 mile north of Cow Camp Road (See Project Site Maps, Attachment A). The footprint for the Tesoro Extension Project includes areas for grading, remedial grading, and construction disturbance areas. In addition to the paved road and associated bridges and interchanges, the construction area includes access roads, materials storage areas, areas for utility relocations, and areas for the construction of Best Management Practices (BMPs). The Project adds approximately 100 acres of impervious surface. More details about the Project and Project impacts are described in Attachments A–E of this Order.

- E. **Project Impacts.** The Project will result in the discharge of waste (fill) in a total of 0.64 acre of waters of the State, including 0.40 acre (5,297 linear feet) of permanent impacts and 0.24 acres (1,819 linear feet) of temporary impacts to jurisdictional waters in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00) (See Attachment B, Table 1).
- F. **Project Mitigation.** The Discharger submitted a compensatory mitigation plan, *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, in October of 2012. To compensate for unavoidable impacts to wetland and non-wetland waters of the State, the

Discharger proposes 20.31 acres (10,316 linear feet) of mitigation and an additional 13.55 acres of upland buffer restoration. The draft HMMP provides for implementation of compensatory mitigation which offsets adverse water quality impacts attributed to the Project in a manner that protects and restores the abundance, types and conditions of aquatic resources and supports their beneficial uses. A finalized HMMP is subject to the approval of the San Diego Water Board and must be implemented under the terms and conditions of this Order.

G. Water Code section 13267 authorizes the San Diego Water Board to require technical and monitoring reports. The only restriction is that the burden, including costs of preparing the reports, must bear a reasonable relationship to the need for and the benefits to be obtained from the reports. Sections VIII and IX of this Order establish monitoring and reporting requirements to ensure that the compensatory mitigation strategy for the Project is successful, to assess the effectiveness of BMP strategies in protecting water quality, and to monitor compliance with the receiving water limitations of this Order.

G.H. Project Runoff Management Plan. The Discharger submitted a post construction storm runoff management plan (RMP), *Runoff Management Plan, 241 Tesoro Extension Project*, prepared by Saddleback Constructors dated February 14, 2012. The RMP provides for the prevention of adverse impacts to aquatic resources through Best Management Practices (BMPs) and incorporation of various project design features for erosion control and water quality treatment. The Discharger reports that the BMPs are in conformance with applicable requirements set forth in the Caltrans statewide storm water NPDES Permit, Order No. 2012-0011-DWQ, NPDES No. CAS000003. The Discharger further reports that most of the BMPs are designed with a safety factor such that they will function in conditions beyond those specified in the Caltrans NPDES Permit. This Order requires that post construction BMPs and project design features provide for the capture and treatment of the 85th percentile, 24-hour storm event from 100 percent of the added impervious surfaces and compliance with the South Orange County Hydromodification Plan (HMP) and the draft Model Water Quality Management Plan (Model WQMP) for South Orange County.

H.I. Regulatory Authority and Reason for Action. By letter dated November 5, 2012, the U.S. Army Corps of Engineers (USACOE) determined that the proposed Project activities will not occur within waters of the United States and therefore the Project is not subject to USACOE jurisdiction under Section 404 of the Clean Water Act (CWA) and a Section 404 permit is not required for the Project. However, surface waters affected by the Project are waters of the State, as defined by section 13050 of the Water Code which include all water bodies, including wetlands and ephemeral, intermittent and perennial stream channels, in all flow conditions, including effluent dominated and seasonally dry. Waste discharges to these waters are subject to State regulation under division 7 of the Water Code (commencing with section 13000).

This Order is issued pursuant to Water Code section 13263, and establishes waste discharge requirements for the discharge of fill material, including structural material and/or earthen wastes from Project construction activities, to waters of the State. The waste discharge requirements of this Order are necessary to adequately address potential and anticipated impacts to waters of the State, and to ensure compliance with applicable water quality control plans and polices.

J. **Statement of Basis.** The San Diego Water Board developed the requirements in this Order based on information submitted as part of the ROWD and other available information. The Information Sheet in Attachment B of this Order contains background information and the supporting rationale for the requirements of this Order and is hereby incorporated into this Order and constitutes part of the Findings for this Order.

K. **Water Quality Control Plan.** The San Diego Water Board adopted a Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for Cañada Gobernadora Creek, Cañada Chiquita Creek, and other receiving waters addressed through the Plan. Subsequent revisions to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Resources Control Board (State Water Board). Beneficial uses applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks specified in the Basin Plan are as follows:

Table 1. Basin Plan Beneficial Uses of Cañada Gobernadora and Cañada Chiquita Creeks

Discharge Points	Receiving Water Name	Beneficial Use(s) (check these)
1, 2, 3, 4, A ₂ , A ₃ , F, G, H	Unnamed tributaries to Cañada Gobernadora Creek	Municipal and Domestic Supply; Industrial service supply; agricultural supply; contact water recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.
J, K, L, T5, T6A, T6E, T7C, T8, IW1, T6W	Unnamed tributaries to Cañada Chiquita Creek	Municipal and Domestic Supply; Industrial service supply; agricultural supply; contact water recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.

Together with an anti-degradation policy, the Basin Plan beneficial uses and water quality objectives serve as water quality standards under the Clean Water Act. This Order specifies waste discharge requirements that are necessary to adequately address effects on, and threats to, applicable water quality standards resulting from discharges attributed to the Project. Through compliance with the waste discharge requirements of this Order, the Project will not result in State water quality standards being violated.

L. **Anti-Degradation Policy.** The State Water Resources Control Board established California's anti-degradation policy in State Water Board Resolution

No. 68-16 (Policy) which requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed under the Policy only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable Water Quality Control Plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance. Consistent with the Policy, this Order contains waste discharge requirements to ensure beneficial uses are maintained or enhanced through mitigation and monitoring requirements for impacts to waters of the State. The waste discharge requirements are designed to ensure and verify that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State.

L.M. No Net Loss Policy. In 1993, the Governor of California issued the California Wetlands Conservation Policy (Executive Order W- 59-93). Commonly referred to as the “No Net Loss Policy” for wetlands, the Executive Order requires State agencies to “ensure no overall net loss [of wetlands] and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property.” This Order meets the objectives of Executive Order W-59-93 through the establishment of compensatory mitigation requirements which offset adverse water quality impacts attributed to the Project in a manner that protects and restores the abundance, types, and conditions of aquatic resources and supports their beneficial uses.

M.N. California Environmental Quality Act. The Discharger is the Lead Agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)). The Discharger certified a Final Subsequent Environmental Impact Report (FSEIR) for the “South Orange County Transportation Improvement Project” (Transportation Improvement Project), and filed a Notice of Determination (SCH # 2001061046) on February 23, 2006, in accordance with California Code of Regulations, title 14, section 15094 (California Code of Regulations, title 14 section 15000 et seq. hereinafter referred to as “CEQA Guidelines”) under CEQA Guidelines Title 14, California Code of Regulations. The Discharger determined the Transportation Improvement Project, without mitigation, would# have a significant effect on the environment. Therefore, the Final FSEIR incorporated ds mitigation measures that to mitigate many of the Transportation Improvement Project’s effects on the environment to less than significant. For those impacts that the Discharger determined to be unavoidable impacts where mitigation was infeasible, the Discharger adopted a Statement of Overriding Considerations finding that the specific benefits of the project outweighed the unavoidable adverse impacts.

On April 18, 2013, the Board of Directors of the F/ETCA approved a conceptual design for the Tesoro Extension and an Addendum to the FSEIR for the Tesoro Extension. As described in the F/ETCA Addendum, the Tesoro Extension is a segment of the Transportation Improvement Project and would extend SR 241 from Oso Parkway to Cow Camp Road. The Addendum states that the alignment of the Tesoro Extension is substantially the same as alignments previously evaluated in the FSEIR for the road segment between Oso Parkway and Ortega Highway. The Addendum states that the differences between the Tesoro Extension and the "Preferred Alignment" described in the FSEIR relates to the "conversion of the folded diamond interchange at Cow Camp Road to a simpler T-intersection configuration." The Tesoro Extension also involves some shifts in road alignment to reduce impacts to surface waters.

In approving the conceptual design for the Tesoro Extension, the Board of Directors adopted findings and determined: 1) that the Tesoro Extension approval would result in no new significant effects and no increase in the severity of an impact as described in the FSEIR; 2) that the Project modifications do not require the preparation of a subsequent or supplemental EIR under Public Resources Code section 21166 or CEQA Guidelines section 15162; and 3) an Addendum is appropriate and may be used to fulfill the environmental review requirements of the Project. F/ETCA determined that the Addendum addressed minor environmental effects associated with minor alterations to the Project design and changes in circumstances that have occurred since certification of the FSEIR. On April 23, 2013, a Notice of Determination for the approval and F/ETCA's decision to prepare an Addendum was posted and filed in the Orange County Recorder's Office and with the State Clearinghouse.

San Diego Water Board Findings

As a responsible agency under CEQA, (CEQA Guidelines section 15096), the San Diego Water Board has reviewed the lead agency's F/ETCA's Final FSEIR, Findings, and Statement of Overriding Considerations, and the Addendum F/ETCA prepared pursuant to CEQA Guidelines section 15164. None of the significant unavoidable environmental impacts triggering the lead agency's adoption of the Statement of Overriding Considerations are within the areas of responsibility of the San Diego Water Board. The San Diego Water Board has considered the environmental effects of the Project, as shown in the FSEIR and the changes identified in the Addendum. The San Diego Water Board finds that since F/ETCA's approval of the Addendum on April 18, 2013, none of the conditions under CEQA Guidelines section 15162 trigger the need for the San Diego Water Board to prepare a subsequent or supplemental EIR in its role as responsible agency under CEQA. Therefore, under CEQA Guidelines section 15050, the decision of F/ETCA, as Lead Agency, is final and conclusive on all persons, including responsible agencies. The San Diego Water Board also finds that none of the significant unavoidable environmental impacts addressed in the FSEIR that led to the F/ETCA's adoption of the Statement of Overriding

Considerations are within the areas of responsibility of the San Diego Water Board.

The San Diego Water Board also concludes, however, that without mitigation, the Project as proposed may have a significant effect on resources within the San Diego Water Board's purview on the environment. Pursuant to CEQA Guidelines section 15091 subdivision (a) (1), the San Diego Water Board finds that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effects that are within the San Diego Water Board's purview as identified in the FSEIR and Addendum.

This Order requires implementation of mitigation measures that will reduce effects on the environment that are within the San Diego Water Board's jurisdiction-responsibility to less than significant. For impacts to resources within the San Diego Water Board's purview, the mitigation measures include: establishment, restoration, and enhancement of 21.27 acres of waters of the State and 13.55 acres of upland watershed buffer restoration. These measures are described in more detail in section VII of this Order and in section 7.0 of the Information Sheet (Attachment B to this Order). Additional mitigation measures for the potential impacts to water resources are described in sections IV and V of this Order. The Order requires the Discharger to comply with a monitoring and reporting program that will ensure that the mitigation measures are implemented and the requirements of this Order are met. Mitigation monitoring and reporting requirements are set forth in section IX of this Order.

N.O. Executive Officer Delegation of Authority. The San Diego Water Board by prior resolution has delegated all matters that may legally be delegated to its Executive Officer to act on its behalf pursuant to Water Code section 13223. Therefore, the Executive Officer is authorized to act on the San Diego Water Board's behalf on any matter within this Order unless such delegation is unlawful under Water Code section 13223 or this Order explicitly states otherwise

O.P. Public Notice. The San Diego Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of the notification are provided in the Information Sheet provided in Attachment B of this Order.

Q. Public Hearing. The San Diego Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Information Sheet provided in Attachment B of this Order.

P.R.

IT IS HEREBY ORDERED that, in order to meet the provisions contained in Division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, the Discharger shall comply with the requirements in this Order.

III. DISCHARGE PROHIBITIONS

- A. The discharge of waste, in a manner or location other than as described in the Report of Waste Discharge or findings of this Order, and for which valid waste discharge requirements are not in force is prohibited.
- B. The discharge of sand, silt, clay, or other earthen materials from any activity in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
- C. The treatment, storage, or disposal of waste in a manner that creates a pollution, contamination or nuisance, as defined by Water Code section 13050, is prohibited.
- D. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit it's being transported into the waters, is prohibited unless authorized by the San Diego Water Board
- E. The Discharger must comply with all applicable Discharge Prohibitions contained in Chapter 4 of the Basin Plan, incorporated into this Order as if fully set forth herein.

IV. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. Prior to the start of the project, and annually thereafter, the Discharger must educate all personnel on the requirements in this Order, including pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.
- B. The Discharger must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- C. The Discharger, and/or all legally responsible parties in the Project construction area, must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, and any subsequent revisions thereto.

- D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to Water Code 13260.
- E. Discharges of concentrated flow during construction or after completion of the Project must not cause downstream erosion or damage to properties or stream habitat.
- F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.
- G. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving waters. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- H. Cofferdams and water barrier construction shall be adequate to prevent seepage into or from the work area. Cofferdams or water barriers shall not be made of earth or other substances subject to erosion or that contain pollutants. When dewatering is necessary to create a temporary dry construction area, the water shall be pumped through a sediment-settling device before it is returned to the water body. The enclosure and the supportive material shall be removed when the work is completed, and removal shall proceed from downstream to upstream.
- I. All areas that will be left in a rough graded state must be stabilized no later than two weeks after completion of grading. The Discharger is responsible for implementing and maintaining BMPs to prevent erosion of rough graded areas. Hydroseed areas must be revegetated with native species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.cal-ipc.org/ip/inventory/weedlist.php>. Follow-up seed applications must be made as needed to cover bare spots and to maintain adequate soil protection.
- J. Except as authorized by this Order, substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous

materials.

- K. Removal of vegetation must occur by hand, mechanically, or using United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to prevent impacts to beneficial uses of waters of the State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, *Statewide General National Pollutant Discharge Elimination System Permit For The Discharge Of Aquatic Pesticides For Aquatic Weed Control In Waters Of The United States General Permit No. CAG990005*, and any subsequent revisions thereto.

V. POST- CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. All storm drain inlet structures within the Project boundaries must be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.

~~B. The Discharger must install and implement the post construction BMPs for the Project described in the *Runoff Management Plan (RMP) for 241 Tesoro Extension Project*, prepared by Saddleback Constructors for F/ETCA, and dated February 14, 2012. Post construction BMPs must be installed and functional within 30 days of Project completion and prior to any authorized use of the State Route (SR) 241 Tesoro Extension.~~

~~B. Post construction BMPs~~ The *Runoff Management Plan (RMP) for 241 Tesoro Extension Project*, prepared by Saddleback Constructors for F/ETCA, and dated February 14, 2012 The RMP must be in conformance with applicable requirements set forth in the statewide storm water NPDES permit for the California Department of Transportation (Caltrans), Order No. 2012-0011-DWQ, NPDES No. CAS000003. ~~Post construction BMPs~~ The RMP must also provide for the capture and treatment of the 85th percentile, 24-hour storm event from 100 percent of the added impervious surfaces, and comply with the draft Model Water Quality Management Plan (Model WQMP) for South Orange County, dated December 16, 2011, and the draft South Orange County Hydromodification Plan (HMP), dated December 11, 2011.

1. **Update RMP.** The Discharger must update the RMP to conform with the above applicable requirements and submit an updated RMP to the San Diego Water Board no later than October 31, 2013. The Discharger shall provide documentation that the updated RMP was prepared and certified by a properly qualified engineer, registered in the State of California. A statement of qualifications of the responsible lead professionals shall be included in the RMP.
2. **RMP Implementation.** The Discharger shall implement the updated RMP as unless otherwise directed in writing by the San Diego Water Board. All post-

construction BMPs described in the RMP must be installed and functional within 30 days of Project completion and prior to any authorized use of the State Route (SR) 241 Tesoro Extension.

- C. All post-construction structural treatment BMPs, including, but not limited to, vegetated swales and media filters, must be regularly inspected and maintained in perpetuity per manufacturers' specifications for proprietary structural devices, and at frequencies no less than those recommended by the California Storm Water Quality Association (CASQA)¹ guidance for non-proprietary measures. At a minimum, the Discharger must comply with the following:
1. Final maintenance plans for the vegetated swales must be developed and implemented based on CASQA guidance.
 2. Flow-based treatment BMPs (e.g., media filters and vegetated swales) must be inspected at a minimum monthly from October through April and at least twice from May through September each year.
 3. Retention basins must be maintained as necessary to prevent nuisance conditions, including those associated with odors, trash, and disease vectors. Such maintenance shall not compromise the ability of the basins to perform water quality treatment required by this Order.
 4. Records must be kept regarding inspections and maintenance in order to assess the performance of the systems and determine whether adaptations are necessary to protect receiving waters.
- D. Bridges, culverts, dip crossings, or other stream crossing structures shall be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the Project. Storm drain lines/culverts and other stream crossing structures shall be designed and maintained to accommodate at least a 100-year, 24-hour storm event, including associated bedload and debris with a similar average velocity as upstream and downstream sections. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be open bottom or embedded and backfilled below the grade of the stream greater than or equal to a depth of 1 foot.
- E. If groundwater dewatering is required for the Project, the Discharger shall enroll in and comply with the requirements of San Diego Water Board Order No. R9-2008-0002 NPDES No. CAG919002, *General Waste Discharge Requirements For Groundwater Extraction Waste Discharges From Construction, Remediation,*

¹ California Storm Water Quality Association (*California Storm Water BMP Handbook, New Development and Redevelopment 2003*), available on-line at: <http://www.cabmphandbooks.org/> [Accessed on January 15, 2012]

and Permanent Groundwater Extraction Projects to Surface Waters within The San Diego Region Except for San Diego Bay.

