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**B. Discussion.**

**1. F/ETCA Prepared the Addendum In Association with the F/ETCA's Evaluation of the Tesoro Project. Nothing in CEQA Requires the Lead Agency to Approve a Project at the Time That the Lead Agency Approves an Addendum.**

The premise of the question is that the F/ETCA did not prepare the Addendum in association with the F/ETCA's evaluation to approve the Tesoro Extension. This premise is incorrect as a factual matter. As described, above, the F/ETCA Board will take a number of future discretionary approvals of the Tesoro Extension. The F/ETCA prepared the Addendum so that, prior to taking a discretionary approval, the F/ETCA could document whether the changes to the SOCTIIP proposed by the Tesoro Extension required the preparation of a subsequent or a supplemental EIR. Thus, the F/ETCA did in fact prepare the Addendum in association with contemplated discretionary approvals by the F/ETCA.

The premise of the question is also incorrect as a matter of law. Nothing in CEQA requires the lead agency to approve a project at the same time that the lead agency approves an addendum. Guidelines section 15164, subdivision (d), provides that the agency "shall consider the addendum . . . **prior to making a decision on the project.**"<sup>38</sup> The California courts have made it clear that it is appropriate for an agency to prepare an addendum before the agency determines whether changes to the project require the preparation of a subsequent or supplemental EIR.<sup>39</sup> Thus, it is clear that a lead agency is not required to take an action approving a project when the lead agency approves an addendum.

**2. The F/ETCA is the Lead Agency. The Water Board Is Not Authorized to be the Lead Agency for the Tesoro Extension.**

Section 21067 defines the lead agency as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect on the environment." The Guidelines definition of lead agency adds that the lead agency will decide what type of document to prepare and "will cause the document to be prepared."<sup>40</sup> The Guidelines also provide criteria for identifying the lead agency, stating that the public agency that will carry out a project shall be the lead agency. In *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, the court held that the appropriate lead agency is the one that has the principal responsibility to implement the project.<sup>41</sup> The project at issue in the case was the amendment of the contracts between the California Department of Water Resources and the state water contractors governing the delivery of water from the State Water Project.<sup>42</sup> In evaluating a challenge to one of the state water contractors

<sup>38</sup> Guidelines, § 15164, subd. (d), emphasis added.

<sup>39</sup> See *Bowman, supra*, 185 Cal.App.3d 1065; *Fund for Env't'l Defense, supra*, 204 Cal.App.3d 1538; *Melom, supra*, 183 Cal.App.4th 41; see also, 2 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont. Ed. Bar. 2012) § 19.42.

<sup>40</sup> Guidelines, § 15367.

<sup>41</sup> 83 Cal.App.4th at p. 906.

<sup>42</sup> *Id.* at pp. 900-903.

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servicing as the lead agency instead of the Department of Water Resources, the court highlighted the crucial role of the lead agency, stating "the lead agency plays a pivotal role in defining the scope of environmental review, lending its expertise in areas within its particular domain, and in ultimately recommending the most environmentally sound alternative."<sup>43</sup>

Further, "so significant is the role of the lead agency that CEQA proscribes delegation."<sup>44</sup> Referencing the Department of Water Resources' "statutory responsibility to build, manage and operate" the State Water Project, the court found that the Department had the principal responsibility to implement the Monterey Agreement, and thus was the proper lead agency.<sup>45</sup>

F/ETCA is a joint powers authority formed pursuant to the Joint Exercise of Powers Act<sup>46</sup> and other provisions of state law<sup>47</sup> to plan, finance and construct a toll road system in Orange County. Thus, the F/ETCA is the agency with the authority and responsibility to carry out the SR 241 toll road in Orange County including the Tesoro Extension. The F/ETCA is the only agency that may act as lead agency for the Tesoro Extension under CEQA. Indeed, since its formation in 1986, the F/ETCA is the only agency to act as lead agency with regard to the SR 241. No other agency has the statutory responsibility to build, finance, manage and operate the toll road system in Orange County, therefore, no other agency may act as lead agency with regard to the SR 241.

F/ETCA complied with CEQA's procedural requirements for consulting with the Water Board as a responsible agency.<sup>48</sup> F/ETCA sent the SOCTIIP FSEIR Notice of Preparation to the Water Board in 2001. A copy of the relevant documents is included in Attachment B. F/ETCA has taken various discretionary approvals of the extension of SR 241 since 1986. F/ETCA provided Information about the SOCTIIP and F/ETCA's status as Lead Agency to the Water Board through the Notice of Preparation, and the Water Board submitted a response to the Notice of Preparation. See Attachment C for the Water Board response to the Notice of Preparation.

### **3. The Water Board is a Responsible Agency for the Tesoro Extension.**

The Water Board is a responsible agency under CEQA because it has discretionary approval authority over the Waste Discharge Requirement Order.<sup>49</sup> As a responsible agency under CEQA, the Water Board's role is 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."<sup>50</sup> Comments by responsible agencies "shall be limited to those project

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<sup>43</sup> *Id.* at p. 904.

<sup>44</sup> *Id.* at p. 907.

<sup>45</sup> *Id.* at pp. 906, 907.

<sup>46</sup> Gov. Code, § 6500 *et seq.*

<sup>47</sup> Gov. Code § 66484.3.

<sup>48</sup> Guidelines, §§ 15052, subd. (a)(3) and 15082.

<sup>49</sup> Pub. Resources Code, § 21069; Guidelines, § 15381.

<sup>50</sup> Pub. Resources Code, § 21002.1, subd. (d).

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activities which are within the agency's area of expertise or which are required to be . . . approved by the agency . . . .<sup>51</sup>

CEQA and the CEQA Guidelines require the Regional Board to rely on the CEQA documentation approved by the F/ETCA. The determination of the lead agency of whether to prepare an EIR:

[S]hall be final and conclusive for all persons, including Responsible Agencies, unless:

- (1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,
- (2) Circumstances or conditions changed as provided in Section 15162, or
- (3) A Responsible Agency becomes a Lead Agency under Section 15052.<sup>52</sup>

None of those conditions are applicable here: the determination not to prepare a subsequent or supplemental EIR has not been successfully challenged in court, no circumstances or conditions have changed that require a subsequent or supplemental EIR (as documented in the Addendum), and the Water Board is not eligible to act as the lead agency for CEQA purposes.<sup>53</sup>

The Water Board is also not eligible to become the lead agency under Guidelines section 15052, which provides limited circumstances for a "shift" in the designation of lead agency. Each of those three circumstances are summarized below, along with an explanation as to why, here, such a shift in lead agency to the Water Board is not authorized under CEQA.

The first circumstance is where the lead agency did not prepare "**any**" environmental document for the project and the time for filing a CEQA lawsuit has expired.<sup>54</sup> This exception does not apply here since the TCA prepared two EIRs and an Addendum for the Tesoro Extension. As previously referenced, for the 2006 SOCTIIP Final SEIR, F/ETCA sent both a Notice of Preparation and the Draft SEIR to the Water Board for review. F/ETCA submitted the Addendum to the Water Board in February, 2013.

The second circumstance is where the lead agency prepared an environmental document, but **all** of the following conditions occur: (a) a subsequent EIR is required; (b) the lead agency has granted final approval for the project; and (c) the statute of limitations for filing a CEQA lawsuit has expired.<sup>55</sup> This exception does not apply here because the Addendum

<sup>51</sup> Guidelines, § 15096, subd. (d); see also *id.*, § 15086, subd. (c) (same).

<sup>52</sup> Guidelines, § 15050, subd. (c).

<sup>53</sup> Guidelines, § 15052, subd. (a).

<sup>54</sup> Guidelines, § 15052, subd. (a)(1).

<sup>55</sup> Guidelines, § 15052, subd. (a)(2).

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prepared for the Tesoro Extension documents that the Tesoro Extension will not result in a new significant impact, or more severe significant impacts, than were disclosed in the 2006 FSEIR. Thus, no subsequent EIR is required and CEQA prohibits the Water Board from requiring the preparation of a subsequent EIR.<sup>56</sup> As detailed above, the TCA has not issued a final approval of the Tesoro Extension.

The third circumstance is where the lead agency prepared inadequate environmental documents without consulting with the responsible agency by sending the responsible agency notice of the preparation of the EIR, and the time for filing a CEQA lawsuit against the lead agency has expired.<sup>57</sup> F/ETCA sent the Notice of Preparation regarding the 2006 Draft SEIR to the Water Board. In addition, the time for filing challenges to the F/ETCA's approval of the Tesoro Extension has not expired. Therefore, this exception does not apply.

In conclusion, the Water Board cannot assume the role of lead agency since none of the conditions in CEQA Guidelines section 15052 have occurred. Furthermore, the Water Board does not have the authority to unilaterally assume lead agency status over the TCA's objection.<sup>58</sup>

**4. EXPLAIN HOW THE TESORO EXTENSION 5.5 MILE TOLL ROAD CONSTRUCTION RELATES TO THE PROGRAM LAID OUT BY AB 32.**

**A. Answer.**

The Tesoro Extension relates to the AB 32 program through consistency and compliance with plans adopted by the California Air Resources Board and the Southern California Association of Governments to implement AB 32 and related legislation governing greenhouse gas emissions.

**B. Discussion.**

**1. AB 32, SB 375 and SCAG's RTP/SCS.**

AB 32, the Global Warming Solutions Act of 2006, established the objective of reducing greenhouse gas ("GHG") emissions in California to 1990 levels by 2020.<sup>59</sup> AB 32 delegated to the California Air Resources Board ("CARB") the responsibility to develop regulations to achieve the GHG emission reduction objective. In the AB 32 Scoping Plan CARB adopted a set of control strategies for different industries and sectors to achieve the required GHG reduction. The AB 32 Scoping Plan identifies a 5 million metric ton reduction in GHG emissions reduction from regional transportation sources throughout the state.<sup>60</sup> In addition, the AB 32 Scoping Plan identified other substantial GHG emissions reductions required to be achieved from California's motor vehicle emissions standards.

<sup>56</sup> Pub. Resources Code, § 21166.

<sup>57</sup> Guidelines, § 15052, subd. (a)(3).

<sup>58</sup> Guidelines, § 15053, subd. (e).

<sup>59</sup> Cal. Health & Safety Code, § 38550.

<sup>60</sup> California Air Resources Board for the State of California, Climate Change Scoping Plan (2008), p. ES-5.

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Subsequent to the enactment of SB 32, the Legislature adopted SB 375, the Sustainable Communities and Climate Protection Act of 2008, to establish detailed requirements for reducing regional transportation GHG emissions through the regional transportation planning process applicable to local, regional and state transportation project.<sup>61</sup> CARB adopted regional GHG reduction targets for each Metropolitan Planning Organization ("MPO") in California (such as the Southern California Association of Governments – SCAG). Meeting the targets is to be demonstrated through the Sustainable Community Strategy (SCS) adopted by the MPO.<sup>62</sup> The SCS is a GHG reduction plan that is coordinated with the Regional Transportation Plan prepared by the MPO and that is consistent with the regional housing needs that are also determined by the MPO.

The SCAG Region incorporated its SCS into the 2012-2035 RTP/SCS to insure consistency between the region's transportation plan and land use strategies to reduce GHG emissions from motor vehicles.

SB 375 allowed subregions within the SCAG Region to prepare their own Sustainable Community Strategies to and to be incorporated into the SCS adopted by the MPO.<sup>63</sup> The Orange County subregion, in which Tesoro Extension is located, prepared the Orange County SCS, based on OCTA's Long Range Transportation Plan 2035. The Orange County SCS included a package of 15 land use and transportation strategies that together reduce GHG emissions from motor vehicles to achieve Orange County's share of the SCAG GHG emission reduction targets.

SCAG's 2012-2035 RTP/SCS, which includes the Orange County SCS, not only met but exceeded the GHG reduction targets set by CARB pursuant to SB 375:

**SCAG Region GHG Reduction Performance Per SB 375**

<b>Year</b>	<b>Target</b>	<b>Reduction Achieved</b>
<b>2020</b>	8%	9%
<b>2035</b>	13%	16%

Source: SCAG 2012-2035 RTP/SCS, Adopting Resolution, April 2012.

The following discussion identifies specific locations within SCAG's regional RTP/SCS where the Tesoro Extension is assumed and modeled as part of the plan that reduces GHG emissions. These include the Tesoro Extension's role as part of the transportation network assumed and modeled in the RTP/SCS; a transportation project assumed in the development of the RTP/SCS regional growth forecast; and its consistency with RTP/SCS strategies for strategic highway system completion to reduce congestion and emissions.

The following discussion also identifies specific locations in the Orange County SCS, adopted as part of the regional RTP/SCS, that further describe the Tesoro Extension's

<sup>61</sup> Gov. Code, § 65080.

<sup>62</sup> Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012).

<sup>63</sup> Gov. Code, § 65080, subd. (b)(2)(B).

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role in, and consistency with, the GHG emission reduction strategy for the Orange County subregion.

**2. SCAG's RTP/SCS Transportation Modeling Assumptions for Tesoro Extension.**

SCAG's 2012-2035 RTP/SCS, adopted in April 2012, includes the Tesoro Extension in its transportation network designed to reduce regional GHG emissions. The Tesoro Extension is included in project listing ORA052 from the 2013 Federal Transportation Improvement Program. SCAG has stated explicitly that the Tesoro Extension is included in ORA052. The Tesoro Extension has been part of ORA052 since 1991 when it was added to the SCAG RTP. ORA052 is also included in the RTP/SCS Project List appendix of modeled project on page 65.<sup>64</sup>

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<sup>64</sup> See Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012), p. 65  
<<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>> (as of Mar. 29, 2013).

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Project Sheet

2013 FTIP (FY 2012/2013 - FY 2017/2018)  
 County Approved  
 Cost in Thousands

Project ID	DRMS#2	County Change	Version	Approved	Date
Agency	TCA				
Station	S	Route	241	CFC Update	1/16/2013 1:21 PM
Regis #	D1	Conform. Cat	TCM	By	Bon
Encl #	15 #	As Baur.	SCAB	SCAB Update	
Phase	Engineering/Plans, Specifications and Estimates (PS&E)			for	
Program Code	CAN67	NEW HIGHWAY (NO HOV LANES) : NRS		FTIP ID	CRA052
Construction Dates	Starting	Ending	Completion Date	OTIPS ID	20930003057
PA&D			8/15/2030	SA&E No	
PA&D Item			Conformity Category	Env. Doc. Type	FEIR
ROW			TCM	Env. Doc. Date	2/1/2008
CGN			Current Project Status	Year Added	0
			County Approved (as of 2/5/2013 11:23:40 AM)		
Change Reason	MINOR CHG			Project Total Cost	1,416,992
Project Description	(FTC-S) (I-5 TO OSD PKWY) (16M) 2 MF EA, DIR BY 2013; AND 1 ADDITIONAL MF EA, DIR, PLS CLMENG & AUX LANES AS REQ BY 2030 PER SCAQ/TCA MOU 4.05/01. #1988				
Fund Type	Fiscal Year	ENR	HOW	CGN	Fund Total
DRMS#04PFAA LU	2013/2014			7,119	7,119
	2006/2006	5,000		2,119	5,000
	2006/2007	20,000	35,000		65,000
	2007/2008	10,000		80,000	90,000
	2008/2009			100,000	100,000
	2009/2010			8,000	8,000
	2010/2011	6,443			6,443
	2011/2012	8,272	1,780		8,052
	2012/2013	6,677	25,513	220,000	252,190
	2013/2014	20,306		249,775	270,081
	2014/2015			249,775	249,775
	2015/2016			249,775	249,775
	2017/2018			38,519	38,519
	2018/2019			38,519	38,519
	2019/2020			38,519	38,519
PREPARE FUNDS		74,698	62,283	1,272,992	1,409,973
Total		74,698	62,283	1,280,001	1,416,992
Comments	general CRA052 includes Terms Extension: the portion of SR 241 between Oso Parkway and Cow Camp Road. Cow Camp Road is listed separately in the FTIP at CRA05201. com 2011 FTIP: Timely Implementation Status - no change				

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### **3. SCAG's RTP/SCS Growth Assumptions Reflect Tesoro Extension.**

The RTP/SCS regional growth forecast is based on the RTP/SCS transportation modeling network for Orange County, which includes the Tesoro Extension. The 2012 RTP/SCS regional growth forecast assumes population and employment growth served by the proposed Tesoro Extension, including Rancho Mission Viejo's Ranch Plan development of 14,000 housing units and 5 million square feet of commercial development.

The Orange County Projection 2010-Modified is Orange County's portion of the regional growth forecast. OCP-2010 Modified was developed by the Center for Demographic Research at Cal State University, Fullerton, in collaboration with the Orange County Council of Governments (OCCOG). SCAG adopted OCP-2010 Modified into the regional growth forecast. Both the SCAG regional growth forecast and OCP-2010 Modified assume construction of the Tesoro Extension.

By 2035, SCAG's Regional Growth Forecast/OCP-2010 Modified assumes that South Orange County population will grow by 27 percent and employment growth is estimated at 32 percent. A large portion of the growth is approved for the Ranch Plan area, parts of which are adjacent to the north and south ends of the Tesoro Extension. Growth in other parts of South Orange County represents the build-out of the remaining areas in accordance with adopted plans, consistent with the SCAG Sustainable Communities Strategy. The future growth pattern adjacent to the Tesoro Extension is depicted on Page 147 of the RTP/SCS in Exhibit 4.17.<sup>65</sup>

The table below presents the specific growth assumptions for the South Orange County area SCAG's regional growth forecast that contains OCP-2010 Modified.

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<sup>65</sup> See Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012), exh. 4.17 <<http://rtpscs.scaq.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>> (as of Mar. 29, 2013).

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**Existing and 2035 Demographic Data Project  
 Contained in SCAG Regional Projections and OCP-2010 Modified**

Jurisdiction/ Category	OCP-2010		Growth
	2010	2035	
<b>City of San Juan Capistrano</b>			
Housing	11,945	12,874	8%
Population	34,649	37,838	9%
Employment	13,787	15,833	15%
<b>City of Mission Viejo</b>			
Housing	34,196	34,846	2%
Population	93,390	97,039	4%
Employment	37,310	38,813	4%
<b>City of San Clemente</b>			
Housing	25,987	27,243	5%
Population	63,620	68,297	7%
Employment	22,569	26,592	18%
<b>Ladera (Unincorporated)</b>			
Housing	8,475	9,338	10%
Population	25,777	29,197	13%
Employment	3,926	4,134	5%
<b>Ranch Plan (Unincorporated)</b>			
Housing	0	14,000	--
Population	0	44,355	--
Employment	0	16,748	--
<b>Total for Subarea</b>			
Housing	80,603	98,301	22%
Population	217,436	276,726	27%
Employment	77,592	102,120	32%
Source: OCP-2010 Modified (CDR, January 2012).			

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#### 4. SCAG's RTP/SCS Strategies Incorporate the Tesoro Extension.

The 2012 RTP/SCS includes transportation and land use strategies to reduce air emissions, including GHG emissions. These programs are designed to reduce congestion, increase access to public transportation, reduce and shorten trips, and enhance coordination between land use and transportation decisions. Specifically, the RTP/SCS includes the Tesoro extension in the following strategies:

1. System Completion/Highways and Arterials. Page 42 of the RTP/SCS calls for projects needed to complete the highway and arterial system necessary for access to jobs, education, healthcare and recreation:

"Highways and Local Arterials. The expansion of highways and local arterials has slowed down over the last decade. This has occurred in part due to increasing costs and environmental concerns. However, there are still critical gaps and congestion chokepoints in the network that hinder access to certain parts of the region. Locally developed county transportation plans have identified projects to close these gaps, eliminate congestion chokepoints and complete the system. They are included in the RTP/SCS."

SR 241 Improvements, which include the Tesoro Extension, are included in Table 2.2, Major Highway Completion Projects that were analyzed in the RTP/SCS modeling and regional criteria pollutant and greenhouse gas emissions analysis at <http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 42.

The Tesoro Extension is also depicted on Exhibit 2.1 as a toll project assumed in the transportation and greenhouse gas emission modeling for the TP/SCS: <http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 45.

2. Priced Transportation System. The Orange County toll roads pioneered the concept of priced transportation in the SCAG region. The Tesoro Extension is a priced facility that will implement the Orange County toll system, and provide interoperability with new priced HOT lanes and Express Lanes in the region as envisioned in the RTP/SCS as a means of cutting congestion and attendant emissions, as the following two citations illustrate:

Transportation investments that support the integrated RTP/SCS that achieves SB 375 GHG reduction targets include "Toll Facilities -- closure of critical gaps in the highway network to provide access to all parts of the region."

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 6.

"[R]ecent planning efforts have focused on enhanced system management, including integration of pricing to better utilize existing capacity and to offer users greater travel time reliability and choices. Express/HOT lanes that are appropriately priced

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can outperform non-priced lanes in terms of throughput, especially during congested periods. Moreover, revenue generated from priced lanes can be used to deliver the needed capacity provided by the Express/HOT lanes sooner and to support complementary transit investments.”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 56.

3. Increased Transit Access. The median of the Tesoro Extension is reserved for future transit use (such as dedicated bus lanes or for rail). Further, the Tesoro Extension will be available for express bus routes as of the opening date. In this regard, the Tesoro Extension supports the RTP/SCS transportation strategies related to increased transit access as a means of reducing GHG emissions:

“Expand the use of transit modes in our subregions such as BRT, rail, limited-stop service, and point –to-point express services utilizing the HOV and HOT lane networks [i.e., congestion-managed, priced transportation facilities such as the Tesoro Extension].”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 154.

“Encourage transit providers to increase frequency and span of service in TOD/HQTA and along targeted corridors where cost-effective and where there is latent demand for transit usage.”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 154.

4. Regional Open Space. Tesoro Extension supports the RTP/SCS strategy of setting aside regional open space to reduce GHG emissions. The regional open space strategy is designed to keep the region more compact and more efficiently served by the transportation system, thus reducing trips, VMT and congestion. The strategy also provides open space GHG sequestration. The Tesoro Extension, as part of Orange County's toll road system, contributes to permanent open space dedication mitigation measures already in place in South Orange County. A total of 2,200 acres of open space have been permanently protected as toll road mitigation.<sup>66</sup>

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<sup>66</sup> See Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012), p. 153 <<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>> (as of Mar. 29, 2013); Regional Council of the Southern Association of Governments, 2012-2034 Regional Transportation Plan/Sustainable Communities Strategy, Subregional Sustainable Communities Strategies Appendix, Orange County Subregional SCS, pp. 247-249 <[http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP\\_SubregionalSustainableCommunitiesStrategies.pdf](http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP_SubregionalSustainableCommunitiesStrategies.pdf)> (as of Mar. 29, 2013.)

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## **5. Tesoro Extension in the Orange County SCS.**

The Tesoro Extension is part of the SCS transportation network and land use strategy to reduce GHG emissions at the local level, as well as at the regional level. SB 375 allowed subregions within the SCAG region to prepare their own SCS plans and strategies for reducing GHG emissions. The Orange County Transportation Authority (OCTA) and Orange County Council of Governments (OCCOG), acting on behalf of the Orange County subregion, prepared a detailed Orange County SCS. The Orange County SCS was adopted as part of the regional RTP/SCS, and is included in its entirety as an appendix to the RTP/SCS.

## **6. Consistency with Orange County SCS Strategies.**

The Tesoro Extension is consistent with, and included in, all applicable Orange County SCS strategies:

**“Increase regional accessibility in order to reduce vehicle miles traveled.”**

The Tesoro Extension increases accessibility to and from South Orange County, and results in reduced vehicle miles traveled, as documented in the traffic study.

**“Support natural land restoration and conservation and/or protection offering significant carbon mitigation potential via both sequestration and avoidance of increased emissions due to land conversion.”**

The Tesoro Extension, as part of the Orange County toll road system, has already contributed to dedication of 2,200 acres of open space as toll road mitigation that provides carbon sequestration benefits and prevents land conversion in strategic areas. The TCA also contributed substantial funds to endow the management of the 38,000 acre wildlife habitat reserve established pursuant to the Orange County Central-Coastal Natural Community Conservation Plan and Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. The Orange County SCS further details TCA's open space program on page 252, and key open space projects are described on page 278. TCA open space mitigation areas are mapped in Figure 62, page 289.

**“Eliminate bottlenecks and reduce delay on freeways, toll roads and arterials.”**

The Tesoro Extension is a tolled facility that will be priced to achieve free-flow conditions that avoid GHG emissions that spike up due to congestion and idling.

**“Continue existing, and explore expansion of, highway pricing strategies.”**

As a priced highway facility, the Tesoro Extension directly supports this SCS strategy. The Orange County SCS discussion on page 252 identifies SR 241 Improvements, which include the Tesoro Extension, as an example of this strategy. Further, Figure 45 (page

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253) shows the Tesoro Extension as part of committed toll improvements along the SR 241 corridor. The discussion on page 263 clarifies that completion of SR 241, which includes the Tesoro Extension, is included in the SCS:

"Planned future toll projects in Orange County include the Foothill Transportation Corridor South project [which includes the Tesoro Extension]...When completed, the southern portion for State Route 241 would enhance the network by adding 105 new tolled lane-miles . . .

"Further, TCA is planning to convert its operations to all-electronic tolling, eliminating any potential congestion at toll booths due to cash transactions. This streamlining program will result in further GHG emission reduction associated with congestion."

