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9

10 BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
11

12 In the Matter of the Petition of:

13 THE FOOTHILL/EASTERN
14 TRANSPORTATION CORRIDOR AGENCY
FOR REVIEW OF ACTION, AND FAILURE
15 TO ACT, BY THE CALIFORNIA REGIONAL
WATER QUALITY CONTROL BOARD, SAN
16 DIEGO REGION, IN CONNECTION WITH
RESOLUTION REGARDING THE DENIAL
17 OF WASTE DISCHARGE
REQUIREMENTS, REVISED TENTATIVE
18 ORDER NO. R9-2015-0022
19

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

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1 **II SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD THAT THE**
2 **STATE BOARD IS REQUESTED TO REVIEW:**

3 The TCA is requesting that the State Board (i) review the Resolution, (ii) declare
4 that the Regional Board failed to comply with the State Board Order, (iii) declare that the
5 Regional Board violated legal requirements applicable to agencies acting in a quasi-
6 judicial capacity, (iv) vacate the Resolution and the Regional Board's action on the
7 Revised Tentative Order, and (v) approve the Revised Tentative Order for the Project
8 recommended by the Regional Board staff in June 2013.

9
10 **III DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT:**

11 The Regional Board adopted the Resolution on March 16, 2015.
12

13 **IV A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR**
14 **FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:**

15 As more fully set forth in TCA's Memorandum of Points and Authorities below, in
16 adopting the Resolution, the Regional Board abused its discretion and otherwise failed
17 to act in accordance with relevant governing law. Specifically, but without limitation, the
18 Regional Board:

- 19 a. Violated the State Board Order by failing to make the findings required by
20 the State Board Oder, and by failing to adopt findings that comply with law
21 applicable to adjudicatory proceedings; and
- 22 b. Violated constitutional and statutory due process requirements by (i) failing
23 to approve the Resolution by a legally competent majority of the Regional
24 Board, (ii) allowing two Board members who did not participate in the
25 adjudicatory hearings on the Revised Tentative Order, and who did not
26 consider the voluminous evidence supporting Revised Tentative Order, to
27 participate and vote on the Resolution, (iii) allowing two Board members
28 who previously voted to approve the Revised Tentative Order to change

1 their vote on the Revised Tentative Order and vote approve the Resolution
2 without reopening the adjudicatory hearings and reconsidering the Revised
3 Tentative Order, (iv) allowing two Board members to vote on the Resolution
4 despite the fact that the two Board members are members of designated
5 "interested parties" who received prohibited ex parte communications from
6 the interested parties, (v) failing to disclose the full substance of prohibited
7 ex parte communications, (vi) failing to reopen the adjudicatory hearings to
8 consider significant new evidence, including, but not limited to, evidence
9 that the impacts of the Project have been greatly reduced because much of
10 the alignment of the Project has been graded pursuant to approvals issued
11 by the Regional Board, and evidence regarding the Regional Board's
12 authority over future extensions of SR 241, and (vii) by allowing interested
13 parties to submit new evidence after the close of the adjudicatory hearings,
14 while simultaneously prohibiting the TCA from submitting new evidence.
15

16 **V THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**

17 The TCA is a Joint Powers Agency formed by the County of Orange and 12 cities
18 in the County to plan, finance, design, construct and operate a toll highway system in
19 Orange County, California. The TCA Board members are all elected officials who
20 collectively represent 1.8 million people. TCA has proposed the Project, a 5.5 mile long
21 extension of the existing State Route 241 from its current terminus at Oso Parkway to
22 Cow Camp Road immediately north of State Route 74 in Orange County.

23 The Regional Board's approval of the Resolution prevents the timely
24 implementation of the Project. The Project is an important element of the Southern
25 California Regional Transportation Plan, Orange County Long Range Transportation
26 Plan, General Plans of the County of Orange and of every city in south Orange County.
27 The Regional Board's decision will result in continued and severe congestion on
28

1 Interstate-5 and local arterials in south Orange County adversely impact air quality,
2 public health and safety of the 1.8 million people represented by the TCA Board
3 members.

4
5 **VI THE SPECIFIC ACTION THE PETITIONER REQUESTS:**

6 For the reasons described in Section IV of this Petition for Review and in the
7 attached Memorandum of Points and Authorities, TCA requests that the State Board
8 (1) declare that the Resolution violates the State Board Order, (2) declare that the
9 Regional Board otherwise violated California law applicable to adjudicatory
10 proceedings, (3) vacate the Regional Board's action on the Resolution, (4) vacate the
11 Regional Board's action on the Revised Tentative Order, and (5) adopt the Revised
12 Tentative Order recommended by the Regional Board staff.
13

14
15 **VII STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL
16 ISSUES RAISED IN PETITION:**

17 Please see TCA's Memorandum of Points and Authorities below and
18 incorporated by reference as if fully set forth herein.
19

20 **VIII STATEMENT THAT THE PETITION HAS BEEN SENT TO THE
21 APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT
22 THE PETITIONER:**


23 A true and correct copy of this Petition and Memorandum of Points and
24 Authorities with attached Exhibits was mailed to the Regional Board via First Class mail
25 on April 14, 2015.
26
27
28

1 **IX STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE**
2 **PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD**
3 **ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT**
4 **RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD:**

5 The issues raised in the Petition were raised by the TCA before the Regional
6 Board. As more fully set forth in TCA's Memorandum of Points and Authorities below,
7 the TCA advised the Regional Board that (1) the Resolution violated the State Board
8 Order, (2) the Regional Board should have reopened the adjudicatory proceedings and
9 reconsidered its action on the Revised Tentative Order, (3) the Regional Board should
10 have allowed the TCA to introduce new evidence that the changes in circumstances
11 have greatly reduced the impacts of the Project on water quality, and (4) the procedure
12 applicable to the Regional Board's consideration of the Resolution violated due process
13 requirements. The procedures adopted by the Regional Board precluded the TCA from
14 introducing any new evidence at the meeting on the Resolution, and from raising other
15 issues prior to the action of the Regional Board on the Resolution.

16 DATED: April 14, 2015

Respectfully Submitted,
NOSSAMAN LLP

17
18 By: 
19 ROBERT D. THORNTON
STEPHANIE N. CLARK
20 Attorneys for Petitioner
21 FOOTHILL/EASTERN TRANSPORTATION
22 CORRIDOR AGENCY
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION & SUMMARY

3 A. Violation of the State Board Order – Failure to Adopt the Required
4 Findings.

5 Despite clear and explicit direction by the State Board, the Resolution adopted by
6 the Regional Board violates the express requirements of the State Board Order. The
7 State Board could not have been clearer that, in order for the Regional Board to deny
8 the WDR for the Tesoro Project on the basis of potential water quality impacts of
9 potential future extensions of SR 241, the Regional Board was “*most importantly*”
10 required to make express findings that:

11 *“explain why the regional water board would be*
12 *limited in its ability to exercise its full authority in*
13 *the future* to prohibit, or otherwise restrict, those
14 future discharges or other water quality impacts in
15 such a manner as to carry out the regional water
16 board’s obligation to protect waters of the state”

17 (State Board Order, at p. 11, ¶ 3 [emphasis added] (attached hereto as Exhibit 1)). The
18 State Board adopted the above requirement in response to testimony by transportation
19 agencies throughout California that it is standard practice to permit and construct
20 transportation projects in phases.

21 The Resolution adopted by the Regional Board is devoid of the “most important”
22 finding required by the State Board Order. Instead, the Regional Board relied on the
23 following incomprehensible “finding”:

24 “By submitting a report of waste discharge for the first phase
25 of a larger project without addressing known, unmitigable
26 water quality impacts from subsequent phases, TCA
27 precluded the San Diego Water Board from evaluating the
28

1 entire project and potential alternatives that could mitigate
2 known significant and unavoidable impacts associated with
3 subsequent phases.”

4 (Resolution, at p. 6, ¶ 32 (attached hereto as Exhibit 2).)

5 Following the logic of the Regional Board in the Resolution, a regional board
6 could deny permits for any of the dozens of transportation improvements in the State
7 that are being permitted and constructed in phases, including the California High Speed
8 Rail project. Nowhere in the Resolution does the Regional Board “***explain why the***
9 ***regional water board would be limited in its ability to exercise its authority in the***
10 ***future*** to prohibit, or otherwise restrict, those future discharges or other water quality
11 impacts in such a manner as to carry out the regional water board's obligation to protect
12 waters of the state.” (Exhibit 1, p. 11, ¶ 3.) To the extent that the Regional Board's
13 Resolution attempts to justify its denial of WDRs based on potential future impacts of
14 future extensions of SR 241 it reads a single provision of the State Board Order out of
15 context and fails to comply with the State Board Order as a whole.

16 In sum, the Regional Board's failure to make the findings required by the State
17 Board Order violated Government Code section 11425.10, is contrary to law, and
18 constitutes an abuse of discretion.

19 **B. Violation of State Board Order – Failure to Identify Competent**
20 **Evidence to Support the Required Finding.**

21 The requirement that agencies acting in a quasi-adjudicatory matter adopt legally
22 sufficient findings is not a mere formality; it is required to ensure that quasi-judicial
23 agencies follow the law. Five decades ago, the California Supreme Court made it clear
24 that quasi-judicial decisions of administrative agencies are required to be supported by
25 written findings that identify the facts relied upon by the agency and that explain the
26 connection between such facts and the agency's legal conclusions. (*Topanga Assn. for*
27 *a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.) As the Supreme
28

1 Court made clear, it is not sufficient for an agency to make the bare finding required by
2 the law. The agency is required to cite to the evidence that it is relying upon to support
3 the finding and to “bridge the analytic gap” between the evidence and the finding. (*Id.* at
4 p. 515.)

5 Here, the Regional Board not only failed to make the finding required by the
6 State Board Order, it failed to identify any relevant or competent evidence to “bridge the
7 analytic gap” between the facts and the required finding that the Regional Board
8 “**explain why the regional water board would be limited in its ability to exercise its**
9 **full authority in the future** to prohibit, or otherwise restrict, those future discharges or
10 other water quality impacts.” (Exhibit 1, at p. 11, ¶ 3.)

11 The uncontested facts here are that the future extensions of SR 241 will require
12 WDRs and 401 water quality certifications issued by the Regional Board for any
13 potential future alignments. Thus, the Regional Board will have full authority to regulate
14 discharges from future extensions of SR 241. The Regional Board failed entirely to
15 identify any evidence to “bridge the analytic gap” between these uncontested facts and
16 the finding required by the State Board Order.

17 During the 2013 adjudicatory hearings, **NO person** presented any evidence that
18 the Regional Board lacked authority to regulate discharges or other water quality
19 impacts from future extensions to protect the waters of the state. At the time the Board
20 denied WDRs for the Project in 2013, none of the three Regional Board members who
21 voted to disapprove the staff recommendation (Abarbanel, Kalemkarian, Morales)
22 expressed any concern that the Regional Board did not have full authority to regulate
23 future extensions so as to protect the waters of the state. (Exhibit 1, at pp. 13-14, ¶ 3
24 [noting that neither the State Board nor its staff were able to determine the basis for the
25 Regional Board’s decision to disapprove of the Revised Tentative Order].) Indeed, as
26 noted by the State Board Order, it is impossible to discern any coherent or lawful
27 rationale for the Regional Board majority’s rejection of the Regional Board staff
28 recommendation. (*Ibid.*)

1 **C. The Regional Board Findings Are an Illegal Post-Hoc Rationalization.**

2 Agencies may not engage in post-hoc rationalizations of their decisions.

3 *(Motor Vehicle Manufacturers Assoc. of the U.S. v. State Farm Mutual Automobile*
4 *Insurance Co. (1983) 463 U.S. 29 [invalidating National Highway Traffic Safety*
5 *Administration's decision where the reason for the decision was not articulated at the*
6 *time of the agency's decision].) Where an agency's findings are not issued*
7 *contemporaneously with the agency's decision, the agency's findings are nothing more*
8 *than post-hoc rationalizations of a decision the agency made. (Bam, Inc. v. Board of*
9 *Police Commissioners of City of Los Angeles (1992) 7 Cal.App.4th 1343, 1346-49.)*

10 The uncontested fact is that **during the 2013 adjudicatory hearings**, the
11 Regional Board never discussed or considered the extent of the Regional Board's
12 authority to regulate discharges from future extensions of SR 241. Indeed, neither the
13 Regional Board staff nor any person testifying during the adjudicatory hearings
14 suggested that the Regional Board would not have full authority to regulate future
15 extensions to protect water quality. Thus, the findings adopted by the Regional Board
16 are nothing more than an illegal post-hoc rationalization of the Regional Board's
17 decision.

18 **D. The Regional Board Violated Due Process Requirements and**
19 **Deprived the TCA and the Public of a Fair and Impartial Adjudicatory**
20 **Proceeding.**

21 Constitutional guarantees of due process of law govern the Regional Board's
22 adjudicatory proceedings. *(Withrow v. Larkin (1975) 421 U.S. 35, 46; Morongo Band of*
23 *Mission Indians v. State Water Resources Control Board (2009) 45 Cal.4th 731, 737.)*

24 Here, due process violations pervade the Regional Board's adjudicatory proceedings.

25 The due process violations include:

- 26 1. Board Members Warren and Olson voted in favor of the Resolution
27 despite the fact that they were not Board members during the adjudicatory
28

1 proceedings and thus could not have heard the evidence presented to the
2 Regional Board during the 2013 adjudicatory hearings.

- 3 2. Board Members Warren and Abarbanel are members of designated
4 “interested parties” in the adjudicatory proceeding (Surfrider Foundation,
5 Sierra Club), and Board Members Warren and Abarbanel engaged in
6 prohibited ex parte communications with interested parties (Surfrider
7 Foundation, NRDC).¹ Their membership and ex parte communications
8 with interested parties deprive TCA and the public of their procedural due
9 process guarantee that all such hearings will be conducted before a
10 reasonably impartial, noninvolved reviewer.
- 11 3. Board members who were in the minority in the 2013 vote on the Revised
12 Tentative Order are not competent on remand to adopt findings that
13 purport to explain the reasoning of the former Board majority, with whom
14 they disagreed.
- 15 4. On remand, the Regional Board refused to reopen the adjudicatory
16 hearing and prohibited the TCA from introducing critical new evidence, but
17 allowed the project opponents to introduce new evidence and failed to
18 strike supplemental information introduced by project opponents from the
19 record.
- 20 5. Contrary to the State Board Order, the Regional Board did not give the
21 TCA an opportunity to revise the report of waste discharge to provide
22 information regarding potential future impacts of SR 241.

23 The cumulative effect of the violations deprived the TCA and the public of a fair
24 and impartial proceeding and violated the due process protections of the California
25 Constitution and the United States Constitution.

26
27 ¹ No other member of the Board or Board staff disclosed membership in any organization listed
28 as an interested party. Members of Board staff received emails from the NRDC, Endangered
Habitats League and California State Parks Foundation, all of which are designated interested
parties.

1 **II FACTUAL BACKGROUND**

2 **A. The Tesoro Extension Project**

3 The facts regarding the Tesoro extension are described in detail in the TCA's
4 initial Petition for Review which is attached hereto. (TCA's Petition for State Board
5 Review of Regional Water Board Denial of WDRs, September 2014 (attached hereto as
6 Exhibit 4).) The Tesoro Extension is an approximately 5.5 mile long extension of
7 existing State Route ("SR") 241 from its current terminus at Oso Parkway to Cow Camp
8 Road immediately north of SR 74 in Orange County ("County"), California.

9 The purpose of the Project is to provide a transportation facility that will reduce
10 existing and forecasted deficiencies and congestion on Interstate 5 ("I-5") and the
11 arterial network in the southern portion of the County. The Project will serve both local
12 (existing and future) and intra- and inter-regional trips. The Project is a component of
13 the Southern California Regional Transportation Plan, the South Coast Air Quality
14 Management Plan and the State Clean Air Act Implementation Plan.

15 The Project includes four general-purpose travel lanes, two in each direction, and
16 a state-of-the-art water quality treatment system and other water quality protection
17 measures. The Project will be owned and operated by the California Department of
18 Transportation ("Caltrans") upon opening of the roadway to traffic. The toll collection
19 facilities will be operated by the TCA.

20 The Project is situated within an unincorporated portion of the County, within the
21 Rancho Mission Viejo ("RMV"). The Regional Board approved a section 401 water
22 quality certification for Cow Camp Road. 1.49 miles (27 percent) of the Project is within
23 Planning Area 2-South of the RMV Ranch Plan. Pursuant to Regional Board approval,
24 RMV graded Planning Area 2 between early 2013 and present day. RMV obtained
25 approvals for development of the Ranch Plan from the County, the U.S. Fish and
26 Wildlife Service, and the California Department of Fish and Wildlife. The U.S. Army
27 Corps of Engineers approved a Special Area Management Plan regarding the Ranch
28

1 Plan under the federal Clean Water Act. The Regional Board approved RMV's request
2 for WDRs for the grading of Planning Area 2, which coincides with the area proposed
3 for the Tesoro Extension. Several environmental groups agreed to the development
4 proposed in the Ranch Plan in a settlement agreement with the County and RMV.
5 These same groups now oppose the Tesoro Extension, which lies within the same
6 geographic area as the Ranch Plan.

7 **B. The Tentative Order and Revised Tentative Order**

8 On August 10, 2012, TCA submitted a Report of Waste Discharge ("ROWD") to
9 construct the Project. (Water Code, § 13260, subd. (a).) Additional information to
10 complete the ROWD application was received on October 4, 2012 and November 8,
11 2012. The ROWD was deemed complete on November 14, 2012. TCA proposes to
12 discharge fill material into waters of the State in association with construction activities
13 at the Project site. The Project was originally anticipated to result in the discharge of fill
14 in a total of 0.64 acre of waters of the State, including 0.40 acres (5,297 linear feet) of
15 permanent impacts and 0.24 acres (1,819 linear feet) of temporary impacts into
16 jurisdictional waters in the Mission Viejo Hydrologic Area (901.20) in the San Juan
17 Hydrologic Unit (901.00). Based on the completed grading as part of the permitted
18 Ranch Plan, this anticipated discharge has been reduced to 0.29 acre of permanent
19 impacts to state jurisdictional waters. (Exhibit 7, at p. 3.)

20 Regional Board staff released Tentative Order No. R9-2013-0007, *Waste*
21 *Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency,*
22 *Tesoro Extension (SR 241) Project, Orange County*, for public review and comment on
23 January 17, 2013 ("Tentative Order").

24 At the March 19, 2013 hearing, Regional Board staff presented information
25 regarding the Tentative Order, including explaining the compensatory mitigation and
26 BMPs proposed for the Project. Regional Board staff commended TCA for water quality
27 protection and mitigation elements of the Project. (See Transcript Excerpts from
28 March 13, 2013 Hearing, pp. 22-23 [emphasis added] (attached hereto as Exhibit 3).)

1 Regional Board staff commented that TCA had proposed a “[gold] standard of
2 mitigation” for the Project. (*Id.* at pp. 31-32.)

3 At the conclusion of the proceedings, the Regional Board continued the public
4 hearing to June 19, 2013 to allow staff and counsel adequate time to (1) evaluate the
5 comments submitted on CEQA compliance, (2) prepare responses to remaining issues,
6 and (3) draft revised conditions and/or additional findings for inclusion in the Tentative
7 Order. (*Ibid.*) On June 19, 2013, the Regional Board held its second hearing on the
8 Tentative Order relating to the Project. Regional Board staff opened the hearing with its
9 presentation regarding the Revised Tentative Order. Among other things, Regional
10 Board staff explained how the Tentative Order had been revised since the March 13,
11 2013 hearing to address concerns raised by the public and by Regional Board
12 members. In order to address concerns, Regional Board staff included additional
13 requirements and modified mitigation measures. (See Exhibit 1, pp. 7-26; see also
14 Transcript Excerpts from June 19, 2013 Hearing, pp. 18-22 (attached hereto as
15 Exhibit 5); June 19, 2013 Executive Officer Summary Report, pp. 3-4 (attached hereto
16 as Exhibit 6).) Staff explained that these changes addressed concerns regarding the
17 Project’s effect on the supply of sediment bed material to Chiquita Creek, Gobernadora
18 Creek and San Juan Creek, as well as concerns regarding the timing of the Regional
19 Board’s approval of certain monitoring and mitigation plans. (Exhibit 5, pp. 17-20.)
20 Staff further explained that, with these revisions, the mitigation in the Tentative Order
21 “meets the mitigation requirements of CEQA and adequately addresses impacts to
22 waters of the State.” (*Id.* at p. 20.) No other state highway has been required to satisfy
23 such rigorous water quality standards, including compliance with the South Orange
24 County Hydromodification Plan, the draft Model Water Quality Management Plan for
25 South Orange County, and the standards set forth in the storm water permit referred to
26 as “MS4.”

27 Despite its staff’s recommendation to approve the Revised Tentative Order, by a
28 three-to-two decision, the Regional Board denied the Revised Tentative Order. Board

1 Members Kalemkiarian, Abarbanel and Morales voted in the majority, denying WDRs
2 for the Project. Board Members Anderson and Strawn voted to approve WDRs as
3 described in the Revised Tentative Order.

4 **C. The Regional Board's Decision**

5 During deliberations on the Revised Tentative Order, Board Member
6 Kalemkiarian –referring to the May 23, 2013 complaint filed by the Attorney General
7 against TCA—stated “I guess what’s most persuasive to me . . . was reading through
8 the attorney general’s complaint or writ, actually, because ***I do not believe that the***
9 ***project is Tesoro, and I think that the project [that] has been presented is the***
10 ***entire [SOCTIIP] highway.***” (Exhibit 5, at p. 198 [emphasis added].) Ms. Kalemkiarian
11 noted that, with respect to the 5.5 mile Project currently before the Board, “the water
12 quality standards will be met.” (*Id.* at pp. 204-05; see also *id.* at p. 198 [stating “I don’t
13 question the staff’s conclusion that this segment meets water quality standards”].)
14 Nonetheless, she explained that after reading the Attorney General’s complaint, she
15 was able to identify her concerns about the Project, which related to the project
16 description. (*Id.* at pp. 204-05). After reading portions of the complaint aloud,
17 Ms. Kalemkiarian stated: “This is not an adequate project description I do not
18 believe that the project description is genuine.” (*Id.* at p. 205.)

19 Following Ms. Kalemkiarian’s comments, Mr. Abarbanel stated: “I think the
20 project that’s in front of us is actually pretty clear. It’s the [SOCTIIP] project that was
21 presented here in 2008 Some people might say I made up what the project is, but I
22 went to the website of the Transportation Corridor Authority and it shows the project
23 going all the way through Interstate 5, somewhere kind of in San Diego County. I don’t
24 know if that’s where they’re going to do it. But that’s the goal of their project and they’re
25 asking us to support that, and I cannot.” (*Id.* at pp. 201-02.) Similarly, Regional Board
26 Chair Morales stated, “As I see it, the project as envisioned may end up [south of San
27 Clemente]; may not. I don’t know. I do think it’s more than five and a half miles
28 though.” (*Id.* at p. 203.)

1 The above statements constitute the only grounds cited by the Regional Board at
2 the time of the decision on the Revised Tentative Order. Board Member Olson became
3 a member of the Regional Board a full month after the adjudicatory hearings on the
4 Revised Tentative Order, and Board Member Warren did not become a Board Member
5 until December 2014 – 18 months after the Regional Board action on the Revised
6 Tentative Order. Thus, neither Board Member Olson nor Warren was a Board Member
7 at the time the decision to deny WDRs for the Project was made. Former Board
8 Member Kalemkarian resigned from the Regional Board in 2013.

9 **D. The State Board Order**

10 TCA timely petitioned the State Board for review of the Regional Board's decision
11 and failure to act. Transportation agencies throughout California testified before the
12 State Board that it is standard practice to permit and construct transportation projects in
13 phases. The transportation agencies also documented that it is very common for an
14 individual transportation improvement to be part of a larger project as described on local
15 and regional transportation plans.

16 The State Board adopted its Order on September 23, 2014. The State Board
17 Order states that in “most cases” regional boards may issue WDRs for the current
18 project and “defer issuance of WDRs for future discharges . . . until the point in time that
19 those discharges are actually proposed.” (Exhibit 1, at p. 10.) The State Board
20 provided assurances to the transportation agencies that regional boards may not deny a
21 WDR for a proposed phase because of potential impacts of subsequent phases, unless
22 the regional board found that it would not have the full authority to restrict water quality
23 impacts of future phases.

24 The State Board Order determined that there was insufficient evidence in the
25 record to determine the reasoning of the Regional Board for denying the Revised
26 Tentative Order. (Exhibit 1, at p. 13.) The State Board found that the Regional Board
27 had failed to comply with the explicit directive of Government Code, § 11425.50,
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1 subdivision (a), which requires that a decision like the Regional Board's "shall be in
2 writing and shall include a statement of the factual and legal basis for that decision."

3 The State Board acknowledged that

4 "In most cases, as long as the regional water board complies
5 with CEQA, the regional water board may issue WDRs for
6 the current project and defer issuance of WDRs for future
7 discharges of waste until the point in time that those
8 discharges are actually proposed, without compromising its
9 responsibility to protect water quality from those future
10 discharges."

11 (Exhibit 1, at p. 11.)

12 Thus, the State Board found the need for detailed findings from a Regional Board
13 is heightened in situations where a Regional Board declines to issue WDRs based on a
14 project's potential to lead to future discharges, requiring an explanation about why the
15 Regional Board would be "limited in its ability to exercise its full authority in the future to
16 prohibit, or otherwise restrict, those future discharges or other water quality impacts."

17 (*Id.* at p. 11.) Specifically, the State Board Order provides

18 "There is a heightened need for detailed findings
19 based on evidence in the record if a regional water
20 board declines to issue WDRs for a project because it
21 will likely lead to additional, future discharges of waste
22 or other water quality impacts. Those findings should
23 describe the potential for future discharges of waste
24 or other water quality impacts, explain why they are
25 likely to result from the current project before the
26 regional water board, **and, most importantly,**
27 **explain why the regional water board would be**
28 **limited in its ability to exercise its full authority in**

1 **the future to prohibit, or otherwise restrict, those**
2 **future discharges** or other water quality impacts in
3 such a manner as to carry out the regional water
4 board's obligation to protect waters of the state."

5 (*Id.*, at p. 11 (emphasis added).)

6 The State Board noted that "it is clear from the transcript that concerns about
7 water quality impacts resulting directly from the Tesoro Extension did not form the basis
8 for the San Diego Water Board's decision." (*Id.* at p. 13.) Following an extensive
9 discussion of the reasons why detailed findings of fact and law are required when a
10 Regional Board chooses to deny WDRs against staff recommendations, the State
11 Board Order directed the Regional board to "provide the factual and legal basis for its
12 decision consistent with this Order." (*Id.* at p. 15.) By failing to adopt the express
13 findings required by the State Board Order, and by failing to identify any competent
14 evidence to support a finding that the Regional Board would be limited in its ability to
15 exercise its full authority in the future, the Regional Board failed to comply with the State
16 Board Order. The Regional Board's findings ignore the State Board assurances made
17 to state-wide transportation agencies that regional boards should not deny WDRs based
18 on impacts of future projects unless the Regional Board makes the "most important"
19 finding, supported by evidence in the record, regarding jurisdiction over future phases.

20 **E. The Regional Board Resolution**

21 After receiving the State Board decision, Regional Board staff discussed the
22 Regional Board's planned course of action with TCA and interested parties in November
23 2014 and again in January 2015. TCA disclosed to the Regional Board at a meeting
24 with Regional Board staff on November 13, 2014 that substantial grading had occurred
25 near the planned project site, associated with the permitted Ranch Plan, which had
26 reduced the Tesoro Extension's potential impacts to State waters from 0.40 acres to
27 0.29 acres. Regional Board staff advised TCA that no additional evidence would be
28 allowed, and that the reduced impact of the Tesoro Extension would not be considered

1 in connection with the Resolution. (Comment Letter from TCA to Regional Board dated
2 February 18, 2015, at p. 3 (attached hereto as Exhibit 7).) The Regional Board
3 thereafter set a hearing date for March 16, 2015 and released the Resolution
4 (Resolution No. R9-2015-0022) for public review and comment on February 4, 2015.
5 The Regional Board explicitly prohibited the introduction of new or additional evidence
6 related to the Revised Tentative Order, and specified “[c]omments must be limited to the
7 findings of the Resolution.” (Regional Board Notice of Procedures for Considering
8 Resolution No. R9-2015-0022, at p. 1 (attached hereto as Exhibit 8).)

9 The Regional Board prepared a Response to Comment Report. (See Regional
10 Board Response to Comments Report for Resolution No. R9-2015-0022 (attached
11 hereto as Exhibit 9).) TCA’s comments are the only comments substantively responded
12 to in the Response to Comment Report. (*Id.* at pp. 2-5.) They are also the only
13 comments for which the Regional Board reiterates its prohibition on new evidence
14 concerning the Tesoro Extension, despite the fact that multiple comments from
15 interested parties and the public stray far from the contents of the Resolution and
16 provide new or supplemental information on topics covered during the 2013
17 adjudication. (Compare *Id.* at p. 3 with *id.* at pp. 5-6.) In particular, a comment from the
18 Save San Onofre Coalition provides new information regarding an arterial (“F” Street)
19 under development by the Rancho Mission Viejo Company and questions the
20 independent utility of the Tesoro Extension as compared with “F” Street. (See
21 Comment Letter from Save San Onofre Coalition, at pp. 4-5 (attached hereto as
22 Exhibit 10).) While F Street was also discussed during the 2013 adjudicatory hearings,
23 the Rancho Mission Viejo Company did not begin seeking construction approvals for
24 that project until *after* the 2013 adjudicatory hearings². The Regional Board informed
25 TCA that information regarding “F” Street and the associated progress of the Ranch
26 Plan would be excluded as new information if offered by TCA, but then allowed that
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28 ² The Regional Board’s website notes that RMV application for a section 401 water quality
certification for F Street was noticed for public comment on April 9, 2015

1 information when submitted by the Save San Onofre Coalition. The Regional Board
 2 was required to exclude the testimony regarding the current of F Street and its partial
 3 approval by the Regional Board. Rather than clarifying that this information would not
 4 be considered by the Board for purposes of the Resolution, the Regional Board noted
 5 the non-governmental organization's comment. (Exhibit 9, at p. 5.) This is only one
 6 example of many instances where the Regional Board considered new information from
 7 Project opponents despite its refusal to allow the TCA to introduce any new evidence.

8 The Resolution states that the Regional Board believes its jurisdiction and review
 9 of the Tesoro Extension to have been improperly limited based on the fact that the
 10 entirety of the 241 Extension was not placed before the Regional Board. (Exhibit 2, at
 11 p. 6, ¶¶ 30-32.) Contradicting this finding is the Regional Board's finding that any future
 12 alignment of SR 241 beyond Cow Camp Road would cross state waters and would
 13 therefore be subject to the full authority of the Regional Board. (*Id.* at p. 6, ¶ 30;
 14 Exhibit 9, at pp. 2-3.)

15 The following table compares the finding required by the State Board Order with
 16 the findings adopted by the Regional Board. It is obvious that the Regional Board did
 17 not adopt the findings required by the State Board Order.

19 State Board Order Required Findings 20 State Board Order, p. 11	Regional Board Resolution Resolution, ¶¶ 31-32
21 "[D]escribe the potential for future 22 discharges of waste or other water quality 23 impacts"	"Proposed future alignments of the toll road extension will have impacts to water quality and water resources, including the San Juan Creek, San Mateo Creek, San Onofre Creek and Christianitos Creek watersheds."
25 "[E]xplain why [those impacts] are likely to 26 result from the current project before the 27 regional board"	" [E]vidence in the record shows the Tesoro Extension is likely to lead to the SOCTIIP toll road project and that unmitigated water quality impacts are likely to result from the SOCTIIP toll road project."

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“[E]xplain why the regional water board would be limited in its full authority in the future to prohibit, or otherwise restrict, those future discharges or other water quality impacts in such a manner as to carry out the regional water board’s obligation to protect waters of the state.”

“By submitting a report of waste discharge for the first phase of a larger project without addressing known, unmitigable water quality impacts from subsequent phases, TCA precluded the San Diego Water Board from evaluating the entire project and potential alternatives that could mitigate known significant and unavoidable impacts associated with subsequent phases.”

We anticipate that the Regional Board will argue that its findings comply with the State Board Order because the State Board Order states that a regional board would be justified in declining to issue a WDR where subsequent phases of a linear project will likely lead to “water quality impacts from which the regional water board may not be able to adequately protect waters of the state by issuing WDRs or taking other appropriate regulatory actions in the future.” (Exhibit 1, at p. 10-11.) The above statement in the State Board Order must be read in conjunction with the State Board’s explicit directive immediately following, that “most importantly” regional boards are required to make the explicit findings that “**explain why the regional water board would be limited in its ability to exercise its full authority in the future.**” (Exhibit 1, at p. 11.).

The Regional Board did not make the “most important” finding required by the State Board Order and did not identify any competent **evidence** to support a finding that the Regional Board “would be limited in its full authority” to regulate future extensions of SR 241.

F. Regional Board Adopts the Resolution

On March 16, 2015, the Regional Board adopted the Resolution. Two of the Regional Board members (Warren and Olson) who voted to adopt the Resolution were not members of the Board during the original adjudicatory proceedings regarding WDRs for the Tesoro Extension. Neither of these Regional Board members

1 documented on the record that they read the transcript of the adjudicatory hearings and
2 had reviewed and considered the evidence presented during the adjudicatory hearings.
3 Board Member Warren disclosed that she is a member of the Surfrider Foundation – a
4 designated interested party in the adjudicatory proceedings on the Resolution – and that
5 she engaged in ex parte communications with the Surfrider Foundation. (Exhibit 8, at
6 pp. 2-3.) Board Member Abarbanel, a member of another interested party (Sierra Club)
7 also disclosed that he engaged in ex parte communications with interested parties
8 (NRDC).³ Neither Board Member Warren nor Abarbanel disclosed the substance of the
9 ex parte communications, as is required by law.

11 III ARGUMENT

12 A. The Regional Board Violated the State Board Order.

13 Despite clear and explicit direction by the State Board, the Resolution adopted by
14 the Regional Board violates the express requirements of the State Board Order. The
15 State Board could not have been clearer that, in order for the Regional Board to deny
16 the WDR for the Tesoro Project on the basis of potential water quality impacts of
17 potential future extensions of SR 241, the Regional Board was “*most importantly*”
18 required to make express findings that:

19 “*explain why the regional water board would be limited*
20 *in its ability to exercise its full authority in the future* to
21 prohibit, or otherwise restrict, those future discharges or
22 other water quality impacts in such a manner as to carry out
23 the regional water board’s obligation to protect waters of the
24 state.”

26 ³ Mr. Abarbanel also disclosed his Sierra Club membership at the March 13, 2013 hearing.
27 (Exhibit 5, at p. 14, lines 1-3.) Receipt of any communications from an interested party should
28 have been disclosed under the rules governing ex parte contacts with State and Regional Board
members relating to an ongoing proceeding. (See Gov. Code, §§ 11430.10-11430.80.) To
date, Mr. Abarbanel has disclosed only a voicemail from the Orange County Business Council
and an email from the Natural Resources Defense Council. (Exhibit 5 at p. 8; Exhibit 8, at p. 3.)