VI. RECEIVING WATER LIMITATIONS

- A. The receiving water limitations set forth below for the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks are based on applicable water quality standards contained in the Basin Plan and federal regulations and are a required part of this Order. Project activities shall not cause or contribute to violation of these receiving water limitations.
1. **Water Quality Objectives.** Water quality objectives applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks established in Chapter 3 of the Basin Plan shall not be exceeded.
 2. **Priority Pollutant Criteria.** Priority pollutant criteria applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks promulgated by the USEPA through the a) National Toxics Rule (NTR) (40 CFR 131.36 promulgated on December 22, 1992 and amended on May 4, 1995) and b) California Toxics Rule (CTR) (40 CFR 131.38, (65 Fed. Register 31682-31719), adding Section 131.38 to Title 40 of the Code of Federal Regulations, on May 18, 2000) shall not be exceeded.

VII. COMPENSATORY MITIGATION

- A. **Duty to Comply.** The Discharger shall retain responsibility for providing compensatory mitigation for the Project as required in this Order and shall direct any agreement(s) to obtain compensatory mitigation services.
- B. **Compensatory Management Plan Development.** The Discharger shall update and finalize the *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, dated October 2012. The HMMP must be received by the San Diego Water Board no later ~~June 14~~ July 26, 2013 and prior to the start of Project construction. The finalized and updated HMMP shall contain the following elements to the satisfaction of the San Diego Water Board:
1. A description of the legal arrangements and instruments for financial assurance, protection, and management that will be used to ensure the long term protection of the compensatory mitigation sites in perpetuity.
 2. A description of the interim and long-term management and reporting plans for the compensatory mitigation sites including but not limited to:

- a. A description and schedule of maintenance, after initial construction, to support achievement of performance standards and maintenance for any other purpose.
 - b. A detailed long-term plan that specifies how the site will be used, how the site will be maintained, who will be responsible for the work, and a schedule for all activities.
 - c. Management measures that will be implemented to ensure long-term sustainability after performance standards have been achieved; the responsible party for implementing the management measures; and long-term financing mechanisms; as well as the conditions that will trigger certain maintenance needs or management activities. Compensatory mitigation sites shall be designed to be self-sustaining when mature to the maximum degree practicable.
3. A description of the factors considered during the site selection process. This should include consideration of watershed needs, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation site.
4. A map of suitable scale and description to identify the ecological characteristics of the compensatory mitigation sites and how that replaces the functions and services of the Project impact sites. This may include descriptions of historical and existing plant communities, historical and existing hydrology, soil conditions, and other site characteristics appropriate to the type of water body proposed as mitigation.
5. A description of the amount and form of financial assurance (e.g. performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments) to be provided, including a brief explanation of the rationale for this determination.
6. Detailed written specifications and work descriptions for the development of the compensatory mitigation sites, including at a minimum, timing, sources of water (include proof of pertinent water right(s), if applicable), methods for establishing desired plant communities, and erosion control measures.
7. A description and schedule of maintenance requirements to ensure the continued viability of the aquatic resources once initial construction is completed.

8. A description of ecologically based, and measureable, performance standards that will be used to determine whether the compensatory mitigation objectives are being met.
9. A description of the factors or parameters that will be monitored to determine whether the compensatory mitigation is on track to meet performance standards and whether adaptive management is needed. A schedule for monitoring and reporting must be included.
10. A description of how the compensatory mitigation sites will be managed, in perpetuity after performance standards have been achieved, to ensure the long-term sustainability of the resource. The description shall identify the long-term finance mechanisms and the party responsible for long-term management.
11. An adaptive management plan that includes a management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation sites. The adaptive management plan must be of sufficient detail to guide decisions for revising the compensatory mitigation plans and implementing corrective measures as necessary to address both foreseeable and unforeseen circumstances.

C. Compensatory Mitigation Plan Implementation. Following receipt of a complete Habitat Mitigation and Monitoring Plan (HMMP), containing the information required under section VII.B. of this Order, the HMMP will be posted on the San Diego Water Board website and released for public review and comment for a minimum of 30 days. Based on the timely comments received, the San Diego Water Board Executive Officer will determine whether to hold a public hearing for San Diego Water Board consideration of the HMMP. If no hearing is scheduled the San Diego Water Board Executive Officer may inform the Discharger in writing that the HMMP is complete based on available information and that the Discharger shall commence with implementation of the HMMP at the general locations described in Attachment C of this Order. Before beginning these activities the Discharger shall:

1. Notify the San Diego Water Board of its intent to initiate the actions included in the HMMP; and
2. Comply with any conditions set by the San Diego Water Board.

D. Temporary Project Impacts. The Discharger must restore areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. The Discharger must implement all necessary BMPs to control erosion and runoff from areas associated with this project. The revegetation palette must not

contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.cal-ipc.org/ip/inventory/weedlist.php>. Follow-up applications shall be made, as needed, to cover bare spots and to maintain adequate soil protection.

E. Timing of Compensatory Mitigation. The Discharger shall implement the compensatory mitigation projects in accordance with the tasks and schedule described below:

1. The construction of the compensatory mitigation projects must be completed no later than 18 months following the initial discharge of dredge or fill material into waters of the State. The Discharger shall submit a written notification to the San Diego Water Board providing the date of the initial discharge of dredge or fill material into waters of the State. This notification must be received by the San Diego Water Board no later than five (5) days following the initial discharge. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10 percent of the cumulative compensatory mitigation for each month of delay.
2. Within 6 months of the start of Project construction, the Discharger shall document that adequate funding to purchase and maintain the compensatory mitigation sites exists to satisfy the compensatory mitigation requirements of the Project as described in the HMMP in perpetuity.
3. Mitigation maintenance and monitoring programs required and approved by the San Diego Water Board shall begin upon completion of construction of the compensatory mitigation projects.

F. Conservation Easement. The Discharger must comply with the following requirements:

1. The Discharger must provide a copy of the Conservation Easement for the compensatory mitigation sites to the San Diego Water Board no later than 6 months following issuance of this Order. The Conservation Easement Deed shall indicate the "Grantor" (property owner) and "Grantee" (holder) of the Conservation Easement.
2. Pursuant to Civil Code Section 815, and Government Code Sections 65965-65968, the holder of the Conservation Easement for Mitigation Area B, per the existing easement agreement with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (CDFW), shall continue to be held by the Discharger (See Attachment F). For Mitigation Area A, the holder of the Conservation Easement shall be the Reserve at Rancho Mission Viejo. The Discharger shall provide documentation to the

San Diego Water Board that it has sufficient funds available to allow it to monitor the compensatory mitigation sites in perpetuity and to ensure compliance with the satisfactory Conservation Easements and report to the agencies. The Discharger shall provide such documentation of adequate and available funds no later than 18 months from the effective date of this Order.

3. Each Conservation Easement must ensure that the property designated for compensatory mitigation will be retained in perpetuity and maintained without future development or encroachment on the site or activities which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the State that it supports. The Conservation Easement or other appropriate legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.
4. The Conservation Easement must provide the Assessor's Parcel Numbers for all of the properties in the compensatory mitigation sites.
5. Recordation of the Conservation Easement shall occur no later than ten (10) days after the Discharger receives concurrence from the San Diego Water Board, and any other agency with jurisdiction, that the Compensatory Mitigation Sites have achieved the performance criteria set forth in the approved Final Habitat Mitigation and Monitoring Plan (approved Final HMMP) required in sections VII.B and VII.C of this Order.
6. Endowment funding for the interim and long-term management of the compensatory mitigation sites must meet the following requirements:
 - a. Pursuant to California Civil Code section 815.3 and California Government Code section 65965 et seq., the Discharger shall hold an endowment for purposes of funding long-term management of the compensatory mitigation sites.
 - b. The Discharger shall include a line item in its annual budget for the interim and long-term management of the compensatory mitigation sites and segregate funds as necessary to ensure compliance with the long-term management requirements of the Conservation Easement and the approved Final HMMP.
 - c. The Discharger must provide the San Diego Water Board with proof of full funding for the endowment fund for the interim and long-term

management of the compensatory mitigation sites in accordance with the HMMP no later than 6 months from the issuance of this Order.

G. Financial Assurance. The Discharger must comply with the following requirements to use a letter of credit, an escrow account, or other form of financial security acceptable to the San Diego Water Board, as a form of financial assurance:

1. No later than 6 months from the issuance of this Order, the Discharger shall provide the San Diego Water Board an irrevocable letter of credit or proof of another form of financial assurance acceptable to the San Diego Water Board in an amount determined by the San Diego Water Board to be sufficient for the value of (1) the acquisition of sites in the land required for compensatory mitigation, (2) the estimated cost of obtaining the Conservation Easement, (3) the estimated cost of construction of the compensatory mitigation projects, and (4) the estimated cost of achieving establishment and compliance with the performance measures set forth in the approved Final HMMP. The Discharger shall prepare a draft financial assurance instrument and submit it to the San Diego Water Board for its approval no later than 90 days following issuance of this Order. The financial assurance instrument shall allow the San Diego Water Board to immediately draw on the financial assurance instrument if the San Diego Water Board determines in its sole discretion that the Discharger has failed to meet its mitigation obligations.
2. The Discharger's bank shall finalize and execute the financial assurance instrument after the San Diego Water Board approves the draft financial assurance instrument.
3. If the Discharger has not met its mitigation obligations within 60 days prior to the financial assurance instrument's expiration date, the Discharger shall confirm with its bank that the expiration date will be extended. If the bank elects not to extend the expiration date, the Discharger shall establish a new financial assurance instrument to replace the original financial assurance instrument. The new financial assurance instrument shall be subject to the San Diego Water Board's approval following the same procedure described in the requirements above. The Discharger shall maintain a financial assurance instrument in place, as described above, until the Discharger has met its mitigation obligations.

VIII. RECEIVING WATER MONITORING

A. The Discharger shall develop a monitoring program to assess effects of the project on the physical, chemical, and biological integrity of receiving waters. In addition, monitoring shall be performed by the Discharger to assess compliance with the receiving water limitations of this Order. The monitoring may be

performed either by the Discharger or through participation in a water body monitoring coalition or both as determined by the San Diego Water Board.

A-1. Monitoring Coalitions. To achieve maximum efficiency and economy of resources, the San Diego Water Board encourages the Discharger to establish or join a water body-monitoring coalition. Monitoring coalitions enable the sharing of technical resources, trained personnel, and associated costs and create an integrated water and sediment monitoring program within each water body. Focusing resources on water body issues and developing a broader understanding of pollutants effects in these water bodies enables the development of more rapid and efficient response strategies and facilitates better management of water quality.

a. If a water body monitoring coalition is established, the coalition shall be responsible for monitoring within the designated water body and for ensuring that appropriate studies and reports required under this Order are completed in a timely manner.

b. The coalitions shall coordinate with the San Diego Water Board to ensure that all coalition participants are proactive and responsive to potential water quality related issues as they arise during monitoring and assessment.

2. Monitoring Plan. The Discharger or water body monitoring coalition shall prepare and submit a Monitoring Plan to assess compliance with the Receiving Water Limitations of this Order. The Monitoring Plan shall be submitted no later than January 1, 2014, and shall contain the following elements:

a. **Quality Assurance Project Plan.** A Quality Assurance Project Plan (QAPP) describing the project objectives and organization, functional activities, and quality assurance/quality control protocols for the water and bioassessment monitoring.

b. **Conceptual Model.** A Conceptual Model identifying the physical and chemical factors that control the fate and transport of pollutants and receptors that could be exposed to pollutants in the water and sediment. The Conceptual Model will serve as the basis for assessing the appropriateness of the Monitoring Plan design. The Conceptual Model shall consider:

- (1) Points of discharge into the segment of the water body or region of interest;
 - (2) Direction of predominant currents;
 - (3) Historic or legacy conditions in the vicinity;
 - (4) Nearby land uses or actions;
 - (5) Beneficial uses of the receiving waters;
 - (6) Potential constituents of concern;
 - (7) Potential receptors of concern; and
 - (8) Other sources or discharges in the immediate vicinity.
- c. **Bioassessment.** The Monitoring Plan shall include provisions for bioassessment monitoring using the professional level non-point source protocol of the California Stream Bioassessment procedure² to assess effects of the project on the biological integrity of receiving waters.
- d. **Spatial Representation.** The Monitoring Plan shall be designed to ensure that the sample stations are spatially representative to evaluate positive or negative site specific impacts on watershed conditions resulting from the Tesoro Extension Project within the water body segment or region of interest.
- e. **Existing Data and Information.** The Monitoring Plan design shall take into consideration existing data and information of appropriate quality.
- f. **Monitoring Frequency.** The Monitoring Plan shall include a schedule for completion of all sample collection and analysis activities and submission of the Receiving Water Monitoring Reports described in Reporting Requirements section IX.F of this Order.

² Copies of the California Stream Bioassessment Procedure can be obtained at <http://www.dfg.ca.gov/cabw/cabwhome.html>. Additional Information on Stream bioassessment may be obtained at http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/bioassessment/index.shtml

3. Monitoring Plan Implementation. The Discharger or water body monitoring coalition shall implement the Monitoring Plan in accordance with the schedule contained in the Monitoring Plan unless otherwise directed in writing by the San Diego Water Board. Before beginning sample collection activities, the Discharger or water body monitoring coalition shall:

- a. Notify the San Diego Water Board at least fourteen days in advance of the beginning of sample collection activities.; and
- b. Comply with any conditions set by the San Diego Water Board with respect to sample collection methods, such as providing split samples.

VIII. IX. REPORTING REQUIREMENTS

- A. Mitigation and monitoring reporting must be conducted for the compensatory mitigation sites and submitted to the San Diego Water Board prior to December 1st of each year. The Discharger shall provide a report to the San Diego Water Board after the completion of baseline surveys of aquatic resources at the compensatory mitigation sites. The Discharger shall also provide annual reports for the compensatory mitigation sites during the management period for the first five years and until all long-term performance measures identified in the approved HMMP have been met to the satisfaction of the San Diego Water Board. The reports must (1) document conditions at the mitigation sites so that changes can be tracked and management issues identified and addressed and (2) include the following information:
 1. The following identification numbers in the header or subject line: Place ID No. 785677, Order No. R9-2013-0007;
 2. The names, qualifications, and affiliations of the persons contributing to the report;
 3. A status report on the construction of the Project;
 4. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data, including at a minimum:
 - a. Topographic complexity characteristics at each mitigation site;
 - b. Upstream and downstream habitat and hydrologic connectivity; and
 - c. Width of native vegetation buffer around the entire mitigation site.
 5. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 6. Other items specified in the approved HMMP;

7. Results of general compensatory mitigation sites conditions, global positioning system (GPS) recordation of jurisdictional waters, and changes in hydrology. Any recommendations for habitat enhancement measures, changes in the monitoring program, or issues such as weed removal and erosion control;
 8. An annual monitoring report, prepared by the easement holder, documenting compliance with the conservation easement. At the discretion of the Conservation Easement holder, the report may be prepared and submitted as a separate report or the information may be submitted to the San Diego Water Board in the Annual Compliance and Effectiveness Report prepared for the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan and Southern Subregion Habitat Conservation Plan;
 9. Photo documentation must be conducted in accordance with the State Water Resources Control Board Standard Operating Procedure 4.2.1.4.³ The Discharger must conduct photo documentation of the Project site, post construction BMPs, and mitigation areas prior to, during, and after Project construction. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced. The report must include a compact disc that contains digital files of all the photos (*jpeg file type or similar*); and
 10. Documentation that Project information has been uploaded to the California Wetlands Portal at <http://www.californiawetlands.net/tracker/>.
- B. California Rapid Assessment Method.** The California Rapid Assessment Method (CRAM) must be utilized at the impact and mitigation sites prior to impacts to establish pre-project baseline conditions. In addition, CRAM must be utilized at the mitigation sites at years 3 and 5 following completion of the mitigation site construction and continuing until success criteria have been met. The results of the CRAM assessment must be submitted each year with the Annual Monitoring Reports and data must be uploaded into eCRAM (<http://www.cramwetlands.org>).
- C. Geographic Information System Reporting.** The Discharger must submit Geographic Information System (GIS) shape files of the impact and mitigation areas with the annual report. All impact and mitigation areas shape files must be polygons. Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points. GIS metadata must also be

³ Available at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDoc_SOP.pdf [Accessed on January 15, 2012]

submitted.

D. Project Completion Report. Within 30 days of Discharger's final acceptance of the completed Project by the design build contractor, the Discharger must submit a Project Completion Report to the San Diego Water Board containing the following information:

1. The dates for initiation of Project construction and completion of Project construction;
2. An evaluation, interpretation and tabulation of Project activities detailing the completion of construction and compliance with all requirements of this Order and all applicable mitigation measures contained in the Project's certified Final Environmental Impact Report for the *South Orange County Transportation Infrastructure Improvement Project*;
3. As-built Project drawings no bigger than 11 inches x 17 inches; and
4. Photos of the completed Project including post-construction BMPs.

E. Compensatory Mitigation Completion Report. The Discharger must prepare and submit a report to the San Diego Water Board, within 30 days of completion of mitigation site preparation and planting, containing the following information:

1. The as-built status of the mitigation sites;
2. Mitigation site topography maps;
3. Planting locations;
4. Pre- and post-construction photos of the mitigation sites; and
5. A survey report documenting the boundaries of mitigation sites.

F. Receiving Water Monitoring Reporting. The Discharger shall submit the results of the receiving water monitoring in the Annual Monitoring Report, due prior to December 1st of each year. Receiving water monitoring reporting shall continue for at least five years following project construction completion. Five years after construction completion, the Discharger may request changes to or elimination of the receiving water monitoring reporting. Receiving water monitoring results must be submitted to the San Diego Water Board in electronic format. The Receiving Water Monitoring Reports shall contain the following information:

- a. Analysis. An evaluation, interpretation and tabulation of the water and bioassessment monitoring data including interpretations and conclusions as to whether applicable Receiving Water Limitations in this Order have been attained at each sample station. The analysis shall also include a discussion of water quality trends, the effects of the Project on receiving waters, and the effectiveness of Project BMPs.
- b. Sample Location Map. The locations, type, and number of samples shall be identified and shown on a site map.
- c. California Environmental Data Exchange Network. A statement certifying that the monitoring data and results have been uploaded into the California Environmental Data Exchange Network (CEDEN).