**"Improve transit modes through enhanced service frequency, convenience, and choices."**

The median of the Tesoro Extension is reserved for future transit uses. In addition, the Extension can accommodate express bus service. On page 260, the Orange County SCS specifically calls for exploration of additional express bus routes for inter-county and intra-county service. On page 263, the Orange County SCS states:

"In addition, TCA's public toll roads can accommodate and facilitate additional future intra-county and inter-county express bus service. The Toll Roads access major future employment growth concentrations in Irvine, Anaheim, Orange and south Orange County, where express bus service may be viable."

**"Implement near term (Transportation Improvement Program and Measure M2 Early Capital Action Plan) and long-term (LRTP 2035 Preferred Plan) transportation improvements to provide mobility choices and sustainable transportation options."**

The Tesoro Extension is included as Project Number ORA052 in OCTA's Transportation Improvement Program. The project listing is the same as included under section B. above.

SCAG RTP/SCS Appendix, Orange County SCS, Page 210, Sustainability Strategies.  
[http://rtpscscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP\\_SubregionalSustainableCommunitiesStrategies.pdf](http://rtpscscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP_SubregionalSustainableCommunitiesStrategies.pdf)

Mr. Darren Bradford  
California Regional Water Quality Control Board,  
San Diego Region  
March 29, 2013  
Page 29

In addition, the Tesoro Extension is depicted on Figure 24, page 230, which shows significant housing growth to achieve regional housing needs immediately adjacent to the Extension by 2035. Figures 32 and 33 (pages 235 and 236) chart robust job growth in areas served by the Tesoro Extension by 2020 and 2035.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Thornton". The signature is written in a cursive style with a large initial "R".

Robert D. Thornton  
of Nossaman LLP

RDT/lmb

cc: Catherine George Hagan, San Diego Water Board  
David Gibson, San Diego Water Board  
Kelly Dorsey, San Diego Water Board  
Valarie McFall, TCA

# **ATTACHMENT A**



Source: TCA Eagle Aerial Imagery, 2011



TESORO EXTENSION PROJECT

### SOCTIIP and Tesoro Extension Comparison

# **ATTACHMENT B**

San Joaquin Hills  
Corridor Agency  
  
Chairman  
JOEL LOUENSCHEIDER  
LAGUNA HILLS



**TRANSPORTATION CORRIDOR AGENCIES**

Foothill/Eastern  
Corridor Agency  
  
Chairman  
SUZIE WILSON  
MISSION Viejo

Date: June 7, 2001

To: Interested Parties

Subject: Notice of Preparation of a Draft Subsequent Environmental Impact Report

The Foothill/Eastern Transportation Corridor Agency (TCA) is preparing a Subsequent Environmental Impact Report for proposed transportation improvements in southern Orange County and northern San Diego County. The proposed transportation improvements being reviewed are three toll road corridor extensions, arterial roadway improvements and widening of the Interstate 5. These transportation improvements and the potential impacts are described in more detail in the attached Notice of Preparation (NOP).

The NOP is being sent to you based on your interest in the project or proximity to potentially impacted project areas. The NOP is required under the California Environmental Quality Act (CEQA) and provides a description of the proposed project, the probable environmental effects of the project and where written comments on the project can be sent. This NOP is also being sent to federal, state and local agencies and cities for their review and comment.

We welcome any input you may have regarding the project and the various environmental resource areas that may be affected. In accordance with CEQA, comments will need to be submitted to the TCA within 30 days of receipt of this NOP.

Sincerely,

Macie Cleary-Milan  
Deputy Director, Environmental and Planning

Walter D. Rieubert, L. M. R. C. ARCHIVE, W. D. R.

125 PACIFICA, SUITE 100, IRVINE CA 92618-3304 • PO BOX 53770, IRVINE CA 92619-3770 • 949/754-3400 FAX 949/754-3457  
www.the1011000s.com

Members: Anaheim • Costa Mesa • County of Orange • Dana Point • Irvine • Lake Forest • Laguna Hills • Laguna Niguel • Laguna Woods  
Mission Viejo • Orange • Newport Beach • Rancho Santa Margarita • Santa Ana • San Clemente • San Juan Capistrano • Tustin • Yorba Linda

© 1999-2001 TCA

VERIFICATION (C.C.P. 446 AND 2015:5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing \_\_\_\_\_ and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am  an officer  a partner \_\_\_\_\_  a \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on (date) \_\_\_\_\_, at \_\_\_\_\_, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature

PROOF OF SERVICE

CCP 1013a(3) Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange State of California. I am over the age of 18 and not a party to the within action; my business address is 7 Cushing, Irvine, California 92618

On (date) 6/7/01, \*\*I served the foregoing document described as Notice of Preparation on prop. owners, interested parties, etc. in this action.

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

\*I deposited such envelope in the mail at XXXXXX Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid at \_\_\_\_\_, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on (date) 6/7/01, at XXXXXX Santa Ana, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Josie Pimentel  
Type or Print Name

Josie Pimentel  
Signature

\*(BY MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)  
\*\*FOR PERSONAL SERVICE, SIGNATURE MUST BE THAT OF MESSENGER)

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7000 1670 0011 1278 9585  
 Richard Baker  
 California Dept. of Conservation  
 5816 Corporate Ave Ste 200  
 Cypress, CA 90630-4747

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

*Santa Watson* 6-15-11

C. Signature  Agent

X *Santa Watson*  Addressee

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7000 1670 0011 1279 0758  
 San Diego Regional Water Quality  
 9771 Clairemont Mesa Blvd  
 San Diego, CA 92124-1324

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

*Denise Jones* 6/15

C. Signature  Agent

X *Denise Jones*  Addressee

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7000 1670 0011 1280 6992  
 Mr. John Sibley  
 Director  
 County of Orange, Public Facilities & Resources  
 PO Box 4048  
 Santa Ana, CA 92702-4048

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

*C. Brorson* 6/15/11

C. Signature  Agent

X *C. Brorson*  Addressee

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

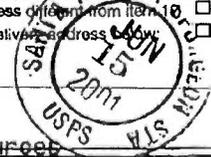
3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952



# **ATTACHMENT C**

# California Regional Water Quality Control Board

## San Diego Region

---

Internet Address: <http://www.swrcb.ca.gov/~rwqcb9/>  
9771 Clairemont Mesa Boulevard, Suite A, San Diego, California 92124-1324  
Phone (858) 467-2952 • FAX (858) 571-6972

June 14, 2001

Foothill-Eastern Transportation Corridor Agencies  
125 Pacifica, Suite 100  
Irvine, CA 92618-3304

Page 1 of 6

ATTN: Macie Cleary-Milan

Subject: **South Orange County Transportation Infrastructure Improvement Project**

Dear Ms. Cleary-Milan,

We have received the subject documents and offer the following comments. We are also providing some additional information regarding the possible regulatory requirements for the subject project since this information has not been selected to be project-specific. Some of the information might not apply to this project.

We would like to see the following questions/concerns addressed in your Environmental Impact Report regarding the subject project:

- a) Would the proposed project create a potentially significant adverse environmental impact to drainage patterns or the rate, or quantity of surface water and runoff?
- b) Would the proposed project result in discharges into surface waters during or following construction, or in any way lead to a significant alteration of surface water quality including, but not limited to temperature, dissolved oxygen, turbidity or other typical urban storm water pollutants (e.g., metals, pathogens, synthetics, organics, sediment, nutrients, oxygen demanding substances.)?
- c) Would the proposed project have a potentially significant adverse impact to groundwater flow though the alteration of pressure head (water table level) within the aquifer or though the interception of groundwater flow via cuts or excavation?
- d) Would the proposed project result in the loss or degradation of any beneficial uses that have been designated for the water bodies that will be directly or indirectly affected by the project?
- e) What mitigation measures are being proposed to eliminate or compensate for the adverse effects identified in (a) through (d) above?

---

California Environmental Protection Agency

Recycled Paper



Page 2 of 6

### Permits

There are six potential permits or approvals that might be needed from the Regional Quality Control Board during the life of a project. Additional information on these permits is provided to assist you in determining the permits that may be required for the proposed project; as well as to encourage project design modifications that may assist in obtaining all needed permits from the RWQCB or SWRCB.

During the construction and development phases of a project, the project could be subject to any one or more of four types of RWQCB permits or approvals. These include; (1) the Statewide National Pollutant Discharge Elimination System (NPDES) General Construction Activity Storm Water Permit, (2) the Clean Water Act 401 water quality Certification, (3) General Dewatering Permit, and (4) Dredging Permit. Upon completion of construction, and throughout the project's operational life, the project may be also subject to one or both of the following two types of RWQCB permits: (1) NPDES permit for any point source discharge of wastes to surface waters; and (2) State Waste Discharge Requirements (WDRs) for any waste discharge to land. Examples of discharges to land requiring WDRs include landfills, reclaimed water discharges from sewage treatment plants for irrigation purposes, sand and gravel operations, and animal confinement facilities.

Water quality degradation is regulated by the Federal National Pollutant Discharge Elimination System (NPDES) Program, established by the Clean Water Act, which controls and reduces pollutants to water bodies from point and non-point discharges. In California, the program is administered by the California Regional Water Quality Control Boards. The Regional Board issues NPDES permits for discharges to water bodies in the San Diego area, including Municipal (area- or county-wide) Storm Water Discharge Permits.

#### ***Construction SWPPP***

Projects disturbing more than five acres of land during construction must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity. This can be accomplished by filing a Notice of Intent (NOI). The project sponsor must propose and implement control measures that are consistent with this State Construction Storm Water General Permit, and with recommendations and policies of the local agency and the RWQCB.

#### ***Industrial SWPPP***

Page 3 of 6

Projects that include facilities with discharges of Storm Water Associated with Industrial Activity must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity. This may be accomplished by filing a Notice of Intent. The project sponsor must propose control measures that are consistent with this, and with recommendations and policies of the local agency and the RWQCB. In a few cases, the project sponsor may apply for (or the RWQCB may require) issuance of an individual (industry- or facility-specific) permit.

### ***Municipal SWPPP***

The RWQCB's San Diego Urban Runoff Municipal Permit requires San Diego area municipalities to develop and implement Storm Water Management Plans (SWMPs). The SWMPs must include a program for implementing new development and construction site storm water quality controls. The objective of this component is to ensure that appropriate measures to control pollutants from new development are: considered during the planning phase, before construction begins; implemented during the construction phase; and maintained after construction, throughout the life of the project.

### ***Water Quality Certification***

The RWQCB must certify that any permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (covering, dredging, or filling of wetlands) complies with state water quality standards. Section 401 Water Quality Certification, or waiver, is necessary for all 404 Nationwide Permits, reporting and non-reporting, as well as individual permits.

Wetlands enhance water quality through such natural functions as flood and erosion control, stream bank stabilization, and filtration and purification of contaminants. Wetlands also provide critical habitats for hundreds of species of fish, birds, and other wildlife; offer open space; and provide many recreational opportunities. Adverse Water quality impacts can occur in wetlands from construction of structures in waterways, dredging, filling, and, otherwise altering the drainage to wetlands.

All projects must be evaluated for the presence of jurisdictional wetlands. Destruction or impact to wetlands should be avoided. Water quality certification may be denied based on significant adverse impacts to "Waters of the State." The goals of the California Wetlands Conservation Policy, include ensuring "no overall net loss and achieving a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values." In the event wetland loss is unavoidable, mitigation will be preferably in-kind and on-site, with no net destruction of habitat value. Mitigation will preferably be completed prior to, or at least simultaneous to, the filling or other loss of existing wetlands.

Successful mitigation projects are complex tasks and difficult to achieve. This issue will be strongly considered during agency review of any proposed wetland fill. Wetland features or ponds created as mitigation for the loss of existing "jurisdictional wetlands" or "waters of the United States" cannot be used as storm water treatment controls.

CEQA requires monitoring of all mitigation efforts as a condition of project approval. Although monitoring programs are not required to be included in environmental documents, it is helpful to know what sort of mitigation monitoring the applicant intends to implement, and who will be accountable for seeing that any proposed mitigation's are successfully executed.

Page 4 of 6

### Project/ Site Planning

Evidence of filing for a NOI and development of a SWPPP should be a condition of development plan approval by all municipalities. Implementation of the SWPPP should be enforced during construction via appropriate options such as citations, stop work orders, or withholding occupancy permits. Impacts identified should be avoided and minimized by developing and implementing the following.

The project should minimize impacts from project development by incorporating appropriate site planning concepts. This should be accomplished by designing and proposing site planning options as early in the project planning phases as possible. Appropriate site planning concepts to include, but are not limited to the following:

- Phase construction to limit areas and periods of impact.
- Minimize directly connected impervious areas.
- Preserve natural topography, existing drainage courses and existing vegetation.
- Locate construction and structures as far as possible from streams, wetlands, drainage areas, etc.
- Reduce paved area through cluster development, narrower streets, use of porous pavement and/or retaining natural surfaces.
- Minimize the use of gutters and curbs that concentrate and direct runoff to impermeable surfaces.
- Use existing vegetation and create new vegetated areas to promote infiltration.
- Design and lay out communities to reduce reliance on cars.
- Include, green areas for people to, walk their pets, thereby reducing build-up of bacteria, worms, viruses, nutrients, etc. in impermeable areas, or institute ordinances requiring owners to collect pets' excrement.
- Incorporate low-maintenance landscaping.
- Design and lay out streets and storm drain systems to facilitate easy maintenance and cleaning.
- Consider the need for runoff collection and treatment systems.
- Label storm drains to discourage dumping of pollutants into them.

Page 5 of 6

## **Construction- Phase Management**

### ***Erosion Prevention***

The project should minimize erosion and control sediment during and after construction. This should be done by developing and implementing an erosion control plan, or equivalent plan. This plan should be included in the SWPPP. The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the following:

- Limit access routes and stabilize access points.
- Stabilize denuded areas as soon as possible with seeding, mulching, or other effective methods.
- Protect adjacent properties with vegetative buffer strips, sediment barriers, or other effective methods.
- Delineate clearing limits, easements, setbacks, sensitive areas, vegetation and drainage courses by marking them in the field.
- Stabilize and prevent erosion from temporary conveyance channels and outlets.
- Use sediment controls and filtration to remove sediment from water generated by dewatering or collected on-site during construction. For large sites, stormwater settling basins will often be necessary.
- Schedule grading for the dry season (May-Sept.)

### ***Chemical and Waste Management***

The project should minimize impacts from chemicals and wastes used or generated during construction. This should be done by developing and implementing a plan or set of control measures. The plan or control measures should be included in the Storm Water Pollution Prevention Plan. The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the following:

- Designate specific areas of the site, away from streams or storm drain inlets, for storage, preparation, and disposal of building materials, chemical products, and wastes.
- Store stockpiled materials and wastes under a roof or plastic sheeting.
- Store containers of paint, chemicals, solvents, and other hazardous materials stored in containers under cover during rainy periods.



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Page 6 of 6



Gray Davis  
Governor

- Berm around storage areas to prevent contact with runoff.
- Cover open Dumpsters securely with plastic sheeting, a tarp, or other cover during rainy periods.
- Designate specific areas of the site, away from streams or storm drain inlets, for auto and equipment parking and for routine vehicle and equipment maintenance.
- Routinely maintain all vehicles and heavy equipment to avoid leaks.
- Perform major maintenance, repair, and vehicle and equipment washing off-site, or in designated and controlled areas on-site.
- Collect used motor oil, radiator coolant or other fluids with drip pans or drop cloths. Store and label spent fluids carefully prior to recycling or proper disposal.
- Sweep up spilled dry materials (cement, mortar, fertilizers, etc.) immediately—do not use water to wash them away.
- Clean up liquid spills on paved or impermeable surfaces using “dry” cleanup methods (e.g., absorbent materials, cat litter, rags) and dispose of cleanup materials properly.
- Clean up spills on dirt areas by digging up and properly disposing of the soil.
- Keep paint removal wastes, fresh concrete, cement mortars, cleared vegetation, and demolition wastes out of gutters, streams, and storm drains by using proper containment and disposal.

We appreciate the opportunity to comment on the subject environmental document and look forward to your response. If you have any questions regarding our concerns or questions, please do not hesitate to contact me at (858) 467-2705 or at [lemop@rb9.swrcb.ca.gov](mailto:lemop@rb9.swrcb.ca.gov).

Sincerely,

Paul Lemons

*California Environmental Protection Agency*

# **EXHIBIT 4**

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STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

In the matter of:

State of California Regional Water Quality Control  
Board San Diego Region Meeting Notice and Agenda  
Legal Advisory Committee

COSTA MESA CITY HALL  
CITY COUNCIL CHAMBERS  
77 FAIR DRIVE  
COSTA MESA, CALIFORNIA

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

ITEM NO. 8, WATER DISCHARGE REQUIREMENTS:  
FOOTHILL/EASTERN TRANSPORTATION, CORRIDOR AGENCY TESORO  
(SR 241) EXTENSION, ORANGE COUNTY  
WEDNESDAY, MARCH 13, 2013  
9:00 A.M.

Reported by: Sonia Renee Smith, RPR, CRR, CSR #11512

CALIFORNIA REPORTING, LLC  
52 LONGWOOD DRIVE/SAN RAFAEL, CA 94901  
PHONE. 415-457-4417/FAX. 415-454-5626  
CALIFORNIAREPORTING@SBCGLOBAL.NET/CALIFORNIAREPORTING.COM

1 APPEARANCES:

2

3 BOARD MEMBERS PRESENT:

4 Tomas Morales, Chairman  
5 Gary Strawn, Vice Chairman  
6 Henry Abarbanel  
7 Eric Anderson  
8 Sharon Kalemkiarian

9 EXECUTIVE STAFF:

10 David Gibson, Executive Officer  
11 James Smith, Assistant Executive Officer  
12 Chris Witte, Executive Assistant

13 STATE BOARD MEMBER LIAISON:

14 Frances Spivy-Weber

15 STATE BOARD STAFF COUNSEL:

16 Catherine Hagan, Esq.

17 NORTHERN WATERSHED UNIT:

18 Kelly Dorsey, Senior Engineering Geologist  
19 Darren Bradford, Environmental Scientist-C

20 TRANSPORTATION CORRIDOR AGENCY:

21 Valerie Hall, Director of Environmental Services  
22 Paul Bob, Engineering Manager  
23 Robert Thornton, Esq.



## 1 APPEARANCES: (CON'T)

2 PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS  
3

4 The following people registered support for the project:

5 Jack Feller, City of Oceanside

6 Samantha Fitzgerald

7 Luis Fonseca, Local #652

8 Brad Fowler, Director of Public Works, City of Dana  
Point

9 Emily France, The Gas Company

10 Richard Gardner, resident of Capo Beach

11 Roger Gaubel, SMWD

12 John Gauthier, RWAN #220

13 Chuck Gibson, Santa Margarita Water District

14 Kevin Gilhooly, Southern California Association of  
Governments

15 Jesus Gonzalez, Local #89

16 Fernando Guzman, Local 652

17 Josh Haskins, Economic Coalition

18 Jose Hernandez, Local 652

19 Peter Herzog, City of Lake Forest

20 Rush Hill, City of Newport Beach

21 Sherry Hodges, resident of Encinitas

22 Cindy Holmes, resident of San Clemente

23 Joaquin Itaro, Local #89

24 Heather Johnson, Dana Point Chamber of Commerce

25 April Josephson, resident of Santa Margarita

Lucille Kring, City of Orange

Steve LaMotte, Assemblywoman Diane Harkey's Office,  
San Juan Capistrano

Michael Latham

Dave Leckness, City of Mission Viejo

Ernesto Lemus, Local #652

Brian Lochrie

William Lochrie, resident of Orange

Juan Carlos Navarro Lopez, Local #652

Victor Lopez, Local 652

Josef Francisco Lozal, Local #89

David Lowe, Director of Design and Construction,  
Transportation Corridor Agencies

Sercio Machado, Local #89

Hector Madrigal, Construction Laborer

Pablo Maldonado, Local #652

Doug Mangione, IBEW

Tom Margo, Former TCA CEO

Wes May, Engineering Contractors Association

Penny Maynard, resident of Dana Point

## 1 APPEARANCES: (CON'T)

## 2 PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

3  
4 The following people registered support for the project:5 Hector Mayorch, Local #89  
6 Ben Medina, Friendly Fix-IT  
7 Abraham Mieda, IBEW Local #441  
8 Robert Ming, City of Laguna Niguel  
9 Carl Morgan, San Diego North EDC  
10 Debbie Newman, Laguna Niguel Chamber of Commerce  
11 Todd Nicholson, Mission Hospital, for CEO McFarlane  
12 David Nydegger, Oceanside Chamber of Commerce  
13 Dennis O'Connor, Orange County Association of  
14 Realtors  
15 Ted Owen, Carlsbad Chamber of Commerce  
16 Jerry Pabbruwee, Sukut Construction  
17 Martin Paine, Senator Mimi Walters' Office, Laguna  
18 Hills  
19 Mike Pino, IUOE Local #12  
20 Chuck Puckett, City of Tustin  
21 Oscar Ramirez, Local #89  
22 Lisa Ramsey, CalTrans District 12  
23 Tom Rath, Flatiron Construction Company  
24 Rhonda Reardon, City of Mission Viejo  
25 Antonio Reyes, Local #89  
Manuel Rodriguez, Local #89  
Robert Ruiz, IUNA Local #652  
Jeff Ruvalcava, Cement Masons 500  
Phil Salerno, Cement Masons  
Alfonso Sanchez, Local #652  
Schott Scheffel, City of Dana Point  
Phil Schwartze, Former Mayor of San Juan Capistrano  
Mark Schwing, City of Yorba Linda  
Sam Simms, Jacob Engineering  
Dave Simpson, Orange County Transportation  
Authority  
Suzanne Singh, Rancho Santa Margarita Chamber of  
Commerce  
Mary Anne Skorpanich, Manager, Orange County  
Watersheds  
Kristin Slocum, Mobility 21  
Jose Salaria, Former Assemblyman, 69th District  
Curt Stanley, SOCE Coalition  
Bryan Starr, Orange County Business Council  
Dave Stefandides, Orange County Association of  
Realtors

## 1 APPEARANCES: (CON'T)

2 PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS  
3

4 The following people registered support for the project:

5 Robert Strunk, Local 89  
6 Joel Thurmacht, IOUE Local #12  
7 Roberto Varquels, Local #89  
8 Richard Vasquez, IBEW Local #441  
9 Michael Walker  
10 Meg Waters, Waters and Company  
11 Mark Wyland, Senator 38th District

12 The following people registered opposition to the project:

13 Danny Adami (phonetic), Esq., Senior Attorney  
14 Natural Resources Council and Director of NRDC  
15 South California Resources Project  
16 Mark Babski, resident of South Orange County  
17 Julianne Bradford, resident of Oceanside  
18 Guinevare Breeding  
19 Craig Cadwallader, Surfrider Foundation, South Bay  
20 Chapter  
21 Paul Carlton, Sierra Club  
22 Julia Chunn-Heer, Surfrider  
23 Jerry Collamar, resident of San Clemente  
24 Bill Deck, Sierra Club  
25 Penny Elia, Sierra Club  
Denise Erkeneff, resident of Dana Point  
Rick Surfrider, Director, South Coast Water  
District  
Sarah Falden (phonetic), Vice President Program for  
the California State Parks Foundation  
Michael Fipps (phonetic), Esq., Staff Attorney  
Endangered Habitat League  
Robert Franklin, Huntington Beach Surfrider Chapter  
Paul Gracey, Sierra Club  
Graham Hamilton, Chairman, Surfrider Los Angeles  
Chapter  
Chris Hardwick, Aloha Kai Research Foundation  
Ray Heinstra (phonetic), Associate Director of  
Orange County Coast Keeper  
Patricia Holloway, resident of San Clemente  
Bill Holmes, Sierra Club

APPEARANCES: (CON'T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered opposition to the project:

- Drew Irby, Board Member Trout Unlimited South Coast Chapter
- Ryan Johnson, Staff Accountant, Surfrider Foundation
- Dale Kewitz, resident of San Clemente
- Mohamedali Mukadam, Accountant, Surfrider Foundation
- Andy Paulson (phonetic), Principal Geomologist (phonetic)
- Robin Pozniakoff, resident of Laguna Beach
- Goeff Rizzie, resident of Anaheim
- Stephanie Seka (phonetic), Surfrider Foundation California Policy Manager
- Robert Siebert, resident of Orange
- Jack Skinner, resident of Newport Beach
- Nancy Skinner, resident of Newport Beach
- Dan Sylbern (phonetic), the Nature Habitats League
- Teresa Tiff, resident of Dana Point
- Bill White, Esq., CEQA
- Dan Young, Trout Unlimited

-000-

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## 1 PROCEEDINGS

2 WEDNESDAY, MARCH 13, 2013

9:28 A.M.

3 (Heretofore noted, for the record, proceedings  
4 were recorded prior to but not requested to be  
5 transcribed.)

6  
7 AGENDA: ITEM NO. 8

8 CHAIRMAN MR. MORALES: Now, the next item is  
9 probably what most of you are here for. That's Item No. 8.  
10 We're, in a second, going to take a short break to kind of  
11 tally up our speaker request cards and figure out what we're  
12 going to do about those proceedings. But before going into  
13 that, I did want to make certain to the extent that folks may  
14 not know, on Friday, we issued an order of proceedings. And  
15 I'll get into this in a little more detail.