1 (State Board Order, Exhibit 1, at p. 11, ¶ 3 [emphasis added]). The Resolution adopted
2 by the Regional Board is devoid of the “**most important**” finding required by the State
3 Board Order. Instead, the Regional Board relied on the following incomprehensible
4 finding:

5 “By submitting a report of waste discharge for the first
6 phase of a larger project without addressing known,
7 unmitigable water quality impacts from subsequent
8 phases, TCA precluded the San Diego Water Board
9 from evaluating the entire project and potential
10 alternatives that could mitigate known significant and
11 unavoidable impacts associated with subsequent
12 phases.”

13 (Exhibit 2, at p. 6, ¶ 32.)

14 Nowhere in this finding (or in any other finding) does the Regional Board “explain
15 why the regional water board would be limited in its ability to exercise its authority in the
16 future to prohibit, or otherwise restrict, those future discharges or other water quality
17 impacts in such a manner as to carry out the regional water board’s obligation to protect
18 waters of the state.”

19 We can only speculate as to why the Regional Board elected to ignore the
20 express requirement of the State Board Order. It may be that the Regional Board did
21 not make the finding because the uncontested facts do not support the required finding.
22 Indeed the Resolution acknowledges that future extensions of SR 241 south of Cow
23 Camp Road would require the crossing of San Juan Creek and would have other
24 impacts on waters of the State and waters of the United States. (Exhibit 2, at p. 6,
25 ¶ 30.) Thus, it is beyond any serious dispute that the Regional Board has the “ability to
26 exercise its full authority in the future” to regulate any discharges from future extensions
27 of SR 241 to protect the waters of the state, including if necessary the denial of a WDR
28 or section 401 certification for future extensions of SR 241.

1 Instead of complying with the clear directive of the State Board Order, the
2 Regional Board adopted findings that can only be described as Orwellian. The
3 syllogism reflected in the Resolution is the following: “Future extensions of SR 241 are
4 contemplated by the TCA. The TCA did not include potential future phases of SR 241 in
5 the WDR application for the Tesoro Extension project. The potential future phases
6 impact waters of the state. Therefore, the Regional Board is limited in its ability to
7 protect waters of the state through an action on the Tesoro Extension.”

8 By this “logic”, any regional board in the state could always deny a WDR or a
9 401 certification for any transportation improvement where future extensions or
10 improvements are contemplated in a transportation plan. In their testimony to the State
11 Board on this matter, the following transportation agencies from throughout the State
12 documented that it is standard practice to permit and construct transportation projects in
13 phases:

14 Metropolitan Transportation Commission of San Francisco Bay Area

15 Los Angeles County Metropolitan Transportation Authority

16 Southern California Association of Governments

17 Riverside County Transportation Commission

18 San Bernardino Associated Governments

19 Exposition Metro-Line Construction Authority

20 Metro Gold Line Transportation Authority

21 Orange County Transportation Authority

22 (Transportation Agency Comment Letters to State Water Board (attached hereto as
23 Exhibits 11–18).)

24 The TCAs submitted evidence to the State Board and Regional Board
25 documenting dozens of examples of transportation projects in all parts of California that
26 are permitted and built in phase, including, but not limited to, the following:

- 27 • California High Speed Rail Project
- 28 • Bay Area Rapid Transit extensions to Santa Clara County

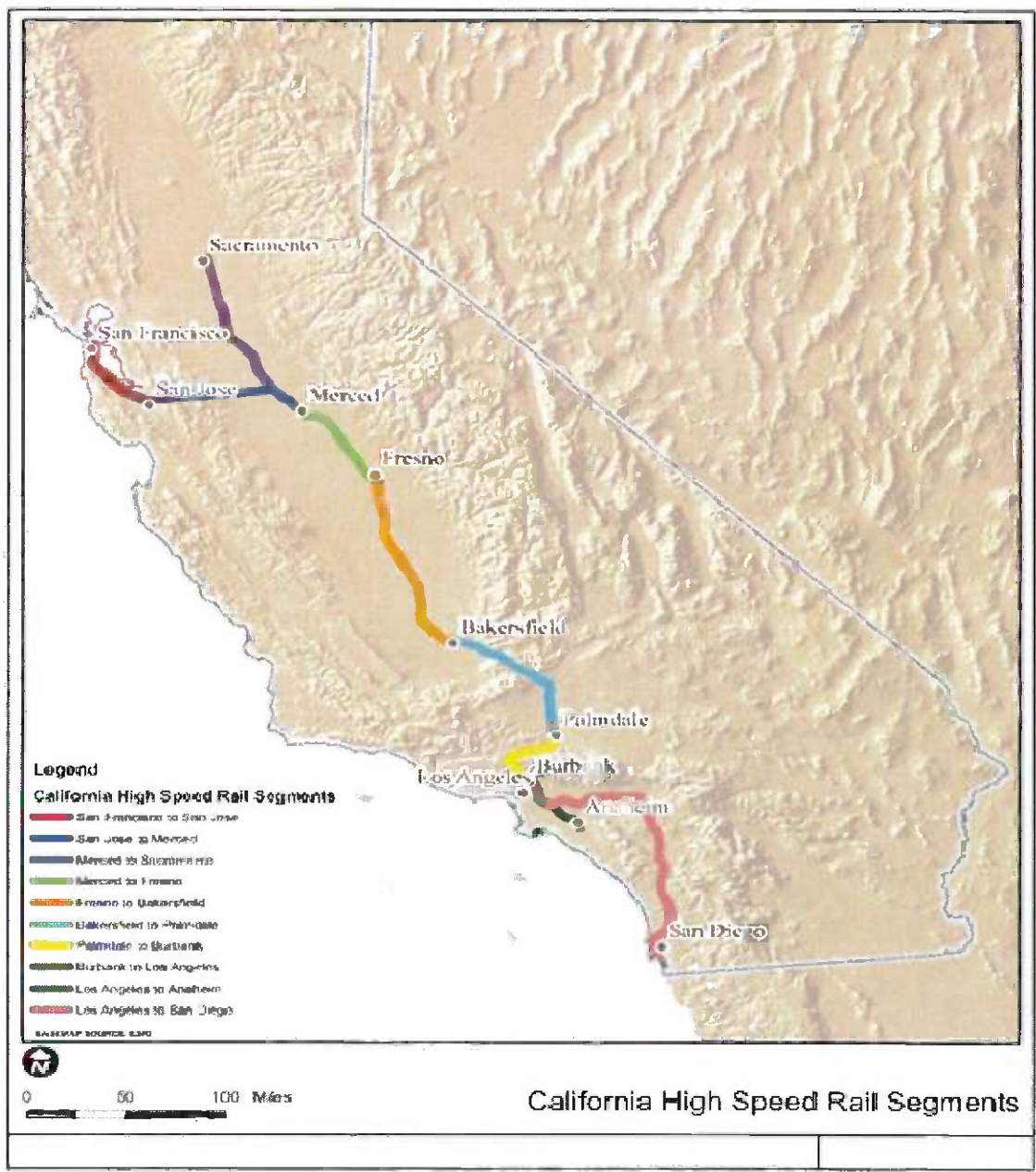
- 1 • LA Exposition Corridor transit project
- 2 • LA Foothill Gold Line transit project
- 3 • LA Westside Subway extension project
- 4 • San Joaquin Valley State Route 99 improvements
- 5 • Sacramento I-5 improvements
- 6 • Bay Area Highway Express Lane projects
- 7 • LA I-5 Improvements
- 8 • San Bernardino High Desert Corridor
- 9 • San Bernardino SR 138 improvements
- 10 • San Diego I-15 improvements
- 11 • San Diego SR 52 improvements
- 12 • San Diego SR 76 improvements
- 13 • Placer SR 65 Lincoln Bypass

14 (Table of Phased Transportation Projects and Permits (attached hereto as Exhibit 19);
15 see also Map of Linear Phased Projects (attached hereto as Exhibit 20).) Following the
16 logic of the Regional Board in the Resolution, regional board could deny permits for all
17 of the above projects because the future phases of the projects would impact waters of
18 the state and the permit applicant did not include the entire project in the first phase
19 application.

20 For example, the California High Speed Rail Authority is permitting and
21 constructing the High Speed Rail project in multiple sections (starting with sections in
22 the Central Valley) while the CEQA analysis of alternative alignments continues on the
23 sections in the Bay Area and in Southern California.⁴

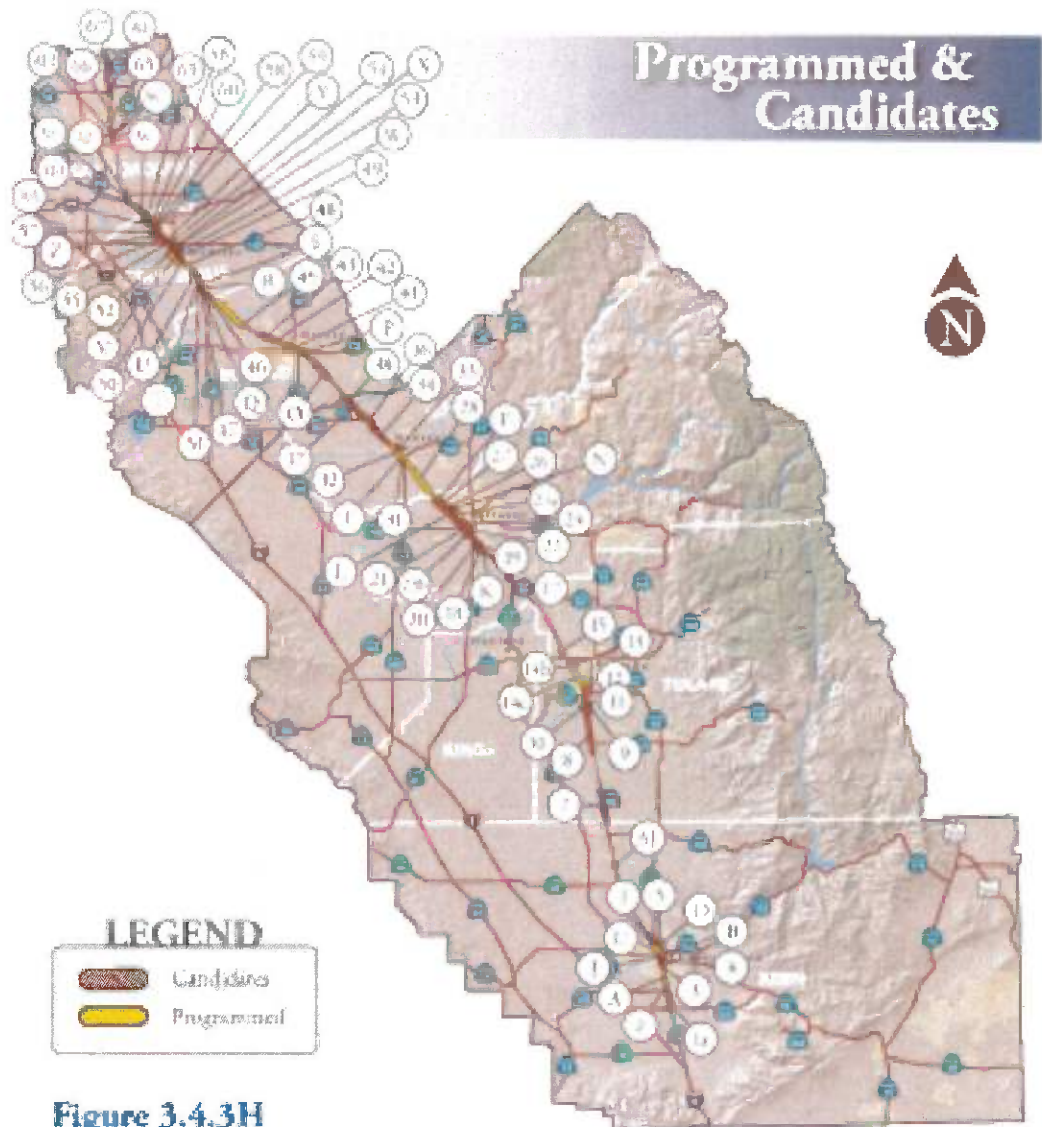
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28 ⁴ Exhibit 21 ["A Proposal To Tunnel Through the Angeles National Forest is Getting a Closer
Look", Los Angeles Times (Aug. 24, 2014)].

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1 Similarly, Caltrans is separately permitting and building dozens of improvements to
2 State Route 99 in the Central Valley that are part of a larger set of improvements to
3 SR 99. (See map of project below)



20
21
22 **Figure 3.4.3H**
23 **Route 99 Business Plan**
24 **Programmed Capacity and**
25 **Operational Improvements Projects**



1 The High Speed Rail Project and the SR 99 improvements will be indefinitely delayed if
2 regional boards may deny the approval of an individual improvement based on potential
3 impacts of future improvements despite independent water board jurisdiction over those
4 future improvements.

5 The transportation agencies testified that a policy allowing regional boards to
6 deny WDRs for one improvement or phase based on potential impacts of subsequent
7 phases would adversely impact the timely and cost-effective delivery of transportation
8 improvements throughout the State. For example, the Metropolitan Transportation
9 Commission for the San Francisco Bay Area testified:

10 "The regional transportation plan for the San
11 Francisco Bay Area identifies a large number of
12 transportation improvements that will be implemented
13 over the next two decades. Many of these
14 improvements will be constructed as funding
15 becomes available, as the CEQA process is
16 completed for each phase, and as regulatory
17 approvals are obtained. It is simply not feasible for
18 practical to obtain regional board or other permits for
19 the entire length of each improvement identified in a
20 multi-decade transportation plan at the time that [the
21 Bay Area transportation agencies] propose to
22 construct an initial phase."

23 (MTC letter to State Board dated September 8, 2014, at p. 2 (attached hereto as
24 Exhibit 11).)

25 Similarly, the Exposition Corridor transit authority explained that its phasing of
26 permitting is essential to the cost-effective and timely delivery of projects:

27 "The Expo Line is a classic example of why it is
28 necessary that transportation agencies retain the

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flexibility to permit and construct major transportation improvements in phases. The Expo Line was originally conceived over twenty years ago as a single project between downtown Los Angeles and Santa Monica. Because of funding limitations and continuing public controversy over alignment and other issues on the western end of the project (e.g. from Culver City to Santa Monica), the Los Angeles County Metropolitan Transportation Authority (Metro) decided that the project should be permitted and built in phases.”

(Exposition Metro Line Construction Authority Letter to State Board dated September 3, 2014, at p. 2 (attached hereto as Exhibit 16).)

In response to the above testimony, the State Board Order specifically instructed the Regional Board that, in order to deny the WDR for the Tesoro Project on the basis of potential water quality impacts of future phases, the Regional Board was required to provide the factual and legal basis to support a finding that the Regional Board would be “limited in its ability to exercise its full authority in the future to prohibit, or otherwise restrict, those future discharges.” (Exh. 1 at p. 11.)

Instead of complying with the express direction of the State Board, the Resolution rehashes the same asserted bases for the Regional Board’s decision to deny WDRs for the Tesoro Extension, namely, that the Regional Board disagreed with the project description. Not a single finding within the Resolution meets the State Board Order’s requirement that the Regional Board explain why its authority over extensions of SR 241 south of Cow Camp Road would be limited.

1 **B. The Regional Board Failed To Identify Competent Evidence to**
2 **Support the Required Finding and Failed to “Bridge the Analytic**
3 **Gap” Between the Evidence and the Required Finding.**

4 The requirement that agencies carrying out a quasi-adjudicatory role adopt
5 legally sufficient findings to support their decisions is a means of ensuring that these
6 agencies follow the law. Adopting findings is more than a mere formality, as the State
7 Board Order acknowledges, because it allows a reviewing body to determine the
8 reasoning behind an agency’s decision. The Regional Board is governed by the
9 provisions of the California Administrative Procedures Act that relate to quasi-
10 adjudicative proceedings. (Water Code, § 648, subd. (b).) This includes the provisions
11 of the Administrative Adjudication Bill of Rights. (Gov. Code, § 11425.10.) Under those
12 provisions, the adjudicative decision of the Regional Board to either condition or deny
13 altogether a permit for water discharge is to be made in writing, based on the record,
14 and include a statement of the factual and legal basis for the decision. (Gov. Code,
15 § 11425.10, subd. (a)(6).) Both state and federal courts have held that legally adequate
16 findings in quasi-judicial actions are necessary to protect the due process rights of
17 parties before an administrative agency. (*Goldberg v. Kelly* (1970) 397 U.S. 254;
18 *Saleeby v. State Bar of Calif.* (1985) 39 Cal.3d 547, 566-68 [holding that an
19 administrative body is required to issue findings in support of its decision in order to
20 satisfy the due process rights of the parties before the agency].)

21 Five decades ago, the California Supreme Court made it clear that quasi-judicial
22 decisions of administrative agencies are required to be supported by written findings
23 that identify the facts relied upon by the agency and that explain the connection
24 between such facts and the agency’s legal conclusions. (*Topanga Assn. for a Scenic*
25 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506.) As the Supreme Court
26 made clear, it is not sufficient for an agency to make the bare finding required by the
27 law. The agency is required to cite to the evidence that it is relying upon to support the
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1 finding and to “bridge the analytic gap” between the evidence and the finding. (*Id.* at
2 p. 519.)

3 Here, the Regional Board not only failed to make the finding required by the
4 State Board Order, it failed to identify any relevant or competent evidence to “bridge the
5 analytic gap” between the facts and the required finding that the Regional Board
6 “**explain why the regional water board would be limited in its ability to exercise its**
7 **full authority in the future** to prohibit, or otherwise restrict, those future discharges or
8 other water quality impacts.” (Exhibit 1, at p. 11, ¶ 3.)

9 The uncontested facts here are that the future extensions of SR 241 will require
10 WDRs, storm water discharge NPDES permits, and 401 water quality certifications
11 issued by the Regional Board for any potential future extensions south of Cow Camp
12 Road. Thus, the Regional Board will have full authority to regulate discharges from
13 future extensions of SR 241. The Regional Board failed entirely to identify any evidence
14 to “bridge the analytic gap” between these uncontested facts and the finding required by
15 the State Board Order.

16 Indeed, the TCA submitted the only evidence on this issue. The TCA presented
17 a stipulated agreement to the Regional Board documenting that future extensions of
18 SR 241 would require Regional Board approval of WDRs and section 401 water quality
19 certifications. (TCA Stipulation to Regional Board’s Future Authority, at pp. 2-3
20 (attached hereto as Exhibit 22).) No contrary evidence regarding the Regional Board’s
21 future jurisdiction was submitted during the adjudicatory proceedings before the
22 Regional Board.

23 **C. The Regional Board Findings Are an Illegal Post-Hoc Rationalization.**

24 Agencies may not engage in post hoc rationalizations of their decisions. (*Motor*
25 *Vehicle Manufacturers Assoc. of the U.S. v. State Farm Mutual Automobile Insurance*
26 *Co.* (1983) 463 U.S. 29 [invalidating National Highway Traffic Safety Administration’s
27 decision where the reason for the decision was not articulated at the time of the
28 agency’s decision].) Where an agency’s findings are not issued contemporaneously

1 with the agency's decision, the agency's findings are nothing more than post-hoc
2 rationalizations of a decision the agency made. (*Bam, Inc. v. Board of Police*
3 *Commissioners of City of Los Angeles* (1992) 7 Cal.App.4th 1343, 1346-49 [holding that
4 findings issued only after the agency's initial decision to be nothing more than
5 unsupportable post-hoc rationalizations].) In *Bam*, the Court of Appeal held that the
6 decision of the board of police commissioners to suspend a motion picture arcade's
7 permit and to issue findings two days later violated the motion picture arcade's due
8 process rights. (*Id.* at p. 1348-49.) As in *Bam*, the Regional Board offered no coherent
9 or legal explanation for denial of the WDRs when it made the decision.

10 During the 2013 adjudicatory hearings, **NO person** presented any evidence that
11 the Regional Board lacked authority to regulate discharges from future extensions to
12 protect the waters of the state. During the 2013 adjudicatory proceedings on TCA's
13 request for WDRs, none of the three Regional Board members who voted to disapprove
14 the staff recommendation (Abarbanel, Kalmkarian, Morales) expressed any concern
15 that the Regional Board did not have full authority to regulate future extensions of
16 SR 241 to protect the waters of the state. Indeed, as noted by the State Board Order, it
17 is impossible to discern any coherent or lawful rationale for the Regional Board
18 majority's rejection of the Regional Board staff recommendation:

19 "As a preliminary matter, it is clear from the
20 transcript that concerns about water quality impacts
21 resulting directly from the Tesoro Extension did not
22 form the basis for the San Diego Water Board's
23 decision. Two of the Board Members indicated that
24 they were satisfied that the Revised Tentative Order
25 adequately addressed any water quality impacts that
26 were directly related to the Tesoro Extension. None
27 of the remaining three Board Members expressed any
28 concerns about water quality impacts that were

1 directly related to the Tesoro Extension Three of
2 the four Board Members who had concluded that the
3 Tesoro Extension is part of a larger project ultimately
4 voted to not approve the Revised Tentative Order.
5 Two of the majority also expressed generalized
6 concerns that future extensions to Interstate 5 may
7 impact water quality. One of the majority referred
8 three times during the deliberations to a CEQA
9 complaint that had recently been filed by the Attorney
10 General that alleged that the Petitioner had violated
11 CEQA by failing to adequately describe the project.
12 Another majority-voting Board Member also referred
13 to CEQA and stated that he thought that there was
14 “some ambiguity in what we are required to do and
15 not do in terms of our analysis.” Therefore, while
16 we can conclude that all three of the Board Members
17 who voted in the majority believed that the Tesoro
18 Extension was part of a larger project that would
19 eventually connect to Interstate 5, we are left with no
20 conclusion as to why they voted to not approve the
21 Revised Tentative Order. Without knowing the factual
22 and legal basis for the decision, it is simply not
23 possible to determine whether it was appropriate.”

24 (Exhibit 1, at pp. 13-14.) The uncontested fact is that **during the 2013 adjudicatory**
25 **hearings**, the Regional Board never discussed or considered the extent of the Regional
26 Board’s authority to regulate discharges from future extensions of SR 241.

27 The Resolution is also devoid of any discussion of the so-called CEQA rationale
28 relied upon by former Board Member Kalemkarian. Thus, the Regional Board has

1 conceded that CEQA does not provide a lawful basis for denial of the Revised Tentative
2 Order. As the TCA documented in its initial petition to the State Board, CEQA required
3 the Regional Board to assume that the TCA had complied with CEQA.

4 At best, paragraphs 31 and 32 of the Resolution are nothing more than an illegal
5 post hoc rationalization, devoid of evidentiary support, for why the Regional Board
6 would be constrained in its ability to regulate future discharges, and at worst it offers no
7 explanation and no finding on this point at all. The Regional Board's post-hoc
8 rationalization violates the California Constitution's due process safeguards in Article 1,
9 section 7, and its guarantee of "freedom from arbitrary procedures." (*People v. Ramirez*
10 (1979) 25 Cal.3d 260, 268-69, accord *Saleeby v. State Bar of Calif.* (1985) 39 Cal.3d
11 547, 563-64.)

12 **D. The Regional Board Violated Due Process Requirements and**
13 **Deprived the TCA and the Public of a Fair and Impartial Adjudicatory**
14 **Proceeding.**

15 Constitutional guarantees of due process of law govern the Regional Board's
16 adjudicatory proceedings. (*Withrow v. Larkin* (1975) 421 U.S. 35, 46; *Morongo Band of*
17 *Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, 737.)
18 Here, due process violations pervade the Regional Board's adjudicatory proceedings.
19 The due process violations include:

- 20 1. Board Members Warren and Olson voted in favor of the Resolution
21 despite the fact that they were not Board members during the 2013
22 adjudicatory proceedings and thus could not hear the evidence presented
23 to the Regional Board during the 2013 adjudicatory hearings.
- 24 2. Board Members Warren and Abarbanel are members of designated
25 "interested parties" in the adjudicatory proceeding (Surfrider Foundation
26 and Sierra Club, respectively).⁵ Board members Warren and Abarbanel
27

28 ⁵ No other Board members or Board staff disclosed membership in organizations that are designated interested parties. However, documents produced by the Regional Board show that

1 engaged in prohibited ex parte communications with interested parties
2 (Surfrider Foundation and NRDC, respectively).⁶ Their membership in,
3 and ex parte communications with interested parties to the 2013 and
4 remand proceedings deprive TCA and the public of their procedural due
5 process guarantee that all such hearings will be conducted before a
6 reasonably impartial, noninvolved reviewer.

- 7 3. Board members who were in the minority in the 2013 vote on the Revised
8 Tentative Order are not competent to adopt findings in the Resolution on
9 remand that purport to explain the reasoning of the former Board majority.
- 10 4. The Regional Board refused to reopen the adjudicatory hearing and
11 prohibited the TCA from introducing critical new evidence, but allowed the
12 project opponents to introduce new evidence and failed to strike that
13 evidence from the record.

14 The cumulative effect of the violations deprived the TCA and the public of a fair
15 and impartial proceeding and violated the due process protections of the California
16 Constitution and the United States Constitution.

17 **1. "He Who Decides Must Hear." Board Members Warren and**
18 **Olson Should Have Been Prohibited from Participating in the**
19 **Deliberations and Decision Regarding the Resolution.**

20 A fundamental principle of adjudicatory proceedings is that "he who decides must
21 hear." (*Morgan v. United States* (1936) 298 U.S. 468 [holding that the one who decides
22 must hear the evidence].) Indeed, the California courts have held that members of
23 quasi-judicial agencies violate due process where they attend the hearing, but don't pay
24 attention to the applicant's presentation of the evidence. (*Lacy St. Hospitality Serv. Inc.*
25 *v. City of Los Angeles* (2004) 125 Cal.App.4th 526, 529.) In *Lacy*, the Court invalidated
26 an adjudicatory decision of a city council because:

27 Regional Board staff received emails from the NRDC, Endangered Habitats League and
California Parks Foundation asking them to oppose the project.

28 ⁶ The Regional Board has withheld other relevant communications requested by TCA in
violation of the Public Records Act.

1 “The tape [of the council hearing] shows that . . . eight
2 council members – three of whom were absent – were not in
3 their seats. Only two council members were visibly paying
4 attention. Four others might have been paying attention,
5 although they engaged themselves with other activities.”

6 *(Ibid.)*

7 The court concluded that the council member’s inattention during the hearing
8 prevented the council from making a reasoned decision and, as a result, violated the
9 applicant’s due process rights. *(Ibid.)* Here, Board Members Warren and Olson were
10 not only inattentive; they were completely absent.

11 In 2013, Regional Board held two days of evidentiary hearings on the WDR
12 proposed by the Regional Board staff. The hearings included lengthy technical
13 presentations by the Regional Board staff and by the TCA. The Regional Board staff
14 recommended that the Regional Board approve WDRs for the Tesoro Extension.
15 However, in June 2013, by a 3-2 vote, the Regional Board rejected the Regional Board
16 staff recommendation.

17 Board Members Warren and Olson were appointed after the Regional Board’s
18 June 2013 decision to deny WDRs for the Tesoro Extension. Board Member Warren
19 was appointed in July 2013, and Board Member Olson was not appointed until
20 December 2014. These members were not on the Board at the time of the prior
21 adjudicatory proceeding, and thus have no ability to understand or explain the analysis
22 and reason of the former Board majority. Neither Board Member Olson nor Board
23 Member Warren indicated at the March 16, 2015 hearing that they had either reviewed
24 the record of the prior proceedings or had made themselves familiar with the evidence
25 prior to considering and acting on the Resolution. It is impossible to know whether they
26 had any familiarity with the prior adjudicatory proceedings whatsoever. As the State
27 Board Order recognized, long-established California law requires that quasi-judicial
28 decisions of administrative agencies are required to be supported by written findings

1 that identify the facts relied upon by the decision maker and that explain the connection
2 between such facts and the legal conclusions. (Exhibit 1, p. 11; *Topanga Assn. for a*
3 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.) In *Topanga*, the
4 California Supreme Court explained that a fundamental purpose of written findings is to
5 force the agency to explain the factual and legal basis for its decision – to bridge the
6 “analytic gap” between the evidence and the agency’s legal conclusions. (*Id.*, 11 Cal.3d
7 at p. 516)

8 With the resignation of Board Member Kalemkarian, the former Board majority
9 no longer exists. Thus, it is impossible, as both a legal and a factual matter, for the
10 former majority to adopt findings that explain the former majority’s reasoning. Certainly
11 Board members Warren and Olson cannot possibly explain the factual and legal basis
12 of the decision by the prior board majority. Board Members Warren and Olson did not
13 participate in the prior proceeding and they simply have no basis to approve the factual
14 and legal reasoning of the former majority. This is particularly the case because, at the
15 time of the decision, the former Board majority failed to articulate any comprehensible
16 basis for the decision. As the State Board Order notes:

17 “Therefore, while we can conclude that all three of the
18 Board Members who voted in the majority believed
19 that the Tesoro Extension was part of a larger project
20 that would eventually connect to Interstate 5, **we are**
21 **left with no conclusion as to why they voted to**
22 **not approve the Revised Tentative Order.** “

23 (Exhibit 1, pp. 13-14 [emphasis added; footnotes omitted].) If, after a review of the
24 record, the State Board and its counsel were “left with no conclusion as to why [the
25 former Board majority] voted to not approve the Revised Tentative Order,” it was
26 similarly impossible for Board Members Olson and Warren to explain the legal and
27 factual basis for the former Board majority’s decision.

28

1 In order for Board Members Warren and Olson to lawfully participate in the
2 consideration of the Resolution, the Regional Board was required to reopen the
3 adjudicatory proceeding, reconsider the evidence presented during the prior
4 proceedings, allow the introduction of new evidence, and reconsider the Regional Board
5 staff recommendation to approve the Revised Tentative Order.

6 **2. Board Members Warren and Abarbanel Are Members of**
7 **“Interested Parties” in the Adjudicatory Proceeding, Engaged**
8 **in Ex Parte Communications with Interested Parties, and Thus**
9 **the Board Members are Unable to Exercise Independent**
10 **Judgment.**

11 Code of Civil Procedure section 1094.5, subdivision (b) creates a statutory right
12 to a fair hearing, which must be conducted before an impartial tribunal. (*Clark v. City of*
13 *Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170; see also *Haas v. County of San*
14 *Bernardino* (2002) 37 Cal.4th 310, 346 [“When due process requires a hearing the
15 adjudicator must be impartial”].) The California Supreme Court has said of
16 administrative adjudicatory hearings that,

17 “Administrative tribunals which are required to make a
18 determination after a hearing cannot act upon their
19 own information, and nothing can be considered as
20 evidence that was not introduced at a hearing of
21 which the parties had notice or at which they were
22 present. The fact that there may be substantial and
23 properly introduced evidence which supports the
24 board’s ruling is immaterial. A contrary conclusion
25 would be tantamount to requiring a hearing in form
26 but not in substance, for the right of hearing before an
27 administrative tribunal would be meaningless if the
28 tribunal were permitted to base its determination upon

1 information received without the knowledge of the
2 parties. A hearing requires that the party be apprised
3 of the evidence against him so that he may have an
4 opportunity to refute, test, and explain it, and the
5 requirement of a hearing necessarily contemplates a
6 decision in light of the evidence there introduced.”

7 (*English v. City of Long Beach* (1950) 35 Cal.2d 155, 158-59 [citations omitted].) It is
8 fundamental to due process that a decision maker may not sit in judgment over his own
9 case. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57
10 Cal.4th 197, 223; *Department of Alcoholic Beverage Control v. Alcoholic Beverage*
11 *Control Appeals Bd.* (2006) 40 Cal.4th 1, 4 [“One fairness principle directs that in
12 adjudicative matters, one adversary should not be permitted to bend the ear of the
13 ultimate decision maker or the decision maker’s advisors in private.”].)

14 A violation of due process can be demonstrated by a showing of a situation,
15 based on the totality of circumstances, “which experience teaches that the **probability**
16 of actual bias on the part of the judge or decision-maker is too high to be constitutionally
17 tolerable.” (*Withrow, supra*, 421 U.S. 35, 47 [emphasis added].) The probability that a
18 single decision maker is biased can be sufficient to warrant reversal of the adjudicatory
19 decision. (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012,
20 1021-22.)

21 California courts are clear that “[j]ust as in a judicial proceeding, due process in
22 an administrative hearing also demands an appearance of fairness and the absence of
23 even a probability of outside influence on the adjudication. In fact, the broad
24 applicability of administrative hearings to the various rights and responsibilities of
25 citizens and businesses, and the undeniable public interest in fair hearings in the
26 administrative adjudication arena, militate in favor of assuring that such hearings are
27 fair.” (*Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.)
28 “Procedural due process in the administrative setting requires that the hearing be

1 conducted “before a reasonably impartial, noninvolved reviewer.” (*Nasha, L.L.C. v. City*
2 *of Los Angeles* (2004) 125 Cal.App.4th 470, 483 [emphasis in original].) Here two
3 Regional Board Members (Warren and Abarbanel) are admitted members of designated
4 “interested parties” (Surfrider Foundation, Sierra Club) who oppose the Tesoro
5 Extension⁷.

6 The Regional Board designated the Surfrider Foundation, the NRDC, and the
7 Sierra Club as “interested parties” during the original adjudicatory proceeding, and both
8 organizations remained actively involved as interested parties throughout the petition
9 proceedings before the State Board and the Regional Board’s subsequent adoption of
10 the Resolution. Both organizations played extensive and prominent roles in the
11 adjudicatory proceedings including providing written and oral testimony and organizing
12 their members to speak in opposition to the Project. Board Members Warren and
13 Abarbanel admitted to receiving prohibited ex parte communications with the
14 environmental organizations. Receipt of such communications by a member of a
15 Regional Board may be grounds for disqualification under Government Code,
16 section 11430.60 and, even if receipt of such communications might be remedied by a
17 Regional Board Member, such communications further compound due process
18 concerns, particularly since Board Members Warren and Abarbanel did not disclose the
19 substance of the ex parte communications as required by law.⁸ (Gov. Code,
20 §§ 11430.40, 11430.50.)

21 A memorandum from the State Board’s Office of Chief Counsel to the members
22 of the State Board and the regional boards explains why ex parte communications in
23 adjudicatory proceedings are prohibited:

24 “Rules regarding ex parte communications have their roots
25 in constitutional principles of due process and fundamental
26

27 ⁷ The issue of bias as it relates to Mr. Abarbanel was previously raised by TCA in its prior
petition for State Board Review (Exhibit 4).

28 ⁸ No other communications to/from Board members have been produced, despite TCA’s
request for them.

1 fairness. With public agencies, ex parte communications
2 rules also serve an important function in providing
3 transparency. Ex parte communications may contribute to
4 public cynicism that decisions are based more on special
5 access and influence than on the facts, the laws, and the
6 exercise of discretion to promote the public interest.

7 **Ex parte communications are fundamentally offensive in**
8 **adjudicative proceedings because they involve an**
9 **opportunity by one party to influence the decision**
10 **maker outside the presence of opposing parties, thus**
11 **violating due process requirements.** Such
12 communications are not subject to rebuttal or comment by
13 other parties. **Ex parte communications can frustrate a**
14 **lengthy and painstaking adjudicative process because**
15 **certain decisive facts and arguments would not be**
16 **reflected in the record or in the decisions.** Finally, ex
17 parte contacts may frustrate judicial review since the record
18 would be missing such communications.”

19 (Memorandum from Michael Lauffer, Chief Counsel Regarding Ex Parte
20 Communications Questions and Answers, at p. 2 (April 25, 2013) (attached hereto as
21 Exhibit 23) [emphasis added].)