F.G. Noncompliance Reports. The Discharger must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the incident and its cause, the period of the noncompliance including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case by case basis if an oral report has been received within 24 hours.

G.H. Hazardous Substance Discharge. Except for a discharge which is in compliance with this Order, any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of Orange, Environmental Health Division in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Discharger is in violation of a Basin Plan prohibition.

H.I. Oil or Petroleum Product Discharge. Except for a discharge which is in compliance with this Order, any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably

will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition

J.J. Report Submittal. The Discharger shall submit both one complete electronic copy (on compact disc or other appropriate media) and one complete paper copy of all reports required under this Order including notifications, technical reports, and monitoring reports. All correspondence and documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Place ID No. 785677, Order No. R9-2013-0007. The preferred electronic format for each report submission is PDF format that is text searchable.

J.K. Signatory Requirements. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:

1. For a corporation, by a responsible corporate officer of at least the level of vice president; or
2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively; or
3. For a municipality, or a State, federal, or other public agency, by either a principal executive officer or ranking elected official.

K.L. Duly Authorized Representative. Applications, reports, or information submitted to the San Diego Water Board may be signed by a duly authorized representative of that person described in Reporting Requirement J above if:

1. The authorization is made in writing by a person described above;
2. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity; and
3. The written authorization is submitted to the San Diego Water Board.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San

Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

L.M. Certification. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

M.N. Submittal Address. Unless otherwise directed in writing by the San Diego Water Board, the Discharger must submit reports required under this Order, or other information required by the San Diego Water Board, to:

Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123

IX. X. PROVISIONS

- A. **Duty to Comply.** The Discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; or (c) denial of a report of waste discharge in application for new or revised waste discharge requirements.
- B. **Duty to Comply.** The Discharger must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the San Diego Water Board) to support this Order and all subsequent submittals required under this Order and as described herein. The conditions within this Order shall supersede conflicting provisions within such plans, specifications, technical reports and other submittals required under this Order.
- C. **Need to Halt or Reduce Activity Not a Defense.** It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.
- D. **Duty to Mitigate.** The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment, including such accelerated or additional monitoring as may be necessary to determine the

nature and impact of the noncompliance.

- E. **Property Rights.** This Order does not convey any property rights of any sort or any exclusive privileges. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations
- F. **Inspection and Entry.** The Discharger must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to:
1. Enter upon the Discharger's premises, where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order;
 2. Access and copy, at reasonable times, any of the Discharger's records that must be kept under the conditions of this Order;
 3. Inspect and photograph, at reasonable times, any of the Discharger's facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this Order; and
 4. Sample or monitor, at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code, any substances or parameters at any location where a regulated facility or activity is located or conducted under the conditions of this Order.

The San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative) will, to the extent feasible and appropriate, coordinate with the Discharger at least 24 hours prior to entry, unless the need for access is to address an emergency.

- G. **Retention of Records.** The Discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the San Diego Water Board.
- H. **Duty to Provide Information.** The Discharger shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego

Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The Discharger shall also furnish to the San Diego Water Board, upon request, copies of records required to be kept by this Order.

- I. **Duty to Provide Information.** When the Discharger becomes aware that it failed to submit any relevant facts in a Report of Waste Discharge or submitted incorrect information in a Report of Waste Discharge or in any report to the San Diego Water Board, it shall promptly submit such facts or information.
- J. **Reopener Provision.** This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:
 1. Violation of any terms or conditions of this Order.
 2. Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts.
 3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
 4. A change in the USACOE non-jurisdictional determination for the Project that requires the San Diego Water Board's consideration and action upon a CWA section 401 certification application for the Project pursuant to California Code of Regulations, title 23, ~~23-CGR~~ sections 3830 -3869.
- K. **Reopener Provision.** The filing of a request by the Discharger for the modification, revocation, reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.
- L. **Reopener Provision.** The San Diego Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Discharger, if the San Diego Water Board determines that the Project fails to comply with any of the terms or requirements of this Order or if the or if the results of the Project have unintended impacts to water quality.
- M. **Transfer of Responsibility.** This Order is not transferable to any person except after notice to the San Diego Water Board. This notice must be in writing and received by the San Diego Water Board at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new Discharger containing a specific date for the transfer of this Order's responsibility and coverage between the current Discharger and the new discharger. This agreement shall include an acknowledgement that the existing Discharger is liable for violations up to the transfer date and that the new discharger is liable from the transfer date on. The San Diego Water Board may

require modification or revocation and reissuance of this Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the Water Code.

- N. **Order Availability.** A copy of this Order, the application, and supporting documentation must be available at the Project site during construction for review by site personnel and agencies. A copy of this Order must also be provided to the contractor and all subcontractors working at the Project site.
- O. **Enforcement Authority.** In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law.
- P. **Investigation of Violations.** In response to a suspected violation of any condition of this Order, the San Diego Water Board may, pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Order to investigate, monitor, and report information on the violation. The only restriction is that the burden, including costs of preparing the reports, must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.

XI. NOTIFICATIONS

- A. These requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to CWA section 402.
- B. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
- C. This Order becomes effective on the date of adoption by the San Diego Water Board.

ATTACHMENT B INFORMATION SHEET

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1.0 Applicant

Foothill/Eastern Transportation Corridor Agency
(Hereinafter Discharger)
125 Pacifica #120
Irvine, CA 92618

District Contact:
Valerie McFall
(949) 754-3475
vmcfall@thetollroads.com

2.0 Project Description

The Project is an approximate 5.5 mile long extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. The Project is located within the Cañada Gobernadora and San Clemente US Geological Survey 7.5-minute quadrangle maps.

The purpose of the Project is to provide a transportation facility that will reduce existing and forecasted deficiencies and congestion on the I-5 freeway and the arterial network in southern Orange County. The Project will serve both local (existing and future) and intra- and inter-regional trips.

The Project includes four general-purpose travel lanes, two in each direction. The center median from Oso Parkway to the Cow Camp Road will be revegetated with a native seed mix and will include drainage improvements, similar to the median along the existing SR-241. The median offers future opportunities for bus rapid transit, light rail, or additional lanes as traffic conditions warrant.

Cow Camp Road will be constructed by Rancho Mission Viejo and the County of Orange prior to, or concurrent with, the construction of the Tesoro Extension Project. An interchange at "G" Street and SR-241 will be constructed 0.6 mile north of Cow Camp Road (See Project Site Maps, Attachment A).

The footprint for the Tesoro Extension Project includes areas for grading, remedial grading, and construction disturbance areas. In addition to the paved road and associated bridges and interchanges, the construction area includes access roads, materials storage areas, areas for utility relocations, and areas for the construction of Best Management Practices (BMPs). The Project adds approximately 100 acres of impervious surface.

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The Project will discharge waste (fill) in a total of 0.64 acre of waters of the State, including 0.40 acre (5,297 linear feet) of permanent impacts and 0.24 acres (1,819 linear feet) of temporary impacts to jurisdictional waters in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00), as summarized in Table 1.

By letter dated November 5, 2012, the United States Army Corps of Engineers (USACE) determined that the Project activities will not occur within waters of the United States and therefore the Project is not subject to USACE jurisdiction under Section 404 of the Clean Water Act (CWA) and a Section 404 permit is not required for the Project. The 0.64 acre of wetland and non-wetland waters was determined by the USACE to be isolated waters outside of federal jurisdiction. These isolated waters remain non-federal waters of the State, and discharges to these waters are thereby regulated pursuant to California Water Code Section 13260, et. seq.

Table 1: Jurisdictional Impact Summary

Jurisdiction Type	Permanent Impact		Temporary Impact	
	Area (acres)	Length (LF)	Area (acres)	Length (LF)
Surface Waters of the State (non-wetland; ephemeral)	0.20	5,297	0.15	1,819
Waters of the State (wetland)	0.20	NA	0.09	NA
Total	0.40	5,297	0.24	1,819

3.0 Regulatory Background

Section 13260(a) of the California Water Code (Water Code) requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, file a Report of Waste Discharge (ROWD). The discharge of dredged or fill material constitutes a discharge of waste that could affect the quality of waters of the State. Water Code section 13263(a) requires that Waste Discharge Requirements (WDRs) be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.

Construction activities associated with the proposed discharges of fill threaten beneficial uses on-site and downstream. The Discharger will file a Notice of

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Intent to the State Water Resources Control Board (State Board) for coverage under State Board Order No. 2009-0009-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit, For Storm Water Discharges Of Associated With Construction And Land Disturbance Activities* (Order No. 2009-0009-DWQ). The San Diego Water Board may conduct inspections to verify compliance with Order No. 2009-0009-DWQ, including, but not limited to, implementation of a storm water pollution prevention plan.

Since all federal waters can also be considered waters of the State, the State of California largely relies on Section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the State. That section requires an applicant to obtain "water quality certification" from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. Each water quality certification includes a condition of coverage with State Water Resources Control Board's General Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Dredge and Fill Discharges that have Received State Water Quality Certification*.

In light of recent U.S. Supreme Court rulings, isolated waters, or waters lacking a significant nexus to a traditionally navigable waterbody, are no longer considered waters of the U.S. (i.e. federal waters), and therefore no longer require certification pursuant to Section 401 of the CWA. In order to comply with the State's "No Net Loss" Policy for wetlands (Executive Order W-59-93), discharges of waste to these nonfederal, State wetlands are being regulated pursuant to California Water Code Section 13260.

On November 5, 2012, the USACE determined the Project property contained no waters of the U.S. On August 10, 2012, the Discharger submitted a ROWD, along with required fees in accordance with the State Water Board's Dredge and Fill Fee Calculator, for discharges of fill associated with the Project to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). Pursuant to fee schedules currently set in CCR Title 23, no annual fees are required, and a threat to water quality (TTWQ) and complexity (CPLX) rating is not applicable for the site. By letter dated November 14, 2012, the San Diego Water Board informed the Discharger that the application was complete.

Order No. R9-2013-0007 serves as individual waste discharge requirements for discharges of fill to non-federal waters of the State.

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4.0 California Environmental Quality Act

~~Before the San Diego Water Board can issue WDRs, the project must have a final, valid environmental document meeting the criteria of the California Environmental Quality Act (CEQA). The CEQA document must fully disclose the potential significant adverse impacts of the project and identify measures to avoid, minimize, rectify, reduce or compensate for the impacts identified, including a monitoring and reporting program to ensure compliance with the proposed mitigation measures.~~

~~The Discharger is the Lead Agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)). The San Diego Water Board is a responsible agency (CEQA Guidelines section 15096).~~

~~Before the San Diego Water Board can issue WDRs, a project must have a final, valid environmental document meeting the criteria of the California Environmental Quality Act (CEQA) (See section II.N of the Order for a more complete discussion of CEQA, the San Diego Water Board's role under CEQA, and its findings).~~

~~The Discharger certified a Final Environmental Impact Report (EIR) for the South Orange County Transportation Improvement Project, and filed a Notice of Determination (SCH # 2001061046) on February 23, 2006, under CEQA Guidelines Title 14, California Code of Regulations. The Discharger determined the Project, without mitigation, will have a significant effect on the environment. Therefore, the Final EIR incorporates mitigation measures that mitigate many of the Project's effects on the environment to less than significant. For those impacts the Discharger determined to be unavoidable impacts, the Discharger adopted a Statement of Overriding Considerations finding that the benefits of the project outweighed the impacts.~~

~~As a responsible agency under CEQA, the San Diego Water Board has reviewed the lead agency's Discharger's Final Final Supplemental EIR, Findings, and Statement of Overriding Considerations, and Addendum F/ETCA prepared for the Tesoro Extension. None of the significant unavoidable environmental impacts triggering the lead agency's adoption of the Statement of Overriding Considerations are within the areas of responsibility of the San Diego Water Board. The San Diego Water Board also concludes that without mitigation, the Project as proposed may have a significant effect on resources within the San Diego Water Board's purview on the environment. The San Diego Water Board finds that with This Order requires implementation of the mitigation measures required by this Order, that will reduce effects on the environment that are within the San Diego Water Board's jurisdiction responsibility will be avoided or lessened to less than significant (CEQA Guidelines section 15091 subd. (a)(1)). Pursuant to CEQA Guidelines section 15097, the Order requires the Discharger~~

~~to comply with monitoring and reporting programs that will ensure that the mitigation measures are implemented and the requirements of this Order are met.~~

5.0 Water Quality Standards and Prohibitions

Section 303 of the federal Clean Water Act (33 U.S.C. §1313) defines the term water quality standards as the uses of the surface waters, the water quality criteria which are applied to protect those uses, and an antidegradation policy¹. A water quality standard defines the water quality goals for a water body by designating the use or uses to be made of the water body, by setting criteria to protect the uses, and by protecting water quality through non-degradation provisions. Under the Porter-Cologne Water Quality Control Act (California Water Code, Division 7, Chapter 2 §13050), these concepts are defined separately as beneficial uses and water quality objectives. Beneficial uses and water quality objectives are required to be established for all waters of the State, both surface and ground waters.

The Project will affect Cañada Gobernadora Creek, Cañada Chiquita Creek and associated tributaries in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00). Individual hydrological subareas (HSA) defined in the Mission Viejo hydrologic area include Oso; Upper Trabuco; Middle Trabuco; Gobernadora; Upper San Juan; Middle San Juan; Lower San Juan; and Ortega.

The Cañada Gobernadora Creek sub-basin originates in the community of Coto de Caza and drains southerly into San Juan Creek. The northern portion of the sub-basin consists of the Coto de Caza residential community and the southern portion has undergone ranching operations. The 11.10-square mile Cañada Gobernadora sub-basin is an elongated valley that is aligned north to south. This sub-basin is predominantly underlain by sands and silts and has the potential to generate relatively high amounts of sediment where the surface is disturbed and channelized.

The Cañada Chiquita sub-basin has a catchment of 9.24 square miles and is aligned north to south. Below the "narrows" in middle Chiquita Canyon, soils are predominantly sands, silts, and clays. Above the narrows, the soils contain slightly more gravels and cobbles. The sandy substrates mean that the main creek is prone to incision under altered hydrologic regimes. Several active headcuts are present in Cañada Chiquita Creek, and the channel is presently incising in several locations. The Chiquita sub-basin produces substantially less sediment than Gobernadora Canyon. Cañada Chiquita Creek rises at an elevation of about 1,000 feet, near the Plano Trabuco, and flows southwest for 1

¹ Pursuant to the federal Clean Water Act, water quality standards are composed of three parts: (1) designated uses, e.g., protection of fish and wildlife, recreation and drinking water supply (40 C.F.R. 131.10); (2) numeric or narrative water quality criteria to protect those uses (40 C.F.R. 131.11); and (3) an antidegradation policy (40 C.F.R. 131.12).

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mile, then due south for about 6 miles to the confluence with San Juan Creek about 1 mile west of Cañada Gobernadora Creek.

The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan), adopted on September 8, 1994 as amended, designates existing and potential beneficial uses for surface and ground waters within the San Diego region. Beneficial uses within the project area are summarized in Table 2 below.

Table 2. Beneficial Uses of the Project Site Surface and Ground Waters

Beneficial Use	Description
Municipal and Domestic Supply (MUN)	Uses of water for community, military, or individual water supply systems, including, but not limited to, drinking water supply.
Agricultural Supply (AGR)	Uses of water for farming, horticulture, or ranching, including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing.
Industrial Service Supply (IND)	Uses of water for industrial activities that do not depend primarily on water quality, including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, and oil well repressurization.
Contact Water Recreation (REC1)	Uses of water for recreational activities involving body contact with water where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and scuba diving, surfing, whitewater activities, fishing, and uses of natural hot springs.
Non-contact Water Recreation (REC2)	Uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.
Warm Freshwater Habitat (WARM)	Uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
Cold Freshwater Habitat (COLD)	Uses of water that support cold water ecosystems, including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
Wildlife Habitat (WILD)	Uses of waters that support wildlife habitats, including, but not limited to, the preservation and enhancement of vegetation and prey species used by wildlife, such as waterfowl.

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The Basin Plan establishes Water Quality Objectives for surface waters within the Mission Viejo Hydrologic Area (901.20) as shown in Table 3 below.

Table 3. Water Quality Objectives for Surface Waters in the Mission Viejo Hydrologic Area

Constituent	Concentration ^a
Total Dissolved Solids	500
Chloride	250
Sulfate	250
Percent Sodium	60
Nitrogen and Phosphorus	b
Iron	0.3
Manganese	0.05
Methylene Blue-Activated Substances	0.5
Boron	0.75
Turbidity (NTU)	20
Color Units	20
Fluoride	1

- a. All units are mg/L unless otherwise noted.
- b. Concentrations of nitrogen and phosphorus, by themselves or in combination with other nutrients, shall be maintained at levels below those which stimulate algae and emergent plant growth. Threshold total Phosphorus (P) concentrations shall not exceed 0.05 mg/l in any stream at the point where it enters any standing body of water, or 0.025 mg/l in any standing body of water. A desired goal in order to prevent plant nuisances in streams and other flowing waters appears to be 0.1 mg/l total P. These values are not to be exceeded more than 10% of the time unless studies of the specific body in question clearly show that water quality objective changes are permissible and changes are approved by the San Diego Water. Analogous threshold values have not been set for nitrogen compounds; however, natural ratios of nitrogen to phosphorus are to be determined by surveillance and monitoring and upheld. If data are lacking, a ratio of N:P =10:1 shall be used.

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The Basin Plan establishes Water Quality Objectives for ground waters within the Mission Viejo Hydrologic Area (901.20) as shown in Table 4 below.