16 But there will not be any final action or a  
17 vote taken at today's hearing. And the -- in short, the  
18 reasons are the issues that were raised by both sides in the  
19 past few week weeks, primarily relating to CEQA. But today  
20 we are going to go forward and take all the testimony and  
21 public participation on the other issues. And -- uh -- we  
22 are looking forward to that. But we are going to have  
23 certain procedures in place, given that a number of folks  
24 that -- that we have here. And do our best to -- to  
25 accommodate everyone.

1                   So, we're going to take a five-minute break.  
2 Please do not leave and expect that it's going to be a  
3 ten-minute break, because it will be five minutes. Thank  
4 you.

5                   THE PUBLIC EN MASSE: (Laughter).

6  
7                   (Heretofore, five-minute break commenced  
8 9:30 a.m. Proceedings resumed 9:39 a.m.)

9                   CHAIRMAN MR. MORALES: Come to order.

10                  Now, I understand that -- that the folks  
11 outside are having a -- a bit of a hard time hearing us.  
12 So -- I'll ask -- I will do my best to speak into the  
13 microphone. And I'd ask that our presenters and -- and our  
14 board, if we have a question, try and -- and do the same, so  
15 that the folks outside are able to hear almost as well as  
16 those of you there are inside.

17                  We are now moving on to Item No. 8. And this  
18 is with respect to the State Route 241 Extension -- sort of  
19 extensive to something -- (inaudible) -- called. So, this is  
20 the time and the place for the public hearing on a tentative  
21 order, No. R9-2013-007. And it is in relation to waste  
22 discharge requirements for the Foothill/Eastern  
23 Transportation Corridor Agency. And, specifically, with  
24 respect to the 241 Tesoro Extension Project.

25                  The purpose of this hearing is for the board

1 to hear testimony and comments about the tentative order.  
2 The first staff, to the applicant, TCA and from those  
3 affected by or interested in the proposed permit and issues  
4 that concern the permit. And, on this past Friday, we issued  
5 an order of proceedings setting forth the order of  
6 proceedings for this side and allocating blocks of time.  
7 That may be modified somewhat, in part, by agreement between  
8 the -- the TCA and the NGOs. Because I believe there were  
9 some travel issues for NGO folks, due to the -- the fire.  
10 So, the TCA may -- it will likely go first, after our staff.

11 Now, we've also established a time certain for  
12 elected officials to speak. And that's at 1:00 p.m., for any  
13 elected officials that want to address the Board. We sent  
14 out that notice. We have received comment cards. And, to  
15 the extent any of the -- the comment cards list elected  
16 officials, we have tried to segregate those and -- and hope  
17 to hear from those folks.

18 Okay. Now, I wanted to repeat, again, that  
19 there will be no final action on this tentative order, at  
20 this meeting. It will occur at a future board meeting. And  
21 we will notify all interested persons and -- uh -- you know,  
22 publicly notice, once that meeting is set. I can fairly  
23 confidently let you know that it will not be next month.

24 Because we've got two days of very full  
25 proceedings, already, on another major item. But it will be

1 at some point after that. Hopefully, soon, after that. But  
2 we will let you all know.

3 Now, we have a -- a large crowd today. And  
4 we've received comment cards. Thank you for submitting  
5 those. After we hear from staff, the TCA and the coalition  
6 will begin taking comments from the members of the public.  
7 We may do that before the elected officials. And it may  
8 begin after the elected officials.

9 If we do begin with more comments, before, we  
10 will take a break at 1:00 o'clock to hear from the elected  
11 officials. We're going to hear from as many of you as  
12 possible, today. But we've got, roughly, 200 comment cards,  
13 so far. And we'll get more, during the day.

14 And while we typically allow three minutes,  
15 per comment, that's not gonna be possible today, simply due  
16 to the volume. We do have signups for position sheets  
17 outside. So, if you are interested in stating your position,  
18 there are a couple of ways of going about it so that it is in  
19 the record. One is by putting your name and stating the  
20 position that you -- that you take, on those sheets. We will  
21 look at them all.

22 The other -- what we'd like you to make is, if  
23 there are any of you that have come and are in agreement with  
24 fellow speakers and you want to get together -- because, say  
25 there are ten of you and you all agree wholeheartedly on a

1 position, you can get together. One person can speak and  
2 say, "I'm speaking on behalf of the following ten  
3 individuals." And that will extend the amount of time that  
4 we give you to present. That will have to be adjusted, of  
5 course. But the way things stand, given the total number  
6 we've got, you'll have, roughly, a minute and a half to --  
7 and -- to speak publicly, which isn't a whole lot of time.  
8 So, the -- to the extent you can coordinate amongst and  
9 between yourselves to minimize the number of public speakers,  
10 the more we'll actually be able to hear from you all  
11 individually. Okay?

12 Now, we will have staff going outside, once we  
13 figure out who all of our public speakers are going to be.  
14 And they will advise the next ten speakers, in order, with --  
15 (inaudible). So, if you are outside, you will know in  
16 advance of when your time to speak is. So, that will be  
17 helpful, in not having folks crowd in and thinking they need  
18 to to make sure they don't miss they're opportunity to speak.

19 So, at this point, we're going to begin our  
20 presentations. But, before hearing from staff, I want to  
21 address any preliminary matters. Are there are any board  
22 members that will either need to make disclosures concerning  
23 -- (inaudible).

24 BOARD MEMBER (MR. ABARBANEL): (Raise of hand).

25 CHAIRMAN MR. MORALES: Dr. Abarbanel.

1 BOARD MEMBER (MR. ABARBANEL): I'd like to disclose  
2 that I am -- am a member of the Sierra Club, which has  
3 submitted along with other people, commentary -- (inaudible).

4 CHAIRMAN MR. MORALES: Yes.

5 BOARD MEMBER (MR. ANDERSON): I also have a  
6 disclosure. I was on the board of Flamingo (phonetic) --  
7 (inaudible) -- force. And I worked extensively with  
8 Endangered Habitat League on the acquisition of 70 acres  
9 known as "Bridges 7 from LaNar (phonetic) for Conversation."  
10 I did not receive any income on this. It is unrelated to  
11 this item.

12 CHAIRMAN MR. MORALES: Thank you, Mr. Anderson.

13 STATE BOARD STAFF COUNSEL (MS. HAGAN):  
14 Mr. Chairman?

15 CHAIRMAN MR. MORALES: Yes, ma'am.

16 STATE BOARD STAFF COUNSEL (MS. HAGAN): May I ask  
17 both of the board members to confirm, assuming it's their  
18 belief, that they can be fair and impartial and consider only  
19 the facts in the record when making a decision on this  
20 matter?

21 BOARD MEMBER (MR. ANDERSON): Yes.

22 BOARD MEMBER (MR. ABARBANEL): Yes.

23 CHAIRMAN MR. MORALES: Thank you.

24 And with that, I'd like to request that the  
25 Water Board Staff come up to make its presentation.

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(Pause in Proceedings 9:47 a.m.)

CHAIRMAN MR. MORALES: And, again -- not "again."  
Thanks for telling me.

But, before we do begin, remember the proceedings are being transcribed. Some of us have the tendency to speak very quickly. So, for the sake of our court reporter, let's not try to rush too much. It's going to be a long day (nod of the head).

NORTHERN WATERSHED UNIT (MR. BRADFORD): (Nod of the head).

Good morning, Mr. Chairman and members of the board. My name is Darren Bradford. I'm an environmental scientist for the Northern Watershed Unit. I'm here to introduce Item No. 8, Waste Discharge Requirements No. R9-2013-0007, for the Tesoro Extension (State Route 241) Project.

Your agenda package includes a revised tentative order, timely submitted comments, response to comments report, along with other supporting documents. I would like to introduce the team working on development of the tentative order. In addition to myself, there is my supervisor, Kelly Dorsey, senior engineering geologist; David Barker, supervising engineer in charge of surface waters

1 branch; and Tony Felix, water resource control engineer.

2           At this time, I would like to enter the San  
3 Diego Water Board files, regarding the Tesoro Extension  
4 Project, into the record for this proceeding.

5           The project is an extension of the existing  
6 State Route 241 of approximately five and a half miles and is  
7 located north of Highway 74 and east of Interstate 5. As you  
8 can see, on the map before you, the project is located in  
9 this general area. Highway -- (indicating) it will run into  
10 Cow Camp Road, which will go to Ortega Highway 74. To orient  
11 you, it will go into the Highway 5. It goes up. And -- show  
12 you where we are. It's in Costa Mesa (indicating).

13           The Tesoro Extension Project, shown here  
14 (indicating). It's not shown there (whispering).

15           The Tesoro Extension Project, shown here, in  
16 yellow (indicating), extends from Oso Parkway to the proposed  
17 Cow Camp Road, shown here in black (indicating), with  
18 possible future off ramps here, at G Street. As you can see,  
19 on the left, there's Chiquita Creek (indicating). And on the  
20 right of the proposed road is Gobernadora Creek (indicating).  
21 Both tributaries to San Juan Creek.

22           The purpose of the Tesoro Extension Project  
23 is to provide improvements to the South Orange County  
24 transportation infrastructure designed to reduce existing and  
25 future traffic congestion on the I-5 freeway and the arterial

1 network in South Orange County. The area shown here, in red,  
2 are included in the Rancho Mission Viejo Ranch Plan  
3 Development, portions of it which are currently under  
4 construction.

5                   The footprint of the -- for the Tesoro  
6 Extension Project includes areas for grading, remedial  
7 grading and construction disturbance. In addition to the  
8 paved road, associated bridges and interchanges, the  
9 construction area includes access roads, areas for material  
10 storage, utility relocations and the construction of Best  
11 Management Practices also known as BMPs.

12                   The Tesoro Extension Project includes four  
13 general purpose travel lanes, two in each direction. Center  
14 median is from Oso Parkway to Cow Camp Road is proposed to be  
15 revegetated with a native seed mix and will include drainage  
16 infrastructure similar to the median shown in this example,  
17 which is the exist- (sic) -- which is an existing section of  
18 State Route 241.

19                   The median offers future opportunities for bus  
20 rapid transit, light rail or additional lanes as traffic  
21 conditions warrant. Once construction is complete, CalTrans  
22 will assume ownership and maintenance responsibilities for  
23 the toll road and the Discharger will be the toll facilities  
24 operator. We are currently processing a 401 application for  
25 the Cow Camp Road Project. It is anticipated Cow Camp Road

1 will be constructed by Rancho Mission Viejo and the County of  
2 Orange prior to or concurrent with the construction of the  
3 Tesoro Extension Project.

4           This figure shows all of the downstream water  
5 bodies, from the impact site to the Pacific Ocean. The  
6 Tesoro Extension Project is located, here, adjacent to the  
7 Chiquita and Gobernadora Creeks (indicating).

8           We show the existing portion of 241 and where  
9 the project may go through. These creeks are tributary to  
10 San Juan Creek, shown here (indicating). The water bodies  
11 shown in -- shown here, in red, are the Clean Water Act  
12 303(d) list of impaired water bodies. Lower San Juan Creek  
13 is -- is impaired for various constituents, including  
14 toxicity, nutrients, DDE and Selenium. The mouth of San Juan  
15 Creek, at the Pacific Ocean, is impaired due to bacteria  
16 (indicating), as shown here in this area.

17           The construction of road projects may threaten  
18 beneficial uses on-site and down the stream. Road projects  
19 increase impervious surfaces and reduce the amount of natural  
20 brown surfaces over which percolation of rainfall and other  
21 surface water can occur, which increases peak storm water  
22 runoff, flow rates and volume. Water quality issues  
23 associated with the road project can be detrimental to  
24 receiving waters, unless properly designed to incorporate  
25 BMPs to control pollutants from storm water and non-storm

1 water discharges, as well as to mitigate impacts from the  
2 discharge of fill to waters of the State.

3           The issuance of the Waste Discharge  
4 Requirements is necessary to ensure adequate design and  
5 implementation of BMPs, appropriate mitigation measures and  
6 protection of water quality.

7           The existing State Route 241 is a toll road  
8 facility owned and op- (sic) -- maintained by CalTrans, with  
9 the Discharger operating the toll collection facilities.  
10 State Route -- State Route 241 currently extends for  
11 approximately 25 miles within the eastern portion of Orange  
12 County. It was built in five segments and ends at Oso  
13 Parkway.

14           Previously, the Discharger proposed a larger  
15 16-mile project from Oso Parkway to I-5, near San Onofre.  
16 The 16-mile route is shown here in pink and dashed purple  
17 lines. All the way from Oso Parkway, which is about right  
18 there (indicating). And then all the way down to I-5.

19           The tentative order only applies to the  
20 northern most five and a half miles shown here with the solid  
21 pink line (indicating). That the Tesoro Extension Project  
22 shown there in pink.

23           Now, I would like to say a few words about the  
24 history of State Route 241. In 2,008, the California Coastal  
25 Commission objected to the Discharger's preferred 16-mile

1 route, under the Federal Coastal Zone Management Act, on the  
2 grounds that the toll road was not consistent with the  
3 State's Coastal Zone Management Program. The commission also  
4 found that the Discharger had not provided sufficient  
5 information to determine whether the project was consistent  
6 with policies related to water quality, wetlands,  
7 archeological resources and greenhouse gas emissions. The  
8 Discharger appealed the Coastal Commission's objection to the  
9 Department of Commerce, triggering an administrative review  
10 process that involved written briefs and arguments by the  
11 parties, input from interested federal agencies, tens of  
12 thousands of written comments from the public and a day long  
13 public hearing in San Diego County.

14                   The Department upheld the Coastal Commission's  
15 decision. However, they did not limit the Discharger from  
16 pursuing another route for its proposed toll road, as long as  
17 it is consistent with the Coastal Zone Management Program.

18                   The majority of the key issues regarding the  
19 tentative order are related to whether the board should  
20 consider the potential impacts of the entire 16-mile reach of  
21 the proposed toll road during its consideration of the  
22 tentative order. The Discharger maintains that the five and  
23 a half mile Tesoro Extension Project has independent utility  
24 and is needed, even without construction of the entire toll  
25 road project south of Cow Camp Road. At this time, the San

1 Diego Water Board has not received any application for  
2 further extension of State Route 241.

3                   This table shows im- (sic) -- (coughing)  
4 excuse me.

5                   This table shows the impacts to waters of the  
6 State associated with the project. Permanent impacts to  
7 waters of the State consist of the placement of fill and  
8 construction of project facilities within approximately .40  
9 acres, which includes 5,200 and nin- (sic) -- 97 linear feet  
10 of surface waters of the State. Of the .40 acre of impacted  
11 waters, .20 acres is wetlands. Temporary construction  
12 impacts consist of approximately .24 acres and 1,819 linear  
13 feet. All temporary impacted areas associated with the  
14 Tesoro Extension Project will be restored to pre-project  
15 conditions.

16                   I would like to point out that all of these  
17 impacts are to non-federal state -- waters of the State. The  
18 United States Army Corps of Engineers determined that the  
19 project activities, as proposed, are not within waters of the  
20 United States and, therefore, the project is not subject to  
21 Army Corps jurisdiction under Section 404 of the Clean Water  
22 Act. Therefore, a Clean Water Act Section 401 Certification  
23 for the project is not required from the San Diego Water  
24 Board. The project is, however, subject to regulation under  
25 Water Code Section 13260, which requires that persons

1 proposing to discharge waste to waters of the State must  
2 apply for and obtain Waste Discharge Requirements from the  
3 Water Board in order to lawfully discharge. The tentative  
4 order serves as individual waste discharge requirements for  
5 the project, related discharges of fill to waters of the  
6 State.

7 Under the State's Regulatory Program, the  
8 proposed project shall avoid and minimize adverse impacts to  
9 the aquatic environment to the maximum extent practicable.  
10 For una- (sic) -- for unavoidable impacts, the project must  
11 provide for replacement of exees- (sic) -- existing  
12 beneficial uses through compensatory mitigation to offset the  
13 loss of wetland and aquatic resource functions caused by the  
14 project. Compensatory mitigation refers to the restoration,  
15 establishment, enhancement or, in certain circumstances,  
16 preservation of wetlands, streams or other aquatic  
17 resources.

18 This table summarizes the mitigation for  
19 permanent impacts to waters of the State. To compensate for  
20 permanent impacts to waters of the State, the tentative order  
21 requires 20.31 acres of establishment, restoration and  
22 enhancement of aquatic resources. This includes  
23 approximately 10,000 linear feet of mitigation. In addition,  
24 the tentative order requires 13.55 acres of upland buffer  
25 restoration. This amount of mitigation acreage is

1 substantially higher than what's typically required for  
2 similar projects.

3           At a minimum, 4.05 acres of wetlands will be  
4 established, which represents a mitigation ratio of over 15  
5 to 1 for wetland impacts. By comparison, mitigation ratios  
6 for similar projects are typically around 3 to 1. The  
7 mitigation ensures no net loss and overall net gain of  
8 wetland acreage, which is required by the "no net loss"  
9 policy. Given the comprehensive approach and large  
10 mitigation ratios, it is anticipated that the proposed  
11 mitigation will adequately compensate for impacts to water  
12 from the State associated with the discharge of fill  
13 material.

14           Compensatory mitigation for permanent impacts  
15 to waters of the State is proposed within Chiquita Canyon.  
16 The picture before you shows the general location of the two  
17 proposed mitigation areas, outlined by black dashed lines.  
18 Mitigation Area A, (indicating) shown here, near Tesoro High  
19 School. And Mitigation Area B, (indicating) right there.  
20 You can also see in the slide, a current -- a current section  
21 of State Route 241, which ends at Oso Parkway. And you'll --  
22 uh -- and the proposed Tesoro Pro- (sic) -- uh -- Extension  
23 Project will go right through, approximately, here  
24 (indicating).

25           Mitigation Area A is a 15-acre area, adjacent

1 to Tesoro High School, located along Chiquita Creek and one  
2 of its tributaries. Wet meadow, mule fat scrub and southern  
3 willow woodland will be established and enhanced in this  
4 area. Mitigation Area B is an 18.86 acre area within the  
5 Upper Chiquita Canyon Conservation Area, which is the  
6 headwaters of Chiquita Creek. 10,300 and 25 linear feet of  
7 ephemeral drainage will be established and restored.  
8 Mitigation Area B will also include establishment of Southern  
9 Sycamore Riparian, restoration of Live Oak and Elderberry  
10 Habitat and over 13 acres of perennial grassland buffer.

11 CHAIRMAN MR. MORALES: Okay.

12 BOARD MEMBER (MR. ANDERSON): You mind if we ask  
13 you a question?

14 NORTHERN WATERSHED UNIT (MR. BRADFORD): Sure.

15 BOARD MEMBER (MR. ANDERSON): Is that any  
16 different, in the "B," that was within the conservation area?

17 NORTHERN WATERSHED UNIT (MR. BRADFORD): "B" is in  
18 the conservation area.

19 BOARD MEMBER (MR. ANDERSON): Yeah. And it kind of  
20 looks like it's already established. How would you think  
21 these -- (inaudible)?

22 NORTHERN WATERSHED UNIT (MR. BRADFORD): Uh-h-h --  
23 the conservation area?

24 BOARD MEMBER (MR. ANDERSON): No. The -- uh --  
25 this -- the wetland where -- that you said establish and

1 restore -- (interrupted)

2 NORTHERN WATERSHED UNIT (MR. BRADFORD): There's a  
3 conservation easement. And it's part of the conservation  
4 area. But the establishment is actually creating waters.  
5 So, right now, it's a -- it's a meadow that's being grazed by  
6 cows and stuff. And they'll go in and create -- create water  
7 habitat -- (interrupted)

8 BOARD MEMBER (MR. ANDERSON): So -- so, the  
9 conservation area kinda owns them. It's, like, this is a  
10 mitigation bank where they're current --

11 NORTHERN WATERSHED UNIT (MR. BRADFORD): Not  
12 technically a bank. It's like a housing conservation  
13 easement -- (mumbled). But it has discharge alone --  
14 (mumbled) -- current.

15 BOARD MEMBER (MR. ANDERSON): Thank you, Mr. --  
16 (mumbled).

17 CHAIRMAN MR. MORALES: Now, Mr. Bradford, I must  
18 now say can you speak a little more into the microphone for  
19 the folks outside? Appreciate the presentation. I don't  
20 want them to miss it.

21 NORTHERN WATERSHED UNIT (MR. BRADFORD): Okay.  
22 Okay. Thank you.

23 Next, I would like to discuss three key  
24 requirements of the tentative order: construction storm water  
25 BMPs, post-construction BMPs and mitigation monitoring and

1 reporting. First, are "construction storm water BMPs."  
2 Construction activities associated with the proposed  
3 discharges of fill may threaten beneficial uses on-site and  
4 downstream. The Discharger must apply for and obtain  
5 coverage under the Statewide Construction Storm Water  
6 Permit. Permit requires the Discharger to develop and  
7 implement a storm water pollution prevention plan to control  
8 storm water and norm- (sic) -- non-storm water discharges and  
9 prevent spills.

10                   Second are post-construction storm water BMPs.  
11 The tentative order require the Discharger to incorporate and  
12 implement BMPs to control storm water discharges that can --  
13 that occur after construction of the project. The Tesoro  
14 Extension Project includes the construction of new pavement  
15 that adds approximately 100 acres of impervious surfaces. As  
16 previously discussed, the addition of impervious surfaces  
17 increases the peak storm runoff flow rate and volume. To  
18 mitigate these impacts, the Discharger must implement their  
19 Runoff Management Plan and ensure that project post-  
20 construction BMPs meet applicable requirements in the  
21 CalTrans Statewide Storm Water NPDES permit; South Orange  
22 County Draft Hydromodification Plan; and the Draft Model  
23 Water Quality Management Plan.

24                   Finally, the tentative order requires a final  
25 Habitat Mitigation and Monitoring Plan be submitted by June

1 14, 2,013. The final mitigation plan will be released for  
2 public review and comment before the mitigation plan is  
3 approved by the San Diego Water Board. Based on comments  
4 received, the Executive Officer will determine if there is a  
5 need for a board hearing to consider approval of the  
6 Mitigation Plan. Mitigation site monitoring and reporting  
7 will be required, annually, for a minimum of five years or  
8 until all long-term performance measures -- measures  
9 identified in the mitigation plan have been met. Long-term  
10 maintenance is required beyond the minimum five-year  
11 mitigation and monitoring program. The Discharger will be  
12 responsible for managing the mitigation sites, in perpetuity,  
13 to ensure the long-term sustainability of the resources.

14           The tentative order was released for public  
15 review and comments on January 17th of this year. In  
16 response to a request for an extension of the comment period,  
17 the deadline for submission of comments was extended from  
18 February 18th to February 25th. Additionally, after  
19 consultation with the Board Chair, late written comments was  
20 received by March 1st, 2,013, were added to the  
21 administrative record. You can see, on this table, the  
22 breakdown of letters in support and against the project. The  
23 majority of the comment letters submitted are from letters  
24 and -- and did not include specific or substantive comments  
25 regarding the tentative order.

1 Over 700 timely submitted comments regarding  
2 the tentative order were received from the Discharger,  
3 various stakeholders, elected officials, organizations and  
4 several hundred private citizens. General and technical  
5 comments received by February 25th, 2,002- -- (sic) -- -13,  
6 are addressed in the Response to Comments Report included in  
7 the supplemental agenda package.

8 Responses to CEQA comments have not been  
9 included in the Response To Comments Report, because they are  
10 still being evaluated. Over 1500 comment letters was -- were  
11 received from February 25th, 2,013 to March 1st, 2,013. We  
12 have received approximately 4,000 additional comment letters,  
13 since March 1st. These have not been admitted to the  
14 administrative record, at this time.

15 Included in your agenda package is the revised  
16 tentative order, supporting -- supporting Document No. 17.  
17 The tentative order has been revised to address some of the  
18 substantive comments received by the first comment due day.  
19 Additionally, we anticipate more changes will be made to the  
20 CEQA portion of the tentative order once our evaluation is  
21 complete.

22 The key issues raised in comment letters  
23 reviewed to date are: Compliance with CEQA, Post-Construction  
24 Best Management Practices and Compensatory Litigation. And I  
25 will discuss each key issue, individually.

1 Next slide.

2 The Save San Onofre Coalition, a broad based  
3 coalition of environmental nongovernmental organizations  
4 claims that the Discharger failed to submit a valid final  
5 CEQA document that the San Diego Board can rely on in  
6 considering the adoption of the tentative order. The  
7 Discharger argues, in rebuttal to the coalition's claims,  
8 that the final subsequent Environmental Impact Report  
9 certified by the Discharger complies with CEQA and meets all  
10 requirements for the San Diego Water Board to adopt the  
11 tentative order. The Discharger also argues that the recent  
12 addendum to the final SEIR further documents that the Tesoro  
13 Extension Project will not have any significant impacts  
14 beyond those evaluated in the final SEIR. At this time,  
15 staff and counsel need additional time to evaluate CEQA  
16 comments and compliance; prepare responses to the CEQA  
17 issues; and draft revised or additional findings as  
18 appropriate for inclusion in the tentative order.

19 The Discharger suggested language to clarify  
20 that the design of Post-Construction Best Management  
21 Practices must meet CalTrans standards and not the standards  
22 in the South Orange County Draft Hydromodification Plan and  
23 Draft Model Water Quality Management Plan.

24 The Environmental Habitats League expressed  
25 concerns that the project will limit the transports of coarse

1 grain sediment to receiving waters. Water Board staff have  
2 reviewed these issues and determined that Post-Construction  
3 BMPs must be designed to comply with both Statewide CalTrans  
4 Storm Water Permit and the South Orange County  
5 Hydromodification Plan and Model Water Quality Management  
6 Plan. Compliance with these standards will included  
7 consideration of the project's effect on coarse grain  
8 sediment transport and design standards that will meet  
9 applicable coarse grain sediment transport requirements.