22 In similar circumstances, and even in recent general NPDES permitting
23 circumstances where restrictions on ex parte communications were less stringent than
24 those applicable to these proceedings, the Office of Chief Counsel has previously
25 advised that regional board members were required to recuse themselves from
26 participating in regional board proceedings. In 2008, the Office of Chief Counsel
27 advised regional board members to recuse themselves in general permit matters where
28 board members were officials in a public agency interested in general permits before

1 the regional board. (State Water Resources Control Board Order No. WQ 2013-0101,
2 In the Matter of Review of Conditional Waiver of Waste Discharge Requirements Order
3 No. R3-2012-0011, R3-2012-0011-02, and R3-2012-0011-03, and Resolution No. R3-
4 2012-0012, SWRCB/OCC Files A-2209(a)-(e), at p. 9, fn. 27.)

5 During the proceedings for Los Angeles County's MS4 permit in 2012, the
6 Natural Resources Defense Council ("NRDC"), objected to the participation of Regional
7 Board Member, Mary Ann Lutz, because she was an elected official of an agency that
8 would be subject to the MS4 permit and because she had ex parte communications with
9 interested parties to the proceedings. (NRDC Comment Letter Participation of Board
10 Member Mary Lutz in Los Angeles MS4 Permit Hearing, at p. 2 (attached hereto as
11 Exhibit 24).) The NRDC stated:

12 "Procedural due process in the administrative setting
13 requires that the hearing be conducted '*before a*
14 *reasonably impartial, noninvolved reviewer.*'" (*Nasha,*
15 *L.L.C v. City of Los Angeles* (2004) 125 Cal.App.4th
16 at 484 (emphasis in original).) Where "an
17 unacceptable probability of actual bias on the part of
18 those who have actual decisionmaking power over
19 their claims" is present, it violates the "undeniable
20 public interest in fair hearings in the administrative
21 adjudication area." (*Id.* at 483.) The actions of Board
22 Member Lutz while she was precluded from
23 participation in Regional Board action on the
24 Tentative Order, demonstrate such "an unacceptable
25 probability of actual bias."

26 (*Id.*)

27 Board Member Lutz stated that she disagreed with the Board counsel's advice
28 that she should recuse herself from the hearing due to ex parte contacts between

1 herself and stakeholders and believed that all of her communications with interested
2 parties had been sufficiently disclosed. (*Ibid.*) Nevertheless, Board Member Lutz was
3 disqualified from the general permit proceedings on the advice of the Board's counsel.
4 If Board Member Lutz was required to recuse herself from participating in the MS4
5 permit proceedings, where ex parte communications were expressly permitted by the
6 statutory exception to the ex parte communication prohibitions of the Water Code,
7 adopted in 2012, then Board Members Abarbanel and Warren were also required to
8 recuse themselves from a decision regarding WDRs where such communications are
9 prohibited under the Water Code and Government Code. (*Ibid.*)

10 The 2012 amendments to the Water Code strengthened the prohibition on ex
11 parte communications, but created an exception for general permit proceedings. (See
12 Water Code, § 13287, subd. (b) [noting that communications regarding general permits
13 are conditionally exempted from the prohibition on ex parte communications].)
14 However, the prohibition on ex parte contacts between Regional Board members and
15 interested parties for WDRs remains in effect while a matter is pending before the
16 Regional Board and is not waived for proceedings regarding WDRs or individual
17 NPDES permits. The prohibition extends the period in which an action of the Regional
18 Board is pending, including the period during which an action is being reviewed on
19 appeal to the State Board, and during any subsequent proceedings that the State Board
20 may order. (Exhibit 23, at pp. 9-10.) Thus, the 2012 Water Code amendments
21 reinforce the prohibition on ex parte communications involving WDRs and such
22 communications by Board Members Abarbanel and Warren, particularly in the absence
23 of disclosures of the content of those communications, provide additional grounds to
24 invalidate the Regional Board Resolution.

25 The “totality of the circumstances” here – the prominent and vocal opposition of
26 NRDC, the Surfrider Foundation and Sierra Club to the Tesoro Extension, the
27 designation of these environmental organizations as “interested parties” in the
28 adjudicatory proceeding, the extensive participation of NRDC, the Surfrider Foundation

1 and Sierra Club in the proceedings, the unlawful ex parte communication by Board
2 Members Warren and Abarbanel, and Board Member Abarbanel's position as Chair of
3 the Regional Board during the consideration of the Resolution – demonstrate a
4 probability of bias on the part of Board Members Warrant and Abarbanel and that Board
5 Members Warren and Abarbanel were required to recuse themselves from the Regional
6 Board's deliberations on the Tesoro Extension Project. Their failure to do so deprived
7 the TCA and the public of a hearing before a reasonably impartial, noninvolved reviewer
8 and violated due process.

9 **3. Board Members Anderson and Strawn Were Prohibited from**
10 **Participating in the Deliberation on the Resolution.**

11 The State Board Order required the Regional Board to "provide the legal and
12 factual basis for its decision." (Exhibit 1, at p. 15.) The "decision" refers to decision by
13 the three member majority of the Regional Board (Abarbanel, Kalemkiarian, Morales) to
14 reject the Regional Board staff recommendation and deny the approval of the Revised
15 Tentative Order. Board Members Strawn and Anderson were in the minority and voted
16 to accept the staff recommendation and approve the Revised Tentative Order, finding
17 that based on the evidence presented to them during both hearings, there was not a
18 legitimate reason to deny WDRs for the Project. Board Members Strawn and Anderson
19 are not able to "provide the legal and factual basis" for a decision that they opposed.
20 They were thus prohibited from participating in the deliberations on the Resolution. For
21 this reason, it is common practice of other state boards (such as the Coastal
22 Commission) to limit the approval of findings to board members who voted in the
23 majority.

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4. The Regional Board Refused to Reopen the Adjudicatory Hearing and Prohibited the TCA from Introducing Critical New Evidence, While Allowing the Project Opponents to Introduce New Evidence.

The TCA requested that it have an opportunity to introduce important new evidence that the impacts of the Project are greatly reduced as a result of the grading for the Rancho Mission Viejo development. Ironically, the Regional Board approved the much more extensive grading for the Rancho Mission Viejo development, while denying approval of the Tesoro Extension in the exact same area. Despite the obvious relevance of this new information, the Regional Board denied the TCA's request to reopen the adjudicatory hearing to allow the TCA to introduce this important new evidence. At the same time, the procedures adopted by the Regional Board allowed the interested parties and project opponents to introduce new evidence. During the meeting on the Resolution, the Regional Board objected to the testimony of the TCA's sole representative, but allowed hours of testimony by the project opponents. The Regional Board's inconsistent treatment of the TCA and the project opponent and the Regional Board' refusal to reopen the adjudicatory hearing and failure to strike improper new evidence from project opponents constitutes a violation of due process.

The State Board Order states that when a regional board declines to issue a WDR it may "choose to give the project proponent an opportunity to revise its project and submit a revised report of waste discharge." (Exhibit 1, at p. 9.) Despite the fact that (i) the Regional Board staff recommended approval of the Revised Tentative Order, and (ii) the Regional Board never considered any evidence regarding the extent of its authority to regulate future extensions of SR 241, the Regional Board never provided the TCA with the opportunity to submit a revised report of waste discharge. The Regional Board's failure to do so is a violation of due process.


1 **IV CONCLUSION**

2 The Regional Board abused its discretion and violated applicable law. The State
3 Board is required to (a) vacate the Resolution, and (b) act in place of the Regional
4 Board and approve the Revised Tentative Order recommended by the Regional Board
5 staff.

6 April 14, 2015

Respectfully Submitted,

NOSSAMAN LLP

8 By: 

9 ROBERT D. THORNTON
10 STEPHANIE N. CLARK

11 Attorneys for Petitioner
12 FOOTHILL/EASTERN TRANSPORTATION
13 CORRIDOR AGENCY

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1 **LIST OF EXHIBITS**

- 2
- 3 Exhibit 1: California State Water Resources Control Board, Item No. 11, State Board
4 Order No. WQ 2014-0154 In the Matter of the Petition of Foothill/Eastern
5 Transportation Corridor Agency For Review of the Denial of Waste
6 Discharge Requirements, Revised Tentative Order No. R9-2013-0007 for
7 the Tesoro Extension (SR 241 Project, Orange County by the California
8 Regional Water Quality Control Board, San Diego Region (September 23,
9 2014) (Corrected).
- 10 Exhibit 2: California Regional Water Quality Control Board, San Diego Region, Item
11 No. 9, Resolution Supporting Denial of Revised Tentative Order No R9-
12 2013-007, Waste Discharge Requirements for Foothill/Eastern
13 Transportation Corridor Agency, Tesoro Extension (State Route 241)
14 Project (Resolution No. R9-2015-0022) (March 18, 2015).
- 15 Exhibit 3: Reporter's Partial Transcript of Proceedings, California Regional Water
16 Quality Control Board, San Diego Region, Meeting Notice and Agenda,
17 Legal Advisory Committee, Item No. 8 Water Discharge Requirements:
18 Foothill/Eastern Transportation Corridor Agency, Tesoro (SR 241)
19 Extension, Orange County (March 13, 2013)
- 20 Exhibit 4: Foothill/Eastern Transportation Corridor Agency Petition for State Board
21 Review of the Denial of Waste Discharge Requirements, Revised
22 Tentative Order No. R9-2013-0007 for the Tesoro Extension (SR 241)
23 Project, Orange County by the California Regional Water Quality Control
24 Board, San Diego Region (July 18, 2013).
- 25 Exhibit 5: Reporter's Partial Transcript of Proceedings, California Regional Water
26 Quality Control Board, San Diego Region, Meeting Notice and Agenda,
27 Legal Advisory Committee, Item No. 9 Water Discharge Requirements:
28 Foothill/Eastern Transportation Corridor Agency, Tesoro (SR 241)
Extension, Orange County (June 19, 2013)
- Exhibit 6: California Regional Water Quality Control Board Item No. 9, Executive
Officer Summary Report, Waste Discharge Requirements: Foothill/Eastern
Transportation Corridor Agency, Tesoro Extension (SR 241) Project,
Orange County (Tentative Order No. R9-2013-0007) (June 19, 2013).
- Exhibit 7: Correspondence from Michael Kraman of Foothill/Eastern Transportation
Corridor Agency to Darren Bradford, California Regional Water Quality
Control Board Re: Comment – Resolution No. R9-2015-0022, Place ID:
785677; Findings Regarding Denial of Waste Discharge Requirements for
Tesoro Extension of SR 241 (February 18, 2015).
- Exhibit 8: California Regional Water Quality Control Board, San Diego Region,
Revised Meeting Notice and Agenda for March 16, 2015 and Notice of
Procedures (March 6, 2015).

- 1 Exhibit 9: California Regional Water Quality Control Board, San Diego Region, Item
2 No. 9, Response to Comments Document, Resolution Supporting Denial
3 of Revised Tentative Order No. R9-2013-0007, Waste Discharge
4 Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro
5 Extension (SR 241) Project, Orange County (Tentative Order No. R9-
6 2015-0022) (March 16, 2015).
- 7 Exhibit 10: Correspondence from William J. White of Shute, Mihaly & Weinberger LLP
8 on behalf of Save San Onofre Coalition to Darren Bradford, California
9 Regional Water Quality Control Board Re: Findings Supporting Denial of
10 WDRs for Tesoro Extension (Comment – Resolution No. R9-2015-0022,
11 Place ID: 785677) (February 18, 2015).
- 12 Exhibit 11: Correspondence from Adrienne Weil of the Metropolitan Transportation
13 Commission of San Francisco to Jeanine Townsend, State Water
14 Resources Control Board, Re: Comments on A-2259; - September 23,
15 2014 Board Meeting. Petition of Foothill/Eastern Transportation Corridor
16 Agency – Waste Discharge Requirements Tentative Order No. R9-2013-
17 0007 – Tesoro Extension Project – State Route 241 (September 8, 2014).
- 18 Exhibit 12: Correspondence from Arthur Leahy, Los Angeles County Metropolitan
19 Transportation Authority, to Jeanine Townsend, State Water Resources
20 Control Board, Re: Comments on A-2259; - September 23, 2014 Board
21 Meeting. Petition of Foothill/Eastern Transportation Corridor Agency –
22 Waste Discharge Requirements Tentative Order No. R-9-2013-0007 –
23 Tesoro Extension Project – State Route 241 (September 15, 2014).
- 24 Exhibit 13: Correspondence from Hasan Ikhata, Southern California Association of
25 Governments, to Jeanine Townsend, State Water Resources Control
26 Board, Re: Comments on A-2259 – September 23 Board Meeting; Petition
27 of Foothill/Eastern Transportation Corridor Agency – Waste Discharge
28 Requirements Tentative Order No. R-9-2013-0007 – Tesoro Extension
Project – State Route 241 (September 15, 2014).
- Exhibit 14: Correspondence from Anne Mayer, Riverside County Transportation
Commission, to Jeanine Townsend, State Water Resources Control
Board, Re: Comments on Draft Order WQ 2014-xx, Petition of
Foothill/Eastern Transportation Corridor Agency (SWRCB/OCC File A-
2259) (September 11, 2014).
- Exhibit 15: Correspondence from Raymond Wolfe, San Bernardino Associated
Governments, to Jeanine Townsend, State Water Resources Control
Board, Re: Comments on A-2259 – Petition of Foothill/Eastern
Transportation Corridor Agency – Waste Discharge Requirements
Tentative Order No. R-9-2013-0007 – Tesoro Extension Project – State
Route 241 (September 15, 2014).
- Exhibit 16: Correspondence from Samantha Bricker, Exposition Metro Line
Construction Authority to Jeanine Townsend, State Water Resources
Control Board, Re: Comments on A-2259; - September 23, 2014 Board

- 1 Meeting. Petition of Foothill/Eastern Transportation Corridor Agency –
2 Waste Discharge Requirements Tentative Order No R-9-2013-0007 –
3 Tesoro Extension Project – State Route 241 (September 3, 2014).
- 4 Exhibit 17: Correspondence from Habib Balian, Metro Gold Line Foothill Extension
5 Construction Authority, to Jeanine Townsend, State Water Resources
6 Control Board, Re: Comments on A-2259; - September 23, 2014 Board
7 Meeting. Petition of Foothill/Eastern Transportation Corridor Agency –
8 Waste Discharge Requirements Tentative Order No. R-9-2013-0007 –
9 Tesoro Extension Project – State Route 241 (September 3, 2014).
- 10 Exhibit 18: Correspondence from Darrell Johnson, Orange County Transportation
11 Authority, to Jeanine Townsend, State Water Resources Control Board,
12 Re: Comments on A-2259: September 23 Board Meeting: Petition of
13 Foothill/Eastern Transportation Corridor Agency – Waste Discharge
14 Requirements Revised Tentative Order No. R9-2013-0007 – Tesoro
15 Extension Project – State Route 241 (September 15, 2014).
- 16 Exhibit 19: Regional Water Quality Control Board Permitting: Adopted/Tentative
17 Orders for Linear Projects (September 15, 2014).
- 18 Exhibit 20: Map of Linear Phased Transportation Projects in California
- 19 Exhibit 21: Los Angeles Times, *Train Route Option Draws Praise; A Proposal to*
20 *Tunnel Through the Angeles National Forest is Getting a Closer Look*
21 (August 24, 2014).
- 22 Exhibit 22: Foothill/Eastern Transportation Corridor Agency Stipulation to Full
23 Authority of Regional Water Quality Control Board Regarding Extension of
24 State Route 241, Signed by Michael Kraman, Foothill/Eastern
25 Transportation Corridor Agency, and Robert Thornton, Nossaman LLP
26 (January 15, 2015).
- 27 Exhibit 23: Memorandum from Michael Lauffer, Office of Chief Counsel, to Board
28 Members, State Water Resources Control Board and California Regional
Water Quality Control Boards, Re: Transmittal of Ex Parte
Communications Questions and Answers Document (April 25, 2013).
- Exhibit 24: Correspondence from Noah Garrison, NRDC, and Liz Crosson, Los
Angeles Waterkeeper, to Sam Unger, Los Angeles Regional Water Quality
Control Board, Re: Participation of Board Member Mary Ann Lutz in Los
Angeles MS4 Permit Hearing (August 23, 2012).

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is 18101 Von Karman Avenue, Suite 1800, Irvine, CA 92612.

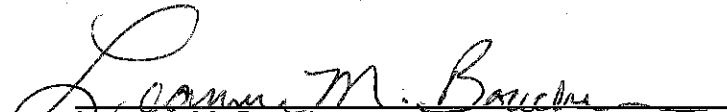
On April 14, 2015, I served the foregoing **PETITION FOR REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on parties to the within action as follows:

SEE ATTACHED SERVICE LIST

- (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown above.

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

Executed on April 14, 2015


Leanne M. Boucher

*In the Matter of the Petition of the Foothill/Eastern Transportation Corridor Agency
for Review of Action, and Failure to Act, by the California Regional Water Quality
Control Board, San Diego Region,
in Connection With Resolution Regarding the Denial of Waste Discharge
Requirements, Revised Tentative Order No. R9-2015-0022*

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EXHIBIT 1

**CORRECTED
Certification**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2014-0154

In the Matter of the Petition of

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY

For Review of the Denial of Waste Discharge Requirements, Revised Tentative Order
No. R9-2013-0007 for the Tesoro Extension (SR 241) Project, Orange County
by the
California Regional Water Quality Control Board,
San Diego Region

SWRCB/OCC FILE A-2259

BY THE BOARD:

In this Order, the State Water Resources Control Board (State Water Board) reviews the San Diego Regional Water Quality Control Board's (San Diego Water Board) denial of Waste Discharge Requirements (WDRs) Revised Tentative Order R9-2013-0007 (Revised Tentative Order) for the Tesoro Extension of State Route 241 in southern Orange County (Tesoro Extension). The Foothill/Eastern Transportation Corridor Agency (Petitioner) alleges that the San Diego Water Board violated the California Environmental Quality Act (CEQA) because it failed to presume that the Petitioner's environmental documents were adequate. Because the basis for the San Diego Water Board's decision to deny WDRs for the Tesoro Extension is not clear from the administrative record, the State Water Board remands the matter to the San Diego Water Board with direction to provide the factual and legal basis for its decision.

BACKGROUND

Formed in 1986, the Petitioner is a joint powers authority composed of a number of local public entities that manages the financing, construction and operations of several toll roads in Orange County. As part of its ongoing planning and construction efforts, the Petitioner is generally the lead agency for purposes of compliance with CEQA.¹ In 1981, Orange County certified an environmental impact report (EIR) which analyzed the establishment of a

¹ Pub. Resources Code, § 21000 et seq.

transportation corridor in southeastern Orange County (now designated State Route 241) in the *County Master Plan of Arterial Highways*. In 1991, the Petitioner certified an EIR analyzing various alternatives for an extension of State Route 241.² In February 2006, the Petitioner certified the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report (FSEIR). The FSEIR identified a preferred alternative that consisted of a sixteen mile extension of State Route 241 from its southern terminus at Oso Parkway to connect to Interstate 5 just south of the Orange County and San Diego County border.³ On February 23, 2006, the Petitioner adopted CEQA findings for the preferred alternative and approved construction of the sixteen mile extension of State Route 241.⁴ On March 23, 2006, the California State Parks Commission and a number of environmental groups sued the Petitioner, challenging the adequacy of the FSEIR.⁵ That litigation was eventually dismissed without prejudice.

Because the sixteen mile extension of State Route 241 required a Clean Water Act section 404 permit from the Army Corps of Engineers, the Petitioner submitted an application for a Clean Water Act section 401 water quality certification to the San Diego Water Board on June 13, 2006. The application was deemed complete by the San Diego Water Board on September 13, 2006.⁶ Despite the submission of supplemental documentation, the Petitioner's request for a water quality certification was denied without prejudice on February 6, 2008. The San Diego Water Board noted that the Petitioner's application remained insufficient to address outstanding concerns regarding the Petitioner's runoff management plan, water quality mitigation measures, proposed habitat mitigation and monitoring plan, baseline water quality monitoring, and antidegradation.⁷ The Petitioner subsequently withdrew its

² Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 4.

³ *Ibid.* State Clearinghouse Number 2001061046.

⁴ Foothill/Eastern Transportation Corridor Agency Resolution No. F2006-02.

⁵ *Cal. State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency* (Super. Ct. San Diego County, Case Nos. GIN51194 and GIN 051371).

⁶ Letter from Senior Environmental Scientist James Smith, San Diego Water Board, to Richard Beck (Sept. 13, 2006). Note that, in this case, the application being deemed complete only means that the application has fulfilled the minimum requirements of the State Water Board certification regulations. (See Cal. Code Regs., tit. 23, § 3856.) Fulfillment of this requirement by an applicant does not mean, and should not be construed to mean, that the applicable regional water quality control board or the State Water Board has received sufficient information to make its determination that a proposed project or activity is reasonably assured to comply with water quality standards or other applicable requirements of state law.

⁷ Letter from Executive Officer John Robertus, San Diego Water Board, to Richard Beck (Feb. 6, 2008).

application for water quality certification.⁸ Also on February 6, 2008, the California Coastal Commission voted not to approve the Petitioner's request for a consistency determination pursuant to the Coastal Zone Management Act.⁹ The Petitioner appealed the California Coastal Commission's determination to the United States Secretary of Commerce who, in turn, rejected the Petitioner's appeal.¹⁰

After these rejections, the Petitioner authorized its staff to pursue a shorter extension of State Route 241. This shorter extension, the Tesoro Extension, would extend State Route 241 from its existing southern terminus at Oso Parkway approximately 5.5 miles south to Cow Camp Road. Cow Camp Road is immediately north of San Juan Creek in Orange County, so the Tesoro Extension would avoid the Coastal Zone and all waters subject to federal jurisdiction, thereby obviating the need for a consistency determination from the California Coastal Commission or a Clean Water Act section 404 permit from the Army Corps of Engineers. The Petitioner filed a report of waste discharge for the Tesoro Extension with the San Diego Water Board on August 10, 2012.

After analyzing the Petitioner's documentation and repeated meetings with the Petitioner, San Diego Water Board staff drafted WDRs Tentative Order No. R9-2013-0007 (Tentative Order) for the Tesoro Extension. On January 17, 2013, San Diego Water Board staff issued a public notice announcing the availability of the Tentative Order and setting a March 13, 2013 public hearing for the San Diego Water Board to consider adoption of the Tentative Order. The public notice established a February 18, 2013 deadline for written comments on the Tentative Order.

On February 15, 2013, the Petitioner's staff finalized a CEQA addendum to the 2006 FSEIR for the Tesoro Extension (Addendum) and submitted it to San Diego Water Board. The Addendum stated that the Petitioner proposed to construct the Tesoro Extension, and identified the Tesoro Extension as the project for the purposes of CEQA analysis. The Addendum concluded that, since the Tesoro Extension generally followed the same alignment

⁸ Letter from Thomas Margro, Transportation Corridor Agencies, to Chad Loflin (Feb. 9, 2009).

⁹ Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 4; Letter from Manager Mark Delaplaine, California Coastal Commission to James Herink (Dec. 6, 2013), p. 2. The California Coastal Commission is the agency responsible for determining consistency with the federal Coastal Zone Management Act. (16 U.S.C. § 1451 et seq.)

¹⁰ See *Decisions and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of the Foothill/Eastern Transportation Corridor Agency from the Objection by the California Coastal Commission* (Dec. 18, 2008). After the rejection of the Petitioner's appeal, the plaintiffs challenging the FSEIR voluntarily dismissed their writ petition on January 12, 2011. (Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), Exhibit 8.)

as the first 5.5 miles of the sixteen mile extension preferred alternative that had been analyzed in the 2006 FSEIR, the Tesoro Extension would not result in any significant environmental effects that were not already discussed in the 2006 FSEIR.¹¹ The Addendum also concluded that there was no need to prepare a Subsequent or Supplemental EIR, and that the 2006 FSEIR, coupled with the Addendum, satisfied the Petitioner's CEQA obligations for the Tesoro Extension.¹²

Due to the last-minute submission of the Addendum by the Petitioner and the extensive written comments that related to the San Diego Water Board's CEQA obligations if it were to approve the Tentative Order, the San Diego Water Board decided that its staff needed additional time to evaluate and respond to CEQA-related issues. The San Diego Water Board stated that it would proceed with the scheduled March 13, 2013 public hearing, but that it would not take any final action on the Tentative Order on that date.

During the hearing on March 13, 2013, the Chair of the San Diego Water Board announced that a second hearing would be scheduled for the purpose of receiving comments related to CEQA, and that San Diego Water Board staff would circulate specific CEQA-related questions prior to the second hearing.¹³ A coalition of environmental groups called the Save San Onofre Coalition (Coalition)¹⁴ and a large number of individuals argued against adoption of the Tentative Order, voicing a number of concerns related to water quality best management practices (stormwater BMPs), hydromodification, sediment generation and transport, and compensatory mitigation implementation and monitoring, as well as CEQA.

On March 15, 2013, counsel to the San Diego Water Board circulated a memorandum with CEQA-related questions to the Petitioner, the Coalition, and the public.¹⁵ The memorandum inquired as to how the Petitioner defined the project for which WDRs were being requested, and whether it was the same as the Petitioner's CEQA definition of the project. Additionally, the memorandum asked about the CEQA consequences of the Addendum, given

¹¹ *Addendum to the South Orange County Transportation Infrastructure Improvement Project Final Subsequent Environmental Impact Report – Tesoro Extension Project* (Feb. 2013), p. 3-22.

¹² *Ibid.*

¹³ San Diego Water Board Hearing Transcript (March 13, 2013), pp. 36-37, 70-71.

¹⁴ The "Save San Onofre Coalition" consists of a dozen non-governmental entities, including the California State Parks Foundation, the Natural Resources Defense Council, Sierra Club California, Surfrider Foundation, and Orange County Coastkeeper.

¹⁵ Letter from Senior Staff Counsel Catherine Hagan to Foothill/Eastern Transportation Corridor Agency, Save San Onofre Coalition and Interested Persons (March 15, 2013).

the lack of the Petitioner's approval of the Tesoro Extension or filing of a CEQA Notice of Determination.¹⁶

On March 29, 2013, the Petitioner and the Coalition submitted responses to the memorandum. On April 18, 2013, the Petitioner's Board of Directors approved the conceptual design for the Tesoro Extension and approved the Addendum.¹⁷ On May 30, 2013, the San Diego Water Board staff issued a public notice announcing the availability of the Revised Tentative Order and setting a June 19, 2013 continued public hearing for the San Diego Water Board to receive comments limited to CEQA and the revisions to the Tentative Order, and to consider adoption of the Revised Tentative Order.

The San Diego Water Board conducted the second hearing on June 19, 2013. At the hearing, the public was asked to limit their comments to the revisions to the Tentative Order and CEQA-related issues.¹⁸ San Diego Water Board staff explained that the revisions to were designed to address water quality concerns related to the Tesoro Extension that had been expressed by Board Members as well as the prior hearing. The revisions addressed sediment supply and hydromodification; the timing of the habitat mitigation monitoring plan and the runoff management plan.¹⁹ The San Diego Water Board's counsel described the Petitioner's recent approval of the conceptual design for the Tesoro Extension and the Addendum, explained that, as a CEQA responsible agency, the San Diego Water Board was bound by the Petitioner's 2006 EIR and the Addendum. Counsel explained that the Revised Tentative Order did not contain any specific findings about environmental impacts related to potential future segments of the toll road.²⁰

After reviewing the written comments and listening to the public comments at both hearings, the Board Members engaged in deliberations about whether to approve the Revised Tentative Order. Eventually, one Board Member made a motion to not approve it. The motion carried, with three Board Members voting in favor of the motion and two Board Members voting against the motion. In response, the Petitioner filed a timely petition with the State Water Board alleging, among other things, that the San Diego Water Board improperly denied the Revised Tentative Order because it believed that the Petitioner's CEQA documents, particularly

¹⁶ *Ibid.*

¹⁷ Foothill/Eastern Transportation Corridor Agency Resolution No. 2013F-05.

¹⁸ San Diego Water Board Hearing Transcript (June 19, 2013), pp. 2-3.

¹⁹ *Id.*, p. 14.

²⁰ *Id.*, pp. 30-31, 35-36.

the description of the Tesoro Extension as the CEQA project in the Addendum, were inadequate.

ISSUES AND FINDINGS

This Order addresses the general scope of San Diego Water Board's responsibilities and authorities regarding the Tesoro Extension pursuant to both CEQA and the Porter-Cologne Water Quality Control Act,²¹ as well as the need for a regional water quality control board to provide the legal and factual basis for its adjudicative decisions. To the extent the Petitioner raised issues that are not discussed in this Order, either in whole or in part, such issues are dismissed as not raising substantial issues appropriate for our review.²²

The California Environmental Quality Act

CEQA requires that all governmental agencies that regulate activities found to affect the quality of the environment, do so giving major consideration to preventing environmental damage.²³ As such, CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.²⁴ With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. The Legislature has made clear that an EIR is "an informational document" and that "[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."²⁵

The "lead agency" is the public agency that has the principal responsibility for carrying out or approving the project. The lead agency will decide whether to prepare an EIR or a negative declaration for the project and will cause the document to be prepared.²⁶ This

²¹ Wat. Code, § 13000 et seq.

²² *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177; *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1114; Cal. Code Regs., tit. 23, § 2052, subd. (a)(1).

²³ See Pub. Resources Code, § 21000, subd. (g); State Water Board Order WQ 2009-0010 (*Point Molate Naval Fuel Depot*), p.2.

²⁴ *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.

²⁵ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390-391. Hereinafter referred to as *Laurel Heights*.

²⁶ Pub. Resources Code, § 21067; Cal. Code Regs., tit. 14, § 15367.

decision is final and conclusive on all persons, including responsible agencies, except under limited situations involving changes to a project or its circumstances.²⁷ Under CEQA, a “project” means “the *whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” It refers to the underlying “activity” for which approval is being sought.²⁸ An EIR must contain an accurate and consistent project description.²⁹

When describing the project and preparing the requisite environmental review, CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project. “Piecemealing” refers to chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.³⁰ The California Supreme Court set forth a piecemealing test in *Laurel Heights* stating that:

an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Under this standard, the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action.³¹

Courts have held there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development,³² or when the reviewed project legally compels or practically presumes completion of another action.³³ On the other hand, two projects may properly undergo separate environmental review (i.e., no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently.³⁴

Public agencies, other than the lead agency, that have responsibility for carrying out or having discretionary approval power over a project are responsible agencies.³⁵

²⁷ Pub. Resources Code, § 21080.1; Cal. Code Regs., tit. 14, § 15050, subd. (c).

²⁸ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 (quoting Pub. Resources Code, § 21065; Cal. Code Regs., tit. 14, § 15378, subds. (a), (c)).

²⁹ See *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App.3d 185, 199.

³⁰ *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283-284.

³¹ *Laurel Heights*, *supra*, 47 Cal.3d at p. 396.

³² *Laurel Heights*, *supra*, 47 Cal.3d at p. 398.

³³ *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 272.

³⁴ *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223 (quoting *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 99).

³⁵ Pub. Resources Code, § 21069; Cal. Code Regs., tit. 14, § 15381.

Responsible agencies have limited authority under CEQA to conduct their own environmental review outside the processes initiated and managed by the lead agency.³⁶ A responsible agency is required to consider only the effects of those activities involved in a project which it is required by law to carry out or approve.³⁷ While a lead agency must consider all environmental impacts of the project before approving it, a responsible agency only considers those aspects of a project that are within the scope of its jurisdiction.³⁸ When mitigating or avoiding a significant effect within its jurisdiction, the responsible agency may only exercise those express or implied powers provided by laws other than CEQA.³⁹

Once a lead agency has completed an EIR, it is presumed legally adequate and the lead agency's certification of an EIR as complying with the requirements of CEQA is presumed correct.⁴⁰ If an action or proceeding is commenced alleging that the EIR does not comply with CEQA and no injunctive or similar relief is granted, responsible agencies must assume that the EIR complies with CEQA and approve or disapprove the project accordingly.⁴¹ If no action or proceeding is commenced as described in Public Resources Code section 21167.3, and a responsible agency believes that the final EIR is inadequate based on impacts to resources within the scope of its purview, it may take that issue to court within 30 days after the lead agency files a notice of determination, prepare a subsequent EIR if permissible under CEQA Guidelines section 15162, assume the lead agency role under the circumstances described above, or be deemed to have waived any objections.⁴²

The Porter-Cologne Water Quality Control Act

When the Legislature enacted the Porter-Cologne Water Quality Control Act (the Porter-Cologne Act),⁴³ it declared that the activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable considering all demands being made on those waters and that the state must be prepared to

³⁶ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.

³⁷ *Sierra Club v. Cal. Coastal Commission* (2005) 35 Cal.4th 839, 860 (quoting Pub. Resources Code, § 21002.1, subd. (d)).

³⁸ *Riverwatch*, *supra*, 170 Cal.App.4th at p. 1202.

³⁹ *Sierra Club*, *supra*, 35 Cal.4th at p. 859; see also Pub. Resources Code, § 21004.

⁴⁰ *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 924-925.

⁴¹ Pub. Resources Code, § 21167.3, subd. (b).

⁴² See Cal. Code Regs., tit. 14, § 15096, subd (e).

⁴³ Wat. Code, § 13000, et seq.

exercise its full power and jurisdiction to protect water quality.⁴⁴ The Porter-Cologne Act sets forth many authorities and responsibilities for the regional water quality control boards (regional water boards). One such authority is the issuance of WDRs to persons discharging waste that could affect the quality of waters of the state.⁴⁵

When a regional water board issues WDRs, the regional water board is obligated to ensure that the WDRs implement relevant water quality control plans, take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.⁴⁶ When issuing WDRs, a regional water board is not required to utilize the full waste assimilation capacities of the receiving water. Whether or not a discharge is authorized, the discharge of waste does not create any vested rights to continue the discharge; the discharge of waste is a privilege, not a right.⁴⁷ It follows, then, that a regional water board has the authority to decline to issue WDRs for a specific discharge. When a regional water board declines to issue WDRs, it may also choose to give the project proponent an opportunity to revise its project and submit a revised report of waste discharge. In addition to the issuance or denial of WDRs, the Porter-Cologne Act also authorizes a regional water board to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.⁴⁸ This may be done in a water quality control plan or in WDRs, and is a more enduring mechanism for protecting water quality.

When issuing WDRs, regional water boards must protect the beneficial uses of the waters that are receiving both direct and indirect discharges from the project, as well as the beneficial uses of any downstream waters that could be affected by the discharges.⁴⁹ When a regional water board is deciding whether to issue WDRs for discharges of waste associated with a project, it is appropriate for the regional water board to consider whether that project will likely lead to additional, future discharges of waste or other related impacts to water quality. Those

⁴⁴ Wat. Code, § 13000.

⁴⁵ Wat Code, §§ 13260, subd. (a)(1) & 13263.

⁴⁶ Wat. Code, § 13263, subd. (a). Water Code section 13241 contains six additional factors that must be considered when, in a project-specific context, a regional water board is establishing effluent limitations more stringent than federal law requires. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618.) These factors are not in contention with this petition.

⁴⁷ Wat. Code, § 13263, subds. (b), (g).

⁴⁸ Wat. Code, § 13243.

⁴⁹ State Water Board Orders WQ 2012-0013 (*Sacramento Regional*), pp. 13, 35; WQ 2008-0008 (*City of Davis*), pp. 12-13.

future discharges of waste or other water quality impacts may result from future phases or segments of the same project, or from unrelated projects by other project proponents.