Table 4. Water Quality Objectives for Ground Waters in the Mission Viejo Hydrologic Area

Constituent	Concentration (mg/L or as noted)							
	Oso	Upper Trabuco	Middle Trabuco	Gobernadora	Upper San Juan	Middle San Juan	Lower San Juan	Ortega
Total Dissolved Solids	1200	500	750	1200	500	750	1200	1100
Chloride	400	250	375	400	250	375	400	375
Sulfate	500	250	375	500	250	375	500	450
Percent Sodium	60	60	60	60	60	60	60	60
NO ₃	45	45	45	45	45	45	45	45
Iron	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Manganese	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
Methylene Blue-Activated Substances	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Boron	0.75	0.75						
Turbidity (NTU)	5	5	5	5	5	5	5	5
Color Units	15	15	15	15	15	15	15	15
Fluoride	1	1	1	1	1	1	1	1

The Basin Plan establishes the following Waste Discharge Prohibitions pursuant to California Water Code §13243:

- Prohibition No. 1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code §13050, is prohibited.
- Prohibition No. 2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code §13264 is prohibited.
- Prohibition No. 3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code §13376) is prohibited.

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- Prohibition No. 7. The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit it's being transported into the waters, is prohibited unless authorized by the San Diego Water Board.
- Prohibition No. 14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

6.0 Basis for Waste Discharge Requirements

Order No. R9-2013-0007 establishes requirements for the discharge of wastes pursuant to Division 7 of the California Water Code and Article 4, Title 23 of the California Water Code, and establishes mitigation and monitoring provisions based on best professional judgment. The Basin Plan states "certification is dependent upon the assurances that the project will not reduce water quality below applicable standards as defined in the Clean Water Act (i.e., the water quality objectives established and the beneficial uses which have been designated for the surface waters.)" The waste discharge requirements, reporting requirements, and standard provisions in Order No. R9-2013-0007 are established in accordance with Division 7 of the California Water Code. The discharge of fill as regulated by Order No. R9-2013-0007 will not reduce water quality below applicable standards.

7.0 Mitigation Measures

Compensatory mitigation for permanent impacts to wetland and non-wetland waters is proposed within Chiquita Canyon. Attachment C shows the general location of the two proposed mitigation areas, Mitigation Area A and Mitigation Area B. The total mitigation acreage, including San Diego Water Board and California Department of Fish and Wildlife (CDFW) jurisdictional areas, includes establishment and restoration/enhancement (21.27 acres) and upland watershed buffer restoration (13.55 acres) and comprises a total of 34.82 acres. The following sections describe existing conditions and the type of mitigation that is proposed for each area.

Mitigation Area A

Mitigation Area A is a 15.96-acre area adjacent to Tesoro High School; located along Chiquita Creek and one of its tributaries (refer to Attachment C). Mitigation Area A is also downstream of the Conservation Area. The establishment/restoration in Mitigation Area A will include the following:

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- Restoration of 2.73 acres of southern willow scrub
- Restoration of 0.45 acre of existing channel
- Establishment of 2.36 acres of southern willow scrub
- Establishment of 4.79 acres of mulefat scrub
- Establishment and restoration of 5.63 acres of wet meadow

The soils in Mitigation Area A are suitable for the proposed wetland and riparian establishment, restoration, and enhancement. Soils within Upper Chiquita Canyon along the creek have been mapped as Chino silty clay loam in the *Soil Survey of Orange and Western Part of Riverside Counties, California*. Clay soils have high water holding capacity, which allows for the slow release of moisture, increasing the duration in which water becomes available to plants. The presence of wet meadow habitat along this creek is driven by the soil characteristics and will allow for this type of habitat to be established under the restored hydrologic regime.

Mitigation Area B

Mitigation Area B is an 18.86-acre area within the approximately 1,158-acre Upper Chiquita Canyon Conservation Area (Conservation Area), the headwaters of Chiquita Creek.

The Discharger holds the conservation easement on this land, and they have managed the land for the past 15 years. The Conservation Area, no longer grazed, is a 1,158-acre site composed of north-south orientated, narrow to broad valleys between rolling hills. Elevations of the site range between 670 to 1,217 feet above sea level. The Conservation Area currently supports two main plant communities, annual grasslands and coastal sage scrub, with small areas of oak woodland, and remnant perennial grasslands. Additionally, some areas are ecotones that transition from annual grasslands to coastal sage scrub. Cattle grazing has occurred for more than 80 years in the low valleys of the Conservation Area. Within these areas, non-wetland ephemeral drainages have been disturbed and in some cases lost completely. Mitigation Area B is located in the southern end of the Conservation Area (refer to Attachment C). In the upper section of the mitigation area, an old ranch berm exists that blocks the ephemeral drainage course from the northern end of the main valley of the Conservation Area. The entire proposed mitigation area is currently annual grassland.

Establishment and restoration actions for Mitigation Area B are:

- Establishment of 0.14 acre of southern sycamore woodland
- Restoration of 4.70 acres of riparian oak/elderberry restoration
- Restoration of 13.55 acres of native grassland restoration (upland buffer)

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- Establishment of 4,873 linear feet (0.22 acre) of ephemeral drainage
- Restoration of 5,456 linear feet (0.25 acre) of ephemeral drainages

The soils within Mitigation Area B are mainly Botella Clay Loam, with some areas of Capistrano Sandy Loam that currently support annual grasslands, but are typically soils that support native perennial grassland vegetation and oak/elderberry habitat. The presence of these soils and water holding characteristics will allow for these types of habitats to be established and restored under the restored hydrologic regime.

Mitigation activities are expected to be successful based on the location, soil type, expected hydrology, and the use of plant species that occur on-site and are known to perform well in habitat restoration programs.

Mitigation will be conducted as outlined in the *Habitat Mitigation and Monitoring Plan for the Tesoro Extension Project*, prepared by NewFields, October, 2012 and any subsequent versions reviewed and approved by the San Diego Water Board).

Long term maintenance beyond the minimum five-year mitigation monitoring program must be provided. The Discharger shall be responsible for managing the mitigation site in perpetuity to ensure the long-term sustainability of the resource. Long-term management shall include, but is not limited to; adaptive management, long-term financing mechanisms, and a conservation easement.

For the reasons above, it is anticipated that the proposed mitigation will adequately compensate for impacts to waters of the state associated with the discharge of fill material.

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Table 5, *Impact and Compensatory Mitigation Summary*, provides a summary of the jurisdictional impacts and conceptual mitigation approach.

Table 5. Impact and Compensatory Mitigation Summary

Jurisdiction Type	Permanent Impact		Mitigation Proposed (Establishment, Restoration, and Enhancement)		Water Board Mitigation Ratio
	Area (acres)	Length (LF)	Site A	Site B	
waters of the state (non-wetland; ephemeral)	0.20	5,297		<ul style="list-style-type: none"> • Establishment: 0.22 acre (4860 LF) of ephemeral, non-wetland drainage area • Restoration: 0.25 acre (5,456 LF) of existing ephemeral, non-wetland drainage area. • Restoration: 4.70 acres of mixed live oak/elderberry habitat • Establishment: 0.14 acre southern sycamore riparian • Restoration: 13.55 acres perennial grassland upland buffer 	2.4:1 (ac) 1.9:1 (LF)
waters of the state (wetland)	0.20	NA	<ul style="list-style-type: none"> • Establishment: 5.63 acres establishment and enhancement of wet meadow (minimum 4.84 acres of wetland establishment) • Establishment: 2.36 acres- establishment of southern willow woodland • Establishment: 4.79 acres – establishment of mulefat scrub • Enhancement: 0.45 acre – enhancement of existing channel • Enhancement: 2.73 acres - enhancement of existing southern willow woodland 		15:1
Total			11.93-acres wetland habitat	0.47-acre ephemeral drainage, 10,316 LF	

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8.0 Runoff Management Plan (RMP)

The post-construction Best Management Practices (BMPs) for the Project are detailed in *Runoff Management Plan, 241 Tesoro Extension Project* prepared by Saddleback Constructors for the Discharger, February 14, 2012. All onsite highway runoff for SR-241 from the area north of San Juan Creek to Oso Parkway will be conveyed to treatment BMPs via storm drain systems equipped with:

- Grated catch basins that minimize trash and debris entering the network,
- A pipeline network that conveys the runoff flows to treatment BMPs with a mainline that runs longitudinally along the highway, and
- Flow splitters that route water quality flows to the BMPs and allow peak flows to continue on their original flow path.

There are 44 proposed onsite drainage systems for this section of the project, and each will convey flow to treatment BMPs which include; 5 Austin Sand Filters (ASF), 5 Biofiltration Swales (BSW), and 3 Detention Basins (EDB). Treatment BMP locations are shown in Attachment E. The BMP exhibits in Attachment E show the preliminary onsite drainage network locations.

Through this Order (Order No. R9-2013-0007), the Project is conditioned to mitigate (infiltrate, filter, and/or treat), prior to discharging to receiving waters, the volume of runoff produced by all storms up to and including the 24-hour, 85th percentile storm event for volume-based BMPs and/or the 1 hour, 85th percentile multiplied by a factor of two for flow-based BMPs, as determined from the local historical rainfall record. The Project must also conform to the Caltrans Project Planning and Design Guide (PPDG), California Department of Transportation, 2010, [the draft Model Water Quality Management Plan \(Model WQMP\) for South Orange County, dated December 16, 2011, and the draft South Orange County Hydromodification Plan \(HMP\), dated December 11, 2011.](#)

9.0 Monitoring and Reporting Requirements

Requirements for monitoring and reporting for the Tesoro Extension (SR 241) mitigation project are found in Order No. R9-2013-0007. Monitoring results will be uploaded by the Discharger to California Wetland Portal (<http://www.californiawetlands.net/tracker/>) for public review.

10.0 Public Participation

The public was notified by a San Diego Water Board internet website posting on August 24, 2012 that a report of waste discharge application for WDRs for the Project was submitted.

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As a step in the WDR adoption process, the San Diego Water Board developed Tentative Order No. R9-2013-0007, a draft version of the Order. The San Diego Water Board has taken the following steps to encourage public participation in the San Diego Water Board's proceedings to consider adoption of the Tentative Order.

Notification of Interested Parties

The San Diego Water Board notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and provided them with an opportunity to submit their written comments and recommendations. Notification was provided through the issuance of notices to interested persons, posting of documents, and notices on the San Diego Water Board website and the circulation of the San Diego Water Board Meeting agenda to interested persons publication.

The Tentative Order No. R9-2013-0007 and subsequent revisions of the Tentative Order were posted on the San Diego Water Board's website for public review and comment on January 17, 2013, February 12, 2013, and May 30, 2013.

11.0 Information and Copying

The Report of Waste Discharge (ROWD), related documents, the tentative Order including discharge specifications and special provisions, comments received, and other information are on file and may be inspected at the address below at any time between 8:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged through the San Diego Water Board by calling 858-467-2952.

12.0 Submission of Written Comments

Interested persons wishing to submit written comments on the Revised Tentative Order must submit them so that they are received no later than 5:00 p.m. on February 18 June 7, 2013. Comments should be submitted either in person during business hours or by mail to:

David W. Gibson, Executive Officer
Attn: Darren Bradford
Place ID No. 785677
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

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The limitation on written comments the San Diego Water Board will accept is briefly described below. The early submission of written comments on the Revised Tentative Order is encouraged. Electronic written comments are acceptable and should be submitted via e-mail to the attention of Darren Bradford at rb9_tesoro@waterboards.ca.gov or bradford@waterboards.ca.gov.

Please indicate in the subject line of all written comments "Comment – Revised Tentative Order No. R9-2013-0007, Place ID: 785677." If the submitted written comments exceed five pages in length or contain foldouts, color graphics, or maps, 15 hard copies must be submitted for distribution to the San Diego Water Board members and staff.

The submission of written comments is the opportunity for interested persons to raise and comment on issues pertaining to the terms and conditions of the Tentative Order. Consistent with State Water Resources Control Board regulations that apply to this proceeding, written comments received after the close of the comment period will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party. Written comments received by the close of the comment period will be provided to the San Diego Water Board members for their review in advance of a public hearing to consider adoption of the Tentative Order. All timely written comments will also be posted as they are received on the San Diego Water Board website.

In response to a request for an extension of the public comment period by Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, the deadline for submission of comments on the Tentative Order was extended from February 18, 2013 to February 25, 2013. The San Diego Water Board ultimately extended the deadline for written comments until March 1, 2013. As discussed at the March 13, 2013 hearing, for the June 19, 2013 continuance of the hearing, written comments will be accepted on two issues only: 1) revisions to the Tentative Order made after the March 13, 2013 hearing; and 2) comments related to CEQA.

13.0 Public Hearing

Revised Tentative Order No. R9-2013-0007 will be considered by the San Diego Water Board for adoption in a public hearing during its regular Board meeting as follows:

Date: ~~March 13~~ June 19, 2013
Time: 9:00 a.m.
Location: Regional Water Quality Control Board
San Diego Water Board Meeting Room
9174 Sky Park Court, Suite 100
San Diego, CA 92123

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Please note: the San Diego Water Board will not consider this item before 1:00 p.m. On ~~January 17, 2013~~ May 30, 2013, a public hearing notice and copies of the Tentative Order were emailed to all known interested persons and posted on the San Diego Water Board's website. Interested persons are invited to attend the public hearing. Participants in the public hearing will have an opportunity to address the San Diego Water Board members at the hearing subject to reasonable limitations prior to the Board taking action on the Tentative Order.

Please be aware that dates and venues may change. The San Diego Water Board Web address is http://www.waterboards.ca.gov/sandiego/board_info/agendas/ where you can access the current agenda for changes in dates and locations.

Information and Copying

The Report of Waste Discharge (ROWD), related documents, the tentative Order including discharge specifications and special provisions, comments received, and other information are on file and may be inspected at the address below at any time between 8:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged through the San Diego Water Board by calling 858-467-2952.

Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding Order No. R9-2013-0007 should contact Darren Bradford (see contact information below), reference the project, and provide a name, address, phone number, and email address.

14.0 Additional Information

For additional information, interested persons may write to the following address or contact Darren Bradford of the San Diego Water Board staff at 858-637-7137 or via email at DBradford@waterboards.ca.gov.

Attn: Darren Bradford
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

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15.0 WDR Petitions

A person may petition the State Board to review the decision of the San Diego Water Board regarding the final Order in accordance with California Water Code Section 133320. A petition must be made within 30 days of the San Diego Water Board taking an action.

16.0 Documents Used in Preparation of the Information Sheet and Order

The following documents were used in the preparation of this Information Sheet and Order No. R9-2013-0007:

- a. Application/Report of Waste Discharge submitted on August 10, 2012 with 13 attachments.
- b. Supplemental application information submitted on October 4, 2012.
- c. Draft Habitat Mitigation and Monitoring Plan, October 1, 2012.
- d. Drainage Plan. Prepared by CH2M Hill, October 1, 2012.
- e. Final Drainage Report. Prepared by Saddleback Constructors, June 1, 2012.
- f. Chiquita Woods Wildlife UC General Plan, prepared by CH2M Hill, September 30, 2012.
- g. Sam Creek Bridge General Plan, Prepared by CH2M Hill, September 30, 2012.
- h. Wildlife/Access UC No. 3 General Plan, prepared by CH2M Hill, September 30, 2012.
- i. Runoff Management Plan: 241 Tesoro Extension Project, Prepared by Saddleback Constructors, February 14, 2012.
- f. South Orange County Transportation Infrastructure Improvement Project Environmental Impact Report, SCH #2001061046, February 23, 2006.
- g. South Orange County Transportation Infrastructure Improvement Project, Notice of Determination, SCH #2001061046, February 23, 2006.

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- h. Letter from the U.S. Army Corps of Engineers to the Transportation Corridor Agencies. Subject: Determination regarding requirement for Department of the Army Permit, November 5, 2012.
- i. Storm Water Pollution Prevention Plan Outline: 241 Tesoro Extension Project, Prepared by Saddleback Constructors, July 27, 2012.
- j. [Addendum to The South Orange County Transportation Infrastructure Improvement Project \(SOCTIIP\) Final Subsequent Environmental Impact Report Sch # 2001061046, February 15, 2013.](#)
- k. [State Route 241 Tesoro Extension Project, Notice of Determination, SCH #2001061046, April 23, 2013.](#)

17.0 Interested Parties

The following individuals and/or entities have been identified as interested parties:

Damon Nagami
Natural Resources Defense Council
dnagami@nrdc.org

Susan Meyer
Army Corps of Engineers
Susan.A.Meyer@usace.army.mil

Bill Orme
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David Zoutendyk
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Tech Staff Info & Use	
File No.	12C-072
WDID	9000002505
Reg. Measure ID	387248
Place ID	785677
Party ID	536510

EXHIBIT 2

**ADDENDUM TO THE
SOUTH ORANGE COUNTY TRANSPORTATION
INFRASTRUCTURE IMPROVEMENT PROJECT (SOCTIIP)
FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT
SCH # 2001061046**

TESORO EXTENSION PROJECT

LEAD AGENCY:

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
125 Pacifica, Suite #120
Irvine, California 92618
Contact: Ms. Valarie McFall
949.754.3475

February 2013

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1.0 Introduction

1.0 INTRODUCTION

The Foothill/Eastern Transportation Corridor Agency (F/ETCA) proposes to construct an approximately 5.5-mile long extension of the existing State Route (SR) 241 (“Tesoro Extension” or “Project”) from its current terminus at Oso Parkway to Cow Camp Road immediately north of SR 74 (Ortega Highway) in Orange County (“County”). F/ETCA is the sponsor and the California Environmental Quality (CEQA) Lead Agency for the proposed Project. Refer to [Figure 1, *Regional Vicinity*](#), and [Figure 2, *Site Vicinity Map*](#).