10           Comments were received regarding the need for  
11 public review of the Final Habitat Mitigation and Monitoring  
12 Plan, as well as adequacy. In order to address these  
13 concerns, the revised tentative order requires the mitigation  
14 plan to be released for public review and comment for a  
15 minimum of 30 days. Timely comments received will be  
16 considered prior to the Water Board's approval of the Final  
17 Habitat Mitigation and Monitoring Plan. As previously  
18 discussed, the Executive Officer will determine if a board  
19 hearing is necessary to approve the mitigation plan.

20           Additionally, we received requests from the  
21 Discharger and Rancho Mission Viejo to make changes to the  
22 Conservation Easement and Financial Assurance Sections of the  
23 Tentative Order to address inconsistencies with procedures  
24 and legal agreements currently in place. The tentative order  
25 was modified, as appropriate, to address these

1 inconsistencies.

2           In summary, this project proposes to construct  
3 a five and a half mile toll road that will impact non-Federal  
4 waters of the State. These impacts will be mitigated at a  
5 vary (sic) -- a very high ratio through establishment and  
6 restoration projects consistent with Water Board standards.  
7 To address the storm water effects of the project, the  
8 tentative order will require the Discharger to meet the BMP  
9 standards in the CalTrans Storm Water Permit, the South  
10 Orange County Draft Hydromodification Plan and the South  
11 Orange County Draft Model Water Quality Management Plan.

12           In agreement with the March 8 Board Chair  
13 Order of Proceedings Memo, staff recommends that the San  
14 Diego Water Board begins the public hearing to receive  
15 testimony and comments and postpone action on the tentative  
16 order to a later meeting.

17           This concludes my presentation. I'm available  
18 to answer any of your questions. Thank you.

19

20           (Pause in proceedings 10:11 a.m.)

21

22           BOARD MEMBER MS. KALEMKIARIAN: Yes, I have a  
23 couple of questions. You stated that this -- the level of  
24 mitigation was higher than is usually required. Why is that?

25

NORTHERN WATERSHED UNIT (MR. BRADFORD): Why is it

1 higher?

2 BOARD MEMBER MS. KALEMKIARIAN: (Nod of the head).

3 NORTHERN WATERSHED UNIT (MR. BRADFORD): When our  
4 project to get to the process -- uh -- when a -- when a  
5 project wants to get through the projects, quickly, then we  
6 recommend proposing a -- a goal standard of mitigation. And,  
7 in this case, the -- the Discharger has brought forward a  
8 system concerning -- (mumbled) -- mitigation plan.

9 BOARD MEMBER MS. KALEMKIARIAN: So, this wasn't a  
10 level requested by the staff.

11 NORTHERN WATERSHED UNIT (MR. BRADFORD): No.

12 BOARD MEMBER MS. KALEMKIARIAN: It was by the  
13 Discharger.

14 NORTHERN WATERSHED UNIT (MR. BRADFORD): They --  
15 they brought that type of -- (mumbled).

16 BOARD MEMBER MS. KALEMKIARIAN: Okay.

17 And then you stated that -- uh -- "in  
18 perpetuity," which to the lawyers here is a phrase which gets  
19 our attention. Who monitors that? Who monitors their in  
20 perpetuity obligation? Is that the obli- (sic) -- is the  
21 Discharger, in that case -- is it the county that's going to  
22 be responsible? The TCA? Who's responsible in perpetuity  
23 and who's gonna monitor that?

24 NORTHERN WATERSHED UNIT (MR. BRADFORD): Well, if I  
25 remember correctly, there was two mitigation types, A and B.

1 One is going to be part of a larger conservation --  
2 (unintelligible) -- associated with Rancho Mission Viejo  
3 Ranch Plan and that has conversation easement. And there's a  
4 ranch preserve third party that will manage that third  
5 area -- (inaudible).

6 BOARD MEMBER MS. KALEMKIARIAN: Go 'head.

7 NORTHERN WATERSHED UNIT (MR. BRADFORD): Is that --

8 BOARD MEMBER MS. KALEMKIARIAN: Go 'head. Just  
9 speak closer.

10 NORTHERN WATERSHED UNIT (MR. BRADFORD): Oh, and --  
11 and -- uh -- the other area, Mitigation B, the Discharger  
12 will be in charge of managing that. I think CalTrans will  
13 eventually take over.

14 THE PUBLIC (UNIDENTIFIED): And some nonprofit  
15 speak of the increase. It will transfer to the --  
16 (inaudible)?

17 BOARD MEMBER MS. KALEMKIARIAN: And, so, who -- who  
18 is to provide oversight, to those, to -- since they're  
19 eventually nonprofits. Sounds like they would be.

20 Who -- who -- who checks the --  
21 (unintelligible) -- if it's being done properly?

22 NORTHERN WATERSHED UNIT (MR. BRADFORD): Well,  
23 they're -- they were required to consign with the permit  
24 and -- and by the report, up until -- I believe it was the  
25 performance standards. But in perpetuity, after that, there

1 will be no more reporting. There will only be -- if we  
2 discover an issue or someone reports an issue.

3 BOARD MEMBER MS. KALEMKIARIAN: So, it's up to them  
4 to kind of self-monitor?

5 NORTHERN WATERSHED UNIT (MR. BRADFORD): Yes.

6 EXECUTIVE OFFICER MR. GIBSON: May I address --

7 MR. THORNTON: We're -- we're number --

8 Ms. Kalemkiarian, Robert Thornton --

9

10 (Simultaneous speech; unintelligible.)

11

12 STATE BOARD STAFF COUNSEL (MS. HAGAN): Excuse me.

13 Can you speak into the microphone, please.

14 MR. THORNTON: Can I suggest, we're -- we're  
15 prepared to address the issues that you're raising here,  
16 about ongoing monitoring, the management of conservation, et  
17 cetera, in some detail.

18 BOARD MEMBER MS. KALEMKIARIAN: Great. I will look  
19 forward to it.

20 NORTHERN WATERSHED UNIT (MR. BRADFORD): It's --  
21 it's all stated in the Habitat Mitigation Monitoring Plan,  
22 long-term management plan, which we have not reviewed yet.  
23 Some of those questions are not -- (mumbled).

24 NORTHERN WATERSHED UNIT (MS. DORSEY): Just -- just  
25 to clarify. Kelly Dorsey, from The Water Board.

1 environmental groups.

2                   We've even helped design (unintelligible), to  
3 see what was the best way to construct this roadway to  
4 satisfy all the input that TCA has communicated. We have  
5 provided a very open process. And later, during the  
6 presentation, I'll go into more of the Cow Camp mitigation.  
7 But, for now, we'd like to turn it over to Dr. Paul Bob to  
8 talk about the Hydromodification Water Quality Ensure  
9 Program.

10                   CHAIRMAN MR. MORALES: Thank you, ma'am.

11                   MR. BOB: Thank you, Valerie.

12                   Thank you, Board Chair and Members of the  
13 Board.

14                   Can everyone hear me, back there? All right.  
15 I'll try to talk loud.

16                   My name is Paul Bob. I did take the oath,  
17 earlier on. And I'm the engineering manager for The Tesoro  
18 Extension Project.

19                   The TCA have completed an extensive analysis  
20 for hydromodification and water quality control under Tesoro  
21 Extension Project. This analysis included the completion of  
22 a baseline and proposed condition hydrology study, a  
23 geomorphic evaluation of the receiving channels, a channel  
24 stability adjustment, a continuous flow simulation and the  
25 development of a mitigation program to match pre- and post-

1 construction flows during curves for a range of  
2 geomorphically significant flows. The state of the science  
3 hydromodification and water quality program has been  
4 developed, based on these analysis, and will be implemented  
5 as part of this program.

6           Before I go into the water quality measures  
7 proposed for the project, I would like to discuss a report  
8 prepared by ESA PWA, which prepared a -- is the review of the  
9 Tesoro Extension Waste Discharge Requirement Application.  
10 This report was prepared for the Endangered Habitat League  
11 and is only five pages attached and does not include any  
12 analysis or calculations to support their conclusions. I  
13 would like to point out some gross inaccuracies that were  
14 found in the report that make the concru- (sic) -- conclusion  
15 completely unreliable.

16           The report, as we see here in their Figure 2,  
17 focuses on Wagon Wheel Canyon as an example of how the  
18 project will have an impact on the supply of coarse sediment  
19 to receiving waters. Then, Figure 2, shown here  
20 (indicating), of their report, it purpror- (sic) -- purports  
21 to show the head water channels of Wagon Wheel Channel, in  
22 relation to the Tesoro Extension Project footprint which is  
23 shown in yellow on the figure.

24           As can be seen on this exhibit, which is the  
25 topographic map of the area, Wagon Wheel Canyon is a large

1 drainage and, most likely, a good source for bed load  
2 material. It is fair to conclude that placing a road in this  
3 canyon could result in a reduction of coarse sediment supply  
4 to receiving waters. The Tesoro Extension Project, however,  
5 does not do this. It does not impact the head waters of  
6 Wagon Wheel Canyon, as ESA PWA claims. And the reason for  
7 this is very simple and straightforward.

8           The Tesoro Extension Project is not located  
9 within Wagon Wheel Canyon, as can be seen. The project is  
10 located about a mile south of Wagon Wheel Canyon. And none  
11 of the project footprint is even in -- within -- within the  
12 Wagon Wheel Watershed. And it is separated, as shown here in  
13 the red polygon, by a large ridge line from the Wagon Wheel  
14 Watershed.

15           Only a small percentage of the project, which  
16 is shown here in purple, would even be within the Gobernadora  
17 Watershed. The unlimited amount of impervious surface  
18 introduced into this watershed and the accompanying BMPs that  
19 will be part of Tesoro Project will avoid adverse  
20 modification. Uhm -- mis- (sic) -- mislocating the project  
21 effectively makes the conclusions of the ESA PWA report  
22 highly suspect, considering that the impact identified in  
23 Wagon Wheel Canyon are nonexistent and those at Kinyata  
24 (phonetic) Gobernadora are negligible.

25           The area presented in the ESA PWA Figure 2 --

1 (indicating) and it's shown here in yellow, it is actually  
2 located completely within an area slated for future  
3 development as part of the Rancho Mission Viejo Development  
4 Plan. A development that was approved and moved forward --  
5 as I already talked about -- via a settlement agreement, with  
6 many of the same environmental groups that opposed this  
7 project. One of the parties that entered into the settlement  
8 agreement is ESA PWA's client, the Endangered Habitat  
9 League. A primary reason for the environmental group  
10 settlement with the ranch is because the development plan,  
11 under that settlement agreement, underwent a rigorous  
12 regulatory process; including preparation of a special area  
13 management plan or a SAMP, which was done through the EPA and  
14 the Army Corps of Engineers.

15                   The Ranch's Plan and The Ranch themselves are  
16 a good steward of the land. As part of their development  
17 program, The Ranch encompasses over 23,000 acres. 17,000 of  
18 those acres are to remain as open space. And -- and part of  
19 that, where they proposed their development, was evaluated  
20 within the SAMP.

21                   Now, ESA and PWA was also instrumental in  
22 studying and determining how best to assure that The Ranch  
23 Plan Development and support infrastructure, such as the  
24 road, avoided, minimize and fully mitigated hydromodification  
25 impacts.

1                   In fact, the ESA PWA prepared The Baseline  
2 Geomorphic and Hydrologic Conditions Report for the Rancho  
3 Mission Viejo Development Special Area Management Plan. This  
4 report set out tenants that were followed in planning the  
5 ranch to assure that potential hydromodification impact of  
6 all plan development would be avoided and minimized to the  
7 maximum extent practical and fully mitigated. The baseline  
8 report specifically states that the soil and geologic  
9 characterization in the drain's analysis will be used to  
10 support citing and design recommendation for suspific (sic)  
11 for a specific project, such as the location of structures,  
12 basins and roads.

13                   The information in this special area  
14 management plan documents, they were used by the Army Corps  
15 of Engineer (sic) and the EPA to select what is known as the  
16 "B-12 Alternative," which is The Ranch Plan that is presently  
17 being development (sic) and was determined by the Corps and  
18 the EPA to be the least environmentally damaging practicable  
19 alternative. This selection was made only after their  
20 consideration of all aquatic water quality hydromodification  
21 impact that would be associated with this alternative. This  
22 exhibit, here, shows the B-12 Alternative and the associated  
23 planning areas. It also shows the roads, which are the lines  
24 in black, that were -- would be incorporated into this  
25 development plan. The SAMP concluded, on an overall basis,

1 that B-12 Alternative is consistent with the SAMP tenant.

2 This alternative is not expected to result in  
3 significant impacts. The B-12 Alternative A would protect  
4 all of the major sources of coarse sediment, indeed focus  
5 development on areas generating fine sediment.

6 The B-12 Circulation System, which is the  
7 roads that support the plan, would be just as -- (clearing  
8 throat) -- would be consistent with the sub-basin  
9 recommendation. The Army Corps of Engineers selected the  
10 B-12 Alternative in conjunction with the APA (sic) -- EPA as  
11 the least environmentally damaging practicable alternative.

12 Now, if I focus in from that B-12 Plan on the  
13 area where the Tesoro Extension is located, it could be seen  
14 that the project effectively overlays the proposed  
15 circulation system for the plan. So we see now, in green,  
16 the proposed Tesoro Extension footprint and how it overlays  
17 the proposed Ranch's road plan.

18 Now ESA PWA, while working for the developer,  
19 was part of the technical team that determined the R and B  
20 plan, including the planned regional arterial road located in  
21 the same place as the Tesoro Extension and would have similar  
22 BMPs that would avoid, minimize and fully mitigate  
23 hydromodification impact in such a sufficient manner that  
24 would decllect (sic) -- declare the LEPA (phonetic). This  
25 same plan did not result in significant, adverse or

1 unmitigated impacts on receiving waters. PWA's current  
2 report does not reference that tetnal (sic) -- that technical  
3 team's finding, even though they were part of that team.  
4 They did -- also did not reference that team's conclusion of  
5 "no significant impact."

6           ESA PWA was, however, sufficiently satisfied  
7 with the results of the SAMP process that, at a CASQA  
8 conference -- and "CASQA" stands for the California  
9 Association of Storm Water Quality Agency. At a proceedings  
10 (sic) at their annual conference, Jeffrey Haltiner, from ESA  
11 PWA, did a talk and presentation about the work that they did  
12 for the Rancho Mission Viejo Development Plan and counted it  
13 as a model for hydromodification management.

14           In the presentation, ESA, they (sic) -- PWA  
15 showed how they evaluated the underlying soil property and  
16 placed the proposed development in low infiltration areas as  
17 a means to review this hydromodification. By placing the  
18 Tesoro Extension alignment within the planning areas and  
19 along the alignment of The Ranch Plan arterial, TCA has  
20 mirrored the SAMP process that ESA PWA participated in.

21           The technical team for the SAMP, including PSA  
22 -- uhm-m-m -- that -- that PSA was a part of drew conclusions  
23 that simply cannot be reconciled with ESA PWA's current  
24 report. And this called the report into serious question,  
25 particularly, since it's -- it is clear that ESA PWA did not

1 understand all the facts of the Tesoro Project. Such as,  
2 which watershed did project actually -- (unintelligible) --  
3 in, versus those watersheds like black -- Wagon Wheel Creek,  
4 that would not even be touched by the project.

5           So, now that I have touched on some of the  
6 mischaracterizations about what we are not doing on the  
7 project, let me describe to you what we are doing on the  
8 project. And that is the state of the science best  
9 management practices.

10           What is listed on this slide is the water  
11 quality and hydromodification control standards that will be  
12 employed on the project. It is important to note that  
13 CalTrans owns and operates the road, once it is open.  
14 CalTrans and TCA will monitor post-construction BMPs with the  
15 goal to be responsive to the data that is collected.

16           Since the project is part of the highway  
17 system, it will be designed to meet, one, The State Water  
18 Board adopted CalTrans statewide NPDES and this board permit  
19 scan; two, the statewide general construction permit; three,  
20 the Draft South Orange County HMP; and then, finally, the  
21 South Orange County model WQMP. As part of our compliance  
22 program for the WDRs, additional technical studies will be  
23 submitted to confirm compliance with all of these conditions  
24 of the WDRs.

25           Now, one of the water quality features that

1 will be incorporated into the project is a porous overlay. A  
2 porous overlay reduces splashing from the under side of  
3 vehicle, as shown in the photo, as you see -- and it depends,  
4 I guess, on where you're sitting. But on the -- on the side  
5 of the photo where you're -- the pavement is a bit darker,  
6 that has the porous overlay. Versus the other side -- on the  
7 other side of the K rail, that is a lighter color. You can  
8 see all the splash that is coming up from those vehicles.

9           When you have a porous overlay, it reduces  
10 that from occurring. So, the porous overlay is an innovative  
11 roadway material that allows the rainfall to seep into the  
12 porous layer and flow along its boundaries with the  
13 underlying conventional pavement to the edge of the roadway.  
14 This high tech surface improves drive ability in wet weather  
15 through reduced splash and spray and reduces risk of  
16 hydroplaning. It also reduces highway traffic noise. And,  
17 what we're interested in, it reduces water pollution.

18           Now, a study was performed by the University  
19 of Texas. And what's shown here is, when a porous overlay  
20 was installed on a highway between the rainy seasons of 2,004  
21 and 2,005 -- so, that's where the red arrow is pointing  
22 (indicating). Before the '05 season, you can see there was a  
23 large amount of total extended solids coming off of the  
24 road. Once the overlay was put in place, the TSS reduced  
25 significantly -- not only for that one year, but for a long

1 period of time afterwards. And then the total -- looking at  
2 the total suspended solids is an excellent indicator for  
3 measuring pollution from highways. And because it -- because  
4 it measures both metal and other solids and to see the porous  
5 pavement have this much production is very significant. And  
6 that's why we're employing it within our roadways.

7 Another state of the science BMP that will be  
8 used on the Tesoro Extension is a sand filter. Now,  
9 mitigation between the California Department of  
10 Transportation and the Natural Resources Defense Counsel,  
11 Santa Monica Bay Keeper, the San Diego Bay Keeper and the  
12 United States Environmental Protection Agency resulted in a  
13 requirement that CalTrans develop a Best Management Practice  
14 Retrofit Pilot Program in CalTrans District 7, which is Los  
15 Angeles; and District 11, which is San Diego. The objective  
16 of this program was to acquire -- acquire experience in the  
17 installation and operation of a -- wide range of structural  
18 BMPs for treating storm water runoff from existing CalTrans  
19 facilities and to evaluate the performance and cost of these  
20 devices. A study team made up of representatives from the  
21 parties to the lawsuit, their attorney, the local VETRA  
22 (phonetic) Control agencies and outside technical provided  
23 oversight of the retrofit program. Now, the result of this  
24 program are very positive and sand filters was rated up to  
25 the top, coming out of this program.

1                   And inside, the quote from the NRC, et al.,  
2 states that:

3                   "The Austin and Delaware sand filters provided  
4 substantial water quality improvement and  
5 produced a very consistent relatively high  
6 quality effluent. TCA has worked hard to  
7 incorporate the state of the art water quality  
8 features into the design of the Tesoro  
9 Extension Project. Those organizations that  
10 are truly interested in water quality  
11 protection should apply these efforts."

12                   I'm now going to turn this back over. Thank  
13 you very much.

14                   MS. HALL: Thank you, Paul.

15                   I'd like to spend a few minutes going over our  
16 proposed Compensatory Mitigation Program for this project.  
17 The Tesoro Extension Project is probably a comprehensive  
18 mitigation program that goes beyond focusing on one specific  
19 habitat type. As in all of the TCA's mitigation, we base our  
20 mitigation on the entire eco (phonetic) system approach,  
21 offset and minimize impacts to all species. Our approach not  
22 only includes the wetlands and Markarian (phonetic) Creeks as  
23 an enhancement, their Austin split (phonetic) includes upland  
24 species and grassland buffer areas.

25                   Since receiving our board's approval of 2,011

# **EXHIBIT 5**

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
March 13, 2013

- ITEM: 8
- SUBJECT: 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 adopting 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 (Tesoro Extension Project)*
- RECOMMENDATION: Adoption of Tentative Order No. R9-2013-0007 is recommended.
- KEY ISSUES:
1. The Save San Onofre Coalition, a broad-based coalition of Orange County environmental non-governmental organizations (NGOs), claims that F/ETCA failed to submit a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely on in considering the adoption of the Tentative Order. F/ETCA argues, in rebuttal to the Coalition's claims, that the Final Subsequent Environmental Impact Report (FSEIR), certified by F/ETCA complies with CEQA and meets all requirements for the San Diego Water Board to adopt the Tentative Order. F/ETCA also argues that the recent addendum to the FSEIR further documents that the Tesoro Extension Project will not have any new significant impacts beyond those evaluated in the FSEIR.
  2. The Save San Onofre Coalition asserts that F/ETCA's Report of Waste Discharge (ROWD), submitted in the application for the Tentative Order, fails to address the requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). F/ETCA asserts in response that the Tesoro Extension Project will comply with the hydromodification requirements of

the recently adopted Caltrans statewide storm water permit (Order No. 2012-0011-DWQ, NPDES No. CAS000003) which were developed specifically for state highways.

3. The Save San Onofre Coalition argues that given the complexity of the Tesoro Extension Project, the multiplicity of technical and legal issues, and the alleged late availability of key documents, today's hearing should be converted to a workshop. The Coalition also argues that the hearing to consider adoption of the Tentative Order, should be held at a location in San Diego County. F/ETCA argues in rebuttal that the San Diego Water Board has made all of the key documents available for public review in a timely manner. F/ETCA also asserts that because the Tesoro Extension Project is located entirely within Orange County, today's hearing in Costa Mesa is the appropriate forum and location and the San Diego Water Board should move forward with considering adoption of the Tentative Order.

#### DISCUSSION:

##### Project Description

F/ETCA proposes to construct the "Tesoro Extension Project," an approximate 5.5 mile long limited access highway 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. This extension will be operated as a toll road, as are the existing portions of SR-241. The purpose of the Tesoro Extension Project is to provide improvements to the south Orange County transportation infrastructure that will help reduce existing and future traffic congestion on the Interstate 5 (I-5) freeway and the arterial network in south Orange County. F/ETCA is the Tesoro Extension Project sponsor overseeing construction and is also the California Environmental Quality (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 Tesoro Extension Project site is tributary to Cañada Gobernadora Creek, Cañada Chiquita Creek, and

associated tributaries in the San Juan Creek Watershed (**Supporting Document No. 1**). Through a process of avoidance and minimization of impacts to these surface waters, F/ETCA avoided all impacts to federal jurisdictional waters and as a result is not required to obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers for the Tesoro Extension Project.

### **Overview of the Tentative Order**

Tentative Order No. R9-2013-0007 (**Supporting Document No. 2**) will, if adopted, establish waste discharge requirements for the discharge of waste attributable to the Tesoro Extension Project to waters of the State, pursuant to Water Code section 13260 et. seq. The Tentative Order was released for public review and comment on January 17, 2013. 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 (**Supporting Document No. 3**).

Construction of the Tesoro Extension Project will result in the discharge of fill to 0.64 acre of waters of the State, including 0.40 acre (5,297 linear feet) of permanent impacts, of which 0.20 acre are wetlands. To compensate for unavoidable impacts to wetland and non-wetland waters of the State, F/ETCA proposes 20.31 acres (10,316 linear feet) of mitigation and an additional 13.55 acres of upland buffer restoration. The Tentative Order finds that this level of compensatory mitigation is sufficient to offset the adverse impacts to waters of the State attributed to the Tesoro Extension Project considering the overall size and scope of the impacts.

The Tesoro Extension Project includes the construction of new pavement and various related structures which add approximately 100 acres of impervious surfaces. The increase of impervious surfaces will reduce the amount of natural ground surface over which percolation of rainfall and other surface water can occur, which increases the peak storm runoff flow rate and volume. The Tentative Order requires implementation of a runoff management strategy to prevent impacts to aquatic resources through Best Management Practices (BMPs) and incorporation of

various project design features for erosion control, and water quality treatment. These BMPs and design features include a pipeline network and flow splitters to route runoff flows to treatment BMPs which include sand filters, biofiltration swales, and extended detention basins. The Tentative Order also requires that post construction BMPs provide for the capture and treatment of the 85<sup>th</sup> 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.

The Tentative Order includes, in Attachment B, a detailed Information Sheet that sets forth the principal background information and facts, regulatory and legal citations, references and additional explanatory information in support of the requirements of the Tentative Order.  
**(Supporting Document No. 2)**

#### **Save San Onofre Coalition Comments**

By letter dated February 6, 2013, Shute, Mihaly & Weinberger requested, on behalf of the Save San Onofre Coalition, that the San Diego Water Board postpone consideration of the Tentative Order until F/ETCA has identified the route for the entire Toll Road project and analyzed its environmental impacts in an environmental impact report, as required by CEQA **(Supporting Document No. 4)**. The Save San Onofre Coalition is a broad-based coalition of Orange County NGOs that includes: Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WILDCOAST-COSTASALVAjE, and Orange County Coastkeeper. Shute, Mihaly & Weinberger submitted additional comments on behalf of the Save San Onofre Coalition by letters dated February 22, 2013 **(Supporting Document No. 5)** and February 25, 2013 **(Supporting Document No. 6)** expressing various concerns with F/ETCA's CEQA documentation submitted in the application for the Tentative Order.

