

EXECUTIVE OFFICER SUMMARY REPORT  
June 19, 2013

ITEM: 9

SUBJECT: Public Hearing (Continued): Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*).

PURPOSE: To consider adoption of revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County.

RECOMMENDATION: Adoption of the revised Tentative Order No. R9-2013-0007 is recommended.

DISCUSSION: This Executive Officer Summary Report (EOSR) supplements the EOSR and Supplemental EOSR provided for Item 8 of the March 13, 2013 San Diego Water Board meeting (**Supporting Document No. 1**). At that meeting, the San Diego Water Board opened a public hearing to consider adoption of the Tentative Order for the Tesoro Extension (SR 241) (Tesoro Extension or Project), which was attended by over 200 people. The San Diego Water Board heard extensive testimony on the Tentative Order from a large diverse group of stakeholders including San Diego Water Board staff, F/ETCA, Save San Onofre Coalition (SSOC), elected officials, and other interested persons. The testimony included concerns that F/ETCA's Final Subsequent Environmental Impact Report (FSEIR) is not a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely upon in considering adoption of the Tentative Order.

At the conclusion of the hearing proceedings on March 13, 2013, the San Diego Water Board continued the public hearing to today's meeting to allow staff and counsel adequate time to 1) evaluate the comments submitted on CEQA compliance, 2) prepare responses to the remaining issues, and 3) draft revised conditions and/or additional

findings as appropriate for inclusion in the Tentative Order.

As directed by Board Chair Morales at the March 13, 2013 Board meeting, San Diego Water Board member questions (**Supporting Document No. 2**) were sent to F/ETCA and SSOC and responses were required by March 29, 2013. Timely written responses were received from F/ETCA and SSOC on March 29, 2013 (**Supporting Document Nos. 3 and 4**). Additional questions posed by Board members during the March 13 Board meeting will be addressed during the Board staff and F/ECTA presentations at today's meeting.

On April 18, 2013, the F/ETCA Board of Directors adopted Resolution 2013F-005 entitled, "*A Resolution of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency Approving Addendum to Final Subsequent Environmental Impact Report and Approving Conceptual Design of the Tesoro Extension Project*" (**Supporting Document No. 5**). In adopting the Resolution, the Board of Directors approved a conceptual design plan for the Tesoro Extension Project and adopted an Addendum to the Final Subsequent Environmental Impact Report (FSEIR) which can be used to fulfill the environmental review requirements of CEQA for the Tesoro Extension (**Supporting Document No. 6**). F/ETCA filed a Notice of Determination regarding the approval and adoption of the Resolution with the State Clearinghouse on April 19, 2013 for state agency review as required under CEQA Guidelines Sections 15205 and 15206 (**Supporting Document No. 7**). San Diego Water Board counsel has reviewed the information submitted in responses to the Board's CEQA questions and considered the findings and conclusions of the F/ETCA Board of Directors in their adoption of Resolution 2013F-005. Based on these and other considerations, San Diego Water Board counsel has concluded that the CEQA documentation provided by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering adoption of the revised Tentative Order.

The testimony of participants at the March 13, 2013 Board meeting also included concerns with the Tesoro Extension Project meeting the coarse (bed material) sediment supply preservation requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). The testimony focused on how the construction of the Tesoro Extension would affect the supply of bed material sediment

to Chiquita Creek, Gobernadora Creek, and San Juan Creek. F/ETCA testified that the findings and conclusions of the *Baseline Geomorphic and Hydrologic Conditions Report* for Rancho Mission Viejo (PCR, PWA, and BHI, 2002), demonstrated that constructing the Tesoro Extension through the headwater channels in Chiquita Creek and Gobernadora Creek would not adversely impact the supply of bed material sediment to those streams. The SSOC maintains that neither the overall purpose nor the detailed findings of the *Baseline Geomorphic and Hydrologic Conditions Report* support F/ETCA's assertion.

Tentative Order No R9-2013-0007 has been revised to address concerns regarding Project impacts to the coarse bed material sediment supply to downstream receiving waters. The Tentative Order now requires F/ETCA to submit and implement an updated Runoff Management Plan by October 31, 2013, prepared and certified by a properly qualified engineer, that clearly indicates the means for compliance with all of the requirements in the HMP, including those regarding coarse bed material sediment supply. The HMP contains provisions for avoiding coarse sediment yield areas and implementation of measures that allow coarse sediment to be discharged to receiving waters to prevent sediment deficit. A detailed discussion of this issue can be found in response to Comment No. 1 in the San Diego Water Board Revised Response to Comments document (**Supporting Document No. 8**). This document replaces and updates the previous version that was prepared for the March 13, 2013 Board meeting. The Revised Response to Comments document addresses all timely submitted comment letters that were received by March 1, 2013.

#### **Final Revisions to the Tentative Order**

San Diego Water Board staff is proposing final revisions to the Tentative Order for the San Diego Water Board's consideration. These revisions are shown in redline/strikeout text in the Revised Tentative Order (**Supporting Document No. 9**) and include:

1. A requirement to update, certify, and implement the Runoff Management plan (RMP) (See section V.B of the Revised Tentative Order);
2. A requirement to develop and implement a monitoring

program to protect water quality and assess compliance with the receiving water limitations of the Tentative Order (see Finding G and section VIII.A of the Revised Tentative Order);

3. Changes to the CEQA findings to acknowledge that the CEQA documentation produced by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering the adoption of the Tentative Order (see Finding N of the Revised Tentative Order); and
4. Corrections of typographical errors and incorporation of suggested text by stakeholders.

By letter dated May 30, 2013 the Revised Tentative Order was released for public review and comment. Consistent with the direction provided by Board Chair Morales at the March 13, 2013 Board meeting, further written comments are limited to: 1) revisions to the Tentative Order since March 13, 2013; and 2) comments pertaining to the Revised Tentative Order and CEQA. Comments on the Revised Tentative Order must arrive no later than 5:00 p.m. on June 7, 2013. San Diego Water Board staff responses to comments received on the Revised Tentative Order and any errata for the Revised Tentative Order will be addressed during staff's presentation at today's meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. EOSR and Supplemental EOSR for Item 8 of the March 13, 2013 San Diego Water Board meeting.
2. San Diego Water Board Member Questions for Written Response Due March 29, 2013 by 5:00 p.m.
3. Shute, Mihaly & Weinberger LLP, Save San Onofre Coalition's Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
4. Nossaman LLP, Foothill/Eastern Transportation Corridor Agencies, Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
5. A Resolution of the F/ETCA Board of Directors Approving the Addendum to the Final Subsequent Environmental Impact Report and the Conceptual Design of the Tesoro Extension Project. (Resolution

- No. 2013F-005), dated April 18, 2013.
6. Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report, dated February 2013.
  7. F/ETCA Notice of Determination, dated April 23, 2013.
  8. San Diego Water Board Revised Response to Comments document.
  9. Revised Tentative Order No. R9-2013-0007 with attachments.