The existing SR 241 is a tolled road facility owned and maintained by Caltrans with the F/ETCA operating the toll collection facilities. The SR 241 extends for approximately 25 miles within the eastern portion of the County. Beginning at its north-end at SR 91 within the City of Anaheim, SR 241 travels south/southwest through unincorporated areas of the County, and the cities of Irvine, Lake Forest, and Mission Viejo, and then terminates to the south at Oso Parkway. The northern portion of SR 241 is referred to as the Eastern Transportation Corridor (ETC), while the southern portion (south of its confluence with SR 133) is referred to as the Foothill Transportation Corridor (FTC).

F/ETCA has conducted an environmental analysis of the Tesoro Extension Project to determine the appropriate form of CEQA clearance document. Technical support documents are on file and available for review at F/ETCA, 125 Pacifica, Irvine, California. As a result of the analysis, F/ETCA has concluded that an Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report (SEIR), certified in February 2006 by the F/ETCA is the appropriate CEQA clearance. Minor alterations of the footprint and analysis are addressed in this Addendum. The SOCTIIP Final SEIR and this Addendum serve as the CEQA document addressing the environmental impacts of the proposed Project. In addition, a substantial portion of the Project site is located within areas approved for development under the Rancho Mission Viejo’s (RMV) Ranch Plan, which is covered under *The Ranch Plan Final Program EIR* (Ranch Plan EIR).

1.1 BACKGROUND

Subsequent EIR History

Although the current planning and environmental review effort for the Tesoro Extension has been underway for approximately four years, planning for a transportation corridor in South Orange County began over 30 years ago. In 1981, the County Master Plan of Arterial Highways (MPAH) was amended to include several transportation corridors to meet the long-term needs of fast-growing Orange County (County). While these corridors were initially contemplated to be public parkways, the shortage of federal and State funding for new highway projects led the County to pursue implementation through a toll road funding mechanism.

Between 1989 and 1991, the F/ETCA prepared TCA EIR No. 3, pursuant to CEQA, for the selection of a locally preferred road alignment for the extension of SR 241. F/ETCA EIR No. 3 was circulated for a 60-day review period that included public hearings. Written responses to comments and a Supplemental EIR were circulated for public review, and F/ETCA EIR No. 3 was certified on October 10, 1991.

In December 1993, the F/ETCA initiated the preparation of a Subsequent EIR (SEIR) to evaluate three alternatives: the CP Alignment, the BX Alignment, and the No-Build Alternative. The CP Alignment is

similar to the 2006 Preferred Alternative approved by the F/ETCA as the lead agency under CEQA (the terms “SOCTIIP”, “Preferred Alternative”, and “A7C-FEC-M Alternative” are used interchangeably in this Addendum) and is described in more detail below.

In 1996, the F/ETCA agreed to work with the signatory agencies of the National Environmental Policy Act (NEPA)/404 Memorandum of Understanding (MOU) to implement the policies of the MOU in developing the Environmental Impact Statement (EIS) Section 404 permitting for the SOCTIIP. The SOCTIIP Collaborative was established to implement the NEPA/404 MOU for SOCTIIP, and included representatives from the Environmental Protection Agency, U.S. Army Corps of Engineers (USACOE), U.S. Fish and Wildlife Service (USFWS), Federal Highway Administration, U.S. Marine Corps Base at Camp Pendleton (as a cooperating Agency), TCA (as a non-voting member) and Caltrans.

The first meeting of the above listed agencies was held in August 1999. The participants deliberated over 28 months to develop the Project’s Purpose and Need statement. The group then identified 29 SOCTIIP alternatives (included in the project area), plus transportation demand and transportation system strategies to be studied. The group then narrowed these down to 24 alternatives (19 toll road alternatives, three non-toll road alternatives and two no action alternatives). A technical report was prepared for each of these 24 alternatives. Over the course of this collaborative effort, some alternatives were eliminated from further evaluation in the Draft EIS/SEIR because they did not meet the Project’s Purpose and Need. The remaining eight toll and two non-toll alternatives were included as full alternatives in the Draft EIS/SEIR.

As background, the SOCTIIP has undergone a lengthy, multi-decade evaluation under state and federal law, which demonstrated that the alternative identified by the Collaborative agencies (A7C-FEC-M) is environmentally preferable and that other alternatives (such as the widening of I-5) are not “reasonable and available” because (1) the alternatives entail more severe impacts on the human or natural environment, and (2) there is no identified funding for the non-toll road alternatives. The currently proposed Project is planned for the northerly 5 ½ miles of the A7C-FEC-M alignment and reflects the Collaborative’s evaluation of the appropriate alignment for that portion of the Project and the approved Rancho Mission Viejo Ranch Plan development project. The location of this Project is appropriate in light of the prior SOCTIIP alternatives analysis directed by the Collaborative, the Collaborative agreement on the preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) (which includes this extension) including the USACOE November 1, 2005 letter of agreement on the preliminary LEDPA, the Southern Subregion Habitat Conservation Plan (HCP), the San Juan Creek and Western San Mateo Watersheds Special Area Management Plan (SAMP) and the approved Ranch Plan. The Project alignment in the proposed location is consistent with the infrastructure plan illustrated and addressed in the Southern Subregion HCP. Additional discussion is provided under *Applicability of Project with Approved Plans*.

The Preferred Alternative is a refined alignment based on the A7C-FEC-M Initial corridor alternative. The A7C-FEC-M-Initial Alternative alignment evaluated in the Draft EIS was refined in order to minimize environmental impacts and address engineering requirements. The refined A7C-FEC-M Alternative was approved as the Preferred Alternative by F/ETCA Board at the time the Final SEIR was certified in February 2006. More specifically, the refinements included the following elements to further reduce environmental impacts:

- Reduction in footprint – the cross-section was reduced
- Consistency with RMV Ranch Plan to maximize open space

- Consistency with Southern Orange County Natural Community Conservation Plan (NCCP)
- Minimize impacts on wetlands and other natural resources
- Minimize utility relocation impacts
- Inclusion of additional wildlife crossings
- Minimization of access road impacts
- Minimization of impacts of extended detention basins to cultural resources

The Tesoro Extension Project alignment is substantially the same as alignments previously evaluated between Oso Parkway and Ortega Highway. Refinements to the Project as well as previous refinements to the SOCTIIP Preferred Alternative and the SOCTIIP A7C-FEC-M which resulted in the SOCTIIP Preferred Alternative, have all been incremental refinements with minor adjustments made to reduce or avoid impacts or to respond to landowner requests. For example, the Preferred Alignment in the Final SEIR incorporated some minor revisions compared to the SOCTIIP A7C-FEC-M alignment. Between Planning Area 2N and Planning Area 2S the alignment was shifted slightly to the northeast for reasons as described on pages 2-3 and 2-4 of the Final SEIR. The only other notable difference between these alternatives was the elimination of two full diamond interchanges: one at K-Street and another further south at G-Street. The Preferred Alignment in the FEIR has only one interchange at Cow Camp Road near the southern boundary of PA-2.

The Preferred Alternative design between Oso Parkway and Cow Camp Road was evaluated to determine if any further refinements were appropriate for the Project based on current conditions and input from the landowner and developer of the Ranch Plan. The difference between the Tesoro Extension and the Preferred Alignment in the Final SEIR relates to the conversion of the folded diamond interchange at Cow Camp Road to a simpler T-intersection configuration. The Tesoro Extension also shifted the alignment in PA-2 to the west to help minimize impacts to surface waters. In addition, near the northern end of PA-2, a slight shift of the alignment to the east was done to avoid an existing reservoir used for ranch operations.

The reduction in the total disturbance area limits for the Preferred Alternative was approximately 9 ha (23 ac) compared with the A7C-FEC-M-Initial Alternative, and 15 ha (37 ac) compared with the A7C-FECM-Ultimate Alternative. The ultimate buildout assumption for the Preferred Alternative was a maximum of six lanes. Figure 3, SOCTIIP and Tesoro Comparison, shows the Preferred Alternative and the A7C-FEC-M Alternative for comparison.

The F/ETCA was the lead agency for the SEIR, which was subject to CEQA requirements and an approval process separate from the finalization of the EIS. The TCA Board of Directors acted in February 2006 to approve the Preferred Alternative and certify the Final SEIR.

In February 2008, the F/ETCA appeared before the California Coastal Commission (CCC) requesting a Consistency Determination for SOCTIIP, as required through our 404 Permit with the USACOE, but was denied. The CCC denied the F/ETCA request citing other alternatives were reasonable and available to the agency. The F/ETCA appealed this decision to the U.S. Secretary of Commerce, which upheld the CCC's previous decision. However, the ruling issued in December 2008 states:

Based on the foregoing, the record establishes that the Project is not consistent with the objectives of the [Coastal Zone Management Act] because a reasonable alternative is available – namely, the [Central Corridor-Avenida La Pata Variation – CC-ALPV] alternative. The [CCC] stated that the CC-ALPV alternative can be implemented in a manner consistent with California's Program, and has described the alternative with sufficient

specificity. The CC-ALPV alternative is available because it satisfies the Project's primary or essential purpose and presents no financial, legal, or technical barrier to implementation. The CC-ALPV alternative is reasonable because it costs less than [SOCTIIP] and presents a net advantage to coastal uses and resources.

This decision in no way prevents TCA from adopting other alternatives determined by the [CCC] to be consistent with California's Program. In addition, the parties are free to agree to other alternatives, including alternatives not yet identified, or modifications to the Project that are acceptable to the parties.

Subsequent to the February 2008 CCC decision, the F/ETCA received its Streambed Alteration Agreement for SOCTIIP from the California Department of Fish and Wildlife (CDFW), as well as a no jeopardy finding in the biological opinion issued by the USFWS as a result of the Section 7 consultation under the Federal Endangered Species Act.

In early 2009, the F/ETCA launched an outreach program and met with nearly 300 stakeholders over a two year period. The stakeholders included meetings with supporters and opponents of the Project, as well as local and government agencies with the goal of obtaining feedback on the need for the Project. The outreach process concluded that traffic was a major concern for those in South Orange County, especially with the approved development of The Ranch Plan moving forward and the severity of existing congestion on Interstate 5 and local arterials.

In October 2011, the F/ETCA Board of Directors authorized staff to proceed with completing updated environmental studies, engineering plans and develop a financing strategy for the Project. Additionally, in August 2012, the F/ETCA Board of Directors authorized staff to execute and obtain all necessary environmental permits and approvals for the Tesoro Extension Project.

The Tesoro Extension Project does not preclude a connection to any of the 19 toll road alternatives evaluated in the SOCTIIP Technical Reports, as illustrated by the various connections shown on [Figure 4, Future Alignment Alternatives](#). These connections are preliminary layouts and have not been advanced to a concept level of engineering design; however, there is no indication that any of the connections cannot be successfully engineered and all can be constructed with standard cut and fill grading.

Proposed Project

As noted above, the Tesoro Extension Project is proposed to extend the existing SR 241 from Oso Parkway to Cow Camp Road. The alignment is proposed between Cañada Chiquita to the west and Cañada Gobernadora to the east, both of which are tributary to San Juan Creek to the south of the Project site; refer to [Figure 2](#). The Project generally follows the same alignment as SOCTIIP Preferred Alternative/A7C-FEC-M up to Cow Camp Road, with minor alterations in the design to avoid impacts to existing uses and/or surface waters; refer to [Figure 3](#).

The Project, when added to the existing SR 241 facility, would provide for regional transportation circulation. F/ETCA and RMV have been coordinating on the Tesoro Extension Project as it relates to RMV's approved development. As noted on [Figure 3](#), these minor design alterations include a potential maximum shift of 500 feet for a distance of approximately 2,500 linear feet to the east to avoid impacts to an existing irrigation reservoir currently utilized by RMV for ranching activities. In addition, a slight shift of approximately 800 feet to the west for a distance of approximately 4,500 linear feet near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. These design alterations result in Project avoidance of discharge of dredged or fill material to all Waters of the U.S., including wetlands.

The Project is located within the RMV, where the approved RMV Ranch Plan proposes up to 14,000 dwelling units, as well as retail, office, and recreational uses, within a development area of approximately 7,694 acres. Figure 5, Proposed Project illustrates the limits of the proposed Project and RMV Planning Areas. The remaining 15,121 acres would be retained as open space with infrastructure and other uses as provided for in the following documents:

- The Southern NCCP/MSAA/HCP Joint Programmatic EIR/EIS on the HCP: The Southern Subregion NCCP/Master Streambed Alteration Agreement (MSAA)/HCP was approved by the USFWS on January 11, 2006. It established a 32,818-acre permanent wildlife habitat reserve that includes 16,536 acres of the RMV. The HCP is intended to protect numerous sensitive animal species and vegetation communities, while allowing for buildout of the Ranch Plan on other portions of the RMV.
- San Juan Creek and Western San Mateo Creek Watershed SAMP and EIS on the SAMP (the USACOE was the lead agency under NEPA for the EIS). The San Juan Creek and Western San Mateo Creek Watershed SAMP is a watershed-level planning document that provides for reasonable economic development (e.g., buildout of the RMV) within the watershed, while also protecting and managing sensitive aquatic biological and hydrological resources. The SAMP established permitting procedures, aquatic resources preservation, aquatic resources restoration, and aquatic resources management.

Full build-out is proposed to occur over a period of approximately 20 to 25 years. Planning Area (PA) 1, near the Antonio Parkway/Ortega Highway intersection, just west/southwest of the Project site, is currently under construction. As shown on Figures 2 and 3, the Project would traverse PAs 2 North (N) and 2 South (S), residential areas of this County-approved development. The EIR prepared for the RMV Ranch Plan was certified by the County in 2004. Area plans are being developed and reviewed for PA 2S. Related plans such as design studies and applications for applicable permits are being processed.

The Ranch Plan approvals require a certain level of transportation infrastructure to support the development. The Ranch Plan evaluated and incorporated both the Tesoro Extension Project (as part of the SR 241 extension) and, in the alternative, a local arterial (F Street). F Street would follow a similar alignment as the Tesoro Extension Project; however, it would not provide for regional connectivity and free flow of traffic. In addition, F Street is not required for RMV development until somewhere between the 7,501st and 10,000th Equivalent Dwelling Unit. Therefore, construction of F Street as Ranch Plan infrastructure is not projected to occur until several years in the future. Although F Street is not presently planned for implementation by RMV, and would not provide the same regional benefits as the Tesoro Extension, the footprint of F Street has been analyzed in several environmental documents, which provides additional background to the physical effects of a road in that location. These effects have been previously identified and evaluated in the Ranch Plan EIR, the Southern Subregion HCP EIR/EIS, and the SAMP EIS, in addition to the SOCTIIP Final SEIR.

Changes to Project Addressed in this Addendum

This Addendum addresses potential environmental impacts of the Project changes and completes the necessary environmental analysis as required pursuant to provisions of CEQA, Public Resources Code Section 21000 et seq., and the State CEQA Guidelines. This document is an Addendum to the previously certified SEIR for SOCTIIP. These two documents, the 2006 Final SEIR and this Addendum, together with the other environmental documents incorporated by reference herein, serve as

the environmental review of the Preferred Alternative as revised. The Preferred Alternative reviewed in this Addendum includes changes to the project previously approved by the F/ETCA.

Pursuant to provisions of CEQA and State CEQA Guidelines, the F/ETCA is the lead agency charged with the responsibility of deciding whether to adopt these Project changes for incorporation into the Tesoro Extension. As part of its decision-making process, the F/ETCA is required to review and consider potential environmental effects that could result from construction and operation of the Preferred Alternative. The 2006 Final SEIR found the following effects of project development to be significant unavoidable impacts: traffic (short-term), land use, farmland, pedestrian and bicycle facilities, air quality; wildlife, fisheries and vegetation; and threatened and endangered species, archaeological resources, visual resources, military uses, mineral resources, and recreation resources.

In February 2006, the TCA Board of Directors certified the Final SEIR (SCH No. 2001061046) and adopted Findings and a Statement of Overriding Considerations for environmental effects associated with project development found to be significant, unavoidable, and adverse.

The F/ETCA review of the changes to the Preferred Alternative is limited by provisions set forth in CEQA and the State CEQA Guidelines. It is limited to examining environmental effects associated with changes between the Project as currently revised and the project reviewed in the certified 2006 Final SEIR. Pursuant to CEQA and State CEQA Guidelines, the F/ETCA is preparing this Addendum to determine whether there are changes in circumstances or new information of substantial importance that would require preparation of a Subsequent or Supplemental EIR.

According to Section 21166 of CEQA and Section 15162 of State CEQA Guidelines, a subsequent EIR is not required for the Tesoro Extension Project unless F/ETCA determines on the basis of substantial evidence that one or more of the following conditions are met:

1. Substantial changes are proposed in the project that require major revisions of the previous EIR due to involvement of new significant environmental effects or a substantial increase in severity of previously identified significant effects.
2. Substantial changes have occurred with respect to circumstances under which the project is undertaken that will require major revisions of the previous EIR due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. New information of substantial importance, which was not known and could not have been known with exercise of reasonable diligence at the time the previous EIR was certified, shows any of the following:
 - The project will have one or more significant effects not discussed in the previous EIR.
 - Significant effects previously examined will be substantially more severe than identified in the previous EIR.
 - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measures or alternatives.
 - Mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the

environment, but the project proponent declines to adopt the mitigation measures or alternatives.

According to State CEQA Guidelines, Section 15163, if any of the conditions noted above are present but only minor additions or changes would be necessary to make the previous Final SEIR adequate to apply to the project in the changed situation, a Supplemental EIR may be prepared.

Section 15164 of State CEQA Guidelines states that an Addendum to an EIR shall be prepared “if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” Thus, if none of the above conditions are met, the F/ETCA may not require preparation of a Subsequent or Supplemental EIR. Rather, the F/ETCA can decide that no further environmental documentation is necessary or can require an Addendum be prepared.