The Save San Onofre Coalition's fundamental claim is that the San Diego Water Board cannot rely on the 2006 South

Orange County Transportation Infrastructure Improvement Project (SOCTIIP) FSEIR certified by F/ETCA or a recent addendum to the FSEIR submitted by F/ETCA, to satisfy CEQA's requirements in adopting the Tentative Order. The project described in the 2006 SOCTIIP FSEIR document was to construct a limited access highway (Toll Road), approximately 16 miles long, extending from the existing SR-241, south from its existing southern terminus at Oso Parkway, to I-5 in the vicinity of Trestles Beach at the Orange County/San Diego County border line. The Coalition asserts that the San Diego Water Board cannot rely on the 2006 SOCTIIP FSEIR or the addendum because the project described in that document was found by the Coastal Commission and the U.S. Department of Commerce to violate the Coastal Zone Management Act due to the impacts of the Toll Road (the last four miles of which ran through San Onofre State Beach) on the coastal zone. The Coalition also maintains that the San Diego Water Board may not consider the environmental impacts of the Tesoro Extension separate and apart from those of the Toll Road project as a whole. The Coalition further asserts that F/ETCA is seeking to piecemeal the environmental review of the Toll Road project (i.e. the project described in the 2006 SOCTIIP FSEIR) in violation of CEQA by moving forward with the first phase of the project (i.e. the 5.5 mile long Tesoro Extension Project) without analyzing the impacts of the entire project-or identifying the proposed route of the Toll Road.

By letter dated February 15, 2013, the Endangered Habitats League (EHL), an NGO member of the Save San Onofre Coalition, submitted comments (prepared by ESA PWA for EHL) regarding the hydromodification impacts of the Tesoro Extension Project. EHL claims that, while the ROWD application for the proposed Project appears to address the flow control portion of the HMP, it does not address the bedload preservation portion of the HMP. EHL asserts that receiving waters will experience a reduction in bedload that would negatively affect beneficial uses and that the project's proposed mitigation does not properly address these anticipated impacts (**Supporting Document No. 7**). Additionally, by letter dated February 25, 2013, Hamilton Biological submitted comments regarding the Tesoro Extension Project Habitat Mitigation and Monitoring Plan at the request of EHL. The Hamilton Biological comments relate to absence of survey results for the San Diego Cactus Wren and the lack of analysis

regarding the Arroyo Toad population in San Juan Creek  
(**Supporting Document No. 8**).

### **F/ETCA Comments and Rebuttal**

By letters dated February 20, 2013 (**Supporting Document No. 9**), and February 25, 2013 (**Supporting Document No. 10**) F/ETCA maintains that the 2006 SOCTIIP FSEIR it certified as the lead CEQA agency and provided in the ROWD is valid and that the San Diego Water Board should rely on it in considering the adoption of the Tentative Order. F/ETCA asserts that the Tesoro Extension Project is proposed to be built within the footprint previously analyzed in the FSEIR between Oso Parkway and Ortega Highway (as shown in Attachment A to F/ETCA's February 20, 2013 letter). F/ETCA reports that the operational characteristics and width of the Tesoro Extension Project are the same as analyzed in the FSEIR. F/ETCA also maintains that the February 15, 2013 addendum to the 2006 FSEIR it approved further documents that the Tesoro Extension Project will not have any new significant impacts beyond those evaluated in the FSEIR. F/ETCA also asserts that because the Tesoro Extension Project is located entirely within Orange County, today's hearing in Costa Mesa is the appropriate forum and location for the hearing. Accordingly the San Diego Water Board should reject Save San Onofre Coalition's request for a hearing location in San Diego County. Additionally, by letter dated February 25, 2013, F/ECTA rebutted the February 15, 2013 letter from EHL stating that the Tesoro Extension Project will comply with the hydromodification requirements of the recently adopted Caltrans statewide storm water permit (Order No. 2012-0011-DWQ, NPDES No. CAS000003) which are developed specifically for state highways and specify analysis and mitigation that is compatible with state highway projects. F/ETCA has proposed a change in the Tentative Order to reflect such compliance (**Supporting Document No. 11**). Based on all of these reasons and other considerations described in its comment letters, F/ETCA maintains the San Diego Water Board should move forward at today's meeting with considering adoption of the Tentative Order.

By letter dated February 25, 2013 (**Supporting Document No. 12**) F/ETCA requested specific modifications to the Tentative Order. San Diego Water Board staff responses to these requested changes and any errata will be included

in a supplemental Executive Officer Summary Report. On February 25, 2013 F/ETCA also provided an overview document for San Diego Water Board members describing the water quality and environmental protection measures to be implemented in the Tesoro Extension Project (**Supporting Document No. 13**).

#### **Additional Comment Letters Regarding the Tentative Order**

By letter dated February 25, 2013 Rancho Mission Viejo requested specific modifications to the Tentative Order regarding the conservation easement and inspection and entry requirements. San Diego Water Board staff responses to these requested changes and any errata will be included in a supplemental Executive Officer Summary Report (**Supporting Document No. 14**). The San Diego Water Board also received several hundred form letters and over seventy non-form letters from private citizens, organizations, and elected officials in support of the Tesoro Extension Project and one letter against the Project (**Supporting Document No. 15**). All of these comment letters were timely submitted by the close of the comment period.

#### **San Diego Water Board Staff Analysis of Comments Received**

San Diego Water Board staff are in the process of reviewing the various technical and legal issues raised in the comment letters on the Tentative Order. Written responses to the comment letters are being prepared for inclusion in a Response to Comments document which will be provided to San Diego Water Board members in a supplemental Executive Officer Summary Report and posted on the Board website for review by interested persons prior to today's hearing.

- |                       |  |
|-----------------------|--|
| LEGAL CONCERNS:       | Some of the legal issues raised by the F/ETCA and the Save San Onofre Coalition are still under evaluation.  |
| SUPPORTING DOCUMENTS: | <ol style="list-style-type: none"> <li>1. Location Maps (Hardcopy)</li> <li>2. Tentative Order No. R9-2013-0007 with attachments (Hardcopy)</li> <li>3. Notice of Availability (Hardcopy)</li> <li>4. Shute, Mihaly &amp; Weinberger LLP on behalf of Save San Onofre Coalition, Request for Public Comment Period Extension, dated 2/6/2013 (Hardcopy)</li> </ol> |

5. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Additional Comments on Proposed Waste Discharge Requirements, dated 2/22/2013 (Electronic Copy)<sup>1</sup>
6. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Response to Transportation Corridor Agencies Letter dated February 20, 2013, dated 2/25/2013 (Hard Copy)
7. Endangered Habitats League, ESA PWA Comment Letter Dated February 15, 2013 (Electronic Copy)
8. Hamilton Biological Comments on HMMP, dated 2/25/2013 (Electronic Copy)
9. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger's February 6, 2013 Request for Extension, dated 2/20/2013 (Electronic Copy)
10. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger Letter Dated February 22, 2013, dated 2/25/2013 (Electronic Copy)
11. Transportation Corridor Agencies, F/ETCA Response to EHL (ESA PWA) Letter Dated February 15, 2013, dated 2/25/2013 (Electronic Copy)
12. Transportation Corridor Agencies, F/ETCA Comments - Tentative Order No. R9-2013-0007 (including explanation of edits), dated 2/25/2013 (Electronic Copy)
13. F/ETCA State Route 241 Tesoro Extension Project Water Quality and Environmental Measures document, dated 2/25/2013 (Hardcopy)
14. Rancho Mission Viejo Comments dated 2/25/2013 (Electronic Copy)
15. Comment Letters Regarding Tentative Order (Electronic Copy)

**PUBLIC NOTICE:**

Notification of this action was sent to the known interested parties via e-mail on January 17, 2013. Tentative Order No. R9-2013-0007 was noticed and posted on the San Diego Water Board website on January 17, 2013.

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<sup>1</sup> Electronic copies in PDF format can be found on the CD provided with this agenda item.

State of California  
Regional Water Quality Control Board  
San Diego Region

SUPPLEMENTAL  
EXECUTIVE OFFICER SUMMARY REPORT  
March 13, 2013

ITEM: 8

SUBJECT: 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 adopting 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 (Tesoro Extension Project)*

RECOMMENDATION: Staff recommends that the San Diego Water Board begin the public hearing to receive testimony and comments on March 13, 2013 and postpone action on the Tentative Order to a later meeting to allow staff and counsel adequate time to evaluate CEQA comments and compliance, prepare responses to remaining issues, and draft revised or additional findings as appropriate for inclusion in the Tentative Order.

DISCUSSION: Comments on the Tentative Order from F/ETCA, Shute, Mihaly & Weinberger on behalf of the Save San Onofre Coalition, Endangered Habitats League, Hamilton Biological on behalf of the Endangered Habitats League, and Rancho Mission Viejo have been previously provided to the San Diego Water Board Members as **Supporting Documents Nos. 4. through 14**. Several hundred form letters and over seventy non-form letters from private citizens, organizations, and elected officials in support of the Tesoro Extension Project and one letter against the Project were also previously provided to the San Diego Water Board Members on disc as **Supporting Document No. 15**. All of these comment letters were timely submitted by the close of the comment period on February 25, 2013.

After the close of the comment period, approximately 5,350 additional comment letters have been received regarding the Tentative Order as of March 7, 2013. In

March 13, 2013

consultation with the Chair, the San Diego Water Board decided to accept late written comments received by 5:00pm on March 1, 2013 for inclusion in the administrative record for the Tentative Order. Over 1,550 comment letters were received from February 25, 2013 to March 1, 2013. Of the approximately 1,550 letters received, 1,515 were form letters against the Project, 30 were form letters in favor of the Project, 6 were general letters against the Project, and 4 were general letters in favor of the Project. Electronic copies of the additional 1,550 comment letters are provided in **Supporting Document No. 16**.

San Diego Water Board counsel is in the process of evaluating and responding to comments in **Supporting Document Nos. 4, 5, 6, 9, and 10** on whether F/ETCA failed to submit a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely on in considering the adoption of the Tentative Order.

The timely submitted comment letters regarding non-CEQA issues on the Tentative Order include several substantive comments on issues of importance to the Save San Onofre Coalition and others, as well as a number of other comments requesting clarification and various modifications to the Tentative Order (**Supporting Documents No. 7, 8, 12, and 14**). A Response to Comments document and Revised Tentative Order (**Supporting Document Nos. 17 and 18**) have been prepared to address the comments and concerns in the technical comment letters that were timely submitted. The substantive issues in these comment letters include:

1. Discharger compliance with the South Orange County Draft Hydromodification Management Plan.
2. Concerns regarding the impacts of the Project on coarse grain sediment (bedload) transport which naturally armors the receiving water stream bed and reduces the erosive forces associated with high flows.
3. Comments regarding the adequacy of the Habitat Mitigation and Monitoring Program with regards to Project impacts affecting the Cactus Wren and the Arroyo Toad.
4. Several requests for changes to the Tentative Order

made by the Discharger and Rancho Mission Viejo regarding post-construction best management practices(BMPs), compensatory mitigation timing and reporting, conservation easements, financial assurances, reporting requirements, and inspection and entry.

The Response to Comments document addressing these issues and Revised Tentative Order (**Supporting Document Nos. 17 and 18**) were released for public review on March 7, 2013 and posted on the San Diego Water Board website.

LEGAL CONCERNS: Some of the legal issues raised by the F/ETCA and the Save San Onofre Coalition are still under evaluation.

SUPPORTING  
DOCUMENTS:

1. Location Maps (Hardcopy)
2. Tentative Order No. R9-2013-0007 with attachments (Hardcopy)
3. Notice of Availability (Hardcopy)
4. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Request for Public Comment Period Extension, dated 2/6/2013 (Hardcopy)
5. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Additional Comments on Proposed Waste Discharge Requirements, dated 2/22/2013 (Electronic Copy)<sup>1</sup>
6. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Response to Transportation Corridor Agencies Letter dated February 20, 2013, dated 2/25/2013 (Hard Copy)
7. Endangered Habitats League, ESA PWA Comment Letter Dated February 15, 2013 (Electronic Copy)
8. Hamilton Biological Comments on HMMP, dated 2/25/2013 (Electronic Copy)
9. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger's February 6, 2013 Request for Extension, dated 2/20/2013 (Electronic Copy)
10. Transportation Corridor Agencies, Response to Shute, Mihaly & Weinberger Letter Dated February 22, 2013, dated 2/25/2013 (Electronic Copy)
11. Transportation Corridor Agencies, F/ETCA

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<sup>1</sup> Electronic copies in PDF format can be found on the CD provided with this agenda item.

March 13, 2013

Response to EHL (ESA PWA) Letter Dated  
February 15, 2013, dated 2/25/2013 (Electronic  
Copy)

12. Transportation Corridor Agencies, F/ETCA  
Comments - Tentative Order No. R9-2013-0007  
(including explanation of edits), dated 2/25/2013  
(Electronic Copy)
13. F/ETCA State Route 241 Tesoro Extension  
Project Water Quality and Environmental  
Measures document, dated 2/25/2013 (Hardcopy)
14. Rancho Mission Viejo Comments dated 2/25/2013  
(Electronic Copy)
15. Comment Letters Regarding Tentative Order  
(Electronic Copy)
16. Additional Comment Letters Regarding Tentative  
Order (Electronic Copy)
17. Revised Tentative Order No. R9-2013-0007 with  
attachments (Hardcopy)
18. San Diego Water Board Response to Comments  
(Hardcopy)

# **EXHIBIT 6**

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

WEDNESDAY, JUNE 19, 2013

WATER QUALITY CONTROL BOARD  
BOARD MEETING ROOM  
9174 SKY PARK COURT  
SAN DIEGO, CALIFORNIA

1 MR. MORALES: I will like to call the meeting  
2 back to order. It's after 1:00 p.m. so we can take up  
3 item number nine on the agenda and this is the time and  
4 place for the continuance of public hearing on tentative  
5 order number R9-2013-0007, Waste Discharge Requirements  
6 for the Foothill/Eastern Transportation Corridor Agency,  
7 Tesoro Extension, commonly know as the 241 project.

8 The purpose of this hearing is for the board to  
9 hear testimony and comments about the tentative order  
10 from staff, the applicant; Foothill Eastern  
11 Transportation Corridor Agency, or TCA, and those  
12 affected by or interested in the proposed permit about  
13 issues that concern them.

14 The board heard from staff representatives for  
15 designated parties and other interested person at the  
16 hearing that took place on March 13, 2013 in Costa Mesa.  
17 The board did not take final action at that hearing. On  
18 May 30 the board issued a notice of continuance of the  
19 hearing and order of proceedings setting forth the  
20 issues that the designated parties and the public could  
21 address in their comments to the board, the order of  
22 speakers for this item, and allocating blocks of time to  
23 staff, TCA, and Save San Onofre Coalition.

24 As specified in the May 30 hearing notice and  
25 order of proceedings designated parties may address any

1 changes to the order since March 13th, and issues  
2 related to CEQA. Now members of the public that were  
3 not able to participate in the March 13th hearing in  
4 Orange County may generally, but very briefly, comment  
5 on the order. Now we do have a list of all of those  
6 that you were able to attend, did attend, and those of  
7 you that spoke at the Orange County hearing. That  
8 hearing was also quite full, but we were able to do a  
9 number of things, including log those of you in support  
10 and opposed to -- to the tentative order. Now as you  
11 can see we have a really large crowd today. After we  
12 hear from staff, the TCA and the Coalition, we will  
13 begin hearing from members of the public, following the  
14 Coalition.

15 Now for those elected officials in the  
16 audience, to the extent we were able to identify you  
17 from the cards submitted, we'll try and have you speak  
18 at that point and then we will also hear from members of  
19 the public representing different affiliations and  
20 positions, as many as we can hear from today. However,  
21 as you can see, we have a lot of folks here and a lot of  
22 you have filled out cards and want to speak. Here's  
23 what I propose and suggest. We have allocated two hours  
24 for the public participation part forum. Generally we  
25 give you all three minutes each to speak, but we can't

1 do it given the number of you that want to speak. So we  
2 have to ratchet that down to about two minutes. I know  
3 that a lot of you share your position with friends,  
4 other groups, members of groups that you belong to, and  
5 to the extent they filled out cards and they want to  
6 give some of their time to you, we'll give you an extra  
7 minute for every person that does that. So you can  
8 elect somebody to speak on your behalf, and, please,  
9 understand that we do log all of the information so we  
10 know, and the record reflects, whether you are in  
11 support of or not tentative order. And as many of you  
12 have seen there is a sign-up sheet out in the lobby  
13 where you can log your positions. We got staff  
14 assisting in that respect. We also have staff that have  
15 led folks back to our library, which is our overflow  
16 room, that accommodates 50-ish folks, and it's already  
17 full and it's overflowing. To the extent anybody leaves  
18 there, staff will be available to get new people to fill  
19 those spots. Back there, however, it's only an audio  
20 feed and the projections that we see from the  
21 PowerPoints. There is no realtime video type feed for  
22 the library, just so you know that. Okay. As I  
23 mentioned this is a continuation of the hearing that  
24 began on March 13 and we heard from a lot of individuals  
25 at that hearing. I want to emphasize that all of the

1 comments received at that hearing are part of the record  
2 for this proceeding. So I encourage any of you that may  
3 have participated there to please not simply repeat what  
4 you may have there, because we do have this issue of  
5 time and our constraint.

6 And largely this hearing today is going to be  
7 or should be focussed on several issues. These are the  
8 continuation issues from the last hearing, which  
9 primarily relate to CEQA. So to the extent there is  
10 public participation or comment, and definitely to the  
11 extent that there's participation or presentation from  
12 interested and designated parties, we expect that they  
13 reflect the issues that we have asked to be addressed  
14 today and please not go too far astray.

15 If you haven't already filled out a speaker  
16 card, and you are interested in speaking, please fill  
17 out a card and get it up to our staff and we'll make its  
18 way up here. And, as I mentioned, we will do our best  
19 to accommodate those requesting to speak once we get  
20 through that portion.

21 So, finally, I would say that we do have, as  
22 you can see, standing room only. Some of you have signs  
23 that you may wish to hold up to make your point, that's  
24 fine, but to the extent you do that I request that you  
25 do it around the perimeters and try to avoid blocking

1 access or the ability of anybody who might be behind you  
2 to actually see what's going on. And this is a reminder  
3 to myself and any speakers that come after me that the  
4 folks in our overflow room will appreciate it if we  
5 speak directly into the microphones, because it's hard  
6 for them to hear otherwise. And I'm the only one at  
7 fault so far. And one of our board members --

8 MR. STRAWN: This is a fire and safety issue.  
9 I understand there's double parking out there that's  
10 blocking some of the access. If you're double parked or  
11 you're questionable about your parking you should move  
12 your car because we will have no choice but to call and  
13 have some cars towed. So please be aware of that.

14 MR. GIBSON: Mr. Chairman, if I can too, on a  
15 similar note, we did reserve seating in the front of the  
16 room for representatives of TCA's and from the NGO's,  
17 included Save San Onofre. I have heard that some of the  
18 seats have been taken by others and I would like to ask,  
19 if the seats can, that they be made available to those  
20 representatives so they can focus on participating in  
21 the deliberations today.

22 MR. MORALES: And that's right and I would the  
23 same thing and it's -- it's not to be elitist folks,  
24 it's simply a function of the proceedings. The NGO's  
25 and TCA representatives are designated parties and along

1 with staff they will be making presentations. So that's  
2 why we reserve the seats for them so that they don't  
3 have to, you know, make their way through the large  
4 crowds. So please don't take offense, but to the extent  
5 you may happen to be in one of those reserved seats, if  
6 you can make it available for the folks we reserved it  
7 for, that would be appreciated.

8 So there are just a few preliminary matters but  
9 before we get to that I would like to ask if there are  
10 any board member's disclosures concerning this item and  
11 I will begin because I received, at my office, two  
12 voicemails, one from Mr. Castaneda in San Diego, he left  
13 no -- no message other than that he was calling in and  
14 it would relate to this; and another from Mr. Star, from  
15 Orange County, who left a message regarding today's  
16 proceedings. I did not return the call. And the  
17 message itself will have no impact on the decision I  
18 make today in my capacity as a board member one way or  
19 another. If there are any other disclosures I will hear  
20 them now. I'll just make a general statement about  
21 ex-parte communications after.

22 MS. KALEMKIARIAN: I also, Mr. Chairman,  
23 received a call, a voicemail, on my office line, from  
24 the representative of the Orange County Business  
25 Council. I believe it was Mr. Star -- I'm not sure --

1 expressing his support for the project. And it would  
2 have no impact on -- on my vote either way.

3 MR. ABARANEL: I also received a voicemail from  
4 Mr. Star or Stark -- I'm sorry. I don't remember --  
5 from the Orange County Business Council. I did not  
6 respond. And, at least in the voicemail, no opinion was  
7 delivered from him to me.

8 I did look at the Orange County Business  
9 Council web page. It was beautiful. It looks like it's  
10 a good organization that helps a lot of people.

11 I also received an e-mail from Mr. Castaneda  
12 and informed him that unfortunately I couldn't talk to  
13 him. And he accepted that.

14 MR. ANDERSON: I have worked on other projects,  
15 mostly relating to the Multi-Species Conservation  
16 Program and the Gnatcatcher Habitat with designated  
17 parties on both sides of the issue. And that shouldn't  
18 influence my decision about this, and I have an open  
19 mind about it.

20 And I also have to mention that, in reviewing  
21 the speaker slips, that my college roommate -- or not  
22 college -- my college buddy, Michael Lynski, is one of  
23 the speakers. And our friendship would not change how I  
24 would vote.

25 MR. MORALES: Okay. Are there any other

1 disclosures by the board?

2 Okay. Quick comment on ex partes that the  
3 state's ex parte rules did change this past year that,  
4 in the future, before any of you all decide to have  
5 ex parte contact, please understand that they're only  
6 allowable now even with a disclosure requirement with  
7 respect to general orders.

8 This is not a general order. This is a WDR.  
9 So to the extent this -- for your knowledge, that it  
10 comes up for you in the future, in situations like this,  
11 those types of contacts are, even under the new rules,  
12 just impermissible.

13 MS. HAGAN: Chairman Morales, perhaps all the  
14 board members could now make the statement, having heard  
15 what we just heard, that they will all make their  
16 decisions based on evidence that is in the record and  
17 not on any outside communications that were received.

18 MS. KALEMKIARIAN: This is Sharon Kalemkiarian.  
19 I will make my decision based only on the evidence  
20 received.

21 MR. ABARANEL: Since I didn't receive any  
22 information, I hope to receive some now and base my  
23 decision on that.

24 MR. ANDERSON: I will base my decision on the  
25 information received and the record.

1 MR. STRAWN: Nobody called me. So I will make  
2 my decision based on the information we will receive  
3 here.

4 MR. ABARANEL: We'll call you next time.

5 MR. STRAWN: Thank you.

6 MR. MORALES: And I, too, will only base my  
7 decision on the information received and made part of  
8 the record.

9 Okay. With that, the order of presentations  
10 and time limit is going to be as follows:

11 First we're going to hear from our staff, the  
12 water board staff. And that's going to be approximately  
13 15 minutes. At that point we'll hear from the  
14 coalition, 30 minutes. And then we'll hear from TCA for  
15 30 minutes.

16 And for you parties, to the extent that you  
17 want to reserve time for closing or rebuttal, let us  
18 know at the beginning of your presentation. We are  
19 keeping time. And we will let you know once you get to  
20 the point where you need to stop in order to reserve the  
21 time.

22 And after that we'll go to interested persons  
23 and basically greet the public. And as I mentioned,  
24 we're going to be shooting for two minutes.

25 I know that's a very brief time, folks. So

1 think about what you want to convey to us before coming  
2 up to the mic.

3 And please, again, if you are part of a group  
4 and you have a number of folks in that group that hold  
5 the same position, it will be much better for us if you  
6 elect a representative that can engage in slightly  
7 fuller presentation by taking some of your time.

8 But we're not going to keep anyone from  
9 speaking, but we do have our time constraints.

10 At the conclusion of those presentations, we  
11 may ask staff to respond to our questions or any  
12 comments that they happen to have heard during the  
13 presentations.

14 A timer is going to be used. Board members and  
15 board council may ask questions at any time throughout  
16 the hearing. The time for questions and responses  
17 doesn't count against you. So don't worry if you're  
18 taking time to respond to our specific questions. It  
19 won't eat into your 30 minutes, folks. Or even some of  
20 you in the public, if we have questions for, you we may  
21 follow up.

22 So now I'd ask that all persons expecting to  
23 testify please stand, raise your right hand and take the  
24 following oath:

25 I'll simply ask you guys to say "I do" when I

1 finish.

2 Do you swear the testimony you are about to  
3 give is the truth? And if so, please answer "I do."

4 THE WITNESSES: I do.

5 MR. MORALES: Okay. So with that, let's begin  
6 with staff.

7 And all speakers, when you come up to the mic,  
8 please state your name and let us know that you have  
9 taken the oath. Thank you.

10 MR. BRADFORD: Good afternoon, Mr. Chairman and  
11 members of the board.

12 My name is Darren Bradford. I'm an  
13 environmental scientist for the Northern Watershed Unit.

14 Excuse me one second.

15 I'm here to introduce item No. 9, Waste  
16 Discharge Requirements No. R9-2013-0007 for the Tesoro  
17 Extension (State Route 241) project.