Linear projects (e.g., road or power line construction or maintenance) are common examples of projects that may have future phases, or segments, that will lead to future discharges of waste or other water quality impacts. Linear projects may affect many different waters and, in the case of new construction, may be implemented in sequential phases. When future phases of a linear project are likely to occur and may have water quality impacts, a regional water board may request that the project proponent provide any readily-available information on those future phases in connection with a pending report of waste discharge or application for the current phase. An example of a project that may result in future discharges of waste or other water quality impacts from unrelated projects is a development project that is adjacent to a sensitive area, such as an important wetlands area. While the project itself may not have any associated discharges of waste that directly affect the sensitive area, the new development may result in future projects and their discharges of waste, or other water quality impacts resulting from increased public access to the sensitive area.

In most cases, as long as the regional water board complies with CEQA, the regional water board may issue WDRs for the current project and defer issuance of WDRs for future discharges of waste until the point in time that those discharges are actually proposed, without compromising its responsibility to protect water quality from those future discharges. However, there are also occasional instances in which a regional water board may be asked to issue WDRs for a project that will likely lead to additional, future discharges of waste that a regional water board finds require consideration along with the current project. A regional water board is not required to put on blinders when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharges of waste or other water quality impacts in the future.⁵⁰ For example, if a regional water board were to determine, based on evidence in the administrative record, that likely prospective alignments for subsequent phases of a linear project, or future projects that will result from a currently proposed project, will likely

⁵⁰ The Petitioner asserts that the regional water boards are limited to considering only the discharges of waste that are actually proposed by the discharger in a report of waste discharge, because Water Code section 13263, subdivision (a), only authorizes the regional water boards to "prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge" This is an overly cribbed interpretation of section 13263, particularly in light of the fact that subdivision (a) also requires the regional water board to consider "other waste discharges," and subdivision (d) makes it clear that a regional water board may issue (and, as explained above, therefore also decline to issue) WDRs even if the discharger has not filed a report of waste discharge. It also would interfere with the regional water boards' broad mandates to protect water quality, as described above.

lead to additional, future discharges of waste or other water quality impacts from which the regional water board may not be able to adequately protect waters of the state by issuing WDRs or taking other appropriate regulatory actions in the future, the regional water board would be justified in declining to issue WDRs for the project.

The Need for Findings

Regional water board proceedings to consider the issuance of WDRs to an individual entity are governed by the State Water Board's regulations for adjudicative proceedings.⁵¹ These regulations incorporate various statutory provisions, including Government Code section 11425.50, subdivision (a), which provides that "[t]he decision shall be in writing and shall include a statement of the factual and legal basis for the decision." This enables the parties to determine whether, and on what basis, to seek review of a regional water board's decision.⁵² The requirement to explain the basis for the regional water board's decision also helps to encourage orderly analysis and reduce the likelihood of unfounded decisions.⁵³ Further, the factual basis must be supported by evidence in the administrative record.⁵⁴

There is a heightened need for detailed findings based on evidence in the record if a regional water board declines to issue WDRs for a project because it will likely lead to additional, future discharges of waste or other water quality impacts. Those findings should describe the potential for future discharges of waste or other water quality impacts, explain why they are likely to result from the current project before the regional water board, and most importantly, explain why the regional water board would be limited in its ability to exercise its full authority in the future to prohibit, or otherwise restrict, those future discharges or other water quality impacts in such a manner as to carry out the regional water board's obligation to protect waters of the state.

It is critical that a regional water board's staff and counsel ensure that the requirement for a statement of the factual and legal basis for the decision is met when they propose draft WDRs and other adjudicatory orders for the regional water board's consideration. Of course, a regional water board is not obliged to adopt its staff's proposed orders. When a regional water board takes a final action in an adjudicative proceeding by approving an oral

⁵¹ Cal. Code Regs., tit. 23, § 648 et seq.

⁵² See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.

⁵³ *Id.* at p. 516.

⁵⁴ *Ibid.*; State Water Board Order WQ 2007-0010 (*Escondido Creek Conservancy*), p. 6.

motion without a written order, it is incumbent upon the regional water board to ensure that the motion contains, or specifically incorporates, sufficient detail about the factual and legal basis for the motion. Depending on the circumstances, it may be advisable to take a recess to allow staff and counsel an opportunity to carefully draft a motion for the regional water board.⁵⁵

The San Diego Water Board's Decision

Following several hours of public comments at the June 19, 2013 hearing, San Diego Water Board staff stated that they maintained their recommendation to adopt the Revised Tentative Order.⁵⁶ The San Diego Water Board then closed the hearing and the Board Members engaged in public deliberations. Following the deliberations, one Board Member made a motion to not approve the Revised Tentative Order. The motion carried, with a majority of three Board Members voting in favor of the motion and two Board Members voting against the motion. Because the decision was made by oral motion only, we look to the transcript of the deliberations to determine the factual and legal basis for the San Diego Water Board's decision, paying special attention to the statements of the Board Members who comprised the majority.

The Petitioner asserts that the San Diego Water Board declined to adopt the Revised Tentative Order on the grounds that it believed that the Tesoro Extension's Addendum, particularly the Tesoro Extension project description, were inadequate.⁵⁷ The San Diego Water Board asserts in its response to the petition that it determined that potential water quality impacts from a larger, more extensive project were not sufficiently evaluated for the San Diego Water Board to approve the Revised Tentative Order.⁵⁸ The Coalition asserts in its response to the petition for review that "the transcript clearly shows that the [San Diego Water Board] based its decision on its conclusion that the Tesoro Extension was merely the initial segment of the proposed Foothill-South previously rejected by the [San Diego Water Board], and [the Petitioner] had thus failed to propose adequate waste discharge requirements for the entire project."⁵⁹

⁵⁵ It is not always necessary for a regional water board to adopt a formal written order; an oral motion can be memorialized in the official minutes or transcript of the regional water board meeting.

⁵⁶ San Diego Water Board Hearing Transcript (June 19, 2013), p. 197.

⁵⁷ Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 4.

⁵⁸ San Diego Water Board Response to Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 2.

⁵⁹ Save San Onofre Coalition Response to Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 24.

As a preliminary matter, it is clear from the transcript that concerns about water quality impacts resulting directly from the Tesoro Extension did not form the basis for the San Diego Water Board's decision. Two of the Board Members indicated that they were satisfied that the Revised Tentative Order adequately addressed any water quality impacts that were directly related to the Tesoro Extension.⁶⁰ None of the remaining three Board Members expressed any concerns about water quality impacts that were directly related to the Tesoro Extension.

The Petitioner, the San Diego Water Board, and the Coalition all appear to agree that the focus of the deliberations was on the description of the project. All five of the Board Members commented on the possibility that the Tesoro Extension may be just the first segment of a larger toll road project that connects State Route 241 to Interstate 5, as was analyzed in the 2006 FSEIR.⁶¹ Four of the Board Members' comments indicated that they had concluded that the Tesoro Extension is, in fact, part of a larger project that would eventually connect to Interstate 5, while the fifth Board Member's comments did not clearly indicate whether or not he agreed.⁶²

Three of the four Board Members who had concluded that the Tesoro Extension is part of a larger project ultimately voted to not approve the Revised Tentative Order. Two of the majority also expressed generalized concerns that future extensions to Interstate 5 may impact water quality.⁶³ One of the majority referred three times during the deliberations to a CEQA complaint that had recently been filed by the Attorney General that alleged that the Petitioner had violated CEQA by failing to adequately describe the project.⁶⁴ Another majority-voting Board Member also referred to CEQA and stated that he thought that there was "some ambiguity in what we are required to do and not do in terms of our analysis."⁶⁵ Additionally one of the majority indicated that there was another important reason that he planned to vote to not approve the Revised Tentative Order, but he never explained what it was.⁶⁶ Therefore, while we can conclude that all three of the Board Members who voted in the majority believed that the

⁶⁰ San Diego Water Board Hearing Transcript (June 19, 2013), pp. 198, 201.

⁶¹ San Diego Water Board Hearing Transcript (June 19, 2013), pp. 198-206.

⁶² *Id.* at pp. 198-203.

⁶³ San Diego Water Board Hearing Transcript (June 19, 2013), pp. 192-205.

⁶⁴ See *Id.* at pp. 198-205.

⁶⁵ *Id.* at p. 204.

⁶⁶ *Id.* at p. 207.

Tesoro Extension was part of a larger project that would eventually connect to Interstate 5,⁶⁷ we are left with no conclusion as to why they voted to not approve the Revised Tentative Order. It is possible that one or more of the Board Members cast their vote because they believed that the Petitioner had violated CEQA. It is possible that one or more of the Board Members cast their vote because they believed that approving WDRs for the Tesoro Extension could lead to unacceptable water quality impacts from a future toll road extension. It is also possible that one or more of the Board Members cast their vote for completely different reasons. Without knowing the factual and legal basis for the decision, it is simply not possible to determine whether it was appropriate.

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⁶⁷ There is substantial evidence in the record to support a factual conclusion that the Tesoro Extension is part of a larger project. That evidence includes the Petitioner's approval of the preferred alternative described in the 2006 FSEIR, the statement on page 2-2 of the Addendum that the Tesoro Extension "does not preclude a connection to any of the 19 toll road alternatives evaluated in the [FSEIR]," Figure 4 of the Addendum, which depicts connections between the Tesoro Extension and the alternatives evaluated in the FSEIR, entitled "Future Alignment Alternatives," and the Petitioner's counsel's statement during the March 13, 2013 hearing that the Tesoro Extension is part of the planned transportation corridor that extends all the way from the existing State Route 241 to Interstate 5. (San Diego Water Board Hearing Transcript (March 13, 2013), p. 74.)

ORDER

IT IS HEREBY ORDERED that, for the reasons discussed above, this matter is remanded to the San Diego Water Board to provide the factual and legal basis for its decision, consistent with this Order. This Order does not require the San Diego Water Board to conduct any further hearings regarding the issuance of WDRs for the Tesoro Extension.

CERTIFICATION

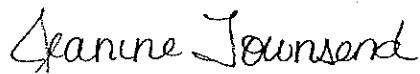
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 23, 2014.

AYE: Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore
Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: Chair Felicia Marcus (Recused)



Jeanine Townsend
Clerk to the Board

EXHIBIT 2



ROBERT G. BRADFORD, JR.
CHAIRMAN




MATTHEW FROSTBERG
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

TO: Mr. Tom Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

In reply/refer to:
dbradford:785677

FROM: David Gibson, Executive Officer 
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
2375 Northside Drive, Suite 100
San Diego, CA 92108

DATE: March 18, 2015

SUBJECT: Resolution Supporting Denial of Revised Tentative Order No. R9-2013-0007,
Waste Discharge Requirements for Foothill/Eastern Transportation
Corridor Agency, Tesoro Extension (State Route 241) Project

Attached find Resolution No. R9-2015-0022 (Resolution), *Resolution Supporting Denial of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (State Route 241) Project, Orange County*, unanimously approved by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) at its public meeting on March 16, 2015.

The Resolution satisfies the State Water Resources Control Board's direction in Order No. WQ 2014-0154 that the San Diego Water Board provide the factual and legal basis for its prior decision to deny Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency Tesoro Extension of State Route 241 in southern Orange County (SWRCB/OCC File A-2259).

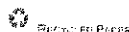
For questions or comments regarding the Resolution, please contact me by telephone at (619) 521-3005 or by email at David.Gibson@waterboards.ca.gov.

Attachment:

Resolution Supporting Denial of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (State Route 241) Project, Orange County, March 16, 2015.

HENRY ABAIBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108-2700 | (619) 516-1990 | www.waterboards.ca.gov/sandiego



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

RESOLUTION NO. R9-2015-0022

**RESOLUTION SUPPORTING DENIAL OF REVISED TENTATIVE ORDER
NO. R9-2013-0007, WASTE DISCHARGE REQUIREMENTS FOR
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, TESORO
EXTENSION (SR 241) PROJECT, ORANGE COUNTY**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter, San Diego Water Board), finds that:

1. On June 13, 2006 the Foothill/Eastern Transportation Corridor Agency (TCA) submitted an application for Clean Water Act section 401 Water Quality Certification (Water Quality Certification) for the Southern Orange County Transportation Infrastructure Improvement Project (SOCTIIP) (Water Quality Certification Application No. 06C-064). The SOCTIIP toll road extension would have added approximately 16 miles of toll road to the current terminus of State Route 241 (SR 241) at Oso Parkway in Southern Orange County and extended the SR 241 south and parallel to Interstate-5 (I-5) before merging with I-5 near the Orange County-San Diego County Line.
2. On February 23, 2006, TCA certified a Final Subsequent Environmental Impact Report (FSEIR) for the SOCTIIP project and filed a Notice of Determination.
3. In support of the FSEIR, TCA adopted findings and a statement of overriding considerations for the SOCTIIP project. TCA found that impacts to wildlife, fisheries and vegetation could not be mitigated to a less than significant level.
4. On February 6, 2008¹, the San Diego Water Board Executive Officer denied Water Quality Certification Application No. 06C-064 without prejudice and expressed concerns that the project, as proposed, would not meet water quality standards². Water quality standards include the water quality objectives and beneficial uses contained in the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan)

¹ (Administrative Record (A.R.) Vol. 5 Index 71.) Citations are to the administrative record the San Diego Water Board submitted to the State Water Resources Control Board in response to TCA's *Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007*. The complete administrative record is available for review on the internet at the following location:
<ftp://swrcb2a.waterboards.ca.gov/pub/rwqcb9/Tesoro%20Resolution/Tesoro%20Official%20Administrative%20Record%20Final/>.

² Under State law, the water boards establish beneficial uses and water quality objectives in their basin plans. Together with an anti-degradation policy, these beneficial uses and water quality objectives serve as water quality standards under the Clean Water Act. In Clean Water Act parlance, state beneficial uses are called "designated uses" and state water quality objectives are called "criteria." Throughout this Resolution, the relevant term is used depending on the statutory scheme.

and the State Water Resources Control Board (State Water Board) Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California (Antidegradation Policy)*. The project application did not address outstanding concerns expressed by the San Diego Water Board regarding the proposed habitat mitigation plan, anti-degradation, the runoff management plan, and water quality monitoring.³

5. On February 6, 2008, the SOCTIIP toll road extension was rejected by the California Coastal Commission (Coastal Commission) due to its recreational impacts to San Onofre State Park and San Mateo Creek, water quality effects, wetland impacts, and impacts to other environmental resources. The Coastal Commission staff report states, "The project is fundamentally inconsistent with the spirit and letter of numerous resource protection policies of the Coastal Act." [The project would not] be compatible with the continuance of the ESHA [environmentally sensitive habitat area]. The ESHA includes habitat for the Pacific pocket mouse, tidewater goby, arroyo toad, coastal California gnatcatcher, least Bell's vireo, and southern California coast steelhead." "[T]he toll road's impacts would be permanent, irreversible, and, for the most part, unmitigable. No other alternative alignment poses the threat of unmitigable and irrevocable impacts of such magnitude."⁴
6. TCA appealed the Coastal Commission's objection to the United States Secretary of Commerce. After holding its own public hearing, the Secretary of Commerce rejected the appeal, finding, among other things, that less environmentally damaging alternatives were available to meet the project need.⁵
7. By letter dated February 9, 2009, TCA formally withdrew Water Quality Certification Application No. 06C-064. The San Diego Water Board Executive Officer confirmed the application withdrawal on February 19, 2009.
8. On August 10, 2012, TCA filed a report of waste discharge for the Tesoro Extension Project (Tesoro Extension) with the San Diego Water Board. This initial segment of the SOCTIIP toll road extension would extend SR 241 from its existing southern terminus at Oso Parkway approximately 5.5 miles south to Cow Camp Road in the vicinity of Ortega Highway (SR 74) in Orange County. In TCA's report of waste

³ Documents supporting the determination that the San Diego Water Board could not ensure protection of beneficial uses due to unresolved water quality impacts can be found in A.R. Vol.5 Index numbers: 9, 10, 17 20, 29, 31,61,81, 90 (emails from Jeremy Hass, San Diego Water Board to TCA consultant discussing unresolved impacts and needed studies and plans); 5, 6, 87 (memos from PWA associates discussing sediment impacts to San Mateo Creek); 120,137 (emails from San Diego Water Board staff to TCA discussing missing information needed to assess impacts); 12,13 (San Diego Water Board staff meeting memos documenting unresolved impacts); 8 (2006 memo from James Smith, San Diego Water Board showing need for additional supplemental information for SOCTIIP 401 Certification application); 33 (correspondence from San Diego Water Board Executive Officer to TCA indicating incomplete assessment of water quality impacts.)

⁴ A.R. Vol. 1 Index 9, p.280-282.

⁵ A.R. Vol.5 Index 146 p.13-14.

discharge, SR 241 would now terminate at Cow Camp Road immediately north of San Juan Creek in Orange County. The Tesoro Extension would avoid the Coastal Zone and all waters subject to federal jurisdiction, thereby obviating the need for a consistency determination from the Coastal Commission, a Clean Water Act section 404 permit from the Army Corps of Engineers, and Water Quality Certification from the San Diego Water Board.

9. On January 17, 2013, the San Diego Water Board released Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency Tesoro Extension (SR 241) Project Orange County (Tentative Order)* for public review and comment. The comment period was open from January 17, 2013 to February 25, 2013.
10. On March 13, 2013, the San Diego Water Board opened a public hearing to consider adoption of the Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency Tesoro Extension (SR 241) Project Orange County (Tentative Order)*. The San Diego Water Board received testimony and accepted written comments but did not take final action on the Tentative Order.
11. At the March 13, 2013, public hearing, the San Diego Water Board directed TCA, the Save San Onofre Coalition (Coalition), and any interested persons to submit written responses to five supplemental California Environmental Quality Act (CEQA) questions. The comment period was open from March 15, 2013 to March 29, 2013.
12. TCA and the Coalition responded to the supplemental questions. TCA stated that the Tesoro Extension is a modification of SOCTIIP, and it prepared an Addendum to the SOCTIIP FSEIR to document changes to the toll road extension.
13. On April 18, 2013, the Board of Directors of TCA approved an Addendum to the SOCTIIP FSEIR for the Tesoro Extension. TCA determined that an Addendum and FSEIR would serve as its environmental documentation for the Tesoro Extension Project.⁶
14. The San Diego Water Board received an Addendum to the FSEIR (Addendum) filed by TCA on April 23, 2013 and considered the contents of the Addendum along with the FSEIR prior to reaching its decision.
15. The Addendum notes that the Tesoro Extension as analyzed in the FSEIR and Addendum does not preclude a connection to any of the 19 toll road alternatives evaluated in the SOCTIIP technical reports.⁷
16. On May 30, 2013 Revised Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension*

⁶ A.R. Vol.1 Index 6.

⁷ A.R. Vol.1 Index 1 p.7.

(SR 241) Project, Orange County was released for public review and comment. Written comments were limited to: 1) revisions to the Tentative Order since the March 13, 2013 public hearing; and 2) comments pertaining to CEQA. The comment period was open from May 30, 2013 to June 7, 2013. The San Diego Water Board received written comments from TCA, the Coalition and other interested parties.

17. On June 19, 2013, the San Diego Water Board continued the public hearing to consider adoption of Revised Tentative Order No. R9-2013-0007, comments on the Project's compliance with CEQA, and the revisions to the Tentative Order proposed since the March 13, 2013 hearing.
18. At the June 19, 2013 hearing a majority of San Diego Water Board members voted to deny adoption of Revised Tentative Order R9-2013-0007. Board members in the majority cited concerns about water quality impacts and an inaccurate and incomplete project description. Board members determined that based on testimony received, and evidence in the record, the Tesoro Extension Project was part of the larger SOCTIIP toll road extension that would extend the toll road south of San Juan Creek connecting to Interstate 5.⁸
19. So long as the San Diego Water Board can determine that a project complies with CEQA, the Board may find it appropriate to issue waste discharge requirements for a portion or segment of a larger phased project. The San Diego Water Board, however, may disapprove any project, or portion or segment thereof, as long as the disapproval is consistent with the authority granted by the Porter-Cologne Water Quality Control Act (Porter-Cologne)(Wat. Code, section 13000 et seq.).
20. The San Diego Water Board may issue waste discharge requirements for large projects in phases; however, phased projects should not segment a larger project into pieces to avoid or limit the Board's review of the project's impacts on water quality and beneficial uses. In considering an earlier phase of a larger project, the San Diego Water Board may consider indirect water quality impacts and whether the current phase of the project is likely to lead to future activities with unacceptable water quality impacts.⁹
21. The San Diego Water Board, when considering the adoption of a discretionary permit, can make its own findings regarding the accuracy and sufficiency of the project description to carry out its statutory obligation to protect water quality. The Board is not required to issue waste discharge requirements if it cannot determine

⁸ See A.R. Vol. 1 Index 27 p. 198-207.

⁹ See A.R. Vol. 1 Index 27 p.201-202 (Board hearing transcript 6-19-2013, Board member Abarbanel discussing the water quality impacts of the project proposed in the SOCTIIP FSEIR and rejected by the Coastal Commission); A.R. Vol. 1 Index 27 p.198, 205 (Board member Kalemkarian discussing inadequate project description leading to an inability to completely assess water quality impacts); p. 203 (Board Chair Morales stating the project is more than a 5.5 mile Tesoro Extension and it is unclear where the larger project may terminate.)

that the project will meet water quality objectives and requirements in its regional water quality control plan.

22. Porter-Cologne provides the authority for the Board to require a report of waste discharge (Wat. Code, §13260) and issue waste discharge requirements taking into consideration "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose... and the need to prevent nuisance..." (Wat. Code, § 13263.)
23. A regional water board... in waste discharge requirements may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. (Wat. Code, § 13243.) In addition, a regional water board may prescribe requirements even if a discharger has not filed a report of waste discharge. (Wat. Code, § 13263, subd. (d).)
24. Issuance of waste discharge requirements is a discretionary action, and all discharges into waters are privileges, not rights. (Wat. Code, § 13263, subd. (g).) Even if a discharge is authorized, the discharge of waste does not create any vested rights to continue the discharge.
25. On July 19, 2013, TCA submitted a timely petition to the State Water Board for: *Reconsideration of Denial of Waste Discharge Requirements Revised Tentative Order No. R9-2013-0007 for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project.* (SWRCB/OCC File A-2259.)
26. On September 23, 2014, after accepting comments from interested parties, the State Water Board adopted Order WQ 2014-0154, *supra*. State Water Board Order WQ 2014-0154 remands the matter to the San Diego Water Board and provides direction to the Board to further explain the factual and legal basis for its denial.
27. State Water Board Order WQ 2014-0154 states that when a regional water board is deciding whether to issue waste discharge requirements for a project it is appropriate for the board to consider whether the project will likely lead to additional future discharges of waste or other related impacts to water quality. The regional water board has the authority to decline to issue waste discharge requirements for a specific discharge and the discretion to prohibit the discharge of waste in certain conditions or areas. (State Water Board Order WQ- 2014-0154 (*Foothill/Eastern Transportation Corridor Agency*)).
28. The Order states that when a regional water board declines to issue waste discharge requirements due to future impacts there is a heightened need for detailed findings. The findings need to explain the potential for future discharges of waste or water quality impacts, explain why they are likely to result from the current project before the regional water board, and explain why the regional water board would be limited in its ability to exercise its full authority in the future to prohibit, or otherwise restrict those future discharges or other water quality impacts.

29. When issuing waste discharge requirements, regional water boards must protect the beneficial uses of the waters that are receiving both direct, and indirect discharges from the project, as well as the beneficial uses of any downstream waters that could be affected by the discharge. (State Water Board Order WQ 2012-0013 (*Sacramento Regional*).
30. Substantial evidence in the record supports a factual conclusion that the Tesoro Extension is part of a larger SOCTIIP toll road extension. The proposed toll road, and preferred alternative, as analyzed in the FSEIR, extends south of San Juan Creek and will impact waters of the United States and waters of the State.¹⁰
31. Due to readily available information that the Tesoro Extension is part of the larger SOCTIIP toll road project, and TCA's failure to address water quality impacts identified in the SOCTIIP toll road project, the San Diego Water Board determines that water quality impacts of TCA's proposed toll road extension have not been adequately addressed. Because evidence in the record shows the Tesoro Extension is likely to lead to the SOCTIIP toll road project and that unmitigated water quality impacts are likely to result from the SOCTIIP toll road project, the San Diego Water Board cannot determine that water quality and beneficial uses in the region will be protected if it approves the Tesoro Extension.
32. In accordance with the direction provided in Order WQ 2014-0154, limiting the San Diego Water Board's review to the Tesoro Extension restricts the Board's ability to exercise its full authority to condition the project to avoid or minimize impacts. Proposed future alignments of the toll road extension will have impacts to water quality and water resources, including the San Juan Creek, San Mateo Creek, San Onofre Creek and Christianitos Creek watersheds. Evidence in the record shows that the toll road extension TCA presented to the San Diego Water Board in 2006 would not meet water quality standards. By submitting a report of waste discharge for the first phase of a larger project without addressing known, unmitigable water quality impacts from subsequent phases, TCA precluded the San Diego Water Board from evaluating the entire project and potential alternatives that could mitigate known significant and unavoidable impacts associated with subsequent phases.

¹⁰ Vol. 2 Index 2 p.89 (Memo from Sam Elters, Chief Engineer to TCA Board of Directors discussing construction of Tesoro Extension as phase of larger project, and attached Exhibit titled, "241 Completion-Initial Segment"); Vol. 2 Index 2 p.104 (TCA Board of Directors Agenda, October 13, 2011, Agenda Item 6: "Initial Segment of the 241 Completion Project"); Vol. 2 Index 20 (Board transcript from 3-13-2013 hearing p.74, Counsel for TCA discussing Tesoro Extension as part of a larger project connecting to Interstate 5); Vol.2 Index 2 p.183 (Army Corps of Engineers Memo to Record of meeting with TCA discussing Corps concerns of TCA attempting to segment a larger project to avoid a more rigorous and public environmental review process and the need for TCA to submit supporting documentation showing that the Tesoro Extension is a single and complete project); Vol.1 Index 1 p. 52 (figure in TCA's 2013 Addendum depicting Tesoro Extension and future alignments to Interstate 5); Vol. 5 Index 1 p.442 (figure in TCA's 2006 FSEIR depicting toll road preferred alternative route connecting to Interstate 5.)

33. The denial of *Revised Tentative Order No. R9-2013-0007 Waste Discharge Requirements for the Tesoro Extension (SR 241) Project* is solely based on the authorities granted to the San Diego Water Board under Porter-Cologne including, but not limited to Water Code sections 13225, 13243, 13260 and 13263 subds. (a), (b), (d), (g).

THEREFORE, BE IT RESOLVED THAT:

The San Diego Water Board:

1. Adopts the detailed findings as set forth above describing the factual and legal basis of its decision to deny Revised Tentative Order No. R9-2013-0007.
2. Finds it is unnecessary to reopen the evidentiary hearing for Revised Tentative Order No. R9-2013-0007.
3. Makes no other changes to its June 19, 2013 decision to deny adoption of *Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County*.

I, David W. Gibson, Executive Officer, do hereby certify that this Resolution with all attachments is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on March 16, 2015.



David W. Gibson
Executive Officer

EXHIBIT 3

1 STATE OF CALIFORNIA

2 REGIONAL WATER QUALITY CONTROL BOARD

3 SAN DIEGO REGION

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6 In the matter of:

7 State of California Regional Water Quality Control

8 Board San Diego Region Meeting Notice and Agenda

9 Legal Advisory Committee

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11
12 COSTA MESA CITY HALL
13 CITY COUNCIL CHAMBERS
14 77 FAIR DRIVE
15 COSTA MESA, CALIFORNIA16 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS17 ITEM NO. 8, WATER DISCHARGE REQUIREMENTS:
18 FOOTHILL/EASTERN TRANSPORTATION, CORRIDOR AGENCY TESORO
19 (SR 241) EXTENSION, ORANGE COUNTY
20 WEDNESDAY, MARCH 13, 2013
21 9:00 A.M.

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

23 CALIFORNIA REPORTING, LLC
24 52 LONGWOOD DRIVE/SAN RAFAEL, CA 94901
25 PHONE. 415-457-4417/FAX. 415-454-5626
CALIFORNIAREPORTING@SBCGLOBAL.NET/CALIFORNIAREPORTING.COM

APPEARANCES:

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BOARD MEMBERS PRESENT:

Tomas Morales, Chairman
Gary Strawn, Vice Chairman
Henry Abarbanel
Eric Anderson
Sharon Kalemkiarian

EXECUTIVE STAFF:

David Gibson, Executive Officer
James Smith, Assistant Executive Officer
Chris Witte, Executive Assistant

STATE BOARD MEMBER LIAISON:

Frances Spivy-Weber

STATE BOARD STAFF COUNSEL:

Catherine Hagan, Esq.

NORTHERN WATERSHED UNIT:

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

TRANSPORTATION CORRIDOR AGENCY:

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

APPEARANCES: (CON'T)**PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS**

The following people registered support for the project:

Jim Adams, Building and Construction Trades
Mary Adams, Local 652, Santa Ana
Jancee Aellia, resident of San Clemente
Milly Alfidi
Sam Allevato, City of San Juan Capistrano
Beth Apodaca, resident of San Clemente
Hamid Bahadori, American Automobile Association
Mike Balsamo, Orange County Building Industry
Association
Lisa Bartlett, City of Dana Point
Pat Bates, 5th District County of Orange
Tony Beall, City of Rancho Santa Margarita
Brent Beasley, Roofers Local #220
Chris Betancourt, Local #89
Jim Bieber, resident of San Clemente
Darren Blume, Flatiron Construction Company
Mark Bodenhamer, San Juan Capistrano Chamber of
Commerce
Jeff Bott
Daryl Brandt, Bricklayers Local #4
Scott Brown, Division Chief, OCFA
Wendy Bucknum, Professional Community Management
Mike Burke, RBF/SC Chamber Board Member
Bill Campbell, Former Supervisor, Villa Park
Denise Casad, Women in Transportation Seminar
Duane Cave, SOCE Coalition
Carolyn Cavecche, OC Tax
Don Chadd, TCWD/SAMLARC HOA
Ross Chun, City of Aliso Viejo
Doug Clark, IUOE #12
Mike Conte, resident of Rancho Santa Margarita
Darin Chidsey, Southern California Association of
Governments
(First Name Unknown) Danielos, Local #89
Bill Davis, Southern California Contractors
Association
Ray Diaz, Operating Engineers
(First Name Unknown) Enriquez, Local #89
Gabino Enriquez, Laborers Union
Adrian Esparza, Local #652
Celso (Last Name Unknown), Local #89
Jim Evert, City of San Clemente

APPEARANCES: (CON'T)**PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS**

The following people registered support for the project:

Jack Feller, City of Oceanside

Samantha Fitzgerald

Luis Fonseca, Local #652

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

Emily France, The Gas Company

Richard Gardner, resident of Capo Beach

Roger Gaubel, SMWD

John Gauthier, RWAN #220

Chuck Gibson, Santa Margarita Water District

Kevin Gilhooley, Southern California Association of Governments

Jesus Gonzalez, Local #89

Fernando Guzman, Local 652

Josh Haskins, Economic Coalition

Jose Hernandez, Local 652

Peter Herzog, City of Lake Forest

Rush Hill, City of Newport Beach

Sherry Hodges, resident of Encinitas

Cindy Holmes, resident of San Clemente

Joaquin Itaro, Local #89

Heather Johnson, Dana Point Chamber of Commerce

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

APPEARANCES: (CON'T)**PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS**

The following people registered support for the project:

Hector Mayorch, Local #89
Ben Medina, Friendly Fix-IT
Abraham Mieda, IBEW Local #441
Robert Ming, City of Laguna Niguel
Carl Morgan, San Diego North EDC
Debbie Newman, Laguna Niguel Chamber of Commerce
Todd Nicholson, Mission Hospital, for CEO McFarlane
David Nydegger, Oceanside Chamber of Commerce
Dennis O'Connor, Orange County Association of Realtors
Ted Owen, Carlsbad Chamber of Commerce
Jerry Pabbuwee, Sukut Construction
Martin Paine, Senator Mimi Walters' Office, Laguna Hills
Mike Pino, IUOE Local #12
Chuck Puckett, City of Tustin
Oscar Ramirez, Local #89
Lisa Ramsey, CalTrans District 12
Tom Rath, Flatiron Construction Company
Rhonda Reardon, City of Mission Viejo
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 Schwartz, 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

APPEARANCES: (CON'T)**PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS**

The following people registered support for the project:

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

The following people registered opposition to the project:

Danny Adami (phonetic), Esq., Senior Attorney
Natural Resources Council and Director of NRDC
South California Resources Project
Mark Babski, resident of South Orange County
Julianne Bradford, resident of Oceanside
Guinevare Breeding
Craig Cadwallader, Surfrider Foundation, South Bay
Chapter
Paul Carlton, Sierra Club
Julia Chunn-Heer, Surfrider
Jerry Collamar, resident of San Clemente
Bill Deck, Sierra Club
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

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PROCEEDINGS

WEDNESDAY, MARCH 13, 2013

9:28 A.M.

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

AGENDA: ITEM NO. 8

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

But there will not be any final action or a vote taken at today's hearing. And the -- in short, the reasons are the issues that were raised by both sides in the past few week weeks, primarily relating to CEQA. But today we are going to go forward and take all the testimony and public participation on the other issues. And -- uh -- we are looking forward to that. But we are going to have certain procedures in place, given that a number of folks that -- that we have here. And do our best to -- to 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 This -- this water requires TCA to make sure
2 that -- that it's maintained for the water to transcend
3 through it. Whether it's handled by the third party, they're
4 still on the line to make sure that it's that -- it's
5 maintained -- (mumbled).

6 THE PUBLIC (UNIDENTIFIED): It's not quiet. You
7 guys, I can't hear very well. Can you turn the mics up?

8 CHAIRMAN MR. MORALES: I don't know if there is a
9 way of turning up the -- the volume, other than through our
10 own vocal cord.

11 THE PUBLIC EN MASSE: Thank you.

12 THE PUBLIC (UNIDENTIFIED): That would be good.

13 THE PUBLIC (UNIDENTIFIED): Close the door.

14 CHAIRMAN MR. MORALES: Well, I don't know that we
15 can close the -- the door, either. I think -- I don't wanna
16 run afoul of the -- the fire codes.

17 THE PUBLIC (UNIDENTIFIED): Then, talk louder.

18 CHAIRMAN MR. MORALES: Okay. We will do our best
19 to -- to talk louder.

20 BOARD MEMBER (MS. KALEMKIARIAN): And, also, lean
21 forward into the speaker. 'Cause I can hear here. It's much
22 better when you lean forward.

23 NORTHERN WATERSHED UNIT (MR. BRADFORD): Okay.
24 Understood.

25 CHAIRMAN MR. MORALES: Okay.

1 Are there any other questions, from the
2 board, for our staff at this time?

3 Okay. Hearing no questions, at this point,
4 we're going to continue on in the proceedings with our other
5 presenters and public comment. But -- before we do that, I
6 would ask that any individual that is expecting to testify --
7 ya know, we administer an oath that I'd ask you to stand and
8 take here in a second. And when you do speak, when you come
9 up, if you can state your name for the record and that you
10 have taken the oath, before proceeding, we would appreciate
11 that.

12 So, if you are intending to testify, please
13 stand at this time and raise your right hand and take the
14 following oath. It's very simple. It's just a required two
15 words on here.