This Addendum reviews the changes to the Project and to the existing conditions that have occurred since the 2006 Final SEIR was certified and compares the environmental effects of the proposed Project with the modifications to the original project previously disclosed in the 2006 Final SEIR. It also reviews new information of substantial importance that was not known and could not have been known with exercise of reasonable diligence at the time the 2006 Final SEIR was certified, and evaluates whether there are new or more severe significant environmental effects associated with changes in circumstances under which project development is being undertaken. It further examines whether, as a result of any changes or any new information, a Subsequent or Supplemental EIR may be required. This examination includes an analysis of provisions of Section 21166 of CEQA and Section 15162 of the State CEQA Guidelines and their applicability to the Project. The focus of the examination is on whether the previous 2006 Final SEIR may be used for the Project.

Evaluation of Environmental Impacts

This Addendum compares anticipated environmental effects of the Project as modified by the F/ETCA with those disclosed in the previous SEIR to review whether any conditions set forth in Section 15162 of the State CEQA Guidelines requiring preparation of a Subsequent or Supplemental EIR are met. Potential individual and cumulative environmental effects of the Project are addressed for each of the following areas:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soils
- Greenhouse Gas Emissions
- Hazards & Hazardous Materials
- Hydrology/Water Quality
- Land Use/Planning
- Mineral Resources
- Noise
- Population/Housing
- Public Services
- Recreation
- Transportation/Traffic
- Utilities/Service Systems
- Cumulative

Section 3.0 of this Addendum contains the analysis and explanation of the potential environmental impacts of the proposed changes to the Project. The analysis is the F/ETCA’s basis for its determination that no Subsequent or Supplemental EIR may be required for the proposed Project.

1.2 PURPOSE OF THE ADDENDUM

When a proposed project is changed or there are changes in the environmental setting, a determination must be made by the Lead Agency as to whether an Addendum or Subsequent/Supplemental EIR is prepared. Environmental criteria are set forth in CEQA Section 21166 and CEQA Guidelines Sections 15162-15164 to assess which environmental document is appropriate (an Addendum or a Subsequent/Supplemental EIR).

1.3 FINDINGS OF THIS ADDENDUM

The F/ETCA has determined that analysis of the Project's environmental effects is best provided through use of an Addendum, and that none of the conditions set forth in Public Resource Code Section 21166 or Section 15162 of the State CEQA Guidelines requiring preparation of a Subsequent or Supplemental EIR have been met.

1. There are no substantial changes to the Project that would require major revisions of the 2006 Final SEIR due to new significant environmental effects or a substantial increase in severity of impacts identified in the 2006 Final SEIR.
2. No substantial changes have occurred in the circumstance under which the Project is being undertaken that will require major revisions of the 2006 Final SEIR to disclose new significant environmental effects or that would result in a substantial increase in severity of impacts identified in the 2006 Final SEIR.
3. There is no new information of substantial importance, which was not known at the time the 2006 Final SEIR was certified, indicating that:
 - The Project will have one or more significant effects not discussed in the 2006 Final SEIR;
 - There are no impacts that were determined to be significant in the 2006 Final SEIR that would be substantially more severe;
 - There are no additional mitigation measures or alternatives to the Project that would substantially reduce one or more significant effects identified in the 2006 Final SEIR; and
 - There are no additional mitigation measures or alternatives rejected by the Project proponent that are considerably different from those analyzed in the 2006 Final SEIR that would substantially reduce any significant impact identified in that EIR.

The complete evaluation of potential environmental effects of the Project, including rationale and facts supporting County findings, is contained in Section 3.0 of this Addendum.

1.4 CONCLUSION

This Addendum addresses the environmental effects associated with minor alterations to the Project design and changes in circumstances that have occurred since certification of the Final SEIR. The conclusions of the analysis in this Addendum are not substantially different from those determined in the Final SEIR within the same geographic area. The Tesoro Extension Project generally follows the

same alignment as SOCTIIP Preferred Alternative/A7C-FEC-M, up to Cow Camp Road, with minor alterations to avoid impacts to existing uses and/or surface waters.

Based upon the information provided in Section 3.0, *Environmental Analysis*, of this document, the Tesoro Extension Project would not result in new or increased impacts, major revisions to the Final SEIR, or new information of substantial importance that was not known and could not have been known at the time the Final SEIR was certified. The Project would not result in significant effects not discussed in the Final SEIR, nor would the effects of the Project be more severe, new, or different and no previously rejected mitigation measures are found to be feasible. Therefore, an Addendum is appropriate, and this Addendum has been prepared to describe the minor design alterations to the Tesoro Extension Project in relation to the Final SEIR.

2.0 Project Description

2.0 PROJECT DESCRIPTION

The proposed Project involves the construction of an approximately 5.5-mile long extension of the existing SR 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of SR 74. As noted above within [Section 1.0](#), the southerly extension of the existing SR 241 was analyzed within the *SOCTIIP Draft EIS/Final SEIR*, in which the A7C-FEC-M alignment was identified as the preferred alternative. The Preferred Alternative/A7C-FEC-M proposed to extend SR 241 from Oso Parkway to I-5, near the Orange/San Diego County border. The Tesoro Extension Project generally follows the same alignment as the Preferred Alternative/A7C-FEC-M up to Cow Camp Road, with minor design alterations to avoid impacts to existing uses and/or surface waters; refer to [Figure 3](#). A detailed description of the Project location and minor alterations to the Project is provided below.

2.1 PROJECT LOCATION AND SETTING

The proposed Project is located north of the City of San Juan Capistrano, in unincorporated Orange County; refer to [Figure 1](#). Generally, the Project is located on presently undeveloped areas within RMV, north of SR 74, south of Oso Parkway, east of Antonio Parkway, and west of Coto de Caza; refer to [Figure 2](#).

The Project site is undergoing residential and commercial development, but has historically been utilized for agricultural and cattle grazing purposes. The alignment is proposed between Cañada Chiquita to the west and Cañada Gobernadora to the east, both of which are tributary to San Juan Creek to the south of the Project site.

The Project site is located within the San Juan Creek Watershed. The San Juan Creek watershed is a diverse mix of open space and urban development, exhibiting a range of physical characters, from mountainous chaparral-covered headwaters, to rolling hills covered with sage scrub to a coastal plain that ends at the Pacific Ocean. The watershed is approximately 496 square miles extending from the Cleveland National Forest in the Santa Ana Mountains to the Pacific Ocean at Doheny State Beach near Dana Point Harbor.

2.2 SOCTIIP PREFERRED ALTERNATIVE/A7C-FEC-M

The SOCTIIP Preferred Alternative/A7C-FEC-M alignment was approximately 16 miles long plus approximately 0.8 miles of improvements along I-5. The proposed facility included four general-purpose travel lanes, two in each direction, for the entire length of the facility. Two additional lanes were proposed to be added in the northern section of the alignment as future traffic conditions warranted. Key components of the SOCTIIP Preferred Alternative/A7C-FEC-M included continuous mainline travel lanes and ramps south of Oso Parkway, several wildlife structures/bridges to facilitate wildlife movement, an approximately 2,100 foot bridge structure crossing San Juan Creek, a toll plaza north of Ortega Highway, ramp toll plazas at Cow Camp Road and Avenida Pico, an approximately 2,859 foot elevated bridge structure spanning San Mateo Creek and I-5 providing a direct connection to I-5, and reconstruction of the existing I-5/Basilone Road interchange.

The total footprint of ultimate A7C-FEC-M was 1,254 acres, while the total footprint for the Preferred Alternative was 1,194 acres. This included areas for grading, remedial grading and construction disturbance, areas for paved roads and associated bridges and interchanges, access roads, materials

storage areas, areas for utility relocations and areas for the construction of water quality Best Management Practices (BMPs). The alignment for the Preferred Alternative/A7C-FEC-M within the vicinity of the Tesoro Extension Project is depicted on [Figure 4](#).

2.3 PROPOSED PROJECT

As noted above, the Tesoro Extension Project generally follows the Preferred Alternative/A7C-FEC-M alignment between Oso Parkway and Cow Camp Road. The primary design alterations considered as part of the Addendum are slight shifts in the alignment to avoid impacts to existing uses and/or surface waters. Specifically, the proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized for ranching activities on the RMV. In addition, an alignment shift to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed; refer to [Figure 3](#). The proposed terminus would also not prohibit future alternative alignments as defined in the SOCTIIP Final SEIR and as depicted in [Figure 4](#).

The Project will operate as a part of the existing SR 241, and does not require any extensions or other improvements to operate effectively, as demonstrated in the Traffic Study. The Tesoro Extension Project does not preclude a connection to any of the 19 toll road alternatives evaluated in the SOCTIIP Technical Reports, as illustrate by the various connections shown on [Figure 4](#). These connections are preliminary layouts and have not been advanced to a concept level of engineering design; however, there is no indication that any of the connections cannot be successfully engineered and all can be constructed with standard cut and fill grading.

The Tesoro Extension Project and associated impact boundaries are depicted on [Figure 5](#). Final design plans will limit construction of the Project within the existing SR 241 to the existing right of way (R/W). It includes four general-purpose travel lanes, two in each direction. The center median, from Oso Parkway to Cow Camp Road would be revegetated with a native seed mix similar to the median along the existing SR 241 north of Oso Parkway. The median offers future opportunities for bus rapid transit, light rail, or additional lanes as traffic conditions warrant. These transit and rail opportunities are not evaluated in this Addendum, since they are not presently proposed. The typical cross section associated with the Project is shown on [Figure 6, Typical Cross Section](#).

Cow Camp Road from Antonio Parkway to SR 241 is a local thoroughfare that is classified as a major highway and would ultimately consist of three lanes in each direction, plus turning lanes, and is projected to carry 30,000+ trips per day (2035). A portion of Cow Camp Road (from Antonio Parkway to west of Chiquita Creek) has been constructed. The next phase of Cow Camp Road (Chiquita Creek to the eastern boundary of PA 2) will be constructed by RMV and County of Orange prior to, or concurrent with, the construction of the proposed Project and is scheduled for initiation of construction in June/July 2013.¹ The PAs associated with the approved RMV Ranch Plan are depicted on [Figure 7, RMV Planning Areas](#).

The footprint for the proposed Project includes areas for grading, remedial grading and construction disturbance areas. In addition to the paved road and associated bridges and interchanges, the

¹ Board of Directors Agenda, Interstate 5 South County Projects Update Handout, Orange County Transportation Authority, January 14, 2013.

construction area includes access roads, materials storage areas, areas for utility relocations and areas for the construction of the BMPs.

Both temporary and permanent activities and facilities are anticipated within the proposed Project footprint. Permanent facilities and activities include:

- Paved road areas
- landform modifications
- Tolling points
- Bridge support structures
- Ramps and structures at interchange locations
- Drainage structures (including cross culverts)
- Realignment of existing agricultural and utility access roads
- Sites for water quality BMPs (primarily Austin sand filters, extended detention basins and bioswales)

Temporary facilities and activities include:

- Cut and fill grading to establish final road elevations. Following grading, all slopes within the open space areas would be revegetated with a native habitat by the following fall
- Erection of falsework for bridge construction
- Material storage areas
- Staging Areas
- Temporary utility relocations
- Remedial grading

Bridges have also been incorporated at select drainage crossings to minimize hydrologic impacts, avoid/minimize impacts to the CDFW and U.S. Army Corps of Engineers (USACOE) regulated resources, and provide for continued wildlife movement in the area.

Finished road grade for the proposed Project would be accomplished using standard cut and fill grading operations. Concrete box girder construction is anticipated at the major bridge locations. Concrete would be used to pave the mainline of the road; however, a permeable friction overlay would be constructed over the roadway to allow for infiltration of stormwater.

Heavy-duty earth moving equipment would be used for road grading and paving. It is anticipated that the type of equipment would consist of:

- | | |
|---------------|--------------|
| • Scrapers | • Compactors |
| • Dozers | • Loaders |
| • Dump trucks | • Backhoes |

- Water trucks
- Paving machines
- Steel wheel rollers
- Excavators
- Belly dump trucks
- Rubber tired rollers

Equipment anticipated for bridge construction would include:

- Cranes
- Pile driving hammers
- Low boy trailers
- Drilling rigs
- Forklifts
- Concrete pump trucks
- Concrete trucks

This equipment would be used for clearing and grubbing, grading, excavation, backfilling, materials and equipment delivery and removal, concrete and asphalt installation, and other construction activities. Staging areas within the disturbance limits would be used during construction for materials storage, equipment and employee parking, temporary storage of soils and other related activities. Access to the construction areas would be via existing public roads and existing ranch/utility access roads.

Project Construction

Construction activities and equipment for the Project would be consistent with the Final SEIR and is provided for informational purposes only. No new substantial change or new impacts would occur.

Construction duration is anticipated to be approximately 18-24 months beginning in 2013. Project initiation would occur at Oso Parkway and extend south towards its terminus at Cow Camp Road.

The basic overall construction steps proposed for the Project are listed below:

- Mobilize equipment to the Project site
- Clear road right-of-way (R/W)
- Oso Bridge Construction
 - Relocate Oso Parkway utilities to outside of the proposed Oso Parkway bridge area
 - Build Oso Parkway detour
 - Move traffic to detour
 - Construct one side of the Oso bridge on existing fill
 - Install utilities into new half of Oso bridge
 - Shift traffic from the existing detour to the new bridge
 - Remove fill on Oso Parkway
 - Construct the other side of the Oso Parkway bridge on falsework
 - Install utilities into second half of Oso bridge
 - Construct intersection modifications and adjacent roadway transitions

- Modify signals at ramps
- Restripe
- Perform remedial grading and cut/fill operations
- Cross culvert installation
- Structure construction at Chiquita Wildlife Crossing and Sam Creek Bridge
- Fine grading for roadway section
- Sewer relocation at Wildlife Crossing #3
- Drainage, Corridor Operating System and electrical construction
- BMP installation
- Tolling gantry installation
- Irrigation and landscaping
- Pavement construction
- Signing and striping
- Open to traffic

Right-of-Way Acquisition

The proposed Project is located within RMV and parcels are held by various entities controlled by RMV. The F/ETCA would acquire, in-fee, the parcels required for the Project construction and upon the opening of the roadway, Caltrans would assume facility ownership, maintenance responsibilities, and tort liability. The F/ETCA would construct and be the toll operator for the facility, and maintain tolling equipment through an encroachment permit with Caltrans. The R/W associated with the Preferred Alternative/A7C-FEC-M was similar to the proposed Project (similar landowners, land uses and parcel locations).

The Project site consists of existing Caltrans R/W located along the existing SR 241, north of Oso Parkway and vacant land south of Oso Parkway, owned by RMV. As part of the Project, approximately 260 acres of new R/W would be acquired by the F/ETCA and transferred to the state upon opening day.

Project Permits and Approvals Needed

A description of the permits and approvals required for the Project is provided below within Table 1, Project Permits and Approvals Needed.

Table 1
Project Permits and Approvals Needed

Agency	Permit/Approval	Triggering Project Feature
USFWS	Section 7 Consultation for Threatened and Endangered Species	Presence and/or potential presence of Thread-leaved brodiaea, Arroyo toad, Southwestern willow flycatcher, Coastal California gnatcatcher and Least Bell's vireo.
CDFW	1602 Agreement Minor Amendment CESA 2080.1 Consistency Determination	Alteration of Streambed Potential presence of state-listed species
RWQCB	Waste Discharge Requirements	Fill impacts to wetlands and Waters of the State
Caltrans	Encroachment Permit	Construction within R/W at existing SR 241
State Water Resources Control Board	Coverage under General Construction Permit	General construction area greater than one acre
County of Orange	Encroachment Permit	Construction and connection to Cow Camp Road
Various (Utilities)	Encroachment Permit	Construction within existing easements

3.0 Environmental Analysis

3.0 ENVIRONMENTAL ANALYSIS

As discussed in [Section 1.0, Introduction](#), this comparative analysis has been undertaken pursuant to the provisions of Section 21166 of CEQA and CEQA Guidelines Sections 15162 and 15153 to provide the F/ETCA with the factual basis for determining whether any changes in the Project, any changes in circumstances, or any new information since the Final SEIR was certified require preparation of a Subsequent/Supplemental EIR or Addendum to the SEIR previously prepared.

The Tesoro Extension Project alignment remains substantially the same as the SOCTIIP Preferred Alternative/A7C-FEC-M from Oso Parkway to Cow Camp Road. Minor design alterations to the alignment were made to avoid RMV ranch facilities and surface waters; refer to [Figure 3](#). The Project was also designed to avoid discharge of dredged or fill material to Waters of the U.S. (USACOE jurisdictional waters). As a result of these changes, updated analysis for impacts within the Project area is provided in this Addendum. Updates were also conducted to address current conditions of existing resources

The analysis below demonstrates that the Tesoro Extension Project would not result in new or increased impacts in comparison to the Final SEIR, would not require major revisions to the SEIR, or result in new information of substantial importance that was not previously known at the time the Final SEIR was certified. The analysis is based on a comparison of the impacts within the same geographic area. See [Appendix A, Applicable Mitigation Measures/Commitments/Conditions](#) for a list of mitigation measures and project design features (PDFs) incorporated into the Project. This list is based on the mitigation measures and PDFs adopted for the Preferred Alternative/A7C-FEC-M, and has been refined to clarify which measures are applicable to the Tesoro Extension Project.

Since the SOCTIIP Final SEIR was certified, construction has begun on the Ranch Plan. Construction in Planning Area 1 and Cow Camp Road has changed the existing conditions in the Project vicinity; however, these developments have not changed circumstances in a way that substantially altered the conclusions of the SOCTIIP Final SEIR.