18 At this time I would like to introduce the  
19 San Diego Water Board files into the record.

20 To refresh your memory, the Tesoro Extension  
21 Project is shown here by a dashed red line that extends  
22 from Oso Parkway to the proposed Cow Camp Road shown  
23 here in gray.

24 So here's the existing sections of 241. Here's  
25 the proposed Tesoro Extension Project. And here is the

1 proposed Cow Camp Road.

2 The purpose of the Tesoro Extension Project is  
3 to provide improvements to the south Orange County  
4 transportation infrastructure.

5 As you will recall, on March 13th, 2013, the  
6 San Diego Water Board opened a public hearing to  
7 consider adoption of the tentative order for the Tesoro  
8 Extension Project.

9 San Diego Water Board members sent written  
10 questions regarding the project to TCA and the Save  
11 San Onofre Coalition, and responses were received on  
12 March 29th, 2013. Those responses have been provided to  
13 the board members as supporting documents Nos. 3 and 4  
14 of the agenda package.

15 Board members also posed questions verbally to  
16 staff and TCA during the March board meeting. These  
17 questions will be addressed today during staff's and  
18 TCA's presentations.

19 The board continued the public hearing to  
20 today's meeting to allow staff and counsel adequate time  
21 to prepare responses to the remaining issues, draft  
22 revised conditions and/or additional findings as  
23 appropriate for inclusion in the tentative order, and to  
24 evaluate the comments submitted regarding compliance  
25 with the California Environmental Quality Act, also

1 known as CEQA.

2 Since the March hearing, staff evaluated the  
3 validity of TCA's CEQA documentation; revised the  
4 tentative order in response to oral comments received at  
5 the March hearing, written comments and legal counsel's  
6 evaluation of CEQA; accepted public comments regarding  
7 the latest provision of the tentative order; revised the  
8 response to comments report to include responses to CEQA  
9 questions; prepared an addendum to the response to  
10 comments report to address new public comments; and  
11 prepared an errata sheet to address additional changes  
12 to the tentative order.

13 The revised tentative order was released for  
14 public review and comment on May 30th, 2013. Written  
15 comments were limited to the tentative order revisions  
16 and CEQA. Comments received between May 30th and  
17 June 7th, 2013 are addressed in the addendum to response  
18 to comments report. The addendum has been included as  
19 supporting document No. 11 in your agenda package.

20 The key issues raised are CEQA compliance,  
21 sediment supply and hydromodification; and timing of the  
22 habit mitigation monitoring plan and the runoff  
23 management plan.

24 I will discuss each key issue individually.

25 The concerns regarding TCA's CEQA compliance

1 include regional board reliance on potentially  
2 inadequate CEQA documentation and issues related to  
3 TCA's public participation process.

4 TCA is the lead agency under the California  
5 Environment Quality Act for the project. TCA certified  
6 a final environmental impact report for the  
7 transportation improvement project in 2006.

8 TCA submitted a report -- a report of waste  
9 discharge application for the Tesoro Extension Project  
10 to the San Diego Water Board in August of 2012. TCA  
11 prepared an addendum for the Tesoro Extension Project,  
12 and the TCA board of directors approved the addendum and  
13 conceptual design for the project on April 18th, 2013.

14 TCA filed a notice of determination with the  
15 state clearinghouse stating that there were no new  
16 significant effects and no increase in the severity of  
17 the impact for the Tesoro Extension Project as compared  
18 to the project analyzed in the 2006 final EIR.

19 MR. ABARANEL: Excuse me. May I ask a  
20 question?

21 MR. BRADFORD: Sure.

22 MR. ABARANEL: What was the project that was  
23 analyzed in the 2006 EIR?

24 MR. BRADFORD: It was the Foothill/Eastern  
25 Corridor Project. It was a 16-mile road that went from

1 Oso Parkway all the way down to the 5.

2 MR. ABARANEL: So it was not the project that's  
3 in front of us today.

4 MR. BRADFORD: It is not the project that is in  
5 front of us today.

6 MR. ABARANEL: Thank you.

7 MR. BRADFORD: The San Diego Water Board, as a  
8 responsible agency under CEQA, has relied on TCA's  
9 environment impact report and subsequently approved  
10 addendum as required by CEQA.

11 The San Diego Water Board, as a responsible  
12 agency, has made findings for impact to resources within  
13 its responsibility and has incorporated mitigation  
14 measures and a monitoring and reporting plan in the  
15 order.

16 The mitigation measures for the Tesoro  
17 Extension Project will reduce impacts to resources that  
18 are within the board's purview to less than significant  
19 level.

20 San Diego Water Board counsel has reviewed the  
21 information submitted in the responses to the board CEQA  
22 question and considered the findings and conclusions of  
23 the resolution adopted by TCA board of directors.

24 Based on the these and other considerations,  
25 San Diego Water Board council has concluded that the

1 CEQA documentation provided by TCA is adequate for the  
2 San Diego Water Board, as a responsible agency, to rely  
3 upon in considering adoption of the revised tentative  
4 order.

5 The board also received comments concerning  
6 opportunities for public participation regarding TCA's  
7 CEQA addendum. These comments largely pertain to  
8 actions TCA has taken with respect to the project  
9 approval and adoption of CEQA addendum.

10 The board does not have authority over TCA's  
11 public participation process used or the manner in which  
12 it approves projects.

13 However, the water board has provided multiple  
14 public participation opportunities for this project that  
15 included a notice of the proposed order for waste  
16 discharge requirements on January 17th, 2013; TCA's  
17 addendum and other important information was posted on  
18 the website; the board accepted written comments on the  
19 tentative order and revisions tentative order; and the  
20 board accepted additional testimony at the March board  
21 meeting.

22 And finally, the board will allow for  
23 additional testimony at today's board meeting.

24 Excuse me one second.

25 Next I would like to discuss concerns regarding

1 TCA's ability to meet the coarse sediment supply  
2 requirements of the Southern Orange County  
3 Hydromodification Management Plan, also known as the  
4 HMP.

5 Testimony and written comments expressed  
6 concern with the project's potential effect on the  
7 supply of sediment bed material to Chiquita Creek,  
8 Gobernadora Creek and San Juan Creek.

9 The tentative order was revised to address  
10 concerns regarding the coarse bed -- coarse bed material  
11 sediment supply by requiring TCA to submit and implement  
12 an updated runoff management plan by October 31st, 2013.

13 The runoff management plan must be prepared and  
14 certified by a qualified engineer. And the runoff  
15 management plan must clearly indicate the means for  
16 compliance with all of the requirements in the HMP,  
17 including those regarding coarse bed material sediment  
18 supply.

19 Lastly, concerns were raised regarding the  
20 timing of the San Diego Water Board approval of the  
21 habit mitigation and monitoring plan and the runoff  
22 management plan.

23 The commenters state that, in order to comply  
24 with the Orange County HMP, the site design may need to  
25 be significantly altered. Possible changes to the

1 project may include modification of fill discharge  
2 locations, storm water best management practices and  
3 grading footprint.

4 They are concerned that the water board cannot  
5 evaluate the project until TCA analyzes the changes  
6 needed to meet the requirements in the HMP.

7 The revised tentative order requires that the  
8 updated runoff management plan comply with the Orange  
9 County HMP and model water quality management plan.  
10 These requirements must be met regardless of when the  
11 runoff management plan is updated and submitted to the  
12 water board.

13 Additionally, should the tentative order be  
14 adopted and the Tesoro Extension Project altered for any  
15 reason from what is currently proposed in TCA's report  
16 of waste discharge, TCA would need to request an  
17 amendment to the order. Such an amendment would be  
18 publically noticed and considered by the San Diego Water  
19 Board for adoption in a public hearing.

20 Commenters also had concerns that the  
21 mitigation plan has been deferred for future public  
22 comment. The commenters believed the board should not  
23 consider approving this project before the mitigation  
24 plan is finalized because doing so may violate the  
25 California Water Code and CEQA.

1           The mitigation measures are not deferred as the  
2           comments suggest. Rather, the tentative order requires  
3           the mitigation plan to be updated to meet the standards  
4           in the order.

5           The requirements for the mitigation plan, as  
6           outline in the section VII and attachment B of the  
7           order, describe the standards that the mitigation plan  
8           must meet. These standards are specific and  
9           enforceable.

10           In addition, water board staff find that the  
11           mitigation required in the order meets the mitigation  
12           requirements of CEQA and adequately addresses impacts to  
13           water of the state.

14           MR. ABARANEL: Could you address the  
15           enforceability of violating the mitigation plan or its  
16           not being sufficient to mitigate the actual discharges.

17           MR. BRADFORD: Well, there are specific  
18           conditions that have to be met by the project when it's  
19           implemented. If -- if it wasn't implemented as  
20           proposed, then they would be subject to enforcement  
21           actions. And that could be a variety of things from our  
22           board.

23           MR. ABARANEL: Suppose mitigation plans are  
24           designated and met by TCA, and then I guess Cal Trans  
25           takes it over once it's completed, but they don't work.

1                   What happens?

2                   MR. BRADFORD:  Then TCA has to come forward  
3 with plans to fix what is wrong.  Typically it's not the  
4 whole mitigation site that has problems.  It's the  
5 particular section that perhaps they need to assess  
6 criteria.

7                   So they have to figure out why it did not meet  
8 the set criteria and come up with a solutions to fix  
9 those issues.

10                  If they can't, then they have to come up with  
11 an alternative mitigation project.  So they still have  
12 to replace those -- those resources.

13                  MR. ABARANEL:  Thank you.

14                  MR. BRADFORD:  Since the March hearing, water  
15 board staff made revisions to the tentative order for  
16 the board's consideration.

17                  These revisions include a requirement to  
18 update, certify and implement the runoff management  
19 plan; a requirement to develop and implement a  
20 monitoring program to protect water quality and assess  
21 compliance with the receiving water limitations of the  
22 tentative order; and changes to the CEQA findings to  
23 acknowledge that the CEQA documentation produced by TCA  
24 is adequate for the San Diego Water Board, as a  
25 responsible agency, to rely upon in considering the

1 adoption of the tentative order.

2 Additionally, in response to public comments  
3 and to fix the errors found in the revised order, an  
4 errata sheet has been provided to the board as  
5 supporting document No. 12.

6 These changes include correction of the date of  
7 the current runoff management plan; correction of errors  
8 in the acres of mitigation listed in finding N and in  
9 attachment B; and a change to the submittal date of the  
10 receiving water monitoring plan to ensure monitoring can  
11 begin this rainy season if needed.

12 As I stated earlier, board members posed  
13 questions during the March board meeting. I would like  
14 to address those questions now.

15 The first board member question: Is the TCA a  
16 road agency only?

17 TCA is not a road agency. TCA is a  
18 transportation corridor agency. TCA has the legislative  
19 authority to construct any transportation improvements  
20 within its corridors that are consistent with the  
21 Southern California Association of Governments regional  
22 transportation plan and the regional transportation  
23 improvement program. These -- this includes such  
24 transit improvements as HOV lanes, bus lanes and light  
25 rail.

1           The next question is: Who uses State Route  
2           241, and where are they going?

3           Survey data compiled by TCA documents a diverse  
4           group of individuals use the toll roads for a variety of  
5           purposes. Approximately 50 percent of the trips on the  
6           toll roads are used by individuals commuting from home  
7           to work.

8           The information shown in the tables provides  
9           demographic information regarding TCA customers with and  
10          without FasTrak accounts. FasTrak customers represent  
11          approximately 95 percent of the users of the toll roads.

12          In 2002 TCA conducted a survey of motorists  
13          traveling on the State Route 241 Foothill/Eastern  
14          Transportation Corridor. The corridor travel pattern  
15          and trip characteristic survey involved patrons who use  
16          FasTrak transponders and patrons that pay cash. The  
17          survey included both weekday and weekend users of the  
18          corridor.

19          The key findings from these surveys are more  
20          than 90,000 trips occur on weekdays between 6:00 a.m.  
21          and 7:00 p.m.; trips to and from work comprise 49  
22          percent of the total weekday traffic between 6:00 a.m.  
23          and 7:00 p.m.; on weekends personal and recreational  
24          uses dominate the purpose of the trips.

25          The next question is: What is the "roads

1 first" policy?

2 In the mid-1980s, the County of Orange, in  
3 order to manage the transportations needs of population  
4 growth and development, adopted a roads first strategy.

5 This policy is manifested in the establishment  
6 of roadway improvement programs in areas having  
7 significant growth and development. The development in  
8 an area is tied to roadway construction by a building  
9 permit phasing, thereby guaranteeing that roads will be  
10 built first.

11 The next question is: TCA noted in its  
12 presentation that there is a 27 percent growth of  
13 population forecast by 2035. What is the forecasted  
14 growth for public transit during the same time period?

15 The forecast for the growth in public transit  
16 are defined by Orange County Transportations Authority's  
17 long range transportation plan and included, by 2035,  
18 add approximately 400,000 hours of bus service, which  
19 constitutes a 25 percent increase; double the size of  
20 the van pull program; increase Metrolink service; and  
21 add 750 miles of bikeways to the existing 1,000-mile  
22 network.

23 The next question is: Who will supervise the  
24 mitigation sites?

25 The revised tentative order requires TCA to

1 identify the party responsible for implementing the  
2 mitigation measures identified in the final mitigation  
3 plan no later than July 26th, 2013.

4 Currently TCA proposes to maintain both  
5 mitigation sites until performance criteria have been  
6 reached, at which time mitigation area A will be  
7 maintained and managed in perpetuity by the Ranch  
8 Mission Viejo Land Trust. TCA is responsible for the  
9 land management of mitigation area B until they  
10 designate a third party.

11 And the final board member question is: How  
12 will the project be funded in perpetuity?

13 The tentative order requires TCA to provide a  
14 form of financial assurance that is acceptable to the  
15 water board within six months of the adoption of the  
16 order. The financial assurance must provide for the  
17 acquisition of land required for compensatory  
18 mitigation; and the estimated cost of obtaining the  
19 conservation easement; the estimated cost of  
20 construction of the compensatory mitigation project; and  
21 the estimated cost of achieving compliance with the  
22 performance measures set forth in the final mitigation  
23 plan.

24 Both water board and the California Department  
25 of Fish and Wildlife require financial security to

1 ensure performance of the mitigation requirements. TCA  
2 has prepared draft escrow agreements for the mitigation  
3 sites. These agreement will be reviewed and approved by  
4 the water board once the mitigation plan has been  
5 finalized.

6 TCA will provide specific information on how  
7 they intend to comply with these conditions in their  
8 presentation today.

9 Finally, I would like to clarify an issue that  
10 occurred during a presentation at the March board  
11 meeting. During the Save San Onofre Coalition  
12 consultant's presentation, a representative showed a  
13 figure incorrectly showing that the Tesoro Extension  
14 Project impacting Wagon Wheel Creek and its headwaters.  
15 The consultant confirmed that they erroneously labeled  
16 drain A1 as Wagon Wheel Creek in their presentation.

17 This is the original figure shown at the March  
18 hearing misidentifying drainage A1 as Wagon Wheel Creek.  
19 As you will see in the next slide, Wagon Wheel Creek is  
20 north of the area shown in this image.

21 So as you can see, this would be the proposed  
22 area for the Tesoro Extension Project. This is drainage  
23 A1. And you can see it's labeled as Wagon Wheel Creek.  
24 So again, that's drainage A1. Wagon Wheel Creek is  
25 actually further north, and you will see it on the next

1 slide.

2 This slide correctly shows the area of the  
3 project, the location of Wagon Wheel Creek and drainage  
4 A1. So here's the study area for the Tesoro Extension  
5 Project. Here's the actual location of Wagon Wheel  
6 Creek. And you can see there is a ridge line that goes  
7 through here that separates the project from Wagon Wheel  
8 Creek.

9 However drainage A1 is down here. And so the  
10 potential impact would be to drainage A1 and not Wagon  
11 Wheel Creek.

12 Please note the study area is the area of  
13 potential impact for the project. Although drainage A1  
14 is within the study area, it will not be filled as part  
15 of the Tesoro Project.

16 In summary, this project proposes to construct  
17 a five and a half mile toll road. To address the storm  
18 water effects of the project, the tentative order will  
19 require the discharger to meet the BMP standards in the  
20 Caltrans storm water permit, the south Orange County  
21 draft hydromodification plan and the south Orange County  
22 draft model water quality management plan.

23 Project impacts to nonfederal waters of the  
24 state have been avoided and minimized to the maximum  
25 extent practical. All remaining impacts to water will

1 be mitigated at a very high ratio to establishment and  
2 restoration projects consistent with and exceeding water  
3 board standards.

4 Therefore, staff recommends adoption of revised  
5 tentative order No. R9-2013-0007 with errata.

6 This concludes my presentation. I am available  
7 to answer any of your questions.

8 MR. ABARANEL: There is a runoff management  
9 plan that is referred to and talks about both -- I'm  
10 sorry. I don't have the words precisely in front of  
11 me -- both water quality and amount of water.

12 Could you tell us what is the origin of the  
13 additional runoff -- I assume it's the hardscape, but I  
14 would like to hear that -- and whether or not there are  
15 additional pollutants from the vehicle use of the  
16 roadway.

17 MR. BRADFORD: So they'll -- I don't know if  
18 there's additional runoff. But it's concentrated  
19 runoff, and it runs off faster as a result of the  
20 impervious surface that's created by the road surface.

21 There are pollutants that will come off the  
22 cars as a result of using the road certainly. They  
23 have -- they have designed post and construction  
24 management practices, such as Austin sand filters,  
25 bioswales, biofiltration. And they're using a porous

1 friction course, I believe it's called, that also helps  
2 remove car pollutants prior to discharge of water to the  
3 state.

4 MR. ABARANEL: Can you tell us what some of  
5 those pollutants are and what -- what levels are being  
6 permitted under this?

7 MR. BRADFORD: I can't specifically state the  
8 levels. There will be metals and petroleum products and  
9 brake dust and concerns about sediment and particulate  
10 from the project.

11 MR. ABARANEL: Do we have some sense of what we  
12 expect?

13 MR. BRADFORD: We do. It's in the runoff  
14 management plan. The details of that have been reviewed  
15 by our storm water staff, and I defer the specifics of  
16 that plan to our storm water staff.

17 MR. ABARANEL: We would like to hear some  
18 comments on that.

19 MR. BRADFORD: Would you like to -- we could do  
20 that now or later.

21 MR. ABARANEL: It's up the chair.

22 MR. MORALES: Well, I don't know if we may end  
23 up hearing some of that from the further presenters. I  
24 think if we don't, we can get that on the back end when  
25 we ask for -- I guess hear follow-up comments if we

1 haven't heard what we need to.

2 But I've got some questions, and this isn't  
3 just for you. This may be more for counsel.

4 I think, after our March 13th meeting, we sent  
5 out four questions for written response that we -- we  
6 were supposed to receive responses by March 29th, and we  
7 did.

8 Question No. 2 and 3, are those now not an  
9 issue given that the TCA filed a notice?

10 And specifically just for the public's benefit,  
11 the first question was: How the TCA defines the  
12 project. That's not my question right now.

13 The second question was: What further  
14 approvals does TCA intend to -- to make prior to the  
15 commencement of construction?

16 And the third question was: What are the  
17 consequences for CEQA purposes of the addendum prepared  
18 by TCA in February since it was prepared without an  
19 associated lead agency project approval or notice of  
20 determination.

21 And my understanding is that the notice of  
22 determination has been prepared and filed, correct?

23 MS. HAGAN: Yes, Chairman Morales. The NOD  
24 was filed on April 23rd. The board of directors of TCA  
25 approved the addendum and a conceptual design for the

1 Tesoro extension on April 18.

2 MR. MORALES: Okay. So then, by them having  
3 done that, does that essentially take care of questions  
4 2 and 3?

5 MS. HAGAN: It -- it -- the --

6 MR. MORALES: It moots 2, and it answers 3?

7 MS. HAGAN: Essentially, yes. The approval on  
8 April 18th clearly stated what the board of directors  
9 was approving and also stated that they contemplated  
10 further approvals. And so that essentially covers  
11 question 2.

12 And as far as question 3, the -- the approval,  
13 yeah, it more or less leads to the answer to question 3.

14 MR. MORALES: Okay. Thanks. Thank you.

15 Next up I believe is --

16 MS. DORSEY: Chair? Kelly Dorsey over here.

17 MR. MORALES: Oh, hi, Kelly.

18 MS. DORSEY: Hi. How are you?

19 I just wanted to clarify a couple of questions  
20 that Henry had -- a couple of the answers that Darren  
21 had given.

22 The -- you asked if this -- if this project was  
23 the project that was in the 2006. And it wasn't the  
24 entire project. It -- but this -- this project was  
25 covered in the 2006 EIR. And if I'm not correct, please

1 correct me.

2 But that's our understanding, that it was  
3 included in that 2006 EIR. It wasn't the entire  
4 project. It was a segment.

5 MR. ABARANEL: So let's call 2006 project,  
6 project A. This is a subset of project A.

7 MS. DORSEY: Exactly.

8 MR. ABARANEL: If at a subsequent date a  
9 project B is brought forward that's different from A --

10 MS. DORSEY: Project --

11 MR. ABARANEL: -- project be included in the  
12 EIR for project B?

13 MS. DORSEY: Say that again. I just want to  
14 make sure I got your -- so --

15 MR. ABARANEL: There was project for which an  
16 EIR was prepared and I guess approved in 2006.

17 MS. DORSEY uh-huh.

18 MR. ABARANEL: The present project would appear  
19 to be -- although I don't know whether it's true in  
20 detail -- a subset of project -- that project. I'm  
21 going to call it project A.

22 MS. DORSEY: Yes.

23 MR. ABARANEL: If at some point in the future  
24 there is a request for an additional extension of  
25 highway 241 that is different from project A, I assume

1 there will have to be an additional EIR.

2 Will that include the present project?

3 MS. DORSEY: I think that would be a question  
4 for TCA. I would say that, if there are any projects  
5 brought to the board with a report of waste discharge or  
6 a 401 certification application, we would have to  
7 process it the same way we're processing this one.  
8 Anything beyond the --

9 MR. ABARANEL: I understand that the processing  
10 would be according to the rules.

11 The question is: Would the present project be  
12 included in any future project because it's only a  
13 subset of the project that was approved seven years ago.

14 MS. HAGAN: Board Member Abaranel, I think that  
15 it would depend on the project description at that point  
16 in time. And that project description would then lead  
17 to the type of CEQA documentation that would be required  
18 for a future project.

19 So some type of environment documentation would  
20 be required for a future project. But we're not in a  
21 position to evaluate that at this stage because we have  
22 the project before us as defined by TCA today.

23 MR. ABARANEL: Maybe I can ask my question in a  
24 different way.

25 The EIR was prepared for a project of which

1 this is a subproject.

2 MS. HAGAN: The --

3 MR. ABARANEL: I'm not -- that isn't the  
4 question.

5 MS. HAGAN: Yes.

6 MR. ABARANEL: I think that was a statement  
7 just to warm up.

8 We are being asked to assume that, were the  
9 remainder of the original project removed, this  
10 subproject has precisely the impact and no more than was  
11 covered under the original project from 2006.

12 MS. HAGAN: That's correct. The project that  
13 was covered in the environment impact report from 2006  
14 and then the subsequent addendum that TCA prepared just  
15 this year in April.

16 MR. ABARANEL: Because the original project was  
17 larger -- I have two questions -- is there any  
18 implication whatsoever that, by accepting the EIR from  
19 2006, that we are accepting the EIR for the full  
20 proposed project from 2006?

21 MS. HAGAN: No. No, there's not.

22 MR. ABARANEL: And my other half of my question  
23 is: Since this a subproject -- I'm not -- I don't  
24 really -- can't speak to the addendum in detail -- but  
25 why was there not an EIR prepared for this project

1 alone?

2 MS. HAGAN: Because TCA, as the lead agency,  
3 determined that this project did not require a  
4 subsequent or supplemental EIR.

5 And as the lead agency, they filed a notice of  
6 determination stating that, as the responsible agency,  
7 we're required to follow the lead agency's determination  
8 unless specific criteria are met.

9 MR. ABARANEL: I'm going to translate that.  
10 If they say it's okay, we have to say it's  
11 okay?

12 MS. HAGAN: Essentially we --  
13 (Microphone feedback noise.)

14 MR. ABARANEL: I think that it's that one.

15 MS. HAGAN: Our authority, as you know, is to  
16 protect water quality and water resources. And staff  
17 has made the determination that the documentation  
18 submitted by TCA and the project description and  
19 approval that they have made for this extension with the  
20 mitigation measures that we have included in our order  
21 address all those impacts to water quality.

22 So we're not making any specific findings with  
23 respect to any other impacts to other resources or other  
24 future potential segments.

25 MR. ABARANEL: But their determination assessed

1 by you to be adequate is a recommendation to the board?

2 MS. HAGAN: Essentially --

3 (Microphone feedback noise.)

4 MS. HAGAN: I hope my answer makes more sense  
5 than that feedback.

6 Essentially under CEQA the lead agency drives  
7 the process. And as a responsible agency, we are bound  
8 by the lead agency's document even if litigation is  
9 filed challenging the lead agency's approval.

10 And that clarifies things in terms of who is  
11 responsible for addressing environmental impacts of a  
12 project.

13 Our responsibility is to assess the water  
14 quality impacts as a responsible agency. And staff has  
15 determined that the documentation that we have from TCA  
16 for this project description, this 5.5 mile segment,  
17 that we have adequate information to make the findings  
18 that all impacts to water resources and water quality  
19 can be mitigated to a less than significant level.