16 Do you swear the testimony you are about to
17 give is the truth? If so, answer "I do."

18 EN MASSE: I do.

19 CHAIRMAN MR. MORALES: Thank you.

20 Now, I also wanted to mention that, on Friday,
21 we received a formal request for postponement of this
22 hearing, since staff is -- our staff is going to be taking
23 more time to conduct an analysis of the -- for the CEQA
24 questions. That request was denied. Because we felt it was
25 important that many of you that had planned to come speak

1 today be given that opportunity. And since it is also likely
2 that the hearing where final action on this matter will be
3 taken will be held in San Diego. Simply given, the order of
4 matters that we're going to be dealing with this year.

5 So, with that, I would like to ask that the
6 TCA come up and do the presentation, initially. Originally,
7 we had it set up in -- stated in the order of proceedings,
8 that the NGOs would go first. But the agreement between the
9 NGOs and the TCA, TCA have agreed to go first. And,
10 therefore, the order will be modified somewhat.

11

12 THE TRANSPORTATION CORRIDOR AGENCY (TCA)

13 MS. HALL: Thank you. With that, may I reserve
14 some time at the end to respond to some comments?

15 CHAIRMAN MR. MORALES: Of course.

16 MS. HALL: Okay, great. Thank you.

17 Good morning, Chair and Members of the Board.
18 My name is Valerie Hall. I'm Director of Environmental
19 Services for the Transportation Corridor Agency. The project
20 before you today for consideration is the SR 241 Tesoro
21 Extension Project.

22 Just to provide some background on our agency,
23 we are a public agency. Many of you may have heard we're a
24 private for profit, but that is not the case. We're actually
25 a public agency governed by 18 public members, as well as the

1 County of Orange. All of our board members are from cities
2 that are within our corridor areas. They lie adjacent,
3 directly to our -- our transportation facilities. Our board
4 members also represent more than 1.8 million residents of the
5 County of Orange.

6 To date, TCA constructed 51 miles of toll
7 roads within Orange County. This represents over 20 percent
8 of the highway and State System in the county. We're also
9 included in the Southern California Association of
10 Government, as well as the San Diego Association of
11 Government Long Range Regional Transportation Plan for a
12 Regional System and have been there for over 20 years.

13 We're also part of the South Coast Air Quality
14 Management Plan. All of our profits are listed as
15 "Transportation Control Measures for Air Quality Benefits."

16 Some background on our projects, as a whole.
17 The TCA, again, has constructed 51 miles to date. The slide
18 before you represents they -- the extensions that we
19 provided, as staff noted, the SR Ter- (sic) -- 241 has been
20 constructed in over seven -- uh -- through seven extensions.
21 All this pining effort that went into account, taking --
22 took into consideration the planned community -- communities
23 for Orange County and the needed infrastructure to support
24 this development and this plan, as well as planning for large
25 flocks to contin- (sic) -- tin- (sic) -- excuse me. To

1 contiguous open space, to accommodate the plan growth as well
2 as set aside open space. We were also one of the nation's
3 first comprehensive State and national reserve areas for open
4 space.

5 This comprehensive planning has made Orange
6 County one of the bests counties in the nation, based on
7 ratio's open space development. And this long range planning
8 accounted for and all of the regional development in the
9 county similar to the existing toll roads, the Tesoro
10 extension project will be account for the level of the
11 required planning and permitting to accommodate this planned
12 growth.

13 Now, getting to the project before you, it --
14 it -- as staff explained, it will extend the existing SR 241
15 3.2 miles from the current terminus of Oso Parkway.
16 Previously, we -- the last extension was known as the Oso
17 Project. And that was 3.2 miles. It opened in 1999.

18 The current traffic on that section of the 241
19 is roughly 7,000 vehicles per day. Oso Parkway, the arterial
20 that 241's connected to currently provides 24,000 trips per
21 day. Similar to the connection at Cow Camp -- that would be
22 part of the Tesoro Extension Project. Cow Camp is planned to
23 carry 58,000 vehicles, almost twice of what Oso Parkway
24 currently has.

25 The County of Orange has several

1 transportation projects to accommodate this planned growth.
2 One of them is known as "The Script Program," the South
3 County Roadway Improvement Program. But then there's --
4 there are three categories of -- from -- to provide for these
5 improvements, including providing regional improvements to
6 its existing State facilities such as SR 241.

7 The 241 Tesoro Extension Project plans to
8 expand the 241 5.5 miles south, from the current terminus of
9 Oso Parkway, down to the City of State Route 74 Orty (sic) --
10 Ortega Highway to Cow Camp Road. As staff explained, there
11 are only two lanes in each direction with an open median and
12 -- and -- uh -- median improvement for water quality.

13 The project is also locating with the approved
14 Rancho Mission Viejo Ranch Plan. Forty-eight percent of the
15 project is located within areas already approved for
16 development under the Ranch Plan. And the project does avoid
17 all jurisdictional areas of the U.S. Army Corps of
18 Engineers.

19 The Tesoro Extension project has a logical
20 terminus. As some may have you to believe, the Tesoro
21 Extension Project will not connect to a dirt road. Cow Camp
22 Road is under construction. It is before you, pending a -- a
23 401 certification and it is planned to begin construction for
24 the portion that will connect to the 241 this summer. They
25 will be ahead of the Tesoro Extension or built concurrently

1 with our project.

2 Cow Camp Road is also planned to be the major
3 bypass for the existing State Route 74. State Route 74
4 currently has one lane in each directed -- uh -- each
5 direction and constrained, topographically. It cannot be
6 widened any further. Therefore, Cow Camp Road will -- will
7 be the new primary east-west arterial.

8 The slide before you shows the portions of Cow
9 Camp Road that are already constructed. Again, Cow Camp Road
10 is on -- is in the -- has been constructed and of -- the
11 remaining portions of the 241 will begin in summer of this
12 year.

13 Getting to the project needs. The Tesoro
14 Extension Project provides a critical alternative route to
15 Orange County. It will increase mobility and provides public
16 safety in one of the largest areas that are planned for
17 growth within Orange County's District. In addition, the
18 Center for Demographic Research, at Cal State Fullerton,
19 projects that same area of Orange County is gonna experience
20 a 27 percent growth in population, 22 percent growth in
21 housing; and a 32 percent growth in employment.

22 Additionally, the transpor- (sic) -- the
23 Tesoro Extension Project is part of the US EPA as well as the
24 Federal highways and FHWA's approvals in the long range
25 transportation plan; and it's important for regional air

1 quality conformity requirements.

2 This graphic before you is a typical example
3 of what occurs on Interstate 5, on a daily basis, and has
4 increased even more so on the weekends. To put a little bit
5 in perspective for you, imagine what San Diego would be like
6 without SR 56, SR 76, SR 78, the 805 or even Interstate 8 or
7 any other freeway, and all the three million residents have
8 in San Diego was Interstate 5. That's what Orange County --
9 South Orange County faces, every day. Our only way in and
10 out is Interstate 5.

11 This results in numerous concerns for public
12 safety. Our project overrides an important major alternative
13 provided a much need redundant alternative for emergency
14 events, as well as every day commuters.

15 The Tesoro Extension Project delivers traffic
16 re- (sic) -- relief without any further extensions needed to
17 extend beyond Cow Camp Road. Similar to the Oso section that
18 I talked about previously, that roadway has been in operation
19 for more than 16 years. The Tesoro Extension can function
20 without any future extension as well. In addition to the --
21 the Rancho Mission Viejo Ranch Plan will provide for -- more
22 than 44,000 new residents to the county. The existing
23 circulation system cannot absorb that growth without any
24 negative impact to traffic.

25 As part of the approvals for The Ranch Plan

1 Development, the same parties that will speak af- (sic) --
2 shortly after the TCA, today, are the same individuals that
3 settled with The Ranch Plan to allow for the development of
4 14,000 units and millions of square feet of commercial space
5 within the ranch planning area.

6 The main difference between and The Ranch Plan
7 and the Tesoro Extension and the roadway that The Ranch Plan
8 will build as part of their system is ours provide free
9 flowing system versus an arterial highway, which makes it --
10 uh -- traffic and mobility much efficient.

11 The project system, a system that the
12 infrastructure agreed to. And, as part of this settlement
13 that the -- uh -- screen before you shows, we've been able to
14 be consistent with -- with the terms of the settlement and
15 have also minimized all environmental impact, again, to
16 provide consistency for these prior approvals.

17 This is the -- the shot of The Ranch Plan.
18 Again, 14,000 new homes. The growth has been agreed to by
19 the NGOs. It is not happening at some undefined date. It is
20 happening now.

21 There's development occurring, right now,
22 within the first planning area. And Planning Area 2 will
23 begin later this year.

24 Additionally, there's the Habitat Conservation
25 Plan that set aside thousands of acres of open space with the

1 U.S. Fish and Wildlife Service. As well as a stream land --
2 uh-h-h -- stream land alt- (sic) -- a -- stream Land
3 alteration management plan -- test alteration management
4 plan. I'm sorry. It was finalized with the Army Corps of
5 Engineers. And just -- and it allows for a watershed base
6 planning document.

7 Currently, as mentioned a moment ago, Planning
8 Area 1 of -- of The Ranch Plan is under development and will
9 result in 1200 homes. That's the photo on the left
10 (indicating). The photo on the right is in a typical area of
11 development, just north of the 241 Extension Project. This
12 is known as Ladera Ranch. Again, this new development within
13 The Ranch Plan will bring over 44,000 people to Orange
14 County.

15 As a recent article noted, in Orange County
16 Register, the Ranch Plan will be the largest city ever
17 constructed in Orange County. It will be much larger than
18 the existing City of San Juan Capistrano and will even have
19 its own Zip Code. Again, as agreed to by the parties that
20 will speak later today, this road -- this development needs
21 the supporting infrastructure system to serve it.

22 To accommodate all of this planned growth, TCA
23 has conducted an extensive outreach process. We've worked
24 with supporters. We've worked with members of the public.
25 We've worked with public agencies. We've worked with

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 delect (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

1 to move forward with the West Indies (phonetic) area
2 environmental analysis, we have continued to meet with all of
3 -- (inaudible) -- resource agency.

4 And today, TCA has been -- (inaudible) -- to
5 receive approval from the U.S. Army Corps of Engineers and
6 the EPA to confirm that there is no waters in the U.S.,
7 subject to their jurisdiction, negating any need for a 404
8 permit for this project. We have also consulted and received
9 a 1602 Stream Bed altera- (sic) -- Alteration agreement from
10 the California Department of Fish and Wildlife. The Fish and
11 Wildlife Office have also approved TCA's Comprehensive
12 Mitigation Plan. The same plan that has been submitted to
13 your staff for review and approval.

14 TCA is currently in the process of consulting
15 with the U.S. Fish and Wildlife Service under the Federal
16 Endangered Species Act. And it is -- uh-h-h -- planning on
17 receiving a biological opinion for this project.

18 Lastly, we've also been working with your
19 staff, very closely, since 2,011, to permit this project and
20 receive a Waste Discharge Requirement Permit for placement to
21 fill in .4 acre (sic) of waters of subject to the State of
22 California. As you can see from this list of agencies, we've
23 conducted a very extensive amount of coordination, not only
24 with public but with very agencies responsible, providing
25 oversight for their jurisdictional areas.

1 Again, the Army Corps EPA confirmed that no
2 404 Permit is required. This avoidance is achieved through a
3 project designed nature that included providing bridges that
4 span waters and adjusting the alignment to further avoid
5 jurisdictional fee- (sic) -- features. This resulted in
6 avoidance of 97.5 percent of water subject to the State.

7 TCA is proposing an in kind and within
8 watershed mitigation program. Again, the impacts of this
9 project are a total of .4 acre per minute impacts. The TCA
10 is proposing over 33 acres of mitigation. This approach
11 provides a net best fit to all species. A portion of our
12 mitigation is within the upper Chiquita Canyon Watershed.
13 That results in a mitigation ratio much higher than normally
14 seen for projects similar to the Tesoro Extension.

15 To compensate for unvoidable -- unavoidable
16 impacts to Regional Water Quality Control Board Areas and
17 Department of Fish and Wildlife, TCA is proposing two
18 mitigation areas, as noted by staff earlier: Mitigation Area
19 A and Mitigation Area B.

20 Mitigation Area A is directly below Tesoro
21 High School, just south of the Oso Parkway. It's
22 approximately 15.9 restricted acres. The photo on the left
23 is an existing area that's been grazed by Rancho Mission
24 Viejo.

25 And TCA plans to come in and enhance and

1 create some Markarian (phonetic) or -- and wetland areas.
2 And it will be representative of the fee- (sic) -- of the
3 future photo that is shown there. The Markarian future photo
4 is a reference site that's also located in that -- and
5 illustrated in the mitigation plans that's within review for
6 your staff, right now.

7 Mitigation Area B is located within TCA Upper
8 Chiquita Canyon Conservation Area. To respond to your
9 question, earlier, the Upper Chiquita Canyon Conservation
10 Area is an easement owned by the TCA with the Fish and
11 Wildlife Service and the Department of Fish and Wildlife,
12 formally Fish and Game. They are a third party beneficiary
13 that have full rights and authority to require TCA to come in
14 and do retroactive measures; and we're responsible to report
15 to them.

16 For the Mitigation Area A, below the High
17 School, that will be folded into the reserve at Rancho
18 Mission Viejo, which is a nonprofit entity that were designed
19 to manage the 16,000 plus acres of the reserve. Again, all
20 the resource agencies have agreed to this and they have
21 enforcement provisions within those easement documents.

22 To date, TC (sic) has ses- (sic) --
23 successfully restored 2,100 acres. These acres comprise
24 wetlands, coastal sage scrub, rare (phonetic) plan, Markarian
25 oak -- woodlands. We have a very successful track record.

1 We have one well-respected restoration specialist that will
2 perform this work, Dr. Mark Redwell (phonetic). And Tesoro
3 will be an example for others to follow in how to build
4 and -- and minimize impacts associated with the roadway.

5 This is one example of our projects we've
6 created. Along with Bonita Creek, there's a 40-acre wetland,
7 a Markarian area. You can see in the very top left photo,
8 that's what it looks like when we first began the project.
9 And what it looks like, today, is the larger photo on the
10 right.

11 These -- this mitigation site contains
12 le-spells-mirago (phonetic), a federally listed species, as
13 well as southwestern fly catcher and the California net
14 catcher. Also important to note, this mitigation site was
15 selected because it was a critical wildlife research between
16 the San Joaquin Hills and Upper Newport Bay.

17 BOARD MEMBER MS. KALEMKIARIAN: How many years does
18 this represent? What's the present from year zero?

19 MS. HALL: The present photo was taken in 2,011.

20 BOARD MEMBER MS. KALEMKIARIAN: And when was year
21 zero?

22 MS. HALL: Year zero was 1997.

23 The next photo is a typical example of all of
24 our coastal sage scrub restoration sites, similar to what
25 we're proposing on the Tesoro Extension. This photo

1 (indicating), here, is just north of where the Tesoro
2 Extension Project will begin. And it provides coastal sage
3 scrub. All of our sites, along where sites close to our
4 airways, have met conforming standards enlisted by the U.S.
5 Fish and Wildlife Service, provide habitat for the federally
6 listed California net catchers. All of our sites are self-
7 sustained and resilient.

8 Beyond the minimum requirements, TCA has also
9 been very instrumental in launching initiative -- an
10 initiative for the County of Orange. This is one example of
11 -- as to one of their problems. The cactus salvage
12 translocation project that was undertaken within TCA's upper
13 Chiquita Canyon Conservation area. This project was done in
14 anticipation of a reservoir being constructed within the
15 project area. We helped them salvage all the cactus.

16 We designed the plan. And we implemented the
17 -- uh -- the cactus and have been monitoring the prob- (sic)
18 -- the program since. And, again, it's for the recovery of
19 the cactus friend. Not of a species. The spill is something
20 that TCA monitors and plans for.

21 This is another program that TCA -- we
22 actually partnered with a nature reserve in Orange County.
23 There is a land manager for 38,000 acres. TCA is an active
24 board member on that rock and partner. They're all the
25 partners where the University of California Irvine's

1 implemented project began, going beyond what we're required
2 to do and implementing projects for the benefit of these
3 various species.

4 In summary of the mitigation, TCA has
5 committed to your staff and your board that we will monitor
6 and report, on an annual basis, for a minimum of ten years
7 under all of our mitigation or until all of our performance
8 standards have -- have been met. We've also committed to
9 providing these annual reports to all of the agencies. And
10 we will provide financial assurances to give your board a
11 level of comfort that our mitigation sites will fulfill their
12 requirements.

13 I would like to turn this over to Rob
14 Thornton, now, to discuss CEQA.

15 MR. THORNTON: Good morning, Board Members. Robert
16 Thornton. I'm counsel to the Transportation Corridor
17 Agencies. And I'd like to specifically address a number of
18 questions that have been raised regarding the California
19 Environmental Quality Act Compliance to the Project.

20 Next line, please.

21 This project has been the subject of
22 extensive comprehensive evaluation pursuant to the California
23 Environmental Quality Act, dating back to 1981. In fact,
24 it's been the subject of no less than four separate certified
25 environmental impact report documents. First, a program

1 level document approved by the County of Orange, certified in
2 1981; followed by a (sic) EIR, certified by the
3 Transportation Corridor Agency 1981; followed by the 2,006
4 subsequent EIR, certified by the Transportation Corridor
5 Agency; a Comprehensive Environmental Impact Report, required
6 by the County of Orange, in regard to the Rancho Mission
7 Viejo Development; and also evaluated the general effects of
8 the SR 241 project; and, finally, the 2,013 addendum which is
9 before you today. So, there is a mount- (sic) -- there is a
10 mountain of CEQA compliance on this project.

11 Next slide, please.

12 Now, the -- the issue's been raised -- and
13 I'm sure will be raised today and subject for question --
14 that, somehow, the consideration of the Tesoro Extension
15 constitutes piece mealing. So, I want to talk about that in
16 some detail. The -- the term "piece mealing," for those of
17 you -- those of you who don't live with CEQA, typically
18 refers to where you -- you proceed with evaluating one
19 portion of the project without looking at other possible
20 future extensions or enlargement of that project. Piece
21 mealing did not occur in the circumstance.

22 As we've just documented, the entirety of the
23 SR 241 was evaluated in three separate certified EIRs. It
24 was evaluated comprehensively and associated with Ranch Plan
25 EIR. An EIR, by the way, which resulted in the settlement

1 agreement with the same groups that are opposing this
2 project, as -- (mumbled) -- all noted and, finally, in the
3 2,013 addendum.

4 So, contrary to the assertion that there's
5 piece mealing, there's been no piece mealing of the
6 environmental analysis.

7 Next slide, please.

8 This slide shows the variable alternatives
9 that were evaluated within the various environmental
10 documents. Actually, this is only a portion of alternatives
11 that were evaluated in 2,006, subsequent EIR. And as the
12 slide indicates, there are numerous alternatives available
13 for extending SR 241 south of the proposed southern terminus
14 of the Tesoro Extension. So, there's no foreclosure of
15 alternatives. Those alternatives all remain open.

16 They're all available to be considered,
17 further, as part of subsequent proceedings. We're not
18 foreclosing any of those alternatives. The board wouldn't be
19 foreclosing any of those -- those alternatives by approving
20 the staff recommendation with the proposed WDR.

21 Now, let me talk a little about how
22 transporta- (sic) -- how environmental compliance is carried
23 out, in the State of California, with regards to
24 transportation project.

25 Next slide, please.

1 There are numerous examples, throughout the
2 state, where transportation projects have been evaluated in
3 precisely the way that this project has been evaluated.
4 Here's a list of ten representative samples of projects where
5 there was a larger project, but there were decisions made to
6 phase construction portions of the project in advance of the
7 completion of other phases of the projects. I wanna focus on
8 two specific very recent examples for the Board's
9 consideration.

10 First, is the California High Speed Rail
11 Project. The largest project in the State, as we all know,
12 from the Governor's State of the State message, a project
13 very near and dear to the Governor's heart. That project is
14 proceeding with ten separate segments. In fact, in separate
15 sections within ten separate segments. The construction is
16 about to commence on portions of the project in the Central
17 Valley, even though the alignment in that project, the
18 location of that project on the north and the south has not
19 been fixed and, indeed, is controversial in some
20 circumstances.

21 So, a very similar circumstance to here,
22 which is a recognition that we identify segments where you
23 can reach a decision -- uh -- reach -- reach -- uh -- or
24 complete the environmental analysis, but preserve options
25 open for future extensions of the project. And that's

1 exactly what we're proposing to do here.

2 The second example highlighted on this script
3 -- on this slide is the Exposition Corridor Light Rail
4 Project. And I know a little bit about this project, because
5 I'm counsel to that authority and represented them in -- in
6 CEQA matters, too. A very very similar circumstance to what
7 we have here is. This is a light rail project that
8 ultimately will connect downtown Los Angeles with Santa
9 Monica. Initially was -- was a (sic) environmental
10 evaluation; was conducted for the entirety of the length of
11 the project.

12 There was controversy about alternatives
13 within Santa Monica, between Culver City and Santa Monica.
14 The Board made a decision to simply proceed with the first
15 phase of the project and to postpone the decision on
16 alternatives of south or -- or rather west of the first
17 phase. Almost an identical circumstance to the process
18 that's been followed by the Transportation Corridor in this
19 county (mumbled).

20 Next slide, please.

21 Now, it's important for the Board to
22 understand the role that the court has under the California
23 Equal Quality Act. CEQA makes a very important distinction
24 between the responsibilities of lead agencies -- in this
25 case, the Transportation Corridor; and the responsibilities

1 of the re- (sic) -- the responsible agency and the regional
2 board here is sitting as a responsibility -- responsible
3 agency. The California guidelines make it clear that
4 determination of a lead agency to prepare an EIR negative
5 declaration shall be final and conclusive for all persons,
6 including responsible agencies.

7 Next slide, please.

8 CEQA goes further to provide that, when the
9 lead agency has prepared an EIR, the responsible agency shall
10 assume that the EIR complies with CEQA. So, the region board
11 has no discretion under CEQA. You're obligated, as a matter
12 of law, to assume that the 2,006 subsequent EIR complies with
13 CEQA.

14 Next -- next slide, please.

15 The only limited exception that's recognized
16 in the CEQA guidelines is, in those circumstances where there
17 is a new information or a significant change in the project
18 or significant change in circumstances, that causes new
19 significant impacts or a substantial increase in the severity
20 of the impact that was not previously evaluated. And, as
21 your staff testified today and as we documented in our
22 submission, the 2,013 addendum that's been provided to you
23 through and by the TCA documents that there is no significant
24 impact and no increase in the severity of any significant
25 impact identified in the 2,006 subsequent EIR. Indeed, as

1 the testimony here today indicates and as the documentation
2 indicates, the modifications of this project actually reduce
3 the impacts that were described in the 2,006 EIR. We've
4 avoided all Federal waters. We've shifted the alignment to
5 minimize the impact of State waters to an extraordinary
6 level.

7 And, as your staff has indicated, we have a
8 gold standard -- to quote your staff -- a gold standard of
9 mitigation several times more rigorous than is typically
10 applied to projects. We have stated a science best manager
11 (sic) practices. I wanna make a point about that. This
12 project has proposed to incorporate best management practices
13 that has not been applied to any other highway in the State
14 of California. That's what's before you in the new -- that
15 is proposed for the construction -- (mumbled) -- order.

16 No other highway in the State of California
17 has adopted the requirements that the TCA has stepped up and
18 said, "We will adopt those requirements."

19 Now -- next slide.

20 What this means to the Board. What this
21 means to the Board is, you're required to assume that the
22 2,006 subsequent EIR complied with CEQA. And the Board does
23 not have the discretion to require a subsequent -- or
24 supplement of EIR. Because the facts before you today, as
25 confirmed by your staff, indicate that the project will not

1 create any significant effect, will not substantially
2 increase the severity of a significant effect.

3 Now, the next slide.

4 Okay. You've heard a -- you've heard about
5 this Department of Commerce decision. Your staff testified
6 about it. And I'm sure you will hear substantial testimony,
7 later today, about the Department of Commerce decision. The
8 Department of Commerce decision did not preclude the TCA from
9 modifying this project or from adopting alternatives.
10 Indeed, as indicated in this slide, the decision states
11 explicitly it in no way prevents TCA from adopting other
12 alternatives for modification of the project.

13 And I want to point out that the project that
14 was before the -- the Department of Commerce and the Coastal
15 Commission had a connection within the coastal zone, ten
16 miles south of the southern terminus of the Tesoro Extension.
17 It's about a half mile of that larger project that was in the
18 coastal zone, management act coastal zone. And it therefore
19 triggered the coastal zone process. All of the issues that
20 were raised before the Coastal Commission and that were
21 raised before the Department of Commerce all related to that
22 last little piece of the project, concerning coastal zone
23 resources. None of those issues are relevant to the Tesoro
24 Extension.

25 Next slide, please.

1 The key fact before the board, on this. This
2 project complies with CEQA. The project extraordinarily, in
3 my experience of waste, all Federal waters of United States,
4 it has a minimal impact on State waters. It has -- the TCA
5 has submitted to a gold standard of mitigation. It has -- it
6 is committed to implementing BMP that no other highway in the
7 State has committed to.

8 The State of California, as we all well know,
9 has gone through a very tough economic period, which we're --
10 we continue to experience. We have some of the most highest
11 unemployment in the nation. This -- this project will put
12 2,000 people to work with good paying local jobs. Some of
13 those folks are represented in this hearing today and I
14 suspect you'll be hearing from them.

15 The project has a logical terminus, at Cow
16 Camp Road. It has independent utility and it does not
17 foreclose alternatives further to the south. We appreciate
18 the Board's attention. And we look forward to the
19 opportunity to -- uh-h-h -- to subsequently submit rebuttal
20 testimony, as the Chair indicated.

21 We respectfully request that the Board of --
22 when it does consider taking an action, that it adopts your
23 staff recommendation. We request that, for purposes of
24 preparing responses to comments, that you close the public
25 hearing at the end of the day; but leave open the

1 opportunity, obviously, for your staff -- uh-h-h -- and in
2 addition to the applicants to prepare responses to comments.
3 Be happy to answer any questions.

4 Thank you very much.

5 CHAIRMAN MR. MORALES: Thank you.

6 I think what we will do is, the Board will
7 have its opportunity to ask questions of you all.

8 Now, with respect to the -- to the CEQA issues
9 that our staff is considering further, I think we'll defer
10 questions on those until the extent necessary. And I hate to
11 admit to do this, but we'll ask that any testimony on the
12 CEQA issues, it occur at -- at our future meeting. Quite
13 possibly, May. We don't currently have a -- a staff
14 recommendation to adopt the order, because of the new
15 information that came in. So, this goes for the -- the NGOs,
16 as well, that will be testifying later.

17 We will be hearing any -- you know,
18 presentation that you have. With respect to CEQA, we are
19 going to be conducting further analysis on that. We expect
20 to -- at the end of the hearing, if we haven't formulated at
21 that time, give you specific questions that we may want you
22 to address and further written briefing with it -- uh -- a
23 schedule on that.

24 MR. THORNTON: I think that -- that would be fine,
25 Mr. Chairman. We'd be happy -- happy to do so.

1 CHAIRMAN MR. MORALES: Yeah.

2 And so all you folks know, our intent at the
3 future meeting will be to hear testimony related specifically
4 to CEQA. And, to the extent we can get the rest of the
5 public and other testimony in, today, on -- on any other
6 matter, we want to get it heard and taken care of and done
7 with, today.

8 STATE BOARD STAFF COUNSEL (MS. HAGAN): (Raise of
9 hand).

10 CHAIRMAN MR. MORALES: Yes.

11 STATE BOARD STAFF COUNSEL (MS. HAGAN): Would you
12 allow me to ask one question to TCA, regarding a specific
13 CEQA issue?

14 CHAIRMAN MR. MORALES: Of course. You can ask the
15 NGOs the same question, later.

16 STATE BOARD STAFF COUNSEL (MS. HAGAN): The
17 question -- and it may be for Mr. Abarbanel to follow. But
18 -- um -- it is whether TCA intends to submit or to make any
19 further approvals before carrying out the project or if the
20 approval was made in -- essentially, in 2,006?

21 MR. THORNTON: No. There will be -- uhm-m-m -- the
22 TCA continuing to stretch their authority and has not made a
23 final -- issued a final discretionary decision with regard to
24 the Tesoro Extension. But we -- we would expect to bring
25 that back to our board later in the year.

1 STATE BOARD STAFF COUNSEL (MS. HAGAN): Do you --
2 do you have any -- uhm -- do you intend to do that, then,
3 after you receive regional board approval? Or -- uhm --

4 MR. THORNTON: That -- that --

5 STATE BOARD STAFF COUNSEL (MS. HAGAN): -- I guess
6 I mean --

7 MR. THORNTON: -- that -- that's -- that's our
8 expectation, obviously, depending on the regional board
9 schedule. That would be our expectation.

10 STATE BOARD STAFF COUNSEL (MS. HAGAN): And would
11 that approval rely on the 2,013 Addendum Act?

12 MR. THORNTON: That -- that approval, in all
13 likelihood, would rely on 2,013 addendum, as -- as maybe
14 supplemented with any new information up to the date of the
15 Board's consideration, obviously.

16 STATE BOARD STAFF COUNSEL (MS. HAGAN): One -- one
17 follow-up. Would that decision or the further approval be
18 made by the Board of Directors or by the -- the project
19 manager who signed the addendum?

20 MR. THORNTON: The -- the decision would -- would
21 be required to be made by the Board of Directors. Under the
22 TCA adopted administrative code, the -- the manager of the
23 Environmental Services had the authority to approve the --
24 (inaudible).

25 STATE BOARD STAFF COUNSEL (MS. HAGAN): Okay.

1 Thank you (nod of the head).

2 CHAIRMAN MR. MORALES: And that was just one lawyer
3 question.

4 EN MASSE: (Laughter).

5 CHAIRMAN MR. MORALES: Thank you, sir.

6 And -- uh -- thank you to the TCA staff members.

7 And I very likely will have some questions. We'll take a
8 five-minute break after we're done with those questions. And
9 we will begin with the NGO presentation, at that point, just
10 so everybody has a sense of timing. My guess is we will take
11 an abbreviated lunch, since we have -- we don't have the
12 matters, as I understand, that we're going to be --

13 BOARD MEMBER (MR. ABARBANEL): (Nod of the head).

14 CHAIRMAN MR. MORALES: -- dealing with, that we
15 normally do during lunch. And try and get started again at
16 1:00, for the -- the time shortened for our elected
17 officials.

18 Any questions from the Board?

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

20 CHAIRMAN MR. MORALES: (nod of the head).

21 Dr. Abarbanel.

22 BOARD MEMBER (MR. ABARBANEL): The transpor- (sic)
23 -- the type of your organization, the Transportation Corridor
24 Agency, what other modalities of transportation do you
25 implement, besides roads?

1 MR. THORNTON: Well, they -- the -- the corridors
2 are actually planned and designed to incorporate both
3 highways and transit usage. And in the regional
4 transportation plans, both for San Diego and the Southern
5 California Ses- (sic) -- Association of Governments, the
6 corridors are designed to include high operative the vehicle
7 plan and its equivalent usage. But those -- those
8 determinations of modality, frankly, were made by those
9 regional transportation planning agencies. That was ---
10 that -- that -- those decisions are made at the regional
11 transportation planning process level.

12 BOARD MEMBER (MR. ABARBANEL): From what you've
13 said, I would infer that TCA agrees that the Tesoro Extension
14 is part of a larger project.

15 MR. THORNTON: It is part of -- it's part of the SR
16 241, which it -- it begins, actually, in Riverside County, as
17 you may recall from the map. And extends, as is designated
18 on the State Highway System, all the way to Interstate 5.
19 So, yes, it's part of the larger system and part of that
20 larger project; correct.

21 BOARD MEMBER (MR. ABARBANEL): What --

22 MR. THORNTON: But -- but, as we've also indicated,
23 Dr. Abarbanel, is that's very typical to look at
24 transportation projects and -- (interrupted)

25 BOARD MEMBER (MR. ABARBANEL): Thank you. Thank

1 you.

2 MR. THORNTON: -- call them straight, for them to
3 be processed in that fashion.

4 BOARD MEMBER (MR. ABARBANEL): Just a -- (mumbled)
5 -- other question.

6 What is the AB-32 impact of the development
7 and the associated road extension?

8 MR. THORNTON: There -- this project is consistent
9 with AB-32. So, for those -- for those of you who are not
10 into nomenclature greenhouse gas issue, AB-32, of course, was
11 the -- the Global Warnings Act that was passed. That has
12 been subsequently expanded through actions taken by the
13 California Air Resources Board to -- (inaudible) -- the 375
14 and other actions. And these projects are actually included
15 within the sustainable community strategy adopted by the
16 Southern California Association of Governments last year.

17 And, so, the San Diego portion -- this
18 portion of course resolves within the SCAG portion. However,
19 the San Diego portion is in the SANDAG, which is sustainable
20 community strategy. So, the project's entirely consistent
21 with the AB-32 implementation strategy approved by the
22 California Air Resources Board.

23 BOARD MEMBER (MR. ABARBANEL): Thank you.

24 Okay. Where are the users of State Route 241
25 coming from and where are they going?

1 MR. THORNTON: That -- that's a very -- that's a
2 very complex question. But, in general, there is the -- the
3 -- 'cause, obviously, there's -- there's a multiplicity of
4 usage of regional highway systems. But, in general, a
5 significant portion is regional trips -- uhm-m-m -- uh --
6 north-south trips. Obviously, folks using -- using these
7 facilities as an alternative to the highway, Interstate 5.
8 And there's a significant component of local trips.

9 But the projects -- the project has a very
10 significant regional use component. And they have a very
11 significant home-to-work component.

12 BOARD MEMBER (MR. ABARBANEL): So, what are the
13 alternative plans for transporting these people and,
14 obviously, goods to their designations?

15 MR. THORNTON: When you're -- when you're referring
16 to "alternative plans," meaning it -- the alternative plans,
17 again, are -- the -- the -- the regional alternative plans
18 are really set by the regional transportation planning
19 agencies. Those decisions are not made by the
20 Transportation Corridor Agency. Those decisions, under
21 Federal and State law, are made by the Southern California
22 Association of Governments with regard to the five Southern
23 California Counties.

24 The TCA Board is not making those decisions.
25 And -- and -- and -- and other folks make those decisions.

1 But we -- (interrupted)

2 BOARD MEMBER (MR. ABARBANEL): I'm sorry. I --

3 MR. THORNTON: -- we're implementing those --

4

5 (Simultaneous speech; unintelligible.)

6

7 BOARD MEMBER (MR. ABARBANEL): I didn't ask you
8 who's making the plans. I asked you what the plans are.

9 MR. THORNTON: Well, the -- there -- there's
10 obviously a comprehensive regional transportation plan for
11 Southern California that is reflected in the regional
12 transportation plan. That has a -- comprehensive has a
13 significant transit component. I referred to one of the
14 transit projects, earlier. The -- (inaudible) -- corridor
15 project is -- is an example of that. But it also has a
16 significant highway component and a highway improvement for a
17 component as a comprehensive plan that gets updated every few
18 years.

19 BOARD MEMBER (MR. ABARBANEL): Thank you. Thank
20 you.

21 (Nod of the head), thank you.

22 CHAIRMAN MR. MORALES: (Nod of the head).

23 BOARD MEMBER (MR. ANDERSON): At this point, was
24 wondering if the -- (inaudible) -- if the SAMP was included
25 in our -- (inaudible) -- or --

1 THE PUBLIC (UNIDENTIFIED): Can't hear you.

2 Can't hear you.

3 BOARD MEMBER (MR. ANDERSON): And -- and --

4 CHAIRMAN MR. MORALES: One second.

5 BOARD MEMBER (MR. ANDERSON): I was just checking
6 to see if the SAMP was included in the -- in the material.

7 UNIDENTIFIED SPEAKER: I just missed it.

8 TCA COUNSEL (UNIDENTIFIED FEMALE): (Inaudible) --
9 not from. San Diego has -- (inaudible).

10

11 (Heretofore noted, for the record,
12 disturbances throughout; simultaneous speech;
13 testimony somewhat inaudible, unintelligible
14 11:16 a.m.)