Aesthetics. Analysis within the Final SEIR concluded that aesthetic impacts related to the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road would be significant and unavoidable. The proposed Project alignment is located within Assessment Units (AU) 1, 36, and 37 of the Final SEIR. Impacts within AU37 north of Ortega Highway were determined to be significant and unavoidable due to remedial grading, cut and fill, and the construction of travel lanes that would alter the panoramic rural view from Ortega Highway. Development within the Ranch Plan will also alter these views.

Aesthetic impacts associated with the proposed Project would be similar in nature to the impacts identified for the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR. Implementation of the proposed Tesoro Extension Project may result in both short-term and long-term impacts to sensitive viewers surrounding the Project site. Grading, cutting of slopes, and construction-related vehicle access and staging of construction materials would occur within proposed roadway R/W along the length of the Project site. Construction associated with the Project would result in exposed surfaces, construction debris, equipment, truck traffic, soil stockpiles, and construction staging areas to nearby sensitive viewers (i.e., motorists, institutional and recreational users, as well as partial distant views from residents at Coto de Caza).

In addition, the Project may result in an alteration to the visual character of the Project area after construction of the Project is completed. The Project may also result in minor light/glare impacts. Minimal nighttime safety lighting would be included as part of the Project, and any new lighting would be equipped with shielding in accordance with Caltrans specifications to minimize light spillover impacts to surrounding areas. Similar to the existing SR 241, the majority of the alignment would not be subject to nighttime lighting to minimize light/glare impacts within open space areas. Additionally, approximately half of the proposed Project site is located within areas already approved for development under the RMV Ranch Plan (PAs 2N and 2S). The remainder of the alignment replicates areas that have been designated for infra in the approved HCP/SAMP/RMV Ranch Plan.

The level of disturbance, impact area, and alignment of the Project are substantially the same as the Preferred Alternative/A7C-FEC-M within the Project limits. As such, a significant and unavoidable impact is expected to remain. Development associated with build out of the RMV would occur regardless of the proposed Project, and a substantial alteration in the aesthetic character of areas within and surrounding PAs 2N and 2S is expected to occur as RMV development progresses. Analysis of aesthetic impacts within the RMV area as part of the Ranch Plan EIR, Southern Subregion HCP EIR/EIS, and SAMP EIS also concluded that significant aesthetic impacts would occur due to landform alteration, alterations to visual character, ridgelines and light and glare, even in the absence of the proposed Project.

While minor design alterations have been incorporated into the Project, the change in the aesthetic characteristics of the vicinity would not be substantial. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized for ranching activities on the RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to Preferred Alternative/A7C-FEC-M and are void of any unique development, topography, or other characteristics that would alter the conclusions reached within the Final SEIR.

Conclusion for Aesthetics: The Tesoro Extension Project would not result in new significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be substantially more severe and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Agriculture and Forestry Resources. The Final SEIR concluded that a significant and unavoidable impact would occur in relation to farmland impacts under the Preferred Alternative/A7C-FEC-M. However, these significant impacts associated with the Preferred Alternative/A7C-FEC-M alignment would occur south of Cow Camp Road, beyond the boundaries associated with the Tesoro Extension Project. The Final SEIR indicated that no farmland of prime, unique, or statewide importance exists within the RMV.

Farmlands within and immediately adjacent to the Tesoro Extension Project alignment are limited to cattle grazing areas. The central portion of the alignment would affect a small area utilized for limited barley production used as cattle feed on the RMV ranch. The nearest row crops to the Project site are situated north and south of the existing Chiquita Wastewater Reclamation Plant (CWRP) in Chiquita Canyon, approximately 0.25-mile west of the Project site. In addition, the 244-acre Color Spot Nursery is situated approximately 0.5-mile east of the southerly terminus of the Project site, north of San Juan Creek. No agricultural areas outside of the Project alignment (including the Color Spot Nursery and row crops adjacent to CWRP) would be affected by the Project. Based on Natural Resources

Conservation Service (NRCS) ratings for agricultural lands, the entirety of the Project site is designated as “Grazing Land”, and no farmland of prime, unique, or statewide importance exists. Moreover, there are no timberland areas within or adjacent to the Project site, as the Project area has been previously disturbed by agricultural and cattle grazing activities. Moreover, no existing forestry resources or zoning for forest land exists within the Project area. While minor design alterations have been incorporated into the Project, these changes would not result in any additional impacts to agriculture or forestry resources. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized on the RMV, and would be shifted to the west near the southerly terminus of the Project in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and are void of any agriculture/forestry resources that would alter the conclusions reached within the Final SEIR.

Conclusion for Agriculture and Forestry Resources: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Air Quality. The Final SEIR included an analysis of the Preferred Alternative/A7C-FEC-M’s short-term (construction) and long-term (operational) air quality impacts. The Final SEIR concluded that the Preferred Alternative/A7C-FEC-M would result in significant and unavoidable impacts during the short-term construction process, in addition to significant and unavoidable impacts during operations due to NO_x emissions in exceedance of South Coast Air Quality Management District (SCAQMD) thresholds.

Based on the Project’s Air Quality modeling the Tesoro Extension Project is not expected to result in new or increased air quality impacts in comparison to the analysis provided in the Final SEIR. As noted above, the Preferred Alternative/A7C-FEC-M and the Project generally follow the same alignment through the RMV and share similar design characteristics. Construction emissions due to activities within the Project site are expected to be similar since the construction methodology associated with the Project would be substantially the same as the Preferred Alternative/A7C-FEC-M (e.g., similar design, topography, geologic conditions, and equipment). Earthwork quantities associated with the Project are expected to be balanced, and haul trip lengths would be substantially reduced in comparison to the Preferred Alternative/A7C-FEC-M due to the shorter length of the proposed extension. On an operational basis, background conditions and traffic volumes identified in the Final SEIR have not substantially changed.² The Project would result in regional transportation and air quality benefits by: 1) reducing congestion on I-5 and on the arterial network and local circulation system in south Orange County; 2) transferring through-vehicle trips, particularly intra- and inter-regional trips between south Orange County and north Orange County and Riverside County, to portions of the regional highway system that have, or will have free-flowing conditions, thereby providing congestion relief on I-5; and 3) improving regional goods movement.

The proposed Project would remain a Transportation Control Measure (TCM) as the Project is included in the Southern California Association of Governments (SCAG) 2012–2035 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) that reduces air pollutant emissions by providing

² *Tesoro Extension Project Traffic Analysis*, Stantec Inc.

relief of existing and projected congestion. The TCMs include toll roads, express lanes, high occupancy vehicle lanes, and dedicated truck toll lanes.

The proposed Project has also been reviewed by the SCAG Transportation Conformity Working Group (TCWG) to determine if the Project represents a Project of Air Quality Concern (POAQC). Based on the particulate matter (PM) analysis for the Project, it is not expected that PM_{2.5} and PM₁₀ emissions would result in violations of Federal air quality standards, increase in the frequency or severity of existing violations, or delay timely attainment of National Ambient Air Quality Standards (NAAQS). On October 23, 2012, the TCWG determined that the proposed Project does not represent a POAQC.

Conclusion for Air Quality: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Biological Resources. A Biological Opinion (BO) was issued for the SOCTIIP Preferred Alternative/A7C-FEC-M in April of 2008. The USFWS determined that the SOCTIIP Preferred Alternative/A7C-FEC-M was not likely to jeopardize the continued existence of any listed species.

Because the proposed Project overlaps with the northerly 5.5 miles of the previously evaluated Preferred Alternative/A7C-FEC-M footprint, the 2012 Biological Assessment³ for the Project determined that two federally listed species are within the Project footprint and three are located outside the Project footprint, compared to the nine identified in the previous Section 7 consultation process for the SOCTIIP Preferred Alternative/A7C-FEC-M (refer to *Table 2, Summary of Project Effects on Biological Resources for the Tesoro Extension Project Compared to the Preferred Alternative/A7C-FEC-M*). The impacts of the Project on biological resources are significantly reduced from the impacts described in the Final SEIR.

For fish and wildlife resources within the responsibility of the CDFW, a 1602 Streambed Alteration Agreement was issued in May 2008 for the Preferred Alternative/A7-FEC-M. In September 2012, the CDFW amended its 1602 Agreement with the F/ETCA to include the Tesoro Extension Project.

Table 2 describes impacts of the Project on threatened and endangered species compared to the impacts described in the Final SEIR.

The Project is located within the Southern Subregion HCP and thread-leaved brodiaea is a Covered Species under this program. The HCP designates a system of reserves designed to provide for no net loss of habitat value from the present, taking into account management and enhancement. No net loss means no net reduction in the ability of the Subregion to maintain viable populations of target species over the long-term. The Project will impact a small population of brodiaea, but will not substantially reduce the habitat components that are essential for the primary biological needs of the species. In consideration of the proposed avoidance and minimization measures, the loss of these locations is unlikely to adversely affect the conservation of the species. With implementation of mitigation measures, there will be no net loss of primary constituents for the thread-leaved brodiaea. For the

³ The 2012 Biological Assessment is available at the F/ETCA.

specific plant populations in the Project footprint and the combined avoidance and minimization measures in conjunction with the Project's mitigation, Project impacts to brodiaea are less than significant.

Table 2
Summary of Project Effects on Biological Resources for the Tesoro Extension Project
Compared to the Preferred Alternative/A7-FEC-M

Common Name and Scientific Name	Federal/State Endangered Species Act Status	Number of Locations Within Direct Impact Area	Comparison to Final SEIR CEQA Determination
Thread-leaved brodiaea <i>Brodiaea filifolia</i>	Threatened/Endangered	Two locations consisting of a total of 15-23 individuals each (up to 46 individuals)	Mitigated to less than significant as identified for the Preferred Alternative/A7-FEC-M.
Arroyo toad <i>Anaxyrus [Bufo] californicus</i>	Endangered/--	None	Less than significant, avoids direct impact identified in the Preferred Alternative/A7C-FEC-M
southwestern willow flycatcher <i>Empidonax traillii extimus</i>	Endangered /Endangered	None	Mitigated to less than significant as identified for the Preferred Alternative/A7-FEC-M.
Coastal California gnatcatcher <i>Poliopitila californica californica</i>	--/Threatened	6 territories/ 118.29 acres scrub habitat	No change in level of impact within Project footprint compared to the Preferred Alternative/A7C-FEC-M
Least Bell's vireo <i>Vireo bellii pusillus</i>	Endangered /Endangered	None	Mitigated to less than significant as identified for the Preferred Alternative/A7-FEC-M.
Source: BonTerra Consulting, <i>Tesoro Extension Project Biological Assessment</i> .			

The Project would not cross San Juan Creek and therefore, would not directly impact the arroyo toad. Avoidance and minimization measures would be implemented to minimize the potential for direct or indirect impacts on this species. Since the San Juan Creek crossing is not included, the Project impacts on the arroyo toad are less than significant from the Preferred Alternative/A7C-FEC-M.

Additionally, the Project is not expected to directly impact southwestern willow flycatcher or least Bell's vireo. Neither species was observed within the Project area during the 2012 focused surveys. With implementation of avoidance and minimization measures, the potential for direct or indirect impact on these species would be minimized; hence, the Project would be mitigated to less than significant, the same as the Final SEIR conclusion for the Preferred Alternative/A7-FEC-M.

The Project impacts six coastal California gnatcatcher territories. When compared to the impacts identified in the Final SEIR, and considering the annual fluctuations that occur with this species, the impact is consistent with the Final SEIR and does not result in any new significant impact or an increase in severity of an impact. Through avoidance and minimization measures, the potential for direct or indirect impacts on the gnatcatcher would be minimized and would not increase within the Project footprint compared to the Preferred Alternative/A7-FEC-M.

The Final SEIR identified some significant effects to non-listed wildlife and vegetation for the Preferred

Alternative/A7C-FEC-M during construction and operation. The Project will not result in any new significant impacts or any substantial increase in the severity of an impact identified in the Final SEIR. The impacts of the Project are significantly reduced based on the setting and footprint of the Project in the context of the regional plans (the Southern Subregion HCP and SAMP) that provide for a combination of habitat preservation and development, including infrastructure, as described earlier in this Addendum.

Conclusion for Biological Resources: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Cultural Resources. The Final SEIR included an analysis of potential impacts to historic, archaeological, and paleontological resources. The Final SEIR concluded that with mitigation, the Preferred Alternative/A7C-FEC-M would not result in adverse impacts to historic or archaeological resources. Several archaeological sites within the Preferred Alternative/A7C-FEC-M study area between Oso Parkway and Cow Camp Road will be avoided. In addition, mitigation measures provided within the Final SEIR minimized impacts to a level below significance. No historical resources were determined to be present along the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road. The results of the paleontological resources survey within the Final SEIR remain confidential to prevent vandalism. However, it was determined that potential impacts to paleontological resources could occur based on the geologic formations beneath the site. The Final SEIR also included mitigation measures to reduce paleontological impacts to a level below significance.

As noted above, the Project generally follows the same alignment as the Preferred Alternative/A7C-FEC-M, with minor alterations to avoid impacts to existing uses and/or surface waters. There are five previously recorded archaeological sites within the disturbance limits.^{4,5} Three of the sites have been determined to not be significant resources for the purposes of CEQA (and determined not eligible for listing on either the National Register of Historic Places or the California Register of Historical Resources). The remaining two resources were determined eligible for listing on the National Register (and thereby for the California Register) under Criterion D. One of these sites is wholly outside the area of direct impact for the Project and would not be affected by the proposed Project and would be protected with the establishment of an environmentally sensitive area (ESA). A small portion of the remaining site extends into the Project site. Work conducted through an Extended Phase I analysis for the Preferred Alternative/A7C-FEC-M demonstrated that the portion of this site that extends into the disturbance limit is not a contributing element of the overall site (it is highly disturbed because the portion that extends into the site is the alluvial flow from the upland archaeological site). The eligible portions of this site are outside of the Project disturbance limits, and would be protected as part of the established ESA.

Portions of the Project area are considered sensitive in relation to paleontological resources due to underlying geologic formations.⁶ During construction, there is potential for the destruction of fossils (non-renewable, limited resources), damage to fossils during grading, destruction of rock units (non-

⁴ *Historic Property Survey Report, Tesoro Extension Project*, LSA Associates, Inc.

⁵ *Archaeological Survey Report, Tesoro Extension Project*, LSA Associates, Inc.

⁶ *Paleontological Resources Identification and Evaluation Report, Tesoro Extension Project*, LSA Associates, Inc.

renewable, limited resources) in the study area, loss of contextual data associated with fossils and loss of associations between fossils. During operations, potential indirect adverse impacts are associated with the provision of access to currently inaccessible areas of Orange County, thereby increasing human presence and potential for damage to paleontological resources and/or unauthorized collecting of resources.

However, as shown in Appendix A, *Applicable Mitigation Measures/Commitments/Conditions*, a similar range of mitigation measures as for the Preferred Alternative/A7C-FEC-M, minimizing impacts to paleontological resources within the Final SEIR, would be applicable to the Tesoro Extension Project. These measures include preparation of a Paleontological Mitigation Plan (PMP) in accordance with Caltrans standards. The PMP would include requirements for construction worker training, preconstruction surveys, monitoring, and resource recovery measures. Since the design characteristics of the Project and the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road are substantially the same, paleontological impacts are anticipated to be similar and mitigation measures would reduce impacts to a level below significance.

Additionally, approximately half of the proposed Project site is located within areas approved for development under the RMV Ranch Plan (PAs 2N and 2S). Development associated with the Ranch Plan would occur with or without implementation of the Tesoro Extension Project.

Conclusion for Cultural Resources: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Geology and Soils. The analysis within the Final SEIR for geology and soils indicates that the Preferred Alternative/A7C-FEC-M would not result in adverse impacts after mitigation related to temporary construction impacts, earthquake damage, destruction of a unique geologic feature, exposure of people or structures to an increased hazard of landslide or mudslide, exposure of structures to potential damage from expansive or collapsible soil, increased soil erosion above natural conditions or exposure of structures to a potential for distress due to foundation settlement or subsidence.

The Tesoro Extension Project would not result in additional impacts to geology and soils beyond those identified in the Final SEIR. As described in Section 2.0, *Project Description*, minor design alterations have been incorporated into the Project to avoid impacts to existing uses and/or surface waters. These minor design alterations would result in a slight shift in grading activities in comparison to the Preferred Alternative/A7C-FEC-M. However, this shift in grading would not result in any new or increased geological impacts as geological conditions are expected to be similar.⁷ It is anticipated that the Tesoro Project would result in a total of approximately 5.6 million cubic yards of excavation and 5.5 million cubic yards of remedial grading. Since the Tesoro Extension Project and the Preferred Alternative/A7C-FEC-M generally follow the same alignment, share similar design characteristics, and would require a similar construction methodology, it is expected that earthwork quantities would be similar between Oso Parkway and Cow Camp Road. Similar geologic conditions would be encountered during construction and the long-term use (extension of the SR 241) would remain the same.

⁷ Personal communication between P. Bopp, F/ETCA, and R. Beck. RBF Consulting, December 10, 2012.

The primary concern in regards to geology, soils, seismicity, and topography is related to long-term operations. The Project would have a minimal potential to result in construction-related geological hazards. The primary short-term concern would be due to erosion and sedimentation during the construction phase, when new cut and fill slopes and other graded areas would be exposed to wind and water. The construction phase impacts will be mitigated as described in Appendix A. The proposed Project would not result in new or increased impacts pertaining to faulting, seismic ground shaking or seismic-related ground failure, landslides, soil erosion, and unstable geologic units than those described in the Final SEIR.

While minor design alterations have been incorporated into the Project, the overall change in the geological characteristics of the vicinity would not be substantial. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized on the RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and are void of any unique geological characteristics that would alter the conclusions reached within the Final SEIR.

As described in the Final SEIR, approximately half of the proposed Project site is located within an areas approved for development under the RMV Ranch Plan (PAs 2N and 2S). Development associated with the Ranch Plan would occur with or without implementation of the Tesoro Extension Project.