20 MR. ABARANEL: So if I translate that, the  
21 discharger determined that the EIR for the subproject is  
22 adequate for CEQA purposes, and that's where we are; we  
23 cannot challenge that here.

24 MS. HAGAN: If we felt that their document was  
25 not adequate in its treatment of impacts to water

1 quality or water resources, we have the discretion under  
2 CEQA, and we have the independent authority to  
3 condition, approve, deny the project.

4 However, staff feels that the mitigation that  
5 is included in the order is sufficient to mitigate.

6 MR. ABARANEL: So that's a staff recommendation  
7 then.

8 MS. HAGAN: Yes.

9 MR. ABARANEL: Thank you.

10 MR. MORALES: Any other questions?

11 MS. KALEMKIARIAN: And I apologize if this was  
12 answered in the staff presentation. I might have missed  
13 it.

14 But are there any concerns at all by staff  
15 about the mitigation measure monitoring?

16 The one thing that stuck out to me after the  
17 last hearing -- and I know Mr. Abaranel and I looked at  
18 this little report -- is the fact that it's like the fox  
19 guarding the henhouse in terms of who does the review of  
20 the mitigation.

21 And I have confidence from what was presented  
22 that it it's been well thought out how the mitigation  
23 occurs.

24 But, you know, maybe you addressed this, but  
25 are we satisfied -- it's funded by one of these

1 nonprofits. Is this not going to go away? How do we  
2 know that the mitigation goes on, that it doesn't just  
3 sort of slide away as other things happen.

4 I do have a concern about that. And I think  
5 you addressed it, but just a little bit more about that.

6 MR. BRADFORD: Sure.

7 MR. MORALES: Yeah. And --

8 (Microphone feedback noise.)

9 MR. MORALES: Okay. I'll just be really loud.  
10 And before you answer that question, I just  
11 sort of had follow-up. Because at the last --

12 (Microphone feedback noise.)

13 MR. MORALES: At the last hearing, yeah, those  
14 were questions that we had. And essentially I think  
15 staff believes that the mitigation, the scope and what  
16 is proposed is appropriate.

17 But our questions went more to the issue of how  
18 can we be certain that, once we're long gone and, you  
19 know, our grandkids want to go out to that area, that  
20 there's still going to be somebody in charge and making  
21 sure that it's being maintained appropriately.

22 I think that's sort of the gist of the  
23 questions with respect to the long-term monitoring of  
24 the mitigation.

25 And just a quick comment on -- on the CEQA. My

1 understanding -- and correct me if I'm wrong -- at the  
2 last meeting our concern was with the fact that there  
3 was no NOD filed, which potentially would have meant  
4 that we would be the, quote, lead agency for CEQA  
5 purposes or could be considered that.

6 And generally under CEQA, if a lead agency  
7 files a notice of determine, as has now occurred, absent  
8 specific situations, we are essentially almost obligated  
9 to accept that because it's not our determination to  
10 make, it as been made, and we deal with our own segment  
11 of the decision making.

12 Is that correct?

13 MS. HAGAN: Essentially that's correct. The  
14 lead agency filed a notice of determination stating that  
15 there were no new impacts to trigger need for a  
16 subsequent or supplemental EIR.

17 And that -- that was their determination and  
18 their approval when they approved the design for this  
19 5.5 mile extension.

20 MR. MORALES: And if they're wrong, it's on  
21 them one.

22 MS. HAGAN: It's -- yes. It's their  
23 responsibility.

24 MR. MORALES: Okay.

25 MR. ABARANEL: If I may comment to Sharon.

1 I will later make a suggestion for us to  
2 consider that addresses the issue of mitigation and in  
3 particular failed mitigation.

4 MR. MORALES: Sharon, did you want a comment  
5 from staff? Because there's a pending question, so --

6 MR. BRADFORD: I can't remember the entire  
7 question at this point, but --

8 MR. MORALES: Talk to us about mitigation.

9 MR. BRADFORD: So TCA is planning on  
10 maintaining the sites until it meets the performance  
11 criteria. And that's the most important part.

12 In terms of the fox guarding the henhouse, we  
13 think that's okay to a certain extent because we're  
14 going to have to ensure that the project meets success  
15 criteria and sign off at that point that the project is  
16 successful and self-staining at that point.

17 We have requirements in the order for TCA to  
18 tell us who the third party managers are going to be by  
19 July 26. So they've already identified the third party  
20 for mitigation area A. But I don't know who the third  
21 party will be for mitigation area B. That has to be  
22 identified by July 26th.

23 In terms of the financial assurances, they are  
24 required by the order to provide that for us in --  
25 within six months of adoption of the order. So they've

1 given us draft documents regarding that that we've  
2 turned over to counsel. And within six months we'll  
3 have to approve the financial assurances for the  
4 project.

5 MS. KALEMKIARIAN: That's helpful.

6 So I guess what I would appreciate is, when  
7 whoever from the TCA addresses that, that you give us  
8 information about how that financial arrangement goes  
9 into perpetuity because that appears to be the problem,  
10 is that initially there'll be a dump of money, and then  
11 that non-profit or third party starts to struggle, and  
12 then it disappears, and there's no longer any  
13 monitoring.

14 MR. BRADFORD: Exactly. And HM -- HMMP is a  
15 half-time mitigation monitoring plan is very vague on  
16 this point. So I don't have a whole lot of information.

17 So we knew you were going to ask this question.  
18 And so I requested TCA to really go into depth and  
19 specifics on this particular issue.

20 MS. KALEMKIARIAN: Okay.

21 MR. ABARANEL: Can I ask a follow-up question  
22 to Darren.

23 So site No. 2 is not designated for basically a  
24 guardian for the mediation project until July 26th.

25 What if this board doesn't like who is

1 designated? Does that nullify any action that we take  
2 today?

3 MR. BRADFORD: Does it nullify --

4 MR. ABARANEL: Suppose we were to approve this,  
5 but on July 27th it's revealed to us who is designated  
6 for site 2, and we don't like it?

7 MS. DORSEY: It's Kelly Dorsey again.

8 MR. ABARANEL: Hi.

9 MS. DORSEY: Hi. We keep passing the mic  
10 around.

11 MR. ABARANEL: That's fine.

12 MS. DORSEY: The idea is that, when they submit  
13 their mitigation plan, we'll be able to comment -- their  
14 final mitigation plan, we'll be able to comment to them  
15 and plus public comment on that mitigation plan. We're  
16 going to allow for 30 days public comment on that  
17 mitigation plan that will include that information.

18 So there will be ample opportunity for  
19 discussion on who the third party is going to be and  
20 whether or not we deem that person to be acceptable.

21 Generally, you know, with the other property  
22 it's Rancho Mission Viejo Trust, which is a non-profit,  
23 and they generally, you know, use agencies that are  
24 nonprofits that -- so that we can separate the  
25 responsibility and the money in escrow and financial

1           assurances away from, you know, the parties that are  
2           doing the project.

3                         And like Darren said, TCA can speak more to the  
4           details of exactly how they're going to do this. But,  
5           you know, we do plan on having a role, in talking with  
6           them about these situations, who is going to be  
7           responsible.

8                         MR. ABARANEL: What if we come to an impasse  
9           and propose party A, and we find party A unacceptable,  
10          does that nullify any actions that the board would take  
11          today?

12                        MS. DORSEY: I think it would be part of the  
13          approving the HMMP process. We wouldn't approve it.  
14          And that -- that would be -- you know, without an  
15          approved mitigation plan, I don't know that they could  
16          move forward.

17                        MR. MORALES: Right. As I understand this, in  
18          today's discussion, even if we did approve it --  
19          unfortunately, it's not the last time we're going to  
20          have to deal with this because they will have to come  
21          back with a mitigation plan. That's going the require  
22          public participation. That would require further  
23          approval.

24                        But before they're actually out there shovels  
25          into the ground, this all has to be dealt with?

1 MS. DORSEY: Correct. If the board adopts the  
2 item today, then TCA will be required to get us their --  
3 their final HMMP, including all of the requirements in  
4 the order, by the end of July.

5 As soon as we get that, we'll post it for  
6 public -- if we get it -- you know, if they give us the  
7 final version tomorrow, we'll put it out as soon as we  
8 get it so we can get public comments. And then we'll  
9 comment back to TCA on that plan, including the public  
10 comments that are appropriate.

11 MR. ABARANEL: I understand, Chairman, the  
12 statement all of that will end up back here for approval  
13 by the board.

14 MS. DORSEY: I think it states in the order  
15 that we will present the information to the executive  
16 officer, and he will make the determination of whether  
17 or not it comes to the board.

18 MR. ABARANEL: Okay. I have another question.

19 On Page 120 out of 443 --

20 MS. DORSEY: Of which document?

21 MR. ABARANEL: Well, I put them all together so  
22 I could search them better. Document No. 6. Supporting  
23 document No. 6. There's a table, environmental issue  
24 and so forth. It's -- I'm sorry. It was much easier to  
25 search when I put them all together.

1 MS. DORSEY: Page 100 -- oh, wait. Are you  
2 talking about the addendum to the --

3 MR. ABARANEL: No. It's supporting document  
4 No. 6. And I -- maybe it's Page 26 under that.

5 MS. DORSEY: Okay.

6 MR. ABARANEL: There's a table. Table is  
7 called "Environmental issues, impacts, analysis." Let  
8 me just read the item. All right.

9 It says: While construction activities will  
10 result in a slight increase in greenhouse gas emissions  
11 during construction, operational emissions during the  
12 proposed project conditions would decrease with the  
13 no-build conditions by .11 percent during the horizon  
14 year.

15 Who made that determination, and what error is  
16 that -- is there in .11 percent, which is a small  
17 number?

18 MS. DORSEY: If you're talking about  
19 supplemental document No. -- supporting document  
20 No. 6 --

21 MR. ABARANEL: Yes, I am.

22 MS. DORSEY: -- then I would defer to TCA on  
23 that because this is their CEQA addendum.

24 MR. ABARANEL: So we have no position on  
25 whether that is correct.

1 MS. DORSEY: I don't see the table that you're  
2 referring to --

3 MR. SMITH: 324.

4 MS. DORSEY: -- on the pages that are --  
5 The document is only 98 pages, James.

6 MR. SMITH: 3-24.

7 MR. ABARANEL: Well, it's table 5 in supporting  
8 document No. 6.

9 This number was called out elsewhere, but I  
10 couldn't find it elsewhere in my search. So I  
11 apologize.

12 But this was actually one of the questions that  
13 we asked about AB32. I admit that's air and not water,  
14 but it is a liquid.

15 MS. DORSEY: Okay. I've got table -- I'm with  
16 you on table 5 now.

17 MR. SMITH: Air quality starting with  
18 construction emissions.

19 MR. ABARANEL: 3-24.

20 MS. DORSEY: Which section? At the bottom?

21 MR. SMITH: 3-24. Last row of the tables.

22 MR. MORALES: It's table No. 5, 326 on the  
23 February 2013 environmental analysis, the addendum to  
24 the SOCTIIP final SEIR.

25 MR. ABARANEL: Again, this is an EIR. The EIR

1 was certified by the discharger and we agreed was okay.

2 Do we know if this is okay?

3 MAIL SPEAKER: We didn't -- we didn't evaluate  
4 findings for air quality impacts because that -- those  
5 findings are within the responsibility of the lead  
6 agency.

7 And as the responsible agency, with our task of  
8 protecting water quality, we don't make findings  
9 regarding air quality impacts, unless we were the lead  
10 for this project, which we aren't.

11 MR. ABARANEL: Okay. Thank you.

12 MR. MORALES: All right. Let's move on. So  
13 when we get to TCA, you may want to cover those points.  
14 But we're not at TCA.

15 We're at Coalition now. 30 minutes.

16 MS. FELDMAN: Good afternoon. My name's Sarah  
17 Feldman. I am the vice-president for programs of the  
18 California State Parks Foundation.

19 Before I begin, I would like to put the board  
20 on notice that we would like to reserve some time for  
21 rebuttal.

22 This morning I'm here representing the entire  
23 San Onofre Coalition, which has worked closely together  
24 for nearly a decade to protect San Onofre --

25 MR. STRAWN: I'm sorry. How much time do you

1 want to reserve for.

2 MS. FELDMAN: Approximately 10 minutes, but  
3 we'll give you the exact number in our closing  
4 statement.

5 MR. STRAWN: So you want me to let you know  
6 when you're 20 minutes?

7 MS. FELDMAN: We have number of people  
8 testifying. So were going to take about 20 minutes now  
9 and about ten later.

10 MR. STRAWN: Okay.

11 MS. FELDMAN: So starting again quickly.

12 I'm here representing the Save San Onofre  
13 Coalition, which has worked closely together for nearly  
14 a decade to protect San Onofre State Beach.

15 Our coalition is made up of the following  
16 groups: California State Parks Foundation, The  
17 Endangered Habits League, The Natural Resources Defense  
18 Council, Surfrider Foundation, Orange County Coast  
19 Keeper, Sierra Club, California Coastal Protection  
20 Network, Sea and Sage, Wild Coast, Defenders of  
21 Wildlife, Laguna Greenbelt, and Audubon California.

22 Together our groups represent over a million  
23 citizens in California. Our members have stood together  
24 many times to protect and defend San Onofre State Beach  
25 from this destructive toll road.

1                   Approximately a thousand people attended the  
2 California State Park and Recreation Commission's toll  
3 road hearing in San Clemente in 2005. And over 3,000  
4 attended the 2008 California Coastal Commission hearing  
5 in Del Mar. 3,000 more were at the Department of  
6 Commerce hearing later the same year.

7                   In the years since the 2008 decision of the  
8 U.S. Department of Commerce to uphold the Coastal  
9 Commission's denial of permission to proceed with  
10 building the toll road, our coalition and its members  
11 have carefully monitored the evolution of the TCA's  
12 efforts to circumvent the Coastal Commission's ruling.

13                   Today those same members have stepped up to the  
14 plate once again. Many of them are at this meeting  
15 today. Over 100 people are outside. There's 50 more in  
16 the overflow room. And in this room now I would like to  
17 ask members of the audience who are here in opposition  
18 to the toll road to please stand or raise their hands.

19                   Our Coalition has submitted a lot of extensive  
20 letters, comments, and we're here again to address you  
21 today. Our representatives of our organization will  
22 address specific concerns related to the toll road and  
23 your upcoming decision.

24                   First and very importantly, we will discuss the  
25 proper segmentation of the toll road and its impact on

1 the larger project and the surrounding area. Next we  
2 will talk about protection of beneficial uses. And last  
3 we will be addressing the procedural issues.

4 Thank you for the opportunity to address you  
5 today and for your close attention to the issues raised  
6 in our testimony.

7 MR. ABARANEL: Can I ask you a question?

8 MS. FELDMAN: Yes. Of course.

9 MR. ABARANEL: I would infer -- I'm asking  
10 whether you agree -- that it is your opinion and the  
11 opinion of the people you represent that the project  
12 before us is not the project; is that correct?

13 MS. FELDMAN: I'm afraid in order to answer  
14 that correctly I'm going to have to ask you to rephrase  
15 it.

16 MR. ABARANEL: This project goes nowhere near  
17 San Onofre. So I have to infer that you would say that  
18 the project before us is not, in fact, the project.

19 MS. FELDMAN: Actually, no. And we will have  
20 testimony coming up right now about the issue of  
21 improper segmentation and the relationship of the Tesoro  
22 Extension to the entire toll road. I'm going to defer  
23 to my colleagues to answer that in more detail.

24 MR. ABARANEL: Okay.

25 MR. WHITE: NOTE: Good afternoon, Chairman

1 Morales and board members.

2 My name is Bill White. I'm an attorney with  
3 Shute Mihaly & Weinberger.

4 So I'm not surprised that there's been a lot of  
5 confusion so far expressed today amongst the board  
6 members and your staff as to what this project is.

7 We have heard on the one hand staff say that  
8 this is a separate project that is not project that was  
9 studied in the 2006 EIR. We've also heard that, no, it  
10 was, but it was a subset or a subproject. Well, you  
11 know, which is it? Problem is that TCA has said it's  
12 both, depending on which formulation happens to suit  
13 them at the time.

14 So when the question was whether to do -- a new  
15 EIR had to be done for project, well, no this is a  
16 subset of the 2006 toll road project, so we don't need  
17 to do a new EIR.

18 But when the question came up whether a  
19 supplemental EIR that addresses the very substantial  
20 changed circumstances that have occurred in connection  
21 with the toll road project, not the least of which is  
22 this rejection by the Coastal Commission, whether that  
23 requires a supplemental EIR to be prepared, no, then it  
24 it's a separate project; it's a standalone project.

25 And every step along the way TCA has re

1 characterized what this project is to suit their needs.  
2 So when they're seeking federal funding for -- with that  
3 funding that only applies to a 16-mile connection to the  
4 I-5, then it's part of the same project. But when  
5 they're asking -- when they're doing eco review for that  
6 funding, it's a separate project, standalone, we don't  
7 have to look at the impacts.

8 This is the problem that unfortunately has  
9 fallen onto your lap now. As you probably know, since  
10 the last time we spoke to you, a lot has happened. The  
11 TCA hastily approved the project, the Tesoro extension,  
12 but the last time we were here they hadn't even taken  
13 action on it.

14 Subsequent to that, our Coalition members filed  
15 a lawsuit challenging that action for some of the  
16 reasons I just mentioned: failure to do supplemental  
17 EIR. The attorney general also filed a suit for the  
18 same reason.

19 And so we understand that this is a mess that  
20 you did not create but that has sort of come to you.  
21 And so -- but there are several ways that you can  
22 resolve this.

23 First, we have heard that your staff feels that  
24 you are bound, as the responsible agency, to the  
25 determination by TCA, that a supplement EIR is not

1 required.

2 I want to say at the outset that we disagree  
3 emphatically with that conclusion. We think CEQA is  
4 clear. It is true that responsible agencies typically  
5 are bound by the lead agency's determination that an EIR  
6 for a project is adequate.

7 But in the realm of whether a supplemental EIR  
8 is required after an EIR has been prepared, CEQA is  
9 clear that a responsible agency makes that determination  
10 independently. And I refer you to section 15050(c)(2)  
11 of the CEQA guidelines.

12 So we think that the regional board can and  
13 should require a supplemental EIR for the project that  
14 takes into account the entire toll road and the changes  
15 that have happened since 2006.

16 But this -- I want to emphasize this is not the  
17 central point that I want to make today. We have made  
18 this point to you before. It still stands. But I want  
19 to let the board know that there are several other  
20 options that allow this board to sidestep that question  
21 altogether, the question of deference to the TCA. And  
22 that's what I want to focus on now.

23 The first of those is the board's independent  
24 authority under CEQA to make findings prior to approval  
25 of a project.

1                   Now, CEQA requires that all responsible  
2 agencies, before they approve a project, have to make  
3 certain findings. They have -- and these findings have  
4 to be made with respect to every significant impact that  
5 has been identified for the project, whether it's been  
6 mitigated or not.

7                   And, in fact, with respect to mitigation, you  
8 are not at all bound by what the TCA has concluded. You  
9 have complete authority and, in fact, an obligation to  
10 make an independent judgment as to whether the  
11 mitigation for significant impacts is adequate.

12                   Now, it is true that, if impacts are beyond  
13 your jurisdiction, you can say so. But with respect to  
14 all other impacts that are within -- that relate to  
15 water quality or water resources, you have to make that  
16 independent finding. Okay?

17                   So that gets back to the question: What is the  
18 project in this case?

19                   Well, let's look at the documents. The TCA has  
20 given you two documents -- two CEQA documents. The  
21 first one is a 2006 EIR. The project described in that  
22 EIR and the impacts described in that EIR are the  
23 impacts of the Foothill South toll road, the entire  
24 project. Okay?

25                   And that EIR concludes, for all its flaws,

1 which are being challenged in court as well -- but on  
2 its face it concludes that there are numerous  
3 significant impacts of the toll road, many of which --  
4 very many of which relate to water quality, water  
5 resource, things that are within your jurisdiction.

6 So what's happened since then? TCA has  
7 approved an addendum to that 2006 EIR. Now, the  
8 addendum TCA has said only relates to this sort of first  
9 phase separate project. Is it a separate project? Is  
10 it a subset? We don't know. They're saying that all  
11 you need to look at is this first phase; forget the rest  
12 of the project.

13 But this addendum itself doesn't tell you what  
14 the significant impacts of the Tesoro extension as a  
15 standalone project are. All it does is say that the  
16 project doesn't change the analysis that was done in the  
17 2006 EIR. And the 2006 EIR, as I mentioned, identifies  
18 numerous significant impacts.

19 So the board is going to -- the board doesn't  
20 have any other documentation on which to make its CEQA  
21 findings other than the significant impacts identified  
22 in the 2006 EIR. So you need to make findings with  
23 respect to all of those impacts. And you need to be  
24 able to find the mitigation proposed for those impacts  
25 is adequate.

1                   Now, in 2008 you looked at this question, and  
2                   so did the Coastal Commission. And separately,  
3                   independently, both of those agencies concluded that the  
4                   TCA had not provided enough evidence to show that there  
5                   would not -- that the significant water quality impacts  
6                   of this project would be mitigated.

7                   Nothing has changed since then. So we urge you  
8                   to use your independent CEQA authority to find that the  
9                   mitigation measures for the project, which is the only  
10                  project you have before you, is what's described in the  
11                  2006 EIR -- that the mitigations for that project are  
12                  not adequate.

13                  Now, I just want to take a minute to mention  
14                  that there's another set of findings under CEQA that you  
15                  also have to make if you were to approve the project  
16                  today, which we would urge you not to do.

17                  Those are findings of overriding  
18                  considerations. And those findings also have to be made  
19                  for -- with respect to the projects -- all of the  
20                  project's significant impacts as a whole. So again, all  
21                  -- the only impacts you have before you are the impacts  
22                  of the toll road project 2006.

23                  What's very interesting is that the TCA, in  
24                  approving the Tesoro extension recently, did not make  
25                  new findings of overriding consideration. Findings of

1 overriding consideration basically say, notwithstanding  
2 significant impacts of a project, there are other  
3 important policy considerations at play which justify  
4 approving a project with significant impacts.

5 Well, the TCA did not make new override  
6 findings. They relied on their old override findings.  
7 Those old override findings all assume that the project  
8 will reach all the way to the I-5 and have all the  
9 benefits that TCA claims would happen once you have a  
10 connection to the I-5.

11 So if there's anything -- if there was any  
12 doubt as to what this project is, I say right there the  
13 prove is in the pudding. That is, TCA has not  
14 separately found that there's benefit of a standalone  
15 project that ends at Cow Camp Road that outweigh the  
16 significant impacts. They haven't made any findings at  
17 all.

18 And we think you should -- we don't think those  
19 findings can be made, especially in light of what the  
20 Coastal Commission has found about the toll road project  
21 as a whole.

22 The second area of authority that would justify  
23 you denying this project today is the Porter-Cologne  
24 Act. The board's authority under the Porter-Cologne Act  
25 is completely separate and independent from CEQA. You

1           owe no deference at all to the TCA's conclusions in the  
2           CEQA documents.

3                       And I'll point out, as part of that authority,  
4           is board's own regulations require that a description of  
5           the project be provided, including -- and this is a  
6           quote -- "the purpose and final goal of the entire  
7           activity." "The purpose and final goal of the entire  
8           activity."

9                       And for all the reasons that we've -- I won't  
10          repeat them here, but we have them in our comment  
11          letters -- there is just no question that the purpose  
12          and final goal of this current project is construction  
13          of the Foothill South toll road in its entirety.

14                      Now --

15                      MR. STRAWN: You're at 20 minutes, just for  
16          your information.

17                      MR. WHITE: Okay. Thank you.

18                      It's the board and not the TCA that makes that  
19          determination. And we would urge you to conclude that  
20          the Foothill South as a whole does not -- there's not  
21          sufficient evidence, as you did in 2008, to approve the  
22          project.

23                      And finally, very quickly, just -- others will  
24          touch on this -- the more narrow issue, the proposed  
25          order -- we appreciate that it now requires that the

1 TCA's R&P comply with the hydromodification requirements  
2 of Harsh County.

3 But it doesn't require the analysis to be done  
4 until October. It doesn't require the analysis to even  
5 be done before construction starts. The whole purpose  
6 of the hydromodification requirements is to -- to -- the  
7 very core aspect of them is to first avoid resources --  
8 sensitive resources. Avoid them. That's a design  
9 measure. It's not a post-construction measure.

10 The staff's order seems to think that the only  
11 measures that would be at play here are  
12 post-construction measures.

13 We need to know now, before you make the  
14 decision, not after you make the decision, what the  
15 outcome of that hydromodification analysis is, whether  
16 they can meet the requirement; if so, how; and what  
17 would be the impacts of the measures that would be  
18 required to meet those impacts.

19 That has to be done now. It's common sense.  
20 So we urge you not to enter the morass -- the legal  
21 morass of CEQA that TCA has created. There are ample  
22 grounds for you to deny the project under your  
23 independent authority.

24 Thank you very much.

25 MR. MORALES: Okay. Question.

1 MR. WHITE: Sure.

2 MR. MORALES: In an effort to try and avoid the  
3 legal morass that CEQA sometimes creates, I need you to  
4 clarify something for me.