15

16 BOARD MEMBER (MR. ANDERSON): Okay. Okay.

17 CHAIRMAN MR. MORALES: Can -- uh -- can we have one
18 of our staff at the door, can you just let the folks outside
19 know that their volume is sort of interfering with our
20 ability to hear.

21 UNIDENTIFIED STAFF: Okay.

22 CHAIRMAN MR. MORALES: Thank you.

23 BOARD MEMBER (MS. KALEMKIARIAN): I -- uh --
24 Mr. Chairman, tell me if my question is verging into what you
25 wanna hold for later.

1 The EIR for this portion, in 2,006, was for
2 the entire portion down to Oso Parkway? I mean, down to 5 to
3 Camp Pendleton or just this portion?

4 MR. THORNTON: No. It was -- it was for the
5 entirety of the -- the larger project.

6 BOARD MEMBER (MS. KALEMKIARIAN): Okay.

7 And then, Catherine, I -- this may be
8 something you wanna defer. But, for my education, the point
9 that was just made that we are not the latitude. It's the
10 Regional Board to make the decision to not respect the --
11 (mumbled) -- the EIR or whatever, but our responsibility to
12 look at this other area of significant impact.

13 Can you just, in layman's term, again,
14 explain that? Because when I read the staff order, on Page
15 9, there's some discussion of that. But I still didn't quite
16 understand what it says that "The unavoidable environmental
17 impacts --" I'm reading from the stack -- "triggering elite
18 agencies to adopt statement of overriding considerations are
19 within the areas of the San Diego Water Board."

20 So, if you could just explain.

21 STATE BOARD STAFF COUNSEL (MS. HAGAN): Well,
22 yeah. The -- the finding that is in your current tentative
23 order is not accurate. It's not that -- it may, in fact, end
24 up being accurate, but we're still evaluating. That --
25 that's the -- assignment that was included in the draft, when

1 it went out for public comment, without additional further
2 evaluation. And we recognize that -- that findings will be
3 dependent on it.

4 BOARD MEMBER (MS. KALEMKIARIAN): So, then, the
5 comments for me -- 'cause I think it would help the audience
6 also. And so, that way, in turn, it will help me.

7 Structurally, our area of responsibility as
8 it relates to what's been done before.

9 STATE BOARD STAFF COUNSEL (MS. HAGAN): Well, if --
10 if the board is acting as a responsible agency, generally,
11 your -- the scope of environmental effects you would consider
12 would be within your jurisdiction of the Water Board.
13 However, if circumstances were to change and you needed to
14 evaluate and -- and consider doing a subsequent EIR on your
15 own and potentially shift to lead agency -- and I don't know
16 that that would be the case. That's something that we're
17 evaluating. But, in theory, then, the board's obligation
18 would be to look at all environmental effects, even without
19 your -- outside of your jurisdiction.

20 BOARD MEMBER (MS. KALEMKIARIAN): Okay.

21 So, as to responsible agency, it's limited to
22 overriding environmental, new -- new overriding environmental
23 impacts? So, what's the standard?

24 STATE BOARD STAFF COUNSEL (MS. HAGAN): It would
25 be -- uhm -- well, it would be looking at water quality

1 impacts and -- and making findings about significant effects
2 on water quality and, potentially, doing a statement of
3 overriding consideration. But we really are still lacking of
4 the -- of necessary information. And I -- I'm sorry to give
5 you a -- an incomplete answer, (nod of the head).

6 BOARD MEMBER (MS. KALEMKIARIAN): No, I
7 understand. That -- that was the Chair's point, then. On --

8 CHAIRMAN MR. MORALES: Okay. I have -- uhm -- just
9 one or two questions. Just for my own information and --
10 it -- it -- and nobody should read anything into the -- the
11 questions that I ask. I just have these intellectual
12 curiosities, sometimes.

13 Now, the Cow Camp Road -- I guess, extension,
14 is that going to occur, regardless of the -- whether 241 is
15 extended to Ortega or not?

16 MR. THORNTON: Yes. Cow -- Cow Camp Road is part
17 of the Rancho Mission Viejo approved development plan and --
18 and will -- is an independent project; correct.

19 CHAIRMAN MR. MORALES: Okay. Now, is -- have --
20 uh -- I guess, two other questions.

21 The -- uhm-m-m -- the Rancho Mission Viejo,
22 the Ranch Plan, I think your testimony was something along
23 the lines of they estimate 40,000 new residents. Do we know
24 if -- if that Ranch construction is likewise going to occur
25 without respect to what they're the extension gets

1 constructed or not? Or is it a chicken in the egg thing?
2 Like -- uh-h-h -- it'll happen if the extension; is there or
3 it'll have to happen.

4 MR. THORNTON: They -- their approvals with the
5 County of Orange require them to have an arterial system in
6 place and it has various time deadlines for various pieces of
7 the arterial system. And if the SR 241 is not constructed,
8 that they have a separate obligation to -- to build --
9 uhm-m-m -- the -- basically -- and the arterial system that
10 Dr. Bob showed, basically, in the identical location of the
11 SR 241.

12 CHAIRMAN MR. MORALES: Okay.

13 And then, I guess -- uh-h-h --

14 MR. THORNTON: The on- (sic) -- the only different
15 -- the only difference being, I might point out, is that it
16 would be -- you know, your standard local arterial with soft
17 lights, et cetera, and would not provide the regional
18 functions that our project is assigned to provide.

19 CHAIRMAN MR. MORALES: All right.

20 And, then, I don't know if this is a question
21 for you all. Maybe it's for the staff, I guess. Just one of
22 the -- these curiosity things.

23 Uh-h-h -- where's the water for all the extra
24 folks gonna come from? The -- (inaudible) -- and bear with
25 them, now.

1 EXECUTIVE OFFICER (MR. GIBSON): That's a very good
2 question, Mr. Chairman, one that has been contemplated by the
3 legislature. There is a law on the book that requires
4 communities like Orange County to consider that question and
5 to make that a part of -- (interrupted)

6 THE PUBLIC (UNIDENTIFIED): What was the
7 question? I can't hear?

8 EXECUTIVE OFFICER (MR. GIBSON): Yeah. The
9 question was, "Well, where will all the water come from for
10 the community plans, like the Ranch?"

11 THE PUBLIC (UNIDENTIFIED): Yes. Thank you, yes.

12 EXECUTIVE OFFICER (MR. GIBSON): And, so, it is
13 really up to the County of Orange and for the districts that
14 provide that service to ensure that there is an adequate
15 water supply as well as waste water treatment function for
16 those communities.

17 CHAIRMAN MR. MORALES: Okay, thank you.

18 Okay.

19 MR. THORNTON: Mr. Chairman, I -- I also wanted to
20 make sure, did -- did we answer -- uh -- ask -- adequately
21 answer Board Member Kalemkiarian's question about the
22 conservation easement?

23 BOARD MEMBER (MS. KALEMKIARIAN): Yes. But I think
24 it was also Mr. Anderson's question.

25 MR. THORNTON: Yes.

1 BOARD MEMBER (MS. KALEMKIARIAN): Yeah. I --
2 I guess I have a follow-up, just -- as I understood your --
3 the answer.

4 So, if the toll road isn't approved, for
5 whatever reason, or permits or whatever, then there will be
6 an arterial road which will be a more local two- or four-lane
7 road with stop lights, et cetera?

8 MR. THORNTON: Correct.

9 BOARD MEMBER (MS. KALEMKIARIAN): So, the -- the
10 Regional decision, transportation-wise -- which I know is not
11 what our responsibility is. Is it going to be a toll road or
12 is it gonna be just a regular?

13 MR. THORNTON: That would -- that would be a reg-
14 (sic) -- regular standard arterial, like the ones you see
15 outside the street here.

16 BOARD MEMBER (MS. KALEMKIARIAN): Okay.

17 And will -- uhm-m-m -- will the builders of
18 who have responsibility for the arterial road, which I assume
19 is the developer, have to then come back again to go through
20 the same approval process for the water impacts?

21 MR. THORNTON: That, I can't answer. I can't
22 answer as to what the -- uhm-m-m -- not sufficiently, what
23 they're in process, to know the answer to that question.

24 CHAIRMAN MR. MORALES: You shouldn't have said
25 anything about the NGOs, because it made me think of

1 something.

2 EN MASSE: (Laughter).

3 CHAIRMAN MR. MORALES: Now, the nonprofit that it
4 manages the -- the portion near the high school, that's
5 already in place -- (interrupted)

6

7 (Simultaneous speech; unintelligible.)

8

9 MR. THORNTON: I had to clarify that. The -- the
10 TCA holds the conservation easement. And, for those -- for
11 those of you who may not be into the nuances of the
12 conservation easement, that's a creature created by State
13 law. It has to be held in perpetuity. Basically, it runs
14 with the land. It precludes any future development and other
15 uses that are incompatible with conservation purposes.

16 The TCA is the grantee. Ultimately, our
17 objective would be for all of our mitigation properties to
18 have any nonprofit trust, being responsible for managing
19 that. There is a trust that was set up as part of the
20 Habitat Conversation Plan, Rancho Mission Viejo Plan that was
21 referred to. Again, a system approved by the environmental
22 groups that are opposing our projects. So, they've already
23 approved that system, signed on to it.

24 The Fish and Wildlife Agency, both at the
25 State and Federal level are beneficiaries of those easements,

1 those conservation easements an added -- (mumbled) -- force
2 and authority.

3 CHAIRMAN MR. MORALES: And -- and thank you.

4 My -- my question was, it will be managed by
5 the trust or a -- a nonprofit. And it sounds like it's
6 already been generated. Who's managing it and how is it
7 funded? Because a management is only as good as --
8 (interrupted)

9 MR. THORNTON: The TCA has commitments in all of
10 its approvals and agreements, with the resource agencies, to
11 fund the ongoing maintenance and management of those
12 properties.

13 CHAIRMAN MR. MORALES: Thank you.

14 Okay. Any other questions?

15 Okay. Let's take a -- uh-h-h -- I've got
16 about 26 after. So, reconvene four or five minutes, folks,
17 no later.

18 Adjourned.

19
20 (Heretofore, short break commenced 11:26 a.m.
21 Proceedings reconvened 11:36 a.m.)
22

23 CHAIRMAN MR. MORALES: Let's go ahead and get
24 start, folks. We're gonna start off with more testimony,
25 now, from the NGO. But, before we do, one of our Board

1 Members, Gary Strawn -- who is basically helping and he's in
2 charge of the public comments -- has a few things to say.

3 VICE CHAIRMAN MR. STRAWN: If I can make a request,
4 please.

5 If we -- we've had a lot of complaints about
6 people not being able to hear -- uhm-m-m -- we've had a lot
7 of that, because of all the noise coming from the back of the
8 room. People trying to get in here and hear. My
9 understanding is there are TVs and audio right around, to my
10 left (indicating). And they can hear fine, in there. And
11 then we'll be able to hear in here. And, so, I really
12 encourage the people that are stacking up by that back door
13 to please step around here, to my left, and we should all be
14 able to hear.

15 Thank you.

16 CHAIRMAN MR. MORALES: Okay.

17 So, we're -- we're going to begin, now, with a
18 testimony from the NGOs. We said that you all have about an
19 hour to do your presentation. Let's go ahead and take this
20 past the noon hour. So, we would like to keep it as close to
21 an hour as possible. If you can come in slightly under an
22 hour, we would appreciate it.

23 We'll take a condensed lunch and try to
24 reconvene as close to 1:00 as possible. Although it may be a
25 bit later, by a few minutes. At 1 o'clock, it is -- we have,

1 as I mentioned, a time certain for government speakers.

2 So, with that -- please state your name, that
3 you've taken the oath and proceed.

4

5 (Heretofore noted, for the record, official
6 surnames and spellings were not received.

7 Therefore, names and titles are phonetically
8 spelled throughout testimony.)

9

10 NON-GOVERNMENT ORGANIZATIONS

11 MS. FALDEN: Good morning. My name is Sarah Falden
12 (phonetic). I'm the vice president for programs for the
13 California State Parks Foundation. And I have taken a oath.
14 This morning I'm here representing the entire San Onofre
15 Coalition. Which has worked closely together for nearly a
16 decade at the San Onofre State Beach.

17 Our coalition is made up of the following
18 groups: The California State Parks Foundation, Endangered
19 Habitat's League, the Natural Resources Events Counsel,
20 Surfrider Foundation, Orfices (phonetic) Coast Keeper, Sierra
21 Club, California Coastal Protection Network, (mumbled) wild
22 coast, Defendants of Wildlife, Greenbelt and Auto Bog
23 (phonetic) California.

24 Together, I've instructed over a million
25 citizens in California. And I would like to speak a little

1 to that. But, before I do, I have just a very quick
2 clarification I'd like to request. Earlier, when the board
3 was addressing testimony and questions relating to CEQA, I
4 wanna confirm that you were referring to -- deferring
5 questions related to CEQA as opposed to testimony related to
6 CEQA. In other words, we, the engineers will have an
7 opportunity to present our testimony relate to CEQA, today,
8 as the TCA did. Is that correct?

9 CHAIRMAN MR. MORALES: That is correct. And, in
10 fact, at -- at the end of the day, we may have more specific
11 questions that we have for you all to address or brief
12 further. And we'll give you a schedule for that.

13 MS. FALDEN: That's fine.

14 CHAIRMAN MR. MORALES: And --

15 MS. FALDEN: We'll -- we'll be prepared.

16 CHAIRMAN MR. MORALES: And to the extent that we
17 have follow-up questions, there will be an opportunity at the
18 future meeting for testimony on that as well. That, yes,
19 you -- you may present on that -- on CEQA. We'll try not to
20 spend to much time on that.

21 MS. FALDEN: Thank you.

22 Our members of San Onofre, many times, from
23 this state beach from this constructive toll road.
24 Approximately a thousand people attended the California State
25 Park and Recreation Commission for a period, in San Clemente

1 in 2,005. Over 3500 attended the 2,008 Coastal Commission
2 here in Del Mar. And 3,000 more were at the Department of
3 Commerce hearing later that same year.

4 In the year since the 2,008 decision of the
5 U.S. Department of Commerce to uphold the Coastal
6 Commission's denial or permission to proceed with building
7 the toll road, our coalition and its members have carefully
8 monitored the evolution of the TCA's efforts to circumvent
9 the Oso Commission (mumbled).

10 Today -- those same members have stepped up to
11 the plate, once again. You have received approximately 5,700
12 letters in support of stopping this ill-advised toll road
13 segment. A high level of concern demonstrated by our
14 members, both through their letters and their attendance of
15 this meeting speaks volumes to the community's opposition to
16 this project. Today's representatives of our organizations
17 will address specific concerns related to the toll road of --
18 and the Water Board's upcoming decision. First and most
19 importantly, we will discuss the improper segmentation of the
20 toll road and its impact on the larger project and
21 surrounding area.

22 Next, we will talk about water quality and
23 then biological imbalance. Last will be addressing
24 procedural issues related to this process, including timing,
25 notice and public participation.

1 Thank you for giving us the opportunity to
2 address you today and for your close attention to any issues
3 raised in our -- (inaudible).

4 MR. WHITE: Good morning, Board Members. My name
5 is Bill White. I'm an attorney with (inaudible) and
6 Weinberg. And I wanna talk to you today about CEQA and why
7 we think this board should refrain from taking any action on
8 this project. So, if supplemental or sub-sufficient
9 (inaudible) to be prepared for the toll road projects.

10 Now, we've already heard a lot about the
11 Tesoro Extension. And we've heard that the Tesoro Extension
12 is very similar, almost identical to the first phase of the
13 toll road project that was analyzed in 2,000 and 6. But this
14 is the wrong question. The question is not how similar the
15 -- that project is the focus study. But rather how similar
16 the entire toll road project, as it is now conceived is the
17 focus studies in 2,006.

18 From virtually the moment that TCA was
19 created, in 1986, it had -- has had one sole and overriding
20 effect. That has been to construct the toll road all the way
21 from Route 91 to the I-5. The problem has been that this
22 last -- the 6 -- the last 16-mile segment of that toll road,
23 which we -- it has been re- (sic) -- called the Foothill
24 south portion of the toll road. That runs almost entirely
25 through pristine open space and important habitat and is

1 being considered by many as one the most destructive --
2 environmentally destructive projects in the State of
3 California.

4 Now, it is true that, in 2,000 and 6, the TCA
5 prepared an Environmental Impact Report of Foothill South
6 Project that analyzed the impact of that project. The groups
7 that were -- that I represent did object and did file a
8 lawsuit, along with the attorney general's office,
9 challenging adequacy of that EIR.

10 Mr. Thornton earlier referred to the
11 settlement agreement that -- that the parties entered into,
12 following the Coastal Commission's decision rejecting the
13 toll road project. That was not a settlement agreement
14 resolving the CEQA issues. It was simply a dismissal of the
15 lawsuit, because the coast- (sic) -- the Coastal Commission
16 and -- and the Department of Commerce subsequently stopped
17 the project. And we agree that the lawsuit was now moot.
18 And we agreed to withdraw it, but with a right to refile it,
19 if TCA ever decided to proceed with the toll road project.

20 Now, we had thought -- most people thought
21 that the Coastal Commission's action which held that the last
22 segment of the toll road, impacts were so severe and --
23 and -- and that the TCA had failed to adequately consider
24 alternatives to that -- to that project, that it violated the
25 Coastal Zone Management Act. That position was upheld by the

1 secretary of Commerce for the Bush Administration. And we
2 felt that that resolves this issue. But it seems, now, that
3 it did not.

4 The effect of those decisions was that, if the
5 toll road were to proceed, it will need to find a different
6 connection to I-5. The last segment, at least, of the -- the
7 toll road project, as it was described in 2,006 EIR, were no
8 longer legally viable. But the TCA's strategy to move
9 forward with this project has been to simply ignore that
10 position. It has been five years, since then. And we still
11 don't know what the project is that TCA is proposing.

12 We don't know where it would go. We don't
13 know where it would connect to the I-5. We don't know who
14 would be effected. We don't know what the environmental
15 impacts of that project would be.

16 Why? Why is this? Well, it seems that the
17 TCA has adopted a new strategy for moving this project
18 forward and, that is, to just start building. What the TCA
19 wants for this board to do is to move forward with an
20 approval of the first segment of the toll road, based on the
21 2,000 and 6 EIR. Even though that project analyzed a proj-
22 (sic) -- a total of configuration that has been invalidated
23 by State and Federal Agencies.

24 They want you to act as if those decisions
25 never happened and -- and -- and that they don't matter.

1 Well, they did happen and they do matter under CEQA. Because
2 when a project, like the toll road, changes or when the
3 circumstances under which it is to be undertaken change --
4 uh-h-h -- in a way that will cause new significant
5 environmental effects or substantial increase, given the
6 severity of it, it is what's considered environmental
7 effects. The supplemental or a subsequent EIR is required.
8 And the first step in this making that determination is to
9 identify the way in which the project has changed.

10 We can't even get to that first step, here,
11 because the TCA has refused to tell the public or to tell
12 this board what is the proposed project. We know that it's
13 not going to include the last segment that was previously
14 approved by TCA. What -- where will it connect to the I-5?
15 What -- follow one of the alternatives that were studied in
16 the EIR? We don't know.

17 The TCA has previously found all of those
18 alternatives were infeasible, for various reasons. Are they
19 changing their mind on that? Are they gonna modify those
20 alternatives? Or are they gonna do something completely
21 different. They've spoken in the past about realigning the
22 toll road so it goes further east, through Camp Pendleton.

23 Is that the -- is that the new project? We
24 don't know. Until there's a actual stable project
25 description for the toll road, whose impacts have been

1 analyzed, the board is really not in a position to take
2 action on the project.

3 And that brings us to TCA's final argument,
4 which is, well, we should -- this board should just ignore --
5 even though it's asking you to rely on the EIR for the toll
6 road project, it's asking you to ignore the toll road project
7 and, instead, treat the Tesoro Extension as a separate
8 project. And, as was described earlier, this is called
9 "piece mealing" or "segmentation." And the reason that
10 segmentation or piece mealing is prohibited, under CEQA, is
11 because the fundamental purpose of CEQA is to consider
12 totality of potential impacts of an action before resources
13 are committed to that action; before, not after. And we did
14 see some slides, earlier, of other transportation projects
15 which supposedly were adopted -- were -- were approved with a
16 similar process as this.

17 We haven't looked at all those projects. But
18 I can tell you, most transportation projects are constructed
19 in phases. That doesn't mean the environmental review for
20 those projects is done in phases. And, in fact, the toll
21 road project had earlier been reviewed that the first portion
22 of it had earlier been reviewed in environmental document.
23 And the entirety of the second portion of the project, the
24 Foothill South, had also been reviewed in environmental
25 documents. But each individual phase didn't get its own

1 separate environmental review.

2 The question is not whether some large
3 transportation projects proceed with environmental review,
4 sometimes, in segments. But whether -- whether a particular
5 segment stands alone and makes sense from a transportation
6 perspective. That is the question. Now, TCA wants you to
7 believe that the Tesoro Extension meets that test, that this
8 five-mile portion of the 16-mile toll road -- which had never
9 previously been considered as a standalone project --
10 suddenly, after all these years, has all this -- uh --
11 significance on its own and is important, from a
12 transportation policy perspective.

13 They say that it's needed to serve the Rancho
14 Mission Viejo Project. In particular, that it's needed to
15 serve the build out of the project or, at least, the -- the
16 development of phase -- of Planning Area 2. Well, Rancho
17 Mission Viejo was approved nine years ago. And they still
18 are only beginning to construct homes in Planning Area 1. We
19 have no idea what's gonna happen in Planning Area 2.

20 It's -- uh -- it's -- although she say it
21 makes it seems as if -- they've just submitted an application
22 for development of the -- of the planning area, recently. It
23 would take years before they actually pull any permits. And
24 we -- we don't know whether the -- the market will support
25 demand for that or when or what the absorption of those units

1 is gonna to be and yet TCA wants to build a 200 million
2 dollar limited access toll roadway to serve that project?

3 The Corps of Engineers has said, given the
4 uncertainty of the development, that -- as they put it, this
5 could be a, quote, "road to nowhere." And that is certainly
6 an accurate description of the project. But even if we knew,
7 for sure, that the development of Rancho Mission Viejo would
8 be completely filled out and we knew when it would happen, it
9 still -- this project still does not have utility. Because
10 the question is not whether that project requires a north-
11 south access road. The question is whether that project
12 needs this toll road, this limited access tollway to support
13 it.

14 And the answer to that question is clearly,
15 "no." Rancho Mission -- as it was noted earlier, Rancho
16 Mission Viejo has its own north-south access road that will
17 be built. It's called "F Street." It is an arterial road.
18 It will provide for all the transportation needs of the en-
19 (sic) -- of the project. Nothing more is needed to support
20 Rancho Mission Viejo. So -- not -- so -- and it would
21 accommodate that development better than the toll road.

22 We heard a lot about the need to have free
23 flowing traffic. Well, when you're -- live in a residential
24 development, you don't have a road that's got limited access
25 and that can't be developed as -- uh-h-h -- for bicycle use

1 or for pedestrian use. And you don't wanna have to pay to
2 use it. What you want is an accessible street. And that is
3 not what the -- what the toll road would do.

4 The only rationale for building something in
5 that location, to -- and that is limited access and that
6 is -- requires you to pay toll, is to extend the toll road to
7 the I-5. But you don't have to just take my word for it.
8 TCA, in 2,000 and 6, considered an alternative that was
9 almost identical to the proposed Tesoro Extension. It was
10 called the "Far East Corridor Ortega Highway Variation
11 Alternative." And here's what it says about that.

12 "That alternative performed poorly for the
13 traffic measures, because this alternative
14 terminates that Ortega Highway. It does not
15 provide a connection to I-5."

16 So, why are they taking this new approach all
17 of a sudden? Uh -- well, read the TCA's staff report. What
18 they said was that they came up with this idea of, quote:

19 "Constructing the project in segments, as a
20 way to move the project forward, while the
21 whole alignment was," quote, "being adjusted."

22 Ya know, I've seen a lot of things in the
23 staff reports that are funny in -- over the years. But this
24 is really a shocking and candid statement. And -- and it's
25 accurate. That is exactly what's going on. They want to

1 start constructing the beginning of the project before they
2 know where the end of the project's gonna go.

3 You know, Army Corps staff, before they
4 determined that they didn't have jurisdiction over this
5 project, was considering the identical issue underneath NEPA
6 (phonetic). And what they said about this is -- the TCA's
7 approach is that it would, quote, "present major NEPA
8 problems" and also that it's, quote, "beginning to look like
9 the classic case of segmentation."

10 Under CEQA, the prohibition against
11 segmentation, if anything, is stronger than under NEPA. It's
12 a standard that's been in place for twenty-five years. And
13 laurel Heights position is CEQA doctrine has got to study the
14 impacts of development that is, quote, "reasonably -- of
15 reasonably foreseeable consequence of the project." That's
16 the standard, "reasonable foreseeable consequence."
17 Everything that we know about the history of this project
18 leads to one conclusion. And, that is, the extension of the
19 toll road all the way to the I-5 is and always has been TCA's
20 one and only objective for this project.

21 And it is clearly a reasonably foreseeable
22 consequence of approving and moving forward with the Tesoro
23 segment. So, what we ask is -- and we ask for TCA to come
24 clean with the public. Sit down and do the work of figuring
25 out what they wanna build, so that the public can analyze it,

1 discuss it and understand the environmental impacts of it.
2 And, until that time, we ask that the Board refuse to
3 continue processing TCA's application.

4 Thank you. And I'm -- I'm happy to answer
5 questions here or -- or at the next meeting.

6 CHAIRMAN MR. MORALES: I think, with respect to
7 questions pertaining to CEQA, we'll probably hold those to
8 the next meeting.

9 MR. WHITE: Okay.

10 MS. SEKA: Good morning, Board Members. My name is
11 Stephanie Seka (phonetic) and I'm with the Surfrider
12 Foundation. I'm the California Policy Manager. As a matter
13 of -- of procedural issues, my -- uhm-m-m -- director
14 of legal matters for the Global Organization of Surfrider
15 Foundation is here, Angela How (phonetic). And she asked me
16 to clarify something. That our organization was not involved
17 with the settlement of Rancho Mission Viejo, as has been
18 characterized today.

19 It's also working on the (mumbled) individuals
20 that were involved in that settlement, but signed an
21 agreement that they would be able to speak out against the
22 toll road. So, that is not even part of my presentation.
23 But, with a little more people, I thought it was important to
24 throw it in there.

25 I'm gonna give you a very broad kind of 60,000

1 foot (sic) review of the impacts that would happen on this
2 watershed. My colleagues, thereafter, will -- will follow-up
3 with very technical analysis of these impacts. But I wanna
4 kind of start a higher level for view. I'd like to reiterate
5 that our coalition sent you a letter, a couple weeks ago,
6 that outline two fundamental concerns. The first is that
7 this road will have the reduction from coarse sediment that
8 would impact the beneficial uses of this watershed and the
9 San Juan Creek.

10 And, secondly, the San Juan Creek is a coastal
11 stream. Therefore, any reduction of sediment within that
12 creek would impact the coastal zone and coastal resources. I
13 even remember this from my 7th grade sedimentary class
14 (mumbled) geology, back then.

15 Before I evaluate the specifics of my
16 testimony, I -- I would just like to cut to the chase, quite
17 frankly, and point out something very obvious. The San Juan
18 Creek Watershed is significantly impaired. It doesn't take a
19 rocket scientist or hydrologist to figure that out. In fact,
20 in 2,000 and 5, the Army Corps of Engineers said that this
21 entire watershed has a sediment start from 1974. And they
22 said -- and I specifically quote -- "that the San Juan Creek,
23 from Bell Canyon to the ocean outlet, is significantly
24 degraded."

25 Therefore, it's incumbent upon you, as an

1 agency, to focus on the existing beneficial uses of this
2 watershed and how to protect them. The TCA application does
3 nothing absolutely nothing to protect benefit -- beneficial
4 uses of this watershed. And I think this is a huge and
5 critical point here, that -- that has really been skimmed
6 over. Their -- their application -- and their staff knows,
7 just as well, primarily focuses on pre-project flow rates.
8 And it really really skims over the coarse sediment road
9 transport.

10 You know, what that getting over the court --
11 coast -- coarse sediment transport does is, it starts cutting
12 back your recently established hydromodification management
13 plan. You know, I mean, I know that you guys spent copious
14 time in 2,011 trying to create some HMP. I said the TCAs are
15 kind of "fly in the face of that hard work" and actually
16 really not put much ana- (sic) -- analy- (sic) -- analyzing
17 into the coarse sediment is -- it's really disservice to all
18 of the hard work that you guys have done in the past.

19 So, in addition to us being extremely
20 concerned about them trying to circumvent the -- the HMP,
21 we're very concerned that they've overlooked impacts to the
22 coastal zone and to the near shore environment that's there.
23 I mean, if you have less sediment, less coarse sediment
24 coming from a stream that's going to B, you're going to have
25 less sand on the beaches, over time, which will implicate how

1 beaches -- beach users are going to actually use the ocean
2 and the coast there.

3 Secondly, San Juan Creek is the major source
4 of sand for the beaches and around San Clemente. And that
5 area are (sic) experiencing extreme erosion. And the City of
6 San Clemente, right now, is contemplating spending millions
7 of dollars putting sand back on their beach, the sediment
8 from coming from San Juan Creek. And I think, for a surf
9 rider and -- and most importantly is that, when you alter
10 coarse sediment up in a watershed, that is gonna have
11 implication on how things fork in the coastal zone. And,
12 yes, that could be a start spot.

13 That could be how people go and wade in -- in
14 the water there. I mean, San Juan Creek, I -- I -- I know
15 that most of you know. Because it is your job to know the
16 water territories here. But the San Juan Creek direct -- it
17 -- it dumps right into the ocean, right there. So you have
18 to know the -- the sediment, that's not gonna be any better
19 for the surf.

20 Playing in the sand, playing on the beach, it
21 will be altered in, immensely, over time. And I think that's
22 a huge point that needs to be made. Especially considering
23 that the Army Corps of Engineers has said that its watershed
24 is suffering already. It's really incumbent upon you to
25 protect what is there already. The last -- you know, strand

1 of what we have there.

2 And, finally, in terms of public safety, which
3 the TCA likes to mention a lot. I think it's really critical
4 to bring that back. Once again, we're concerned about public
5 safety, in terms of erosion. The Army Corps of Engineers
6 said, in 2,000 and 5, that the -- this -- you know, sediment
7 decreasing has exposed important infrastructure and has
8 already caused sewer and pipe lines to fail. This is already
9 happening.

10 And they are gonna ask for more of the
11 segregation of that watershed. In terms of public safety, it
12 just can't handle that. So, in closing, we're really
13 concerned that the TCA is overlooking coarse sediment flow.
14 It has to be Coastal knows. And we're extremely troubled
15 that they're trying to circumvent your HMP levels and we ask
16 that you hold them accountable.

17

18 (Pause in Proceedings 11:51 a.m. to
19 11:52 a.m.)

20

21 MR. HEINSTRA: Good morning, Board Members. My
22 name is Ray Heinstra (phonetic). And I am the associate
23 director of Orange County Coast Keeper. I'd like to point
24 out that we are also not one of the parties to any of the
25 previous agreements or opinions on BMPs or anything else.

1 One of the things I'm -- I'm gonna -- I'm
2 gonna focus on is water quality. That's our -- our mission.
3 So, we're -- I'm very -- specifically focusing on water
4 quality. In the tentative -- tentative resolution 6 --
5 Section 6, it states that "receiving waters shall not ex-
6 (sic) -- exceed basin plan or CTR -- CTR requirements."

7 One of the first things you wanna do is, if
8 you're -- you're -- if you have a goal like that is, you need
9 to design your BMPs to the -- (mumbled). And, yet, there's
10 no baseline water quality data for the -- for these receiving
11 waters, either the -- either the re- (sic) -- the Gobernadora
12 or Chiquita Creek or for the -- for San Juan Creek, in the --
13 in the area of the project. So, this is something we've
14 asked the TCA to produce on numerous occasions. Whenever you
15 design the project, the first thing you wanna do is decide
16 where you're at and then start from there. So I think one of
17 the first things the board should do is require that the
18 baseline data be -- be -- uh -- required.

19 We did a very limited study, ourself (sic),
20 and found that fifty percent of our water quality tests for
21 metals exceeded the CTR quality criteria. So, there is a
22 potential for water quality issues there and I think we
23 should be designing -- designing to those. Then talking
24 about BMP. So, we wanna look at the past performance of the
25 TCA on -- on BMPs and water quality protection. Well, to

1 start off with the -- with the San Juan -- uh -- with the San
2 Joaquin Hills corridor.

3 This board was aware of what happened there.
4 They put in, at that time, state of the science BMP that
5 turned out to not work -- not work, at all. And it end up
6 having to be replaced, after a -- after a court order
7 requiring that, in order -- uh -- by CalTrans, to go ahead
8 and fix -- and fix the problem. The -- look at -- at 261
9 toll road. There was a decision made there to put -- in-
10 (sic) -- instead of putting the road on top of lines, to
11 avoid a high water table, to de-water the area, to build the
12 road up -- on the -- on the ground and then go 'head and
13 de-water to keep it from flooding did that also involve the
14 state of art at that time? Yeah, 'til you got your
15 procedures (phonetic) facility.

16 Well, it turned out that the effluent from the
17 demodification facility was wildly high in -- in solidium.
18 And nobody had really looked at solidium as an issue. And it
19 turns out solidium is a huge issue in this watershed. And
20 now this is the primary source of salinium (phonetic) in --
21 in the -- in the watershed. It's from misty water from a
22 dewatering operation.

23 It's now having to be treated by the Irvine
24 Ranch Water Qual- (sic) -- Quality District at a cost of
25 900,000, a year, to the -- the tax payers. On the -- on the

1 Tesoro Project, they're proposing sand filters. That is a --
2 you know, that is a BMP. Whether it's the appropriate BMP
3 for the wat- (sic) -- unknown water quality issues that we
4 have in the receiving waters. I -- I don't know. I can't
5 make a recommendation on that.

6 But we need to -- what we needed to do is find
7 out what we really need to do and decide the BMP properly for
8 those receiving waters. The permeable pavement, that --
9 that's this logo's nice ideas. However, what happened on the
10 73 is that, only about five years later, they went back and
11 repaved the area. Probably have to here. Are they gonna
12 receive that, with permeable pavement? Uh-h-h -- who knows?

13 So, moving on, on 303(d) listings that the
14 staff report mentioned, the San Juan Creek, lower San Juan
15 Creek is already listed for six parameters on 303(d) list.
16 What we're really concerned about is, without proper BMPs,
17 without properly studying the issues, we can end up with the
18 whole creek thing -- (mumbled). And the last thing we need
19 is a -- is more sections of creek in this (mumbled) region
20 that's more problems to deal with. So, the monitoring needs
21 to be done. BMPs really need to be designed to make sure --
22 to ensure that we don't end up in those things, not just
23 guessing, the way we are right now.

24 Finally, this is a steel-head drop restoration
25 area. So, we need to look at the impact this may have on the

1 steel-head drop. Copper, in specifically, has a -- had
2 variable level, has the effect of disorienting salmonoids
3 (phonetic).