Conclusion for Geology and Soils: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Greenhouse Gas Emissions. At the time of certification of the Final SEIR, GHG emissions were not part of the required CEQA analysis. Effective March 18, 2010, the State adopted amendments to the *CEQA Guidelines* requiring the analysis and mitigation of the effects of GHG emissions in draft CEQA documents.

Recent case law regarding the analysis of GHG found that GHG emissions and global climate change are not “new information” since these effects have been generally known for quite some time (even though previously not a listed topic in the CEQA Guidelines Appendix G). Therefore, for this Project, would not be considered new information pursuant to *CEQA, Public Resources Code* Section 21166, for which recirculation is required, if the analysis demonstrates no new significant impact or increased severity of an impact. A detailed analysis is provided within the Tesoro Extension Project Air Quality Assessment, and is summarized below.

Operational Emissions

Climate change refers to long-term changes in temperature, precipitation, wind patterns, and other elements of the earth's climate system. An ever-increasing body of scientific research attributes these climatological changes to greenhouse gases (GHGs), particularly those generated from the production and use of fossil fuels. An individual project does not generate enough GHG emissions to significantly influence global climate change. Rather, global climate change is a cumulative impact. This means that a project may participate in a potential impact through its incremental contribution combined with the

contributions of all other sources of GHG.⁸ In assessing cumulative impacts, it must be determined if a project's incremental effect is "cumulatively considerable" (refer to CEQA Guidelines sections 15064[h][1] and 15130). To make this determination the incremental impacts of the project must be compared with the effects of past, current, and probable future projects. The GHG emissions analysis is based on traffic data from the *Tesoro Extension Project Traffic Study*, prepared by Stantec, Inc. This data consists of regional traffic volumes and includes growth from past, current, and probable projects.

The AB 32 Scoping Plan contains the main strategies California will use to reduce GHG emissions. As part of its supporting documentation for the AB 32 Scoping Plan, CARB released the GHG inventory for California (forecast last updated October 28, 2010). The forecast is an estimate of the emissions expected to occur in year 2020 if none of the foreseeable measures included in the AB 32 Scoping Plan were implemented. The base year used for forecasting emissions is the average of statewide emissions in the GHG inventory for years 2006, 2007, and 2008.

VMT for Existing, Opening Year (2015), and Horizon Year (2035) No Build and With Project scenarios are depicted in Table 3, *Summary of Vehicle Miles Traveled and Vehicle Hours Traveled*. The Opening Year scenario addresses conditions soon after the anticipated opening of the Project. The Horizon Year scenario is a long-range cumulative time frame, consistent with the horizon year used for transportation planning in Orange County and the recently adopted 2012-2035 Southern California Association of Governments (SCAG) *Regional Transportation Plan/Sustainable Communities Strategy* (RTP/SCS). Table 3 includes data within the regional area beyond the Project limits, including freeways, arterial roads, and collector streets. As indicated in Table 3, daily VMT for the proposed Project would generally decrease when compared to No Build conditions for both the opening year and the horizon year. Based on the Tesoro Extension Project Traffic Study, prepared by Stantec Inc., total daily VHT would be 322,263.4 during the Opening Year With Project scenario and 387,538.5 during the 2035 With Project scenario. Both the Opening Year and Horizon Year With Project scenarios would result in improvements in VHT when compared to No Build conditions.

Table 4, *Daily Greenhouse Gas Emissions* depicts the estimated future emissions from vehicles traveling within the Project study area (i.e., the regional area surrounding the Project limits, including freeways, arterial roads, and collector streets). The study area for this analysis includes all or portions of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, San Clemente, Dana Point, and unincorporated Orange County. As shown in Table 4, the existing VMT in the study area generates 7,216 tons per day of carbon dioxide (CO₂). CO₂ emissions would increase during the Opening Year and Horizon Year scenarios due to VMT growth in the region. Table 4 also indicates that emissions would decrease during the with Project conditions compared to No Build conditions due to the decrease in VMT with the Build Scenario. If the further emissions improvements under AB 1493 (Low Carbon Fuel Standard) were included, the Project would have an even greater decrease in CO₂ emissions.

⁸ This approach is supported by the AEP: *Recommendations by the Association of Environmental Professionals on How to Analyze GHG Emissions and Global Climate Change in CEQA Documents*, March 5, 2007, as well as the SCAQMD (Chapter 6: The CEQA Guide, April 2011) and the US Forest Service (Climate Change Considerations in Project Level NEPA Analysis, July 13, 2009).

Table 3
Summary of Vehicle Miles Traveled and Vehicle Hours Traveled

Scenario	Peak	Non Peak	Total
Vehicle Miles Traveled			
Existing	7,367,237.3	6,456,223.4	13,823,460.7
2015 Opening Year - No Build	7,864,644.4	6,919,588.5	14,784,188.2
2015 Opening Year - With Project	7,866,988.6	6,917,141.1	14,784,129.7
<i>Percent Change from No Build</i>	0.03%	-0.04%	0.00%
2035 Horizon Year - No Build	9,467,047.4	8,432,187.5	17,899,234.9
2035 Horizon Year - With Project	9,459,865.7	8,420,485.6	17,880,351.3
<i>Percent Change from No Build</i>	-0.08%	-0.14%	-0.11%
Vehicle Hours Traveled			
Existing	167,003.4	134,521.0	301,524.4
2015 Opening Year - No Build	178,324.6	144,106.0	322,430.6
2015 Opening Year - With Project	178,251.5	144,011.9	322,263.4
<i>Percent Change from No Build</i>	-0.04%	-0.07%	-0.05%
2035 Horizon Year - No Build	241,171.5	174,766.1	388,937.6
2035 Horizon Year - With Project	213,289.6	174,248.9	387,538.5
<i>Percent Change from No Build</i>	-0.41%	-0.30%	-0.36%

Source: Stantec, Inc., *Tesoro Extension Project Traffic Study*.

Table 4
Daily Greenhouse Gas Emissions

Scenario	CO ₂ ^{1, 2}	CO ₂ (Pavley I + LCFS) ^{1, 2}
	tons/day	tons/day
Existing	7,216	6,953
Opening Year (2015)		
No Build	7,717	6,919
With Project	7,717	6,919
<i>Difference from Existing (Percent Change)</i>	501 (6.95%)	-34 (-0.49%)
<i>Difference from No Build (Percent Change)</i>	0 (0%)	0 (0%)
Horizon Year (2035)		
No Build	9,755	6,766
With Project	9,745	6,759
<i>Difference from Existing (Percent Change)</i>	2,529 (35.05%)	-194 (-2.80%)
<i>Difference from No Build (Percent Change)</i>	-10 (-0.11%)	-7 (-0.11%)

CO₂ = carbon dioxide; LCFS = Low Carbon Fuel Standard

Notes:

- Emissions calculated using EMFAC2011.
- Based on traffic volumes provided by Stantec, Inc.

Construction Emissions

The Project may also result in GHG emissions during the construction process. Construction GHG emissions may include emissions produced as a result of material processing, on-site construction equipment, and truck/passenger vehicle trips to and from the Project site. As noted above under the discussion for Air Quality impacts, the Preferred Alternative/A7C-FEC-M and the Project generally follow the same alignment through the RMV and share similar design characteristics. Construction emissions due to activities within the Project site are expected to be similar since the construction

methodology associated with the Project would be substantially the same as the Preferred Alternative/A7C-FEC-M (e.g., similar design, topography, geologic conditions, and equipment). Earthwork quantities associated with the Project are expected to be balanced, and haul trip lengths would be substantially reduced in comparison to the Preferred Alternative/A7C-FEC-M due to the shorter length of the proposed extension. Moreover, mitigation for construction-related air quality impacts within the Final SEIR would remain applicable to the Tesoro Extension Project; refer to Appendix A, *Applicable Mitigation Measures/Commitments/Conditions*.

CEQA Conclusion

While construction activities would result in a slight increase in GHG emissions during construction, operational emissions during the proposed Project conditions would decrease from the No Build conditions by 0.11 percent (approximately 10 tons per day) during the 2035 horizon year. As described above, the proposed Project would reduce existing and forecast deficiencies and congestion on I-5 and the surrounding arterial network. Additionally, as depicted in Table 3, VMT and VHT would decrease with the implementation of the proposed Project. As shown in Table 4, emissions would also be reduced with the implementation of the Pavley fuel standards.

The proposed Project is a transportation infrastructure facility that would reduce existing and forecast deficiencies and congestion on I-5 and the surrounding arterial network, implement a TCM project adopted by SCAG, and reduce vehicle hours traveled in the Project area. The proposed Project would result in slightly beneficial impacts in regards to GHG emissions. The Project would result in a reduction in congestion on I-5 and on the arterial network and local circulation system in south Orange County, and is forecast to decrease CO₂ emissions by 0.11 percent (approximately 10 tons per day) in comparison to the No Build condition.

As stated above, the proposed Project is included in the SCAG SCS to reduce GHG emissions from passenger vehicles. The Project is programmed in the RTP (RTP ID ORA052 and FTIP ID ORA052) and is therefore recognized as an improvement project that would improve transportation operations in the region. The proposed Project would reduce congestion and provide better traffic flow through Project area. The 2012 RTP/SCS includes programs, policies, and measures to address air emissions, including GHGs. RTP/SCS measures that help mitigate air emissions, including GHG emissions, are comprised of strategies that reduce congestion, increase access to public transportation, improve air quality, and enhance coordination between land use and transportation decisions.

The proposed Project is located within the unincorporated County of Orange, which does not have an Orange County specific applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. Therefore, the proposed Project neither conflicts with a locally adopted plan, policy, or regulation pertaining to GHGs, nor does it impede the state from meeting its AB 32 obligations. The proposed Project is included in the SCAG region's SCS required under SB 375 to reduce GHG emissions from passenger vehicles. The SCS integrates land use and transportation strategies to achieve CARB GHG emissions reduction targets. The SCS includes the proposed Project in its transportation network designed to reduce regional GHG emissions, and the population and employment growth served by the proposed Project is assumed in the SCS. Additionally, the proposed Project is included within the RTP/SCS as Transportation Control Measure (TCM)-01. TCMs are projects that implementing strategies to reduce congestion and emissions from on-road mobile sources. The FCAA Section 108 (f) identifies the types of projects that are eligible to be TCMs. The SR 241 Toll Road Project has been designated as a TCM in all RTPs since 1991, and all AQMPs since 1994. As the

Project is consistent with the RTP and SCS adopted by SCAG pursuant to SB 375, it is consistent with a plan adopted to reduce GHG emissions.

As such, the proposed Project would result in a less than significant impact in regards to GHG emissions and consistency with applicable plans, policies, and regulations.

In addition, as described in the Final SEIR, approximately half of the Project site is located within areas approved for development under the RMV Ranch Plan (PAs 2N and 2S). Development associated with the Ranch Plan would occur with or without implementation of the Tesoro Extension Project.

Conclusion for Greenhouse Gas Emissions: The Tesoro Extension Project would not result in significant impacts related to the emission of GHGs. The analysis presented above does not represent new information pursuant to CEQA, Public Resources Code Section 21166.

Hazards and Hazardous Materials. The Final SEIR included an analysis of the Preferred Alternative/A7C-FEC-M's impacts related to hazards and hazardous materials, and concluded that all impacts would be mitigated to a level below significance. Based on the hazardous materials analysis within the Final SEIR, no documented hazardous materials sites were determined to exist along the Preferred Alternative/A7C-FEC-M alignment between Oso Parkway and Cow Camp Road.

As noted above, the Preferred Alternative/A7C-FEC-M and the proposed Project generally follow the same alignment and encounter similar existing conditions in relation to hazardous materials. Based upon the Project's Initial Site Assessment (which considers the minor design alterations incorporated into the Project), no known hazardous materials sites were found to occur along the Project site upon review of governmental hazardous materials records. In addition, site reconnaissance indicates that no Recognized Environmental Conditions (REC) were found to exist within Project site boundaries. Impacts are anticipated to be similar and applicable mitigation measures within the Final SEIR would also apply to the Tesoro Extension Project. The Project would not involve the routine use or disposal of large quantities of hazardous materials, and would not interfere with the implementation of an emergency response or emergency evacuation plan. The Project would provide additional access facilitate emergency response or evacuation.

In addition, approximately half of the proposed Project site is located within areas approved for development under the RMV Ranch Plan (PAs 2N and 2S). Development associated with the Ranch Plan would occur with or without implementation of the Tesoro Extension Project.

Conclusion for Hazards and Hazardous Materials: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Hydrology and Water Quality. Based on analysis of hydrology and floodplain impacts within the Final SEIR, the Preferred Alternative/A7C-FEC-M included PDFs between Oso Parkway and Cow Camp Road that minimized impacts to floodplains, waterways, and hydrologic systems to a level below significance. In addition, impacts related to water quality were determined to be less than significant due to the incorporation of various water quality PDFs, which included various BMPs such as bioswales and biostrips, Austin Sand Filters and permeable friction overlay.

The Project would not result in additional impacts to hydrology and water quality beyond those identified in the Final SEIR. As noted above, minor design alterations have been incorporated into the Project to avoid impacts to existing uses and/or surface waters. These minor design alterations would result in a slight shift in grading activities in comparison to the Preferred Alternative/A7C-FEC-M. It is anticipated that the Project would result in a total of approximately 5.6 million cubic yards of excavation and 5.5 million cubic yards of remedial grading. Since the Tesoro Extension Project and the Preferred Alternative/A7C-FEC-M generally follow the same alignment, share similar design characteristics, and would require a similar construction methodology, it is expected that earthwork quantities would be similar between Oso Parkway and Cow Camp Road. Similar hydrological conditions would be encountered during construction and the long-term use (extension of the SR 241) would remain the same.

Based upon the Runoff Management Plan (RMP) prepared for the Project, the Tesoro Extension Project would include a similar range of PDFs/BMPs to provide adequate drainage and minimize potential water quality impacts, such as extended detention basins, bioswales, and flow splitters.⁹ However, additional PDFs/BMPs that were not proposed as part of the Preferred Alternative/A7C-FEC-M are included in the Tesoro Extension Project, such as Austin Sand Filters and the use of permeable pavement throughout the entire alignment. These additional features are anticipated to result in less runoff and reduced impacts in comparison to the Final SEIR as the use of Austin Sand Filters and permeable pavement was not proposed. The Project would continue to be subject to applicable water quality regulations, which include coverage under the NPDES Construction General Permit and preparation of a Storm Water Pollution Prevention Plan (SWPPP). Moreover, the proposed Project would include a range of on- and off-site drainage facilities that would adequately convey storm water through the Project area, and would maintain pre-project hydrologic conditions in the downstream off-site tributaries.

While minor design alterations have been incorporated into the Project, the overall change in hydrology/water quality impacts would not be substantial. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized on the RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and are void of any unique development, topography, or other characteristics that would alter the conclusions reached within the Final SEIR. The updated RMP prepared for the Project addressed these minor design alterations and determined that the PDFs noted above would be sufficient to meet existing water quality standards.

In addition, as described in the Final SEIR approximately half of the proposed Project site is located within areas approved for development under the RMV Ranch Plan (PAs 2N and 2S). Development associated with the Ranch Plan would occur with or without implementation of the Tesoro Extension Project.

Conclusion for Hydrology and Water Quality: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

⁹ Runoff Management Plan, 241 Tesoro Extension Project, Saddleback Constructors.

Land Use and Planning. The analysis of land use and planning impacts related to the Preferred Alternative/A7C-FEC-M within the Final SEIR concluded that impacts in regards to land use and planning would be less than significant. The Tesoro Extension Project would not result in any new or increased land use impacts in comparison to A7C-FEC-M between Oso Parkway and Cow Camp Road.

In addition, the Project would not result in conflicts with existing or proposed land uses in the Project area. The Project generally follows the same alignment as A7C-FEC-M and has been designed to avoid conflicts with future development under The Ranch Plan. The County of Orange approved The Ranch Plan in November 2004, after the publication of the SOCTIIP Draft SEIR. The Ranch Plan depicted an alignment of the SR 241 extension as shown on the MPAH; however, the EIR for The Ranch Plan acknowledged that if another alignment is selected, the development plan would accommodate the selected alignment. The Ranch Plan was approved at a General Plan or conceptual level plan, with development areas shown as “bubbles” with no grading plan or placement of residential units or buildings. Development on the Ranch will not occur without additional, more detailed planning through an Area Plan process with the County of Orange. The future Area Plans can site development away from the Tesoro Extension Project while staying within the development bubbles. Thus, no conflicts with The Ranch Plan would occur under the proposed Project, and no disruption or division of future development would occur. Moreover, mitigation within the Final SEIR would remain applicable to the Tesoro Extension Project; refer to Appendix A, *Applicable Mitigation Measures/Commitments/Conditions.*

While minor design alterations have been incorporated into the Project, the overall change in the land use characteristics of the vicinity would not be substantial. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized on the RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and are and would not alter the conclusions reached within the Final SEIR.

Additionally, as described in the Final SEIR, approximately half of the proposed Project site is located within areas approved for development under the RMV Ranch Plan (PAs 2N and 2S). Development associated with the Ranch Plan would occur with or without implementation of the Tesoro Extension Project.

Conclusion for Land Use and Planning: The Tesoro Extension Project would not result in significant individual or cumulative effects not discussed in the Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

Mineral Resources. The analysis of mineral resources within the Final SEIR concluded that the Preferred Alternative/A7C-FEC-M would not result in significant impacts between Oso Parkway and Cow Camp Road. The Final SEIR identified the availability of mineral resources in San Juan Creek; however, the Tesoro Extension Project would not affect these resources, since it would terminate at Cow Camp Road and would not extend to, or impact, San Juan Creek.

The proposed Project and associated minor design alterations would not result in additional impacts to mineral resources beyond those identified in the Final SEIR. The Project study area is not located within an area of known mineral resources, either of regional or local value; the Final SEIR did not