5 Is it the case then that -- we're a responsible  
6 agency. We're not lead agency.

7 MR. WHITE: That's right.

8 MR. MORALES: Now, is it -- you're saying that  
9 we're required under CEQA to make a finding of  
10 overriding consideration?

11 MR. WHITE: That's right. All responsible  
12 agencies are required to make a finding of overriding  
13 considerations when a project they're approving has  
14 significant and unavoidable impacts, which is what it  
15 does, even according to TCA's own documents.

16 Even -- look at the addendum. All the --  
17 again, all the addendum says is that the significant  
18 impacts -- if you look at its -- the chart, you see all  
19 the impacts identified in 2006, including significant  
20 and unavoidable impacts. And the conclusion is there  
21 will be no change from that 2006.

22 So yes, there are a number of significant and  
23 unavoidable impacts.

24 MR. MORALES: Okay. I'll look to Mr. Thornton  
25 to enlighten me.

1 MR. WHITE: Thank you.

2 MR. ABARANEL: Mr. White, before you go, I did  
3 have a quick question about the agricultural section of  
4 the CEQA analysis on the table.

5 MR. WHITE: Yes.

6 MR. ABARANEL: And maybe this could clarify the  
7 confusion -- the morass -- the CEQA morass.

8 The impact it has is impacts to farmlands of --  
9 I'm going to read this to refresh your memory -- unique  
10 and/or statewide importance would occur. However, these  
11 impacts would occur south of Cow Camp Road, outside of  
12 the Tesoro extension project study area.

13 So what you're saying now is that we actually  
14 have to consider those impacts as part of this approval  
15 despite the fact that it's not part of the project  
16 that's before us?

17 MR. WHITE: Well, let me say this: We do think  
18 that you should and have to consider the entire project  
19 for various reasons, which we have said before, which is  
20 this project doesn't have any independent utility,  
21 et cetera.

22 But separate from that, it's true that there's  
23 a couple of places like the place that you mentioned,  
24 maybe one or two other impacts, where the TCA in the  
25 text says these impacts only occur south of Cow Camp

1 Road, and they're not.

2 But for the most part, if you read -- and I --  
3 I request that you look at the addendum and look at the  
4 chart and try to figure out for yourself what impacts  
5 are significant or not significant of the Tesoro.

6 They don't come out and say. I mean it's  
7 telling that they don't have a chart that says here are  
8 impacts of Tesoro, significant, significant but  
9 mitigated, less than significant. There is no such  
10 chart.

11 The only reference they make, except for a  
12 couple places in the text, is no different than the 2006  
13 EIR. And that's all you have to go on.

14 So, you know, if they had wanted to do a  
15 separate analysis and treat this project as a separate  
16 project and do override findings for this project as a  
17 separate project and make separate impact, you know,  
18 determinations for this protect, they could have done  
19 it. But they didn't, and so you don't have the benefit  
20 of that when you're making your decision.

21 So yes, you do need to make override findings  
22 for all the significant impacts of the project.

23 Any other questions? Thank you, board members.

24 MS. SECACHEQUIN: Good afternoon, board  
25 members. My name is Stephanie Secachequin. I'm the

1 California policy manager for the headquarters of the  
2 Surfrider Foundation.

3 Today I would like to briefly outline how  
4 approval of this project would undermine the  
5 hydromodification plan and the recently established MS4  
6 permit. And I saw a bunch of you cringe maybe by  
7 mentioning MS4, but there's a great tie-in here.

8 To do this, I want to underline how -- at least  
9 we have humor, right?

10 I would like to basically underline how they  
11 curb certain requirements but most importantly how this  
12 fundamentally undermines the spirit and the hard work  
13 that went into the MS4 permit and the HMP process.

14 I think it's really important to remind the  
15 audience that both HMP and the MS4 were created on what  
16 you -- this board calls a watershed approach. Keep that  
17 in the back of your head.

18 When the MS4 was passed in May, executive  
19 officer Gibson said that this was the most profound  
20 decision that you would make for the next two decades.

21 The HMP that was concluded in 2011 was equally  
22 forward thinking and carefully crafted by you, your  
23 staff. What you did during that process is that you  
24 required dischargers to prove how they would protect  
25 beneficial resources before, during and after the

1 project. That was a huge milestone for both of those  
2 things to go forward.

3 Considering the magnitude of hard work and  
4 sound science that went into both the MS4 and the HMP,  
5 we believe it's absolutely imperative that these two  
6 regulatory frameworks are strongly upheld.

7 In fact, the Save San Onofre Coalition believes  
8 you have to ask yourself two questions to determine that  
9 you're holding these regulatory frameworks in care.

10 The first is, simply put: How can this board  
11 approve a permit before you know the exact implications  
12 to beneficial uses. As mentioned before, the TCA does  
13 not have to produce documentation until October of 2013  
14 --

15 MR. THORNTON: Point of order, Mr. Chairman.  
16 Point of order.

17 I thought the order of proceedings was the  
18 San Onofre Coalition and the TCA was limited to two  
19 subjects, CEQA issues --

20 MR. MORALES: Whoa, folks.

21 MR. THORNTON: There were two subjects in the  
22 chair's order of proceeding that the San Onofre  
23 Coalition would speak to: California Environmental  
24 Quality Act --

25 MR. MORALES: If you're going to speak, can you

1 give him the microphone.

2 MR. THORNTON: I want to clarify because this  
3 may relate to our presentation, Mr. Chairman.

4 But we had discussions with your staff. You  
5 issued a order of proceedings that you close the public  
6 hearing at the end of the full-day hearing in Costa  
7 Mesa.

8 MR. MORALES: That's correct.

9 MR. THORNTON: And your order of proceedings  
10 could not have been more clear that additional testimony  
11 by the Coalition and the TCA was limited to two issues:  
12 Number one, California Environmental Quality Act.  
13 Mr. White spoke to the CEQA issue. That's fine. Number  
14 two, revisions to the tentative order.

15 Point of order, Ms. Secachequin is outside the  
16 scope of the --

17 MS. SECACHEQUIN: If I could finish my --

18 MR. THORNTON: -- required testimony.

19 I've got a point of order pending here.

20 So our point of order, Mr. Chairman, is that  
21 the testimony of the Coalition is outside the scope of  
22 your order of proceedings.

23 MS. SECACHEQUIN: And I would just like to say  
24 my next sentence, which actually --

25 Because the tentative order has not

1 substantively changed -- because the tentative order has  
2 not substantively changed, and because the  
3 hydromodification analysis has not substantively  
4 changed, and because the TCA doesn't have to produce  
5 documentation until October of 2013, our original  
6 concerns still remain that hydromodification impacts are  
7 going to happen.

8 MR. THORNTON: Mr. Chairman, I restate our  
9 point of order.

10 MR. MORALES: So noted.

11 MS. SECACHEQUIN: So if the -- can I ask you a  
12 question, sir?

13 If the tentative order analysis of  
14 hydromodification has not changed since March, what are  
15 we supposed to talk about? It's the same thing. So our  
16 same concerns remain.

17 MR. MORALES: And --

18 MS. SECACHEQUIN: It's the same thing.

19 MR. MORALES: And I understand that, ma'am.  
20 But with respect to the hydromodification, it is  
21 correct, I believe, to some extent that was addressed in  
22 March. And, you know, we were fairly clear. And, you  
23 know, when I stated --

24 MS. SECACHEQUIN: The tentative order for this  
25 time, sir, about the HMP and their hydromodification

1 analysis is exactly the same as it was in March. And so  
2 therefore -- another board member is agreeing with me.  
3 I sorry. I just want to point that out.

4 And because it's the same --

5 MR. ABARANEL: Ma'am, shaking my head does not  
6 mean I'm agreeing with you.

7 MS. SECACHEQUIN: Well, I mean --

8 MR. ABARANEL: I just -- let me -- then I have  
9 to explain what I'm shaking my head about.

10 Those issues are going to -- we're going to  
11 take into consideration when we make our final  
12 determination. We've already heard them. We're  
13 considering them. And they are part of how I will make  
14 my decision.

15 MS. SECACHEQUIN: Fair enough. But they don't  
16 have to produce documentation until October of 2013 --

17 MR. MORALES: Okay.

18 MS. SECACHEQUIN: -- about how they comply with  
19 the HMP. That was not the case in March. That's --  
20 that's part of the new tentative order.

21 But I'll continue. We don't need to talk about  
22 them submitting after-the-fact documentation because I  
23 think that's fundamentally important for this board to  
24 realize that you can't issue a permit by accepting  
25 after-the-fact documentation. It's putting the cart

1 before the horse, is the final point with that.

2 MR. MORALES: Okay. If you want to save some  
3 time -- how close are they? You're down to about four  
4 minutes remaining. So you're into your rebuttal.

5 The times where questions were asked or points  
6 of order were raised did not count against you.

7 MS. SECACHEQUIN: I'll -- in deference to you  
8 and everyone here, I'll finish up.

9 I would just like to remind you that you  
10 rejected this application based on the same EIR in 2008  
11 except they're relying on their same old environmental  
12 documents, and none of those permit an adequate detail  
13 change. And we believe that you categorically should  
14 deny this permit.

15 MR. MORALES: Thank you.

16 MR. FITTS: Good afternoon. My name is Michael  
17 Fitts. I'm staff attorney with Endangered Habitats  
18 League.

19 Very quickly now, jettisoning my written  
20 testimony, the three-part hydromodification analysis  
21 that's contained in the HMP explicitly contemplates that  
22 design changes would be made based on the result of that  
23 analysis.

24 The second prong of that analysis is to avoid  
25 significant bed material in the site design. Obviously,

1 if you approve a particular design and then require the  
2 analysis, the design is part of the permit. You can't  
3 go back and unbreak that egg.

4 So we would respectfully ask that this permit  
5 decision be deferred until you receive the required  
6 hydromodification analysis. As CEQA impacts -- CEQA  
7 implications it's very difficult to make a determination  
8 that this project will have no significant hydrological  
9 impacts before the analysis that is required to  
10 determine those impacts is done.

11 And it has significant impacts under the  
12 Porter-Cologne Act as well where you can't make a  
13 determination that beneficial uses will not be  
14 impaired -- that is a premise for issuing a permit --  
15 until that analysis is done.

16 Thank you very much.

17 MR. HEIMSTRA: Good afternoon. Ray Heimstra  
18 with Orange County Coast Keeper.

19 To keep it short, we're very concerned about  
20 TCA's ability to protect water quality in the immediate  
21 project area and the downstream tributaries, which  
22 include Doheny Beach at the ocean.

23 To keep -- once again, to keep it really short,  
24 the -- you know, they're required to revise a runoff  
25 management plan. That revision is required after --

1 after this permit, after the consideration of approval.

2 That's putting the cart before the horse. We  
3 need to see the revised runoff management plan and then  
4 review it and make a decision afterwards. So you  
5 shouldn't approve the permit today just because of that.

6 The next thing is allowing the permit to  
7 concede without collecting baseline water quality data.  
8 It's very important that we have baseline water quality  
9 data to make sure that there isn't degradation that's  
10 going on.

11 We can see the problems with that with the 261  
12 where they missed a giant selenium problem that cost us  
13 millions of dollars to remediate. Same thing with San  
14 Juan.

15 In watershed there's also more important  
16 consequences. We've got endangered species, including  
17 abalone, commercial and recreational species that could  
18 be impacted by road runoff. And there is just not  
19 enough data.

20 So keeping it really short, I'm sorry, but  
21 that's where we're at. Thank you.

22 MR. NAGAMI: Good afternoon, board members.  
23 Damon Nagami. I'm a senior attorney with the Natural  
24 Resources Defense Council. I'm just here to wrap up  
25 quickly.

1 Another important reason to deny the permit is  
2 that the public has been denied adequate review of the  
3 project. TCA has gone to great lengths to evade public  
4 input rather than facilitate it.

5 This egregious behavior violates the letter and  
6 spirit CEQA, is completely antithetical to this board's  
7 commitment to ensuring public participation in the  
8 permitting process.

9 In closing, we all know what's happening here.  
10 This is an improper attempt by TCA to bring back the  
11 full 16-mile toll road, which both the Coastal  
12 Commission and the Bush administration rejected in 2008  
13 because of a long list of adverse environmental impacts,  
14 including impacts to water quality.

15 For all the reason you have heard, we believe  
16 you have the authority and the obligation to deny TCA's  
17 application for waste discharge requirements based on  
18 its failure to meet water quality standards.

19 This concludes our initial presentation. We'd  
20 like to reserve about five minutes for closing based on  
21 the number of questions and answers that were sort of  
22 taking up the time that we had.

23 MR. MORALES: The questions and answers did not  
24 eat into your time. We stopped the timer, and they  
25 didn't count against you.

1 MR. AGAMI: When you said that we had gone 20  
2 minutes, we had actually gone 15. So I don't know which  
3 kind of timer you were using, but I think we were timing  
4 exactly. So I'm going to submit that for the record.

5 MR. MORALES: We have been going for close to  
6 two hours here. So let's take a three-, four-minute  
7 break. Don't go very far, folks. Get your coffee. If  
8 you need to make a quick run, do it.

9 MR. GIBSON: Mr. Chairman, if I can, I would  
10 like to ask our audience to remember that these are  
11 formal proceedings and to be respectful of all the  
12 speakers and not to applaud or clap or cheer or  
13 otherwise speak over speakers.

14 MR. MORALES: Please take your seats.

15 Okay. We've got our board members here. We're  
16 about to start with TCA.

17 But before we do, I went back and looked at --  
18 at the revisions to the tentative order. And there is  
19 some discussion of updated RMPs and section 5 sub C.

20 So while it's not the testimony I was hoping or  
21 looking for today, I think we'll let it in, but I  
22 definitely am going to allow TCA the opportunity to  
23 respond in any way they feel is necessary, given that  
24 testimony.

25 But for the members of the public, as I stated

1 at the beginning, the purpose of this proceeding is not  
2 just to open it up as a free-for-all. We did want to  
3 hear about very specific issues, and those generally  
4 pertain to any changes to our tentative order and decoy  
5 issues. And I believe the CEQA issues will primarily be  
6 dealt with by staff and the designated parties.

7 So with that, Mr. Thornton.

8 MR. THORNTON: Thank you, Mr. Chairman, members  
9 of the board.

10 Robert Thornton on behalf of the Foothill  
11 Eastern Transportation --

12 Once again, Robert Thornton on behalf of  
13 Foothill Eastern Transportation Corridor agencies.

14 We want to express our appreciation to your  
15 staff for their hard work and diligence on this proposed  
16 tentative waste discharge order and to the board  
17 members. I know you sat through a day-long proceeding  
18 already in Costa Mesa. And obviously we appreciate your  
19 attention to this matter.

20 But just to remind everyone, we are only  
21 talking about the five-mile extension of state route  
22 241. Specifically the responsibility of this agency is  
23 with regard to impacts to state waters. We're talking  
24 about permitted impacts of this project of four-tenths  
25 of an acre in impact.

1           We have mitigation proposed for this project of  
2           15 to one what your staff referred to in the last  
3           hearing as meeting a gold standard for mitigation.

4           Your typical requirement would be in the order  
5           of one to one or three to one. Indeed this board  
6           recently approved a 401 certification for Cow Camp Road,  
7           which is the southern terminus of this project, with  
8           one-to-one mitigation. So we're 15 times what has been  
9           required of other similarly situated applicants.

10          Now I want to respond specifically to the board  
11          members' questions regarding mitigation sites.

12          First of all, I want to say that TCA is  
13          extremely proud of their history in mitigation, there  
14          commitment to mitigation, how they restored and enhanced  
15          over 2,000 acres of mitigation to the course of their  
16          project.

17          With regard to financial assurances, the TCA  
18          has built -- financed and built 2.5 billion dollars in  
19          regional transportation improvements and has never  
20          defaulted on a financial obligation, never. Has never  
21          defaulted on an environment obligation, never.

22          We will -- we are responsible to fully mitigate  
23          any permanent and temporary impacts by creating,  
24          restoring, enhancing and revegetating per the HMMP. We  
25          have detailed performance standards that have been

1 established with success criteria. We're overseen by  
2 both the U.S. Fish and Wildlife Service and the  
3 California Department of Fish and Game with regard to  
4 the achievement of those performance standards.

5 And now, because of your jurisdiction, we'll be  
6 overseen by your agency with regard to accomplishment of  
7 the success criterias of the -- of the mitigation  
8 program.

9 We have a annual monitoring reporting  
10 requirement to the resource agencies. Again, state  
11 department of fish and wildlife, U.S. Fish and Wildlife  
12 Service. And we're obligated, as been mentioned, to  
13 provide the water board with an acceptable financial  
14 assurance instrument. Indeed an instrument has already  
15 been drafted and provided to the board.

16 Again, we're talking about public agencies that  
17 have constructed 2.5 billion dollars in regional  
18 transportation improvements. We have demonstrated that  
19 we're here for the long term. We've demonstrated a  
20 commitment to following through on mitigation  
21 obligations. We've never defaulted on an obligation.

22 Next slide.

23 There are two specific mitigation sites that  
24 have been identified as the mitigation areas for the  
25 WDR. One is the -- referred to as mitigation area A

1 south of Tesoro High School. There's already a funding  
2 mechanism in place for this site already approved by the  
3 U.S. Fish and Wildlife service pursuant to the Rancho  
4 Mission Viejo habitat conservation plan.

5 There's already a long-term funding mechanism,  
6 aside from the TCA's commitment to -- to restoring --  
7 constructing and restoring wetlands in this area.  
8 There's already an existing long-term management plan to  
9 be operated by the Rancho Mission Viejo conservancy  
10 which has both public representatives and  
11 representatives of the Rancho Mission Viejo company.

12 And again, I think it's noteworthy to comment  
13 here, with regard to the adequacy of these measures, the  
14 very same groups that are sitting here today opposing  
15 these projects approved this same mechanism because they  
16 have entered into a settlement agreement with the  
17 Rancho Mission Viejo company with regard to this  
18 development and approved all these documents.

19 Next slide.

20 Mitigation area B, what we refer to as the  
21 Upper Chiquita conservation area, this is actually a  
22 conservation area that was acquired well in advance of  
23 any impact of our projects in the mid '90s. We  
24 established a conservation bank in coordination with the  
25 fish and wildlife service and the State Department of

1 Fish and Wildlife were proposing mitigation in that  
2 area.

3 Again, we demonstrated over the years a  
4 commitment. There is already a conservation easement in  
5 place that protects this property in perpetuity. And we  
6 will certainly follow through and implement the  
7 requirements of the tentative WDR to provide an  
8 acceptable plan of financial assurances of the TCA's  
9 intent, frankly, as -- has been to hold onto this site.

10 But if at some point in the future we decide  
11 to -- to transfer management of the conservation  
12 easement to a third party, that would be required to be  
13 approved by both U.S. Fish and Wildlife Service, the  
14 State Department of Fish and Wildlife and your agency.

15 So you have a veto power, if you will, on the  
16 transfer of authority -- authority with regard to that  
17 site.

18 Now, I want to get into some of the CEQA  
19 issues, which is a primary -- supposed to be a primary  
20 focus. So a lot of folks here obviously have signs  
21 saying "Save Trestles." This project is nowhere near  
22 Trestles. It's ten miles away from Trestles. It's  
23 seven miles away from -- from Dana Point.

24 Next slide.

25 There's been discussion of Cow Camp Road. And

1 I believe some statements have been made in the press  
2 and some comments were made by the opponents about  
3 connecting to a dirt road.

4 Well, the upper right-hand picture was taken  
5 yesterday, Mr. Chairman. That is a picture of Cow Camp  
6 Road. It's not a dirt road. That's phase one. Phase  
7 two, the construction bid documents are out to bid.  
8 We'll be under construction shortly.

9 The picture on the lower-left was taken  
10 yesterday. That's a picture of the current status of  
11 the Rancho Mission Viejo ranch plan development in  
12 what's called planning area one. Ultimately the ranch  
13 plan will include 14,000 homes. It will double the size  
14 of the City of San Juan Capistrano. So that's the need  
15 for this project.

16 Next slide.

17 As has already been noted --

18 MR. ABARANEL: Can I ask a question?

19 MR. THORNTON: Sure.

20 MR. ABARANEL: We heard earlier that TCA has a  
21 policy called "roads first."

22 Can you go back one slide.

23 The lower-left looks like road second.

24 MR. THORNTON: Board Member Abaranel, first of  
25 all, just a correction. It's actually the County of

1 Orange policy of roads first.

2 The TCA's project, in fact, are part of that  
3 regional policy to have adequate infrastructure in place  
4 before the development occurs. Because we all know in  
5 this society what happens if you don't develop your  
6 infrastructure before the development occurs: the  
7 infrastructure never happens.

8 So that's one of the reasons why it's so  
9 critical to approve this extension before that  
10 development is in place, so that we do have an adequate  
11 regional infrastructure system.

12 MS. KALEMKIARIAN: But isn't it in place?

13 MR. THORNTON: Well, first of all, planning  
14 area one is to the west of where our project area is.  
15 But that's one reason it's so critical that we move  
16 forward with this five miles.

17 Because the development is coming, and we're  
18 not going to have an adequate regional infrastructure  
19 program in place for south Orange County unless we  
20 complete the system at least to Cow Camp Road.

21 MS. KALEMKIARIAN: But I'm confused again.  
22 Because the development is coming before the road, or  
23 it's not?

24 MR. THORNTON: The development is coming. Now,  
25 those homes aren't open yet. But the development has

1       been initiated. And that's why it's so critical that we  
2       proceed with the segment.

3               Next slide.

4               We can go beyond this. We've already spoken to  
5       this issue.

6               Next slide.

7               With regard to the procedural issues that have  
8       been raised concerning the TCA's action, it was actually  
9       the opponents of the project that came before you in  
10      March and said the TCA board has to act first.

11              Well, we did exactly what the opponents asked  
12      us to do. We took the matter back to the TCA board.  
13      They noticed the hearing in accordance with the Brown  
14      Act. They approved the addendum. And they issued a  
15      notice of determination.

16              Next slide.

17              There have been multiple opportunities for  
18      public involvement. Indeed I dare say there are very  
19      projects that have four-tenths of an acre of impacts on  
20      state waters that have had the level of public scrutiny  
21      that this project has had.

22              This board should be applauded for the  
23      extent -- the extent of public involvement. It  
24      obviously had a day-long hearing before. You posted on  
25      your website the addendum three weeks before the March

1 hearing. Obviously the opponents submitted extensive  
2 comments.

3 There has been a very extensive opportunity for  
4 public comment. And there will be additional  
5 opportunities in the future both before the TCA and  
6 through the federal environment process.

7 Next slide.

8 As your staff has indicated, the issue here  
9 under CEQA is really quite straightforward and narrow.  
10 CEQA could not be more clear, as your staff has  
11 indicated, in the addendum response to comments.

12 And this is a quote from your staff report:  
13 The water board must presume the EIR prepared by the  
14 lead agency to be adequate.

15 That's the California Environment Quality Act.

16 Next slide.

17 There's no grounds to require additional  
18 environmental documentation.

19 Again, a quote from your staff's findings in  
20 the addendum response to comments at Page 3: The water  
21 board finds none of the conditions that would require  
22 subsequent or supplemental EIR.

23 So there's no basis under CEQA or under law to  
24 require an additional environmental documentation.

25 Next slide.

1                   Finally, with regard to the point that was made  
2 by Mr. White that litigation has been filed, it is one  
3 of the realities in this society that we live in that  
4 you can't build anything without a CEQA lawsuit being  
5 filed.

6                   But CEQA, again, addresses this very clearly,  
7 that your staff indicates appropriately under CEQA:  
8 Even if litigation is filed, responsible agencies are  
9 required to presume documents prepared by the lead  
10 agency comply with CEQA.

11                   Next slide.

12                   And the CEQA review here has not been piecemeal  
13 because there have been four EIRs prepared evaluating  
14 extensions of State Route 241 going all the way back to  
15 a programmatic-level document in 1981; subsequent  
16 document from the TCA in '91; and then 2006 subsequent  
17 EIR; the 2004 ranch plan EIR, which evaluated both the  
18 development and the extension of the state route 241;  
19 and of course the 2013 addendum on the Tesoro extension.

20                   Next slide.

21                   As we indicated before in the prior proceeding,  
22 the Tesoro extension does not foreclose the  
23 consideration of a broad range of alternatives.

24                   The TCA board has made no decision as to  
25 whether or how to proceed south of Cow Camp Road. We

1 will continue the dialogue with the community on that.  
2 Indeed, we spent two years in detailed direct  
3 proceedings with the Save San Onofre Coalition  
4 discussing that very issue, and we're committed to  
5 continuing that dialogue.

6 Next slide.

7 As I indicated at the prior proceeding, it is  
8 extremely common in California for large transportation  
9 projects to be phased.

10 Go to the next slide.

11 I want to focus on the high-speed rail project.  
12 I mentioned this at the last hearing. But this is the  
13 largest project in the state. Indeed, it's the largest  
14 project in the nation. And guess what? It's being  
15 phased. It's being segmented.

16 It's a project that is designed to run from  
17 San Diego to the bay area. But the first phase, the  
18 first segment is in the central valley, the segment that  
19 shortly will be under construction.

20 It was evaluated separately under CEQA even  
21 though there are continuing controversies and decisions  
22 have not been made about the alignment of the project  
23 either in Southern California or in the bay area.

24 MS. KALEMKIARIAN: If you go back a slide  
25 please. No, to the map, yeah, and it relates to the