4 So, it's one of those things that are related
5 and need to be concerned about. Copper is a -- is a typical
6 runoff in -- in road- -- uh -- essentially, in roadway
7 runoff. And, also, this is a designated -- the -- the
8 receiving waters are designated as cold water streams. So,
9 what's the impact of having the freeway putting runoff into
10 that, on that cold water designation? Is it gonna flip it
11 over to a warm water designation? Change -- change the whole
12 system? In which case, that takes care of its -- that --
13 that finishes of the steel head.

14 So, these are some things that I'd -- we'd
15 really -- I'd really like you to consider. And I think you
16 should put off adopting this permit. And, at the very least,
17 baseline the water quality, this is done. I really think a
18 very specific EIR needs to be done to address the specifics
19 of this project, rather than just using something from the
20 past. Thank you.

21

22 (Pause in Proceedings 12:07 p.m.)

23

24 MR. PAULSON: Good morning. My name is Andy
25 Paulson (phonetic). And I'm the principal geomethologist

1 (phonetic) for the (mumbled). And I'd like to add to your
2 already bulging pile of paper, if you don't mind, by giving a
3 handout that would cover the slides to that. Thank you very
4 much.

5 So, I'm the director and principal
6 geomethologist of (mumbled). And, in that capacity, I was
7 the lead geomethologist in San Diego County HMP and also the
8 Contra Costa County HMP; and, then, also several additional
9 HMPs from municipalities and developers. And, so, a lot of
10 my work is focused on hydromodification. And that's gonna be
11 the main focus of my testimony today.

12 I'm going to be talking about the adequacy of
13 the TCA technical documents and addressing hydromodification
14 impacts. And also looking at the impacts of beneficial uses
15 of receiving water in this system.

16 If you'd go to the first slide.

17 So, a fundamental concept in the channel
18 geomethology is that stable channels are imbalanced between
19 the amounts of water that's delivered by the watershed and
20 the amount of sediment that's delivered by the watershed.
21 And that balance maintains the channel form. So, a channel
22 that is stable is evolved to be in equal agreements. Being
23 that the sediments in this water are delivery coming from the
24 watershed.

25 Next slide.

1 So, it also follows that, if you disrupt
2 either the supply of water or the supply of sediment, you
3 throw the channel out of -- out of equilibrium. And, so,
4 channel instability and channel erosion problems tend to
5 arise from a dramatic shift in the amount of water or the
6 amount of sediment that's being delivered to the stream
7 channel. And the next few slides show some examples of
8 that.

9 So, for example, if we increase the amount of
10 water going into the -- uh -- so, if we increase the amount
11 of sediment going into the channel, then that tends to shift
12 the balance over on one side. And the next slide will show a
13 typical response from that. So, if you increase the amount
14 of sediment supply into a watershed, you will tend to get
15 aggravation. The channel will fill up with sediment. The
16 next slide shows the converse of that, which is more relevant
17 to this situation.

18 If you get an increase in water or an decrease
19 in sediment, then system will tend to degrade. So the
20 balance will shift over onto the other side. And the next
21 photo shows the look -- the response. So, when we talk about
22 hydromodification, we're talking about these channels on the
23 left, that is down and eroded and started to suffer the
24 impacts for their beneficial uses.

25 Go to the next slide.

1 So, most people understand very clearly that
2 the increase in the amounts of water that runs off the
3 development project into a creek can cause a situation like
4 the one we see on the left-hand side. But it is less
5 apparent and it's really something that we've only recently
6 (mumbled) come to terms. But we can get the same effect by
7 reducing the sediments. In particular, by reducing the
8 amounts of bed sediment that gets into this -- into the
9 creek. And this is sometimes referred to as "hungry water
10 effect," where we have water that doesn't contain sediment
11 running off the development projects, which is a freeway.

12 Getting the -- excuse me. Getting into the
13 creeks without pairing (phonetic) sediments. It needs to get
14 back its sediment lead -- sediment load. It needs to take up
15 additional sediments to use up that capacity. So it fills
16 that, by mining the beneficial impact of the receiving
17 waters. It does it by causing -- by causing precorrosion.
18 And so that's the hungry water effect that we get from
19 sediment starvation.

20 Go to the next slide.

21 And, so, there is a typical response that
22 channels go through when that effect takes place. Basically
23 the channels initially, starting at the top of this figure,
24 are an equilibrium. They start to cut downwards into their
25 bed, initially. 'Cause they're taking up -- the hungry water

1 is picking up bed sediments. Then, once the banks become too
2 high and the (inaudible) collapse, we then get up the loaded
3 grain fine sediments because the banks tend to be fine
4 material being released into the stream.

5 That fine sediment, for example, can show us
6 fine habitat fish downstream and it tends to change the
7 dynamics of the stream between the relatively coarse system
8 to much more of a fine expanded sediment system. So, this is
9 a typical response that we see.

10 Next slide.

11 So, Hydromodification Management Plan is
12 specifically designed to prevent these things from happening,
13 to protect the beneficial uses of the stream. And I've been
14 working in HMPs for the last ten years in this State. And,
15 so, I've seen the evolution of HMP planning. The initial HMP
16 is all focused on the waterside of the equation. So, most of
17 the HMP is developed up-to-date, are very focused on things
18 like doing LIDs and having detention basins, controlling
19 ranges of critical flows and -- and, essentially, trying to
20 get the -- the waterside of the equation, after development,
21 to match pre-project condition.

22 Much less attention is being put on the left-
23 hand side of the equation on the southern transport side of
24 the equation. And that's really something that's suddenly
25 just starting to happen at the moment. And, so, some

1 comments were made earlier by the TCA regarding the SAMP, the
2 "special area of management plan," which my company was
3 involved with, as part of the Orange County planning. And,
4 so, I want to just sort of make some points about how SAMP
5 fits into this evolution. We can think that SAMP is sort of
6 an early topographic modification management plan.

7 The technical work that SAMP discussed, in
8 1999, it was completed less than 2,003. And, so, although
9 SAMP has only come out in 2- (sic) -- 2012, there's been a
10 big delay in the process for implementing SAMP. The
11 technical studies were done between 1999 and 2,003. And,
12 during that time, they were the states of the art. That was
13 where hydromod (sic) was.

14 It was really focused on the waterside of
15 equation; but it was not focused on the sediment side of the
16 equation. Indeed, the San Diego part of the mod (sic), which
17 was only implemented a couple of years ago, also focused
18 primarily on the -- on the waterside and only began to look
19 at sediment.

20 The next slide.

21 Orange County, however, has actually taken a
22 step forward. It's not just looking at the -- at increases
23 in water that you get from an incopious (phonetic)
24 development, but it's also looking at the reduction in
25 sediment. It's looking at sediment starvation. And, so, in

1 that respect, the Orange County agency really is sort of the
2 state of the art for the -- for this period, for 2012,
3 2,013. So, it's been able to fold in a series of measures
4 which people have been talking about for the last ten years,
5 but which haven't made it through its permit process until
6 now.

7 And it -- it is no coincidence that this is --
8 this is the County. Orange County is a very sensitive
9 environment. It has, amongst the highest sediment, not just
10 in the State of California, but in the United States. So,
11 it's a -- an environment that is particularly vulnerable to
12 changes, even more so, in sediment delivery.

13 And the applicants, in their response to our
14 initial study, said that the -- their initial study focused
15 on the use in the Orange County Hypographic (sic)
16 Modification Management Plan as a -- uh -- as the permit
17 process. They were trying to conform with the HMP.

18 When we raised some comments pointing out that
19 they could not actually conform to the sediment transport
20 side of it, they said, "Well, actually, we're gonna look at a
21 CalTrans sediment instead. We'll look at the CalTrans
22 hydromod (sic) permit. And they stated that the CalTrans
23 hydromod permit is functionally the same as the Orange County
24 permit.

25 Now, in fact -- this isn't the case. The

1 Orange County -- the Orange County permit, first of all, has
2 this provision where applicants are required to look at
3 sources of sediment and then try to preserve that sediment
4 and mitigate for it. That isn't present in the CalTrans
5 Hydromod Program. The hydro -- the CalTrans Hydromod Program
6 also is focused on contention basis and it's focused on
7 retaining the (inaudible) percentile storm, whereas the --
8 uh-h-h -- the Orange County HMP is focused on much more
9 sophisticated flow duration controls.

10 So, it's really not an apples-to-apples
11 comparison to say that these two pieces of stone water are
12 permitting a design to cover the same processes. So, we
13 would argue that the Orange County Agency is both much more
14 protective of beneficial uses and also it's much more
15 applicable to this particular type of landscape.

16 Next line, please.

17 So, in reviewing the TCA's application, this
18 is the language that comes out of the Orange County HMP,
19 simply talking about separately management. It lays out
20 three steps that applicants are required to do, in order to
21 make sure that they are not causing sediment starvation in
22 the system. Essentially to identify watershed, the high
23 source of the sediment. To then go in and look at their
24 vulnerability (phonetic). And either to avoid them, if
25 possible or if -- if it's impossible to avoid them, to

1 mitigate avoiding them. This is not found, these steps to be
2 carried out in the applicants permit application.

3 Next line.

4 So, if we look at the alignment -- the
5 proposed alignment of the road, it cuts right through a
6 series of very steep head water areas. I think the next line
7 shows this just a little bit better. This oblique area shows
8 the type of head waters that we're talking about. So these
9 are exactly the locations that are a main source of sediment
10 or cause sediment in the system.

11 I also wanna talk little bit of types of
12 sediment. TCA, in their response earlier on this morning,
13 said these systems -- the SAMP system, they're not coarser.
14 They refer to them as "SAMP systems" rather than coarse or
15 gravel or pebble systems.

16 Finally, it's bed load. The illicit and SAMP
17 is the bed material. The San Juan system is a -- primarily a
18 sand driven system. So, the -- the high -- the HMP for
19 Orange County is designed to protect the bed material. It's
20 the material that makes up the boundary of the channel, not
21 the fine suspended material that washes in, for example,
22 sheet wash. So, this is still very relevant. The fact that
23 this is a sound system does not mean that it's not bed
24 material.

25 Okay, next line.

1 So, the other part of this, then -- so, first
2 of all, the TCA studies did not look at the sensitivity of
3 these watersheds. They hadn't done those studies that are
4 required to see whether they are sensitive. And, if so, seem
5 to -- seek to avoid those areas. They have proposed
6 mitigation for some of those areas. But we did not find the
7 mitigation site that's being proposed to be equivalent, from
8 the sediment delivery perspective to the areas that are being
9 impacted.

10 And the next graphic, I think, shows that.
11 So, again, if we look at the oblique area of the photos, at
12 the areas that are being affected by the alignment and then,
13 on the right, the mitigation areas, we can see fairly large
14 distances in those areas that lead us to believe they would
15 not be significant sources of the type of material that would
16 be cut off by the road development. So, we feel that there
17 are inadequacies in the proposed mitigation and also in the
18 analysis that goes to that.

19 So, finally, conclusion.

20 Next slide.

21 Having looked at these studies, we don't feel
22 that they complied with the Orange County HMP. The HMP was
23 specifically designed to protect beneficial uses in this
24 particular type of environment. And, so, we feel that these
25 studies are not sufficient to do that and that the mitigation

1 methods that are being proposed are also insufficient to
2 mitigate the likely impacts of the (inaudible) see this.

3 And, with that, I'd be happy to take
4 questions.

5 BOARD MEMBER (MS. KALEMKIARIAN): I -- I do have
6 just a couple of questions. And I think you can answer my
7 questions for this one. It's the -- where are the steel-head
8 trouts, in this picture?

9 MR. PAULSON: (Hands to ear), where are the what?
10 Sorry?

11 BOARD MEMBER (MS. KALEMKIARIAN): The "trout."

12 MR. PAULSON: Excuse me?

13 BOARD MEMBER (MS. KALEMKIARIAN): The "trout." The
14 fish.

15 MR. PAULSON: In that -- in that picture, I would
16 imagine they are some distance down the stream.

17 MR. HEINSTRAS: (Raise of hand), excuse -- excuse
18 me. They're -- they're -- uh-h-h -- they're located in the
19 entire system. The entire system to -- (unintelligible) --
20 restoration.

21 BOARD MEMBER (MS. KALEMKIARIAN): So, in the San
22 Juan Creek, as well?

23 MR. HEINSTRAS: Yes. San Juan Creek, Trabu- (sic)
24 -- Trabuco.

25 BOARD MEMBER (MS. KALEMKIARIAN): I'm not a

1 fisherman, so. Okay.

2 MR. PAULSON: And, so -- I mean, the critical point
3 would be that if those systems were to -- you were to -- if
4 you were to have hungry waters in the head waters and then a
5 lot of mining at the banks, that material potentially could
6 be finer than the bed material that had previously been going
7 down the system. And it has the capacity then to bury, for
8 example, direct to the nest of the -- somewhat slay
9 (phonetic) their exit of course.

10 BOARD MEMBER (MS. KALEMKIARIAN): Okay.

11 So, going back, if you could, to the slide
12 that -- that showed the impact area of the mitigation.

13 Yeah, that one.

14 You're a scientist. So, you get this stuff
15 like this. I need a little more information.

16 MR. PAULSON: Okay.

17 BOARD MEMBER (MS. KALEMKIARIAN): So, the -- the
18 impact area is showing us where the roads are gonna go;
19 correct?

20 MR. PAULSON: (Nod of the head).

21 BOARD MEMBER (MS. KALEMKIARIAN): Okay.

22 And the mitigation is being proposed, you're
23 saying, at somewhere where -- would -- that would mitigate
24 the sediment issue?

25 MR. PAULSON: (Nod of the head).

1 BOARD MEMBER (MS. KALEMKIARIAN): Or, if it was to
2 be mitigated, that's one of the areas that it could happen?

3 MR. PAULSON: Yeah. That is the area that's been
4 -- (coughing) -- excuse me -- that's being put into plan as
5 far as the mitigation's concerned about.

6 BOARD MEMBER (MS. KALEMKIARIAN): So, it -- I mean,
7 this looks, to me -- and, so, tell me why your -- your
8 conclusion that it produces less sediment. And it looks like
9 dirt. The -- the water's just gonna take the dirt all in the
10 trunk of that -- (interrupted)

11 MR. PAULSON: Yeah, the mitigation site.

12 BOARD MEMBER (MS. KALEMKIARIAN): Yeah.

13

14 (Simultaneous speech; unintelligible.)

15

16 MR. PAULSON: Well -- so, the mitigation site --
17 yeah, it looks like an area that would generate wash -- that
18 would generate very -- (interrupted)

19 BOARD MEMBER (MS. KALEMKIARIAN): It might be good.
20 I don't know that, so. But --

21 MR. PAULSON: Yeah. I mean, it -- it -- it --
22 we're talking about sediment. I sometimes use the analogy of
23 (unintelligible), that's kind of good cholesterol and bad --
24 bad cholesterol. There's good sediments and bad sediment.
25 In general, bad material tends to provide a high function for

1 the beneficial uses in streams. In particular, bad sediments
2 are what create things like ripples and pools within the
3 stream. It's what creates blood -- the habitat leeches
4 (phonetic).

5 It's what creates a lot of the diamondism
6 (phonetic) and pathology within the stream system. Finer
7 sediment, in particular, the Spaniard sediment tends to have
8 less positive effects and not the negative effects, because
9 it's -- for example, fantasies problems, if you fill in the
10 fine spaces within the bed of the creek, you began, spoiling,
11 and so on.

12 So, it's kind of a generalization to -- to
13 talk about good and bad -- for a simplification, to -- to
14 talk about good and bad sediment. But it is helpful to
15 distinguish between the bed material and the material that
16 washes in off the hill slope. Because --

17 BOARD MEMBER (MS. KALEMKIARIAN): So --

18 MR. PAULSON: -- it tends to be finer and -- and
19 less beneficial.

20 BOARD MEMBER (MS. KALEMKIARIAN): So, then, the
21 conclusory statement up at the top, I assume there's -- or is
22 there a study that needs this? Because, just by looking at
23 these pictures --

24 MR. PAULSON: Mm-hm.

25 BOARD MEMBER (MS. KALEMKIARIAN): -- you're saying

1 one stream is less better than the other. I -- I don't
2 understand how that --

3 MR. PAULSON: No. We've not had the opportunity
4 within this sort of time scale and -- and -- and the budget
5 that we're -- we've been looking at this. We are essentially
6 in review -- we're sort of in review mode. We're reviewing
7 documents, looking to see if they are adequate and meet
8 the -- the standards that would be required. And -- and
9 we're finding questions that we can -- I -- I'm basing this
10 on a kind of qualitative assessment, based on 20 years of
11 going out into the field and looking into the modifications
12 and then hyping those up by technical studies.

13 But this looks, to me, that the area on the
14 west is -- is more likely to be a source of type of
15 material. And the area on the right-hand side is more likely
16 to be a set (mumbled) of course that will keep flow and we'll
17 find sediment delivering processes.

18 BOARD MEMBER (MS. KALEMKIARIAN): Okay.

19 CHAIRMAN MR. MORALES: I have a question. And I'll
20 approach it by saying I think we have excellent staff for our
21 board. In their presentation, I believe that the tentative
22 order, they state that they account for both the CalTrans
23 post-construction BMPs and the South Orange County
24 requirement, which assuming that --

25 MR. PAULSON: (Nod of the head).

1 CHAIRMAN MR. MORALES: -- that they're the HMPs.

2 MR. PAULSON: Mm-hm, (nod of the head).

3 CHAIRMAN MR. MORALES: Now, I'm hearing you say
4 something different. So, is this one of those cases where
5 they're saying "toe-may-toe" (tomato) and you're saying "toe-
6 mah-toe" (tomato)? Or --

7 MR. PAULSON: I'm saying "toe-mah-toe" (tomato) --

8

9 (Simultaneous speech; unintelligible.)

10

11 CHAIRMAN MR. MORALES: Or do you believe that
12 they -- miss them?

13 MR. PAULSON: I believe -- uh-h-h -- I -- I don't
14 wanna put words in their mouth. And I -- I -- I've worked
15 with them. I have lifetime (mumbling) -- and I respect them,
16 as well.

17 And I believe that they're focused on the
18 waterside, when they made that comment, in that they're
19 looking at the adequacy of the BMPs in meeting the whole
20 duration control requirements which are part of the
21 hydromodification plan, the Orange County HMP, and the
22 detention basin requirements which are part of the CalTrans.

23 And, so, those -- uh -- those BMPs on the
24 water site, although they approach the problem from different
25 angles, they tend to take a huge showing, in some cases, to

1 both where, unavoidably (phonetic), you can achieve the same
2 effects in some, using either of those same measures. So,
3 I'm having a -- I'm having to infer, a little bit, from --
4 from what they just said. I'm guessing that they focused on
5 the flow duration control which is -- that's safe, when most
6 of us have been looking for most of the last ten years, but
7 not looking at the specific provision which is in the Orange
8 County HMP, to look at the sources and then sensitivity, etc.

9 SENIOR ENGINEERING STAFF (MS. DORSEY): But --
10 Chairman Morales, Kelly Dorsey, down here. (Raise of hand),
11 hi.

12 I just wanna clarify that this order says to
13 require that they comply with CalTrans and the Orange County
14 Compliancy Law. So, it does require them to comply with the
15 Orange County HMP that we've talked about.

16 CHAIRMAN MR. MORALES: And that was my
17 understanding. So -- I'm a little confused when they --
18 appear to be hearing something different.

19 MR. PAULSON: We believe that they -- I -- we
20 believe that they have done the studies to the hycology
21 (phonetic) side of it, so the waterside; but not from the
22 sediment transport side. We've not been able to find
23 evidence within the submittals that we've seen that shows an
24 assessment that sediment generation out of these head water
25 areas.

1 CHAIRMAN MR. MORALES: Thank you.

2 VICE CHAIRMAN MR. STRAWN: Can you tell me,
3 actually, for -- just for example, these two areas. Have
4 there been bio assessment done on either of these? And, in
5 recent history, do you have a record of that? 'Cause that
6 does -- definitely, one of the things to measure is -- is
7 embeddedness (phonetic) and that's gonna talk about signs
8 versus -- more normal size sediment. Can you address that?
9 Or is -- IS that -- (interrupted)

10 MR. PAULSON: I -- I can't address the biological
11 side of that, I'm afraid. I'm strictly a soil and water guy.

12 VICE CHAIRMAN MR. STRAWN: Okay. Well, that's
13 where your soil goes into -- (inaudible) -- bugs down there
14 and including the fish. Thank you.

15 BOARD MEMBER (MR. ANDERSON): Earlier, I think the
16 TCA has -- uhm-m-m -- attacked your presentation, by
17 saying -- by saying that that -- that your overlay of the SR
18 241 Extension, if I understood it correctly, was incorrect in
19 the one watershed overlay over the -- (inaudible)

20 MR. PAULSON: Sir, (hand behind ear) I can't hear
21 you. Do you mind --

22 BOARD MEMBER (MR. ANDERSON): Yes.

23 MR. PAULSON: -- repeating that?

24 BOARD MEMBER (MR. ANDERSON): Earlier, the TCA, I
25 believe, attacked your presentation by saying that your

1 overlay of the SR 241 Extension was incorrect one watershed
2 over?

3 MR. PAULSON: (Nod of the head).

4 BOARD MEMBER (MR. ANDERSON): Could you address
5 that?

6 MR. PAULSON: I -- yeah. I'm afraid I can't
7 address that, here. The -- uh -- the GI Expert was done by a
8 colleague who's not -- present here, today, and he's actually
9 traveling. And I'm -- I'm here, instead. I can look into
10 that and address that question, either at a future meeting or
11 by -- uh -- by correspondence -- (mumbled).

12 But I think, this point -- I mean, the --
13 the -- uh-h-h -- the significance there is that it's the head
14 waters of the San Juan System and their topographic relation
15 to one another -- uh-h-h -- that is kind of the key thing
16 here, the -- the geographic connection.

17 CHAIRMAN MR. MORALES: You -- you can't -- I -- I'm
18 sorry. You can't look at the -- the existing pictures and
19 say, "Yeah, based on my study of where the 241 is going to be
20 -- you know, the picture's wrong?"

21 MR. PAULSON: I'm afraid I can't, no.

22 CHAIRMAN MR. MORALES: Any -- (Pause).

23 Thank you.

24 MR. FIPPS: Good afternoon. I -- good afternoon.
25 I think it's afternoon, now.

1 My name is Michael Fipps (phonetic). I serve
2 as staff attorney for the Endangered Habitat League, part of
3 the sediment -- Safe Sediment, the coalition.

4 Before I begin my written testimony, I would
5 like to make a clarification. EHL was a signatory to the
6 settlement agreement with Rancho Mission Viejo. We would not
7 have entered into that settlement agreement, if the SAMP were
8 part or -- what -- if the toll road or any segment of it, the
9 -- the Tesoro Extension were part of that -- uh-h-h -- SAMP.
10 It was not part of the SAMP. F Street was part of the SAMP.

11 CHAIRMAN MR. MORALES: I might be able -- sorry.
12 Might be able to save you some trouble. We're well-aware of
13 section 11.47 HFP (phonetic).

14 MR. FIPPS: Okay.

15 CHAIRMAN MR. MORALES: So, we understand it's your
16 right to participate, because these are not prejudice.

17 MR. FIPPS: Thank you.

18 Okay. The core function of a waste discharge
19 requirement's permit, under the Port of Pomona Act, is to
20 provide assurance that beneficial uses identified in the
21 basin plan for this region are not impaired by any
22 discharge. The board must also ensure that existing
23 waterfall be maintained. Has -- has been demonstrated, by
24 the previous testimony, TCA has failed to provide this
25 assurance, in two ways. First, the TCA failed to account for

1 or properly analyze potential for reduction of sediment or
2 receiving watershed. Without a thorough understanding of
3 this adverse impact, it's impossible to design and implement
4 a mitigation program adequately accounts for this impact.
5 Just common sense.

6 Secondly, as Andy pointed out, there is no
7 mitigation on the effective watersheds or any depletion of
8 sediment in those watersheds. The staff correctly determined
9 that the regional board's South (sic) County
10 Hydromodification Management Plan must be fully implemented
11 by the way charge -- discharge requirements. And this is
12 correct, for a couple of reasons. First, the HMP applies by
13 the very terms of this project. Tesoro Extension is
14 functionally a freeway.

15 It's a non-exempt priority development
16 project. The applicant consist of local jurisdictions, many
17 of which are -- are co-permittees that help develop the HMP
18 and it is within the geography location. Strikingly more
19 fundamentally, even if the HMP doesn't technically apply, the
20 elements of the HMP constitute this board's final word as how
21 best to protect beneficially use projects of this type and
22 the board has the discretion on projects, subject to CEQA, to
23 require the analysis contained and required by the HMP,
24 independently of what their tech requires. As Andy has
25 pointed out, that TCA has failed to implement the HMP insofar

1 as it relates to analysis of sediment transport.

2 The TCA has submitted comments to the effect
3 that project discovered by the CalTrans channel (mumbled).
4 This is true. But, again, as staff correctly notes, only
5 partially so. Once the CalTrans assumes responsibility for
6 operating the facility, post-construction elements of the
7 permit would -- uh -- would be governed by the CalTrans
8 permit. This does not mean that the HMP does not apply.

9 And, for the reasons state (sic) above, permit
10 does apply and the TCA has failed to implement it. For these
11 reasons, post-application for discharge requirements, the
12 Tesoro Extension should be denied. Thank you very much.

13 CHAIRMAN MR. MORALES: Thank you.

14 Are there any more NGO? How many more do we
15 have here?

16
17 (Show of hands.)

18
19 CHAIRMAN MR. MORALES: Two more?

20 UNIDENTIFIED SPEAKER: Very short. Very short.

21 CHAIRMAN MR. MORALES: Very short?

22 UNIDENTIFIED SPEAKER: (Nod of the head).

23 CHAIRMAN MR. MORALES: Okay.

24 EN MASSE: (Laughter).

25 MR. SYLBERN: Good afternoon. I'm -- Chair,

1 Members of the Board, Dan Sylbern (phonetic), with the Nature
2 Habitats League.

3 I will simply be summarizing the written
4 comments of biologist Rob Hamilton. He found two major
5 defects in the Habitat Mitigation Monitoring Plan or HMMP.
6 Because that plan does not mention two very significant
7 species: The Coastal Cactus Realm and the Arroyo Toad. The
8 HMP (sic) makes no mention of -- uh -- of -- of the cactus
9 realm, recent surveys or any mitigation for the species.

10 This is egregious. Because this cactus realm
11 has crashed in population. Since the TCA prepared the
12 environmental impact report, the fires have devastated the
13 species. This crashed 90 percent decline of population and
14 is on the verge of exportation in Orange County. There must
15 be analysis and mitigation for the species.

16 And the project impacts a hundred and eighteen
17 acres of Coastal Sage Scrub. It's important to note that
18 mitigation for the nat capture, which is in the HMMP, is not
19 equivalent to mitigation for the cactus realm.

20 Secondly, the HMMP makes no mention of the
21 Arroyo Toad. This is a federally endangered species list --
22 listed in San Juan Creek, just south of the terminus of this
23 proposed extension. And this animal, the Arroyo Toad,
24 requires forging habitat up to two kilometers from the
25 creek. This highway would pave over the forging habitat and

1 block access to forging habitat. Yet there is no mention, in
2 the mitigation plan, for -- uh -- of the impact or mitigation
3 for this species.

4 Finally, you were asked earlier about the way
5 the TCA would manage, in perpetuity, all these easements.
6 That takes money. You should be aware that the TCA, for many
7 years, has had shaky finances. Its bonds are near a junk or
8 one step above junk rating. The State of California is
9 currently investigating whether it is prudent for the TCA to
10 take on additional debt.

11 So, I want you to, at least, consider that as
12 you consider the questions of how this property would be
13 managed in perpetuity. Thank you.

14 CHAIRMAN MR. MORALES: Thank you.

15 BOARD MEMBER (MR. ANDERSON): Dan. So -- Dan.

16 So, you were summarizing the -- those letter
17 from Hamilton?

18 MR. SYLBERN: Yes.

19 BOARD MEMBER (MR. ANDERSON): Okay. That's it.
20 Thank you.

21 MR. ADAMI: Good afternoon. Danny Adami, senior
22 attorney with the Natural Resources Counsel and the Director
23 of NRDC Southern California Resources Project. I'm the last
24 speaker for The Saint -- Safe San Onofre Coalition. I
25 believe we kept it an under an hour. So, thank you very much

1 for affording us the time to present our comments in a
2 logical order and -- and together. We appreciate that, very
3 much. I'm just gonna wrap up our preparation with a couple
4 of observations and requests of procedural issues.

5 But first, on behalf of the Coalition, I
6 wanted to thank Regional Board staff, including Dar- (sic) --
7 uh -- Darren Bradford, Kelly Dorsey and -- and everyone, for
8 their responsiveness; they're being available to answer our
9 questions; providing us access to documents. We really
10 appreciating any other working hard. And -- uh -- if -- we
11 really appreciate your efforts.

12 We would appreciate the opportunity to augment
13 our comments, in the future, based on the fact that neither
14 we nor the public have had much time at all to review some
15 key documents in preparation of this hearing. For example,
16 TCA waited until just a few weeks ago to release the CEQA
17 addendum. And then, even then, the agency did not make the
18 key supporting documents, as a (sic) addendum, available for
19 review. One example of this is that we only obtained TCA's
20 traffic studies yesterday. And that was pursuant to a
21 request under Public Records Act.

22 So, we re- (sic) -- need some real -- we need
23 some additional time to take a look at these documents. For
24 this reason, we'd like to request that this public hearing
25 not be closed today; but that it be continued to a future

1 board meeting. We further request that continued public
2 hearing takes place in San Diego. Sounds like that's the way
3 you're leaning, anyway.

4 Many of our -- uh -- many stakeholders live in
5 San Diego, San Diego County, including many members of our
6 organization would do -- would like to have their voices
7 heard on this issue. We also would like to reiterate our
8 request that we made in our February 22nd letter. The public
9 commentary be extended, both through today, to include the
10 almost 6,000 comments that came in from our members and
11 activists, opposition to this project. But also, through the
12 next public hearing, in order to give us and others a full
13 and fair opportunity to review all the key documents and
14 comment on them. And some of those documents, as I have
15 mentioned, have been only been made available very recently.

16 Finally, we would like to request the
17 continued public hearing take place at least sixty days from
18 now or -- in other words, so these two regional board
19 meetings count. Also sounds like that's the way it's
20 leaning. Please consider that TCA's board has not yet taken
21 action to improve this project or consider the CEQA
22 addendum. The CEQA issues have not yet fully been gone
23 through and understood, as we can -- as -- it's clear from
24 the discussion today. And there's been very very little
25 public participation allowed or reported, in fact, none at

1 all on the CEQA agenda.

2 There've been no hearings. No ability to
3 weigh in from public and with TCA's board or with any agency,
4 up to this point. Again, that document has only been made
5 available very recently.

6 In conclusion, we hope that this board sees
7 this project for what it is. This is clearly a last ditch
8 attempt by T- -- TCA to bring back the full 16-mile toll
9 road, at which both the Coastal Commission and the Department
10 of Commerce definitively rejected, five years ago, because of
11 the long list of the kind of (mumbled) environmental
12 impacts. None of those impacts -- impacts can be cured by
13 segmenting the road, illegally, which they're planning to do.
14 So, all this building the road, in pieces, doing anything to
15 alleviate mobility concerns that are essential to South
16 Orange County residents.

17 Following the agreement, we think that the
18 best approach would be for the Board to deny the Waste
19 Discharge Application, at this point, and let TCA reapply
20 when it has all the information that it needs or to support
21 its application, or you choose not to do that.

22 And we appreciate that the Board is
23 considering putting this off to a future hearing. Again, I
24 would reiterate that -- that public hearing not be closed,
25 that comments can be taken at that time. This concludes or

1 presentation and we thank you, again, for allowing us to
2 testify in concert. Thank you.

3 CHAIRMAN MR. MORALES: Okay. We're gonna wrap up.

4 But -- it -- you know what the (mumbled)
5 procedural defeat from the gentlemen's victory. We're doing
6 most of what you have stated you would like. Now, I'll point
7 out that we decided to go ahead with this meeting and we had
8 received request from -- frankly, if you look at the -- the
9 papers, both sides, that the meeting be put off altogether.
10 But we felt the public comment, especially by the folks here
11 in Orange County, was very important. So, we proceeded.

12 We will not take up this issue, next month.
13 So it will be made, at the earliest, that we do any -- any
14 more and take a final vote on the matter. Prior to the end
15 of the day, as I mentioned earlier, we will give you
16 questions that we would like you -- (inaudible) -- and a
17 briefing schedule. So there will be more information taken,
18 with respect to that. And we will also make it a public
19 document and we'll like to place it up on -- on -- uh -- our
20 website and send it to the interested parties. So, to the
21 extent possible, know, folks, that we try and keep everything
22 open to the public.

23 And -- and this board's stated that one of our
24 main goals is -- is public participation and -- uh --
25 (mumbled) -- you know, everything being secret. Okay?

1 With that, I know that we did give TCA the
2 opportunity to respond. And I would ask, how long do you
3 anticipate that will take?

4 MR. THORNTON: Mr. Chairman, if I might suggest,
5 since you were -- you -- you have gone beyond your lunch
6 hour.

7 CHAIRMAN MR. MORALES: Yes.

8 MR. THORNTON: If -- if I might suggest, you take
9 the -- whatever lunch break you were taking and we can come
10 back, after that, subject to the public official executed --
11 (inaudible) -- after.

12 CHAIRMAN MR. MORALES: Excellent suggestion.
13 That's exactly what I was thinking.

14 And it's -- we'll -- (Pause). It's now 20
15 'til. Let's reconvene at 10 after. And I will, at that the
16 point, ask that the -- the public and governmental officials
17 what their preference is, whether they rather wait. Or we
18 may have them go and then have you conduct your -- your
19 rebuttal, prior to the remainder of the -- the public.

20 All right? So, let's break for lunch, folks.

21

22 (Heretofore, lunch break commenced

23 12:40 p.m. Proceedings resumed

24 1:19 p.m.)

25

1 CHAIRMAN MR. MORALES: All right. I'm gonna call
2 the meeting to order. And we're about to begin the public
3 presentation portion. TCA is going to be given the
4 opportunity to provide a response. Their estimate is five to
5 ten minutes.

6 So, we decided to take it and have that
7 portion of the hearing concluded, prior to beginning all of
8 the public comment. And, as soon as they are done, we will
9 immediately jump to our public and governmental officials;
10 since we're a little bit past their time, certainly. And we
11 appreciate your -- your patience.

12 Mr. Thornton.

13 MR. THORNTON: Thank you, Mr. Chairman, Members of
14 the Board. And I -- got a long day and this will be brief.
15 I wanted to respond to a number of specific points. And I'll
16 respond to several and then Dr. Bob will probably respond on
17 some of the -- uh -- hydromorthology (phonetic) and other
18 technical issues.

19 First, with regard to the regional needs for
20 the facility and regional need for transportation, in
21 particular. It's noteworthy that Mr. White, counsel to the
22 opponents here today, flew to this hearing from San
23 Francisco. He used regional transportation. But he -- he
24 had some trouble -- some difficulty getting here, as I
25 understand it. If you ever wanted evidence of the need for

1 region transportation facilities, he's an example of that.

2 Indeed, I suspect a lot folks in this hearing
3 room, today, used regional transportation facilities to
4 access this public hearing. So, that's why we need regional
5 transportation facilities.

6 Secondly, the point that was made that,
7 somehow, we should enlist society: let development occur
8 before we deal with our infrastructure issues is a completely
9 bankrupt suggestion. Development is a reality, in
10 California. We have 38 million people. All the demographers
11 tell us we're going 50 million people. We have to have an
12 infrastructure that serves our population.

13 It is, frankly, just incredibly disingenuous for
14 the same groups who entered into a settlement agreement, with
15 the land owner developer, to approve 14,000 homes and five
16 million square feet of development and infrastructure all
17 supporting that, at a scale several times -- many times
18 larger than what is before you with regard to this project,
19 to suggest that this project is something -- that somehow
20 gonna have a significant affect, when those same groups
21 agreed to that development. And to come in here today and
22 suggest, "So that development may not happen. After all,
23 there might be a market down" -- (unintelligible). Some
24 folks, I suppose, would hope for a continuation in
25 recession. Most us don't.

1 Most of us want to have the economy improved
2 until all of us can participate in a robust economy. But the
3 notion that you would -- would just hope that development
4 doesn't occur or wish that development doesn't occur and not
5 to be prudent and responsible, planning an infrastructure in
6 anticipation of that is frankly irresponsible.

7 Next point. Points were made about the
8 presence of Arroyo Toads. The so-called "protocol surveys"
9 carried out in accordance with U.S. fishing laws service
10 requirements have documented no Arroyo Toads in
11 (unintelligible). And, again, the same groups who are here
12 today complaining about potential impacts on Arroyo Toad
13 (sic) have agreed to a ranch plan development -- many times
14 larger than what we're talking about today, are ranch plan
15 developments that include a comprehensive habitat
16 conservation plan that treats -- that addresses the Arroyo
17 Toads conversation needs over a larger area, as well as the
18 cactus realm needs. Both of them are covered species under
19 ACP (phonetic). The TCA Mitigation Program includes 60 acres
20 of cactus, cactus scrub creation to address potential cactus
21 range inhabitants (phonetic).

22 Finally, with regard to -- or, not finally.
23 But with regard to the questions -- (mumbled) -- frankly, in
24 every one of our hearings, it suggested -- uh-h-h --
25 Dr. Sylbern suggested today, "Gee, the TCA's finances are

1 shaky," et cetera. The transportation corridor agencies has
2 been in existence, since 1986. They have successfully
3 financed over two billion dollar of regional transportation
4 improvements without a single penny of Federal dollars. Not
5 one penny of federal dollars have gone in. And, frankly,
6 very few State dollars have gone into these projects.

7 The TCA have met every single financial
8 obligation. To the entirety of their life, they've never
9 defaulted on an obligation. And to cavalierly suggest that
10 TCA's finances may be shaky and they may be able -- not able
11 to fulfill their commitments in this permit -- frankly not
12 supported by the record, I might add, if your staff has a
13 condition, the permit is required a \$750,000 escrow
14 arrangement.

15 Frankly, I wanted bring back to -- to the
16 slide, 21167.3. Mr. White referred to a litigation that --
17 uh-h-h -- that his firm commenced against EIR. They did
18 submit litigation. They did dismiss the -- the case --
19 uh-h-h -- without prejudice, which means that they can
20 refile. But they made the select (sic) -- they made the
21 election to dismiss that lawsuit.

22 They could have prosecuted that lawsuit to the
23 determination regarding adequacy EIR. They elected not to do
24 that. And, under CEQA, as we've described, very clearly
25 provides that once litigation is initiated Section 21167.3 (b)

1 of CEQA obligates responsible agencies to assume that that
2 EIR complies with the requirements of the California
3 Environmental Quality Act.

4 So they can't come in here, today, and suggest
5 that somehow that EIR is not adequate. And, as we've
6 documented today, in our presentation, there are numerous
7 examples throughout the State where other transportation
8 agencies -- including the (unintelligible) -- are proceeding
9 in precisely the way that this project is proceeding.

10 Now, finally, we've heard statement that you
11 hear in every public hearing and every project I've ever
12 represented: "Let's not make a decision. Let's do the --
13 more analysis."

14 Mr. Chairman, Members of the Board, the
15 construction of regional transportation facilities, in Orange
16 County, to address the needs of a growing population, has
17 been under evaluation, for now, over three decades. As we
18 documented, four separate Environmental Impact Reports have
19 been prepared with regard to this project. Frankly, the
20 Governor stated at the State Address -- addressed this
21 particular issue. CEQA has been abused. And the suggestion,
22 today, are an example of abuse of process the govern's
23 addressed and discussed.

24 We respectfully suggest that the Board should
25 not -- should not fall prey to those suggestions of

1 suggesting that additional analysis should be
2 (unintelligible). And I'd like Dr. Bob to respond to some of
3 the more technical comments. Thank you.

4 MR. BOB: Thank you, again, Board.

5 I'm just gonna touch on, real quick, the
6 comments that Mr. Paulson made about the Orange County HMP
7 and the base load analysis requirement in it. RWDR has
8 required that we comply with not only the CalTrans
9 requirement but also the Orange County HMP requirement, to
10 control the hydromodification concern. If you -- you
11 identified that as a board, but -- but, yes, that is
12 something that will be done.

13 And we know that we will concur with the
14 OCHMP, because our lead consultant that worked on this
15 project wrote the manual for that. We concur that, as part
16 of that, you have to look at both the water side and the
17 sediment side of the equation. We also concur that, with the
18 South Orange County HMP process, there are three steps that
19 are required. And I'll read from the slide that Mr. Paulson
20 had.

21 Step 1 is to determine whether the site is the
22 significant source of bed material or to receiving the
23 stream; and, 2, avoid significant sedimentary (phonetic)
24 supply area in the area.

25 So, we've looked at this analysis. And what

1 we used were the maps that Mr. Paulson's company, PWA
2 (phonetic), prepared that show the soil mapping in the area.
3 And I'm gonna quickly just go through this. The red area and
4 the blue area are the clays and silk (phonetic). As you
5 heard from Mr. Paulson, they're not concerned about that.
6 It's the sand that makes the bed load material.

7 So, go 'head and advance the slide.

8 So, this is a blowup of where we have the
9 Tesoro Extension.

10 And go ahead and advance it, one more time.

11 You'll see that the planning areas are on
12 this.

13 And advance it, once more.

14 And the road is on this. And where the road
15 is located is in the blue and the red areas. The reason why
16 it's located there is because the ranch went through the SAMP
17 process. And they specifically put their developments in
18 these impervious areas of silk and clays. So, we have
19 identified the -- this area of significant bed material and
20 the areas where the source will be.

21 Again, we looked at another map -- go 'head
22 and advance it.

23 That was prepared, as part of the SAMP. And,
24 in the red, are the chronic sources of the bed materials that
25 are of concern. And those red areas are in San Juan Creek

1 and in Gobernadora. We're in -- we're -- our footprint is in
2 neither of those areas.

3 And, in fact, go 'head and advance that slide.

4 A footnote, on this graphic, it specifically
5 says that the -- uhm-m-m -- "Ranch Plan Development will not
6 impact or obstruct any of the coarse sediments applied." So,
7 utilizing the information from the SAMP, we have been able to
8 make the preliminary evaluation. And that we do and will
9 comply with the three tenants that Mr. Paulson cited.

10 So, we are very confident we can comply with
11 the sediment side of the equation for the OCHMP. And,
12 ultimately, the board has the assurance we will comply. If
13 it isn't -- it is a regular -- it is a regulatory requirement
14 of the WDRs. Thank you very much.

15 CHAIRMAN MR. MORALES: Thank you.

16 And -- uh -- I think, at this point, I'll ask
17 the -- let's see. The folks that are here from the
18 government agencies and the elected officials, go 'head and
19 come up. And Mr. Strawn will be (indicating).

20 VICE CHAIRMAN MR. STRAWN: For lack of any other
21 order, I wanted to put these in -- in alphabetical order.

22 So, Mr. Allevato, I believe you'll be first.
23 And -- uh -- Ms. Nelson (phonetic), you'll follow him. And
24 we have almost 20 government folks here. So, we're gonna
25 watch that 30 -- or that three-minute limit, or we're gonna

1 be here for a long time.

2 MR. ALLEVATO: Good morning, Chairman Morales and
3 Board Members. (Clearing throat) -- excuse me.

4 My name is Sam Allevato and I am the Mayor
5 Pro Temp for the City of San Juan Capistrano. I represent
6 the community with the oldest continuously occupied
7 residential area in the State. Our historic city is
8 perversed by four creeks, the I-5 Freeway, State Highway 74
9 and the Metrolink-Amtrak Railroad Line. We are virtually the
10 funnel for all major transportation systems traveling between
11 Los Angeles and San Diego.

12 Our city has consistently sought solutions to
13 transportation issues, by supporting projects that divert
14 traffic around our town and not through it. That is exactly
15 what the Tesoro Extension, the State Highway 241 will do.
16 And that is why my community, overwhelmingly, supports its
17 construction.

18 The new community, called "Rancho Mission
19 Viejo," is currently constructing their master plan community
20 with houses -- uh -- upper construction, this summer. This
21 is a realty. This is happening, as I speak.

22 This project will encompass 14,000 new
23 dwelling units and over five million square feet of
24 commercial property. The Tesoro Extension will guarantee
25 that these new residents will have the ability to leave and

1 return to their new community, without having to travel to
2 San Juan on the already impacted State Highway 74. This
3 extension will actually divert traffic off of Ortega Highway,
4 away from San Juan and onto the toll road system and Antonio
5 Parkway.

6 I'm a retired law enforcement officer, with
7 over 40 years of public service. I am especially attuned to
8 the lack of redundant transportation systems in our area.
9 Other than the I-5, the next closest interstate is 40 miles
10 east of us, and it's the I-15.

11 We have already experienced closures, on the
12 I-5, for emergencies, that have caused our area to be
13 completely closed off to adjacent communities and to adjacent
14 counties. In the event of a natural or a manmade disaster,
15 we have no alternative evacuation route. The Tesoro
16 Extension would help deal with issues, by providing
17 redundancy to the I-5.

18 Also representing a community with four
19 creeks; its own ground water recovery plant; the Trabuco
20 Creek, the only natural wildlife corridor in Orange County,
21 one that is home to the endangered steel head trout, I am
22 especially sensitive to the use -- or to the issue of water
23 quality. I know the care for which the TCA has undertaken on
24 all their construction projects. Their attention to treating
25 the runoff in the existing 51 miles of roadway is a model for

1 all transportation agencies and has received approvals from
2 all major resource agencies. I would not approve any project
3 that would endanger the quality of the water that flows
4 through our streams.

5 In conclusion, approximately two years ago,
6 my city council voted to support the Tesoro Extension. I
7 would like reiterate the support of the San Juan Capistrano
8 City Council, for the Tesoro Extension. Because we know it
9 will divert current and future traffic around our community;
10 will provide a much needed redundant collateral roadway to
11 the I-5; and will do so in a scientifically approved manner
12 sensitive to environment of our community.

13 Thank you for your attention.

14 THE PUBLIC EN MASSE: (Clap of the hands). Here,
15 here.

16 VICE CHAIRMAN MR. STRAWN: (Inaudible) -- then Pat
17 Bates will be next -- (inaudible)

18 MS. BARTLETT: Good afternoon, Water Board
19 Members. As chair of the Foothill Eastern TCA Board --
20 (interrupted)

21
22 (Simultaneous speech; unintelligible.)

23
24 CHAIRMAN MR. MORALES: If -- if -- I'm sorry.
25 Excuse me. I'm sorry. I hate to interrupt your

1 presentation.

2 But, when you folks come up, I -- thank you
3 for stating your name. Please reiterate that you've taken
4 the oath that we administered earlier.

5 And I would ask the -- the public, there are
6 gonna be a lot of people supporting and -- in fact, opposing
7 some of the comments that are made. If we could hold our
8 applause until the end, it might allow things to flow a
9 little smoother.

10 I'm sorry.

11 MS. BARTLETT: Thank you.

12 Good afternoon, Water Board members. I'm Lisa
13 Bartlett. As Chair of the Foothill Eastern TCA Board, it's
14 my responsibility to hold the TCA Engineering Staff to the
15 highest standard, to ensure that the 241 Extension complies
16 with all environmental regulatory requirements.

17 Our staff has met or exceeded all
18 environmental requirements. We have included Austin Sand
19 Filters, to purify the water runoff. Extended this -- the
20 tension basin will capture and treat water. Flow splitters
21 will assure that the water flow rate of the runoff will mimic
22 pre-development conditions.

23 The project will use coarse pavement, which
24 allows water to seep into the ground water through the --
25 (inaudible) -- and will also prevent water spray, on the

1 roads, during the rain (unintelligible). The need for the
2 project is clear. With 14,000 homes planned for Rancho
3 Mission Viejo, the terminus for the extension and with more
4 cars and trucks, every day, using of the I-5 Freeway, an
5 alternate route is crucial to the region's economic success.

6 This project will create more than 2,000 jobs
7 at a time when State unemployment is generally 10 percent.
8 Quite frankly, we need the work. And we have the quality
9 project that complies with all environmental regulations.

10 With this permit, we can then begin the
11 construction process. Therefore, we ask for your approval.

12 We support our military through "The Helmets
13 True Heart" -- "Helmet to Hard Hats Program," that offers
14 good paying jobs for our military veterans. This project not
15 only provides traffic related to millions, but will provide
16 jobs to those who have honorably served our nation.

17 The staff has analyzed the technical studies
18 prepared for this project and we will respectfully request
19 that we have your vote and approval for this permit. Thank
20 you very much, today, for you time and consideration.

21 VICE CHAIRMAN MR. STRAWN: Okay. And -- uh-h-h --
22 Tony Beall.

23 MS. BATES: Good afternoon, honorable Chair and
24 Board Members. My name is Pat Bates. And I am the Orange
25 County Supervisor that represents what we call "The Fabulous

1 5th District," which means South Orange County. I'm also
2 chair of the Environmental Oversight Committee for Orange
3 County Transportation Authority.

4 You have heard from scientists and water
5 quality experts that testify to the state of the art features
6 that will protect the water quality within the watersheds
7 throughout South Orange County. When first elected to this
8 office, I heard many concerns from my constituents. Policy
9 concerns, topping the list, included traffic relief and
10 protection of our national resource. It is true that there
11 are times when improving infrastructure and building roadways
12 conflict with protecting the environment.

13 We are fortunate that this Tesoro project is
14 one that meets traffic needs and, as importantly, it
15 addresses our environmental concerns. I understand your role
16 is to assess the water quality impact. Your board staff has
17 studied the water quality issues intensely and initially
18 determined that the TCA state of the art mitigation measures
19 ensure a high level of water quality.

20 Additionally, from an air quality perspective,
21 the regional impact of cars idling in traffic, on I-5, are
22 far greater than cars flowing at the speed limit. This
23 project will help alleviate freeway congestion and flow is --
24 provide drivers an alternate route. The total surface water
25 impact of this project is minimal, less than a half acre.

1 Regardless of the scope of impact, year pleaded (phonetic),
2 your board must diligently review how a project will affect
3 water quality and we are certainly pleading that this board
4 takes your job seriously and is looking at this project from
5 all view points.

6 Once your review is complete, I think you
7 will -- (inaudible) -- consider that the Tesoro Extension is
8 the project that needs some stringent guidelines for
9 protecting our water. I want to thank you for your service
10 and your careful consideration of this project and the
11 independent analysis that your staff has provided. Thank you
12 and, most importantly, for the opportunity to address you
13 today and coming to our community to facilitate many of the
14 speakers today. Thanks, again.

15 VICE CHAIRMAN MR. STRAWN: Mr. Beall.

16 And I understand that Chief Brown may have
17 departed. And, so, if that's -- that's -- if not, it'll be
18 Mr. Campbell next.

19 MR. BEALL: Good afternoon, my name is Tony Beall.
20 I'm the Mayor of Rancho Santa Margarita. I'm here today to
21 speak strongly in support of the Tesoro Extension.

22 Rancho Santa Margarita a great community with
23 50,000 residents. As the mayor, my key priorities include
24 ensuring a high quality of life, continued economic growth
25 and the overall vitality of our community. Our city council

1 has repeatedly and unanimously supported this outward
2 extension of the 241, for a number of reasons. Rancho Santa
3 Margarita residents use this roadway more than any other
4 people (shake of the head), (shrug of shoulder) period. And
5 it's a life line to our community. And this extension is
6 crucial.

7 It's crucial to the mobility of our
8 residents. And it's crucial to the economic growth of our
9 local business community. This five-mile extension will
10 allow an entirely new customer and client base to have easier
11 access to Rancho Santa Margarita. In our city, local tax
12 revenue is very critical to our success, our viability, our
13 sustainability in Rancho Santa Margarita. And, so, our
14 business community -- which accounts for a significant amount
15 of tax revenue, it supports the importance of government
16 programs that allows us to provide necessary services to our
17 residents.

18 We need this roadway extended. The 241 will
19 create more than 2400 jobs, relieve traffic in a time that we
20 need both, desperately. I care deeply about the environment
21 and clean water, and so do my residents. And the
22 environmental impact studies will show this is a great
23 project. The storm water runoff system that is proposed
24 here, it is state of the art.

25 It creates a runoff flow that mimics nature,

1 both in water quality and in a water flow rate. The TCA has
2 gone above and beyond a delivering a state of the art roadway
3 that will both protect the environment and provide needed --
4 badly needed increased mobility for the people of all the --
5 Southern Orange County in Southern California. So, on behalf
6 of the City of Rancho Santa Margarita, our 50,000 residents,
7 I urge you to support the TCA's Waste Discharge Requirement
8 Application and allow the Tesoro Extension to move forward.

9 This extension is crucial to the economic
10 growth and improved mobility for the people of South Orange
11 County. Thank you.

12 THE BOARD (MR. ABARBANEL): MR. BEALL, may ask you
13 couple of questions? Did you support the previous toll road
14 extension that was considered about five years ago?

15 MR. BEALL: Our city has consistently and
16 unanimously supported the extension on the roadway.

17 THE BOARD (MR. ABARBANEL): Is this the policy of
18 your city to consider acting on 1/3 of a project, when it
19 comes before you? Or do you wait until the entire project is
20 over?

21 MR. BEALL: This particular extension that we are
22 contemplating, today, is unlike any that's come before it.
23 This entire roadway has been built in portions such as this.
24 So, from our city's standpoint, this makes perfect sense.

25 This particular extension -- I appreciate the

1 opportunity to answer your question. It stands on its own,
2 as a viable extension. Because -- uhm-m-m -- it has been
3 carefully studied. It doesn't limit, in any way, future
4 extensions to go in any other direction. It pencils out,
5 from a financial standpoint, on its own.

6 And, so, it has been viewed, analyzed,
7 studied and approved based upon its own merits as it is. So,
8 if I don't view this as viewing -- or approving something
9 as -- piece meal. We had looked at it on its own. It
10 stands, on its own. And it passes mustard by a clear margin.

11 BOARD MEMBER (MR. ABARBANEL): Thank you.

12 MR. BEALL: You're welcome.

13 THE PUBLIC EN MASSE: (Clapping of hands).

14 MR. LOCKREY: As you mentioned, Chief Brown
15 couldn't be here. He had to leave. Would you like me to
16 read his comments into the record?

17 VICE CHAIRMAN MR. STRAWN: Could you state your
18 name, sir?

19 MR. LOCHRIE: My name's Brian Lochrie. I've been
20 asked to read his comments into the record, if -- if it
21 pleases. Otherwise, I can have them submitted?

22 STATE BOARD STAFF COUNSEL (MS. HAGAN): You should
23 read them into the record.

24 CHAIRMAN MR. MORALES: Very good.

25 MR. LOCHRIE: Okay.

1 Chief Brown is the Battalion Chief of
2 Emergency Medical Services for the Orange County Fire
3 Authority and strongly urges you to approve the application
4 before you, on behalf of the Transportation Corridor Agency.
5 The Orange County Fire Authority serves close to 1.4 million
6 people in our 500 and 60 square mile service area. The OCFA,
7 along with our residents, have benefited greatly from the
8 existing toll road network in Orange County, specifically
9 during emergencies. State Routes 241, 73, 133 and 261 have
10 provided a means for us to quickly move fire fighters
11 throughout our county, to evacuate large numbers of res-
12 (sic) -- residents quickly, at risk -- who are at risk. And
13 the roads have served as good control points for advancing
14 wildfires.

15 Over the last several years, that have --
16 there have been numerous occasions where the roads have
17 played an important role in achieving better than expected
18 outcomes from fires. Specifically, the communities affected
19 by brush fires off of the Cleveland National Forest, to the
20 east, were helped by the 241 toll road. As we have -- as we
21 have seen, when it comes to protecting lives and property
22 from fire, whether we're safely evacuating those at risk or
23 getting sufficient number of fire fighters into our
24 neighborhoods to stand and fight, time is of the essence.
25 Should you grant this permit to TCA to proceed with the next

1 five-mile segment, the Tesoro Extension, OCFA would expect
2 that the benefits we experience along with the existing
3 networks would be realized when the next brush fire,
4 earthquake or major disaster hits.

5 On behalf of the Orange County Fire Authority,
6 we sincerely appreciate your attention to the public safety
7 in this matter. Thank you.

8 VICE CHAIRMAN MR. STRAWN: (Nod of the head).

9 Mr. Campbell and then Mr. Chun.

10 MR. CAMPBELL: Good morning, Board Members. Thank
11 you very much for meeting in Orange County. It saves us all
12 the drive. I appreciate your efforts to come here.

13 I represented the area in question, for six
14 years, as a State Assemblyman. And for the past 10 years,
15 I've served on the Orange County Board of Supervisors and, by
16 virtue of that, served on the Foothill Eastern TCA. I was
17 chairman of the Foothill Eastern TCA when a decision was
18 made, by the board, to request SAMP to study this extension.
19 I'm hear to speak to you about the environmental impact, of
20 the need for the extension and the job's benefit (sic).

21 From an environmental perspective, to me, the
22 project should be a slam dunk. The project does not impact
23 any wetlands under Federal jurisdiction and has less than a
24 half acre of impact with waters regulated by the State. The
25 project has extensive water runoff protection, including

1 extended detention basin to recapture your water runoff.
2 Porous pavement, to reduce water runoff and offer safety
3 protection for our motorists. Austin sand filters, to remove
4 any impurities from the water that runs off the roadway.

5 The flow splitters, to manager the runoff
6 flows so that it mimics predevelopment conditions. The
7 project meets the critical need for congestion relief in a
8 region that will soon experience tremendous growth. The new
9 terminus will be near Ortega Highway where Rancho Mission
10 Viejo company (sic) is building 14,000 homes. Thus, this
11 nearly five-mile extension is designed expressly to meet the
12 regional community needs and offer relief to (unintelligible)
13 families -- this is the using the system commuters, along
14 with the neighboring fire, police and medical workers to
15 respond in a timely fashion, to emergency. But it's com-
16 (sic) -- combat gridlock, it will promote smoother traffic
17 flow that will reduce air pollution, a win-win for everyone.

18 This project will create more than 2,000 jobs,
19 just here in Orange County. Moreover, the project qualifies
20 for "The Helmets to Hard Hats Program," which will find work
21 for returning military veterans. Your staff has analyzed the
22 technical studies prepared for this project and recommends
23 approval of the project -- uh -- for approval of the permit.
24 Please, listen to them and approve this permit. Thank you
25 very much.

1 VICE CHAIRMAN MR. STRAWN: Mr. Chun.

2 If not, Mr. Evert.

3 Mr. Feller.

4 THE PUBLIC (UNIDENTIFIED): Yes.

5 VICE CHAIRMAN MR. STRAWN: Moving along fast, now.

6 Mr. Herzog.

7 THE PUBLIC (UNIDENTIFIED): Got someone coming.

8 MS. HODGES: Good afternoon. I'm Sherry Hodges,
9 native of San Diego County. I live in a beach community of
10 Encinitas. And I'm reading a statement for Oceanside City
11 Councilman, Jack Feller.

12 He thanks you for taking the time to hear this
13 important matter. And his -- uhm -- and he asked that his
14 comments be read into the record. He strongly urges you to
15 approve the application before you, on behalf of the
16 Transportation Corridor Agency. This project will be a model
17 for environmental sensitivity. It does not any -- impact any
18 wetlands, under Federal jurisdiction. And has less than half
19 an acre of impact to waters (unintelligible) by the State.

20 I understand, too, that there will be no final
21 determination today as to whether or not you will approve
22 this permit. It's extraordinarily difficult (unintelligible)
23 how you could ignore the extensive water runoff protection.
24 The TCA has engineers for this project. And, furthermore,
25 the economic impact is significant in creating over 2,000

1 jobs. As a member of SANDAG, I know that SR 241 is part of
2 our Regional Transportation Improvement Plan. Eventually,
3 the SR 241 will be the only alternative to connect San Diego
4 County with Orange County.

5 But, in the meantime, this next five-mile
6 segment will benefit the residents of San Diego and Orange
7 County, in relieving traffic congestion. I sincerely
8 appreciate your attention to approving the permit for this
9 environmentally sensitive five-mile extension of SR 241.

10 Thank you.

11 Signed the City Councilman, Jeff Feller.

12 VICE CHAIRMAN MR. STRAWN: That will bring us to
13 Mr. Herzog.

14 MR. HERZOG: Good afternoon, Mr. Chairman, Members
15 of the Board. My name is Peter Herzog. I'm the City
16 Councilman in the City Lake of Forest. And the 241 affects
17 our community. In fact, we were the founding area of the
18 241.

19 On behalf of the 70,000 plus residents of
20 Lake Forest and the additional 12,000 that are coming to my
21 community, we strongly support and have long supported the
22 extension and as well as the improvement that's gone into the
23 241 Corridor. Our city -- uh -- just about three years ago,
24 grew 4200 new housing units to deal with the housing needs in
25 Orange County. That will bring an additional 12,000

1 residents to add on to what's going on with The Ranch Plan.

2 And I am aware you've heard a lot of the technical

3 discussion, so I will not go back into that.

4 You do have the letter from our City Council

5 that -- which was unanimously improved, dealing with those

6 technical aspects. But I do wanna touch on two things.

7 First, is the segmentation CEQA issue. And it's an absolute

8 red herring. I -- and I know that, because I've lived

9 through it.

10 As I mention, the 241 first stretch was built

11 in Lake Forest. It was in Lake Forest. It went nowhere

12 else. And, since then -- those were the last 20 years,

13 because I've lived there since 1982, I have watched this be

14 built. And what you have, now, is one of the major success

15 stories in transportation in the country.

16 You have 51 miles of this highway

17 infrastructure, which is 25 percent of the Orange County

18 infrastructure that's been built on it, by the TCA, through

19 nonrecourse bonds at no cost to the tax payers. Paid by the

20 users. And has been proven, time and time again. And,

21 again, it's been done. So, there's a very extremely

22 environmentally sensitive land.

23 And so, as I mentioned with it, they found it

24 and then they're done in parts. Because it didn't start at

25 51 miles. It started about three or four. This is very

1 common. And, if you know any transportation projects and
2 having served on the TCA for a period of time, no major
3 construction project was built all at once. They are built
4 in parts.

5 It is a classic well-known, well-accepted
6 methodology of bringing infrastructure to the California and
7 to the nation. Eisenhower's an -- an international -- our
8 national highways were not built at once. They were built in
9 parts. And, why? It's called "funding."

10 You don't have the money to do it all at
11 once. You do it in parts. It's a rational logical well-
12 accepted planning approach to major infrastructure projects.

13 Secondly, this project stands on its own.
14 Absolutely, positively. Right now, where does it end?
15 Tesoro High School. The kids at high school have a great
16 toll road to get to school.

17 THE PUBLIC EN MASSE: (Laughter).

18 MR. HERZOG: God bless 'em.

19 But, guess what? We need transportation
20 improvement in Orange County, not just getting high school
21 kids to school. So, what are we -- what has been designed is
22 an extension to get you down to a major east-west arterial,
23 I-74, where people come into Orange County from the Inland
24 Empire. And what will this project provide? It'll provide
25 them the ability to get off Ortega Highway, well before San

1 Juan Capistrano, and head north.

2 Instead of going through San Juan clogging
3 their arterials, heading on the I-5, clogging I-5 North in
4 the morning -- which, if any of you drive it, is a
5 nightmare. That is what this road will do. It has
6 independent significance, independent importance and
7 independent success in it now. This is a sound
8 environmentally friendly project. I urge you to close this
9 public hearing today and vote, promptly, on approving this
10 permit.

11 Thank you, very much.

12 THE PUBLIC EN MASSE: (Clap of hands).

13 VICE CHAIRMAN MR. STRAWN: Mr. Erkeneff.

14 MR. ERKENEFF: Hello. My name's Rick Erkeneff.
15 I'm the Director of North and South Coast Water District
16 Board -- uhm -- chairman board. Thank you, so much, for --
17 for hearing passionate testimony, on both sides. And I'd --
18 I would like for you to really look, in detail, at the NGOs
19 and what they presented and how detailed and precise their --
20 their argument is against this ill-fated road. But it has
21 been ill-fated from the start.

22 Years ago, I was part of the -- the Orange
23 County Transportation Authority Stakeholders Group. And they
24 identified that this segment of this road, the entire length
25 would be the least traveled road in Orange County. So, the

1 solutions really needed to come from east-west improvements,
2 not north-south. And I would encourage you all to -- to take
3 a look at the 30,000 foot view and look at what needs, in
4 that area, are -- are -- really need to be there.

5 From a road point of view, this does not
6 solve traffic issues in the region. So, fast forward to --
7 uh-h-h -- last November, being elected onto the board. I've
8 become very aware of the water quality issue. And it's kind
9 of the tale of two watersheds. When you look at San Mateo
10 Creek, that's not urbanized and you look at the San Juan
11 Capistrano region, those -- those are two very -- (pause) --
12 different watersheds. And the main reason is the
13 urbanization and what has built up those watersheds.

14 So, this road at the top of the -- the -- the
15 founding waters of the San Juan Creek is really negatively
16 affect it, as the NGOs have presented to you. So, as that
17 water comes down the watershed, both on the surface and
18 underneath, there's -- uhm-m-m -- the City of San Juan
19 Capistrano that uses that resource for drinking water. And
20 the Southwest Water District has one well that produces
21 around ten percent of the -- the -- uhm -- drinking water
22 within the area. And the second well, right now, is being
23 put in. So, it's not just the surface water but it's also
24 the ground water that can be very much negatively affected by
25 contaminants and by these types of projects.

1 And -- and so, again, I would urge for you to
2 reject this -- this road in this segment. And -- uh -- thank
3 you for your time.

4 THE PUBLIC EN MASSE: (Clap of hands).

5 VICE CHAIRMAN MR. STRAWN: Mr. Hill.

6 And then -- uh-h-h -- Mr. -- or Ms. Kring.

7 MR. HILL: Board Chair and Board Members, good
8 afternoon. My name is Rush Hill. I am the Mayor, Pro Temp,
9 for City of Newport Beach. I would like to welcome you to
10 our county and I'm pleased you made the trip north.

11 I am also the Chairman of the San Joaquin
12 Transportation Agency. We are the board that strikes
13 (unintelligible) the 73 toll road. Orange County Toll Road
14 System is absolutely critical to the improved mobility
15 through our region. This project has been studied as a
16 standalone extension and is needed to accommodate, not only
17 the natural population growth as you've heard about today,
18 but also to provide an alternate to our already congested
19 I-5.

20 The water filtration system, for its
21 pavement, and other water quality features are exactly the
22 types of state of art water pollution prevention features
23 that should be used on all new road construction. Once
24 completed, the water prevention system used to develop this
25 roadway will be used as a model for future roadway

1 construction projects. And your board will be able to take
2 the credit for setting a newer and higher standards (sic) for
3 road building projects.

4 I've heard some people say that California is
5 dying; that the regulatory process has become so burdensome
6 that even good projects cannot be approved any more. I
7 disagree. This is a great project, environmentally sound,
8 needed for traffic relief and will create thousand of jobs.

9 By voting to approve this permit, you can
10 show us, here today, California is still a state where we can
11 build projects that will, quite literally, move us all
12 forward. Don't allow your good board to be used by special
13 interest groups for anything other than judging water
14 quality. I urge you to support approving this permit, so
15 that both your board and the TCA can celebrate the future of
16 green roads.

17 CHAIRMAN MR. MORALES: Just one minute
18 (whispering).

19 BOARD MEMBER (MS. KALEMKIARIAN): I think he'll
20 know the answer to this.

21 There was some comment made, during the NGO
22 presentation, that 73 had been resurfaced but not with the
23 permeable surface. Did -- do you have any knowledge about
24 that? Has there -- has 73 been resurfaced? And was it with
25 the same permeable asphalt?

1 MR. HILL: I do not have the answer to that.

2 CHAIRMAN MR. MORALES: We have -- staff, nobody
3 has --

4 MR. LOWE: I'll just quickly go over the history of
5 the 73. We opened it, in 1996, through CalTrans. They
6 decided, about two years after that -- (interrupted)

7 EXECUTIVE OFFICER (MR. GIBSON): Mr. Chairman, if
8 you'd -- I may suggest that the speaker approach the
9 microphone, so we can get the recording and the audience can
10 hear it.

11 CHAIRMAN MR. MORALES: And if you would state your
12 name, sir.

13 MR. LOWE: My name is David Lowe. And I'm the
14 Director of the Diamond Construction for TCA. And I -- and I
15 did take the oath, earlier this morning.

16 The CalTrans took over the road in 1996, from
17 73. And that project was designed and built according to
18 their standards. Subsequent to that opening, there were some
19 problems with hydro planning and they decided to go 'head and
20 install a permeable overlay throughout that entire project
21 and that -- that went in, in stages, over the years. But
22 there has been no removal of that overlay, since that time.
23 Always been permeable overlay. Become a much much safer
24 project for the -- for the system of Orange County.

25 CHAIRMAN MR. MORALES: Thank you.

1 MR. HILL: Further questions?

2 CHAIRMAN MR. MORALES: Thank you, (shake of the
3 head).

4 MR. HILL: Thank you.

5 VICE CHAIRMAN MR. STRAWN: Would the gentleman that
6 just spoke, if you didn't do a card before, if you would
7 for -- for the record.

8 Ms. Kring.

9 MS. KRING: Yes. Good afternoon, Chairman and
10 Board Members. My name is Lucille Kring and I'm a council
11 woman from the City of Anaheim.

12 We're a city of approximately 300 and 50
13 thousand residents. And we -- uh -- the 241 actually
14 begins -- the northern part begins in Anaheim. So, with the
15 addition of the 241, the five extra miles, our residents will
16 be able to get there to South County a lot quicker. And this
17 project is very environmentally sound. It not -- does not
18 impact any wetlands under the Federal jurisdiction and has
19 less than a half acre of impact to waters regulated by the
20 State.

21 Few roads, in California, provide such a high
22 level of environmental protection against the water
23 pollution. This project means a cry- (sic) -- a critical
24 need for congestion relief, in a region that will soon
25 experience tremendous growth. As was mentioned, several

1 times, Tesoro's terminus will be near Ortega Highway where
2 Rancho Mission Viejo is building 14,000 homes. It amounts to
3 a new city of approximately 30,000 people in South Orange
4 County. And, if this does not justify the extension, then
5 nothing else could.

6 The traffic is suddenly to show the project
7 State works on a standalone basis to serve this new town,
8 along with a 500 million square feet of new commercial space
9 it wants. That's the equivalent of two South Coast Plaza
10 shopping centers. That's the nearly five-mile extension. It
11 is designed, expressly, to meet regional community needs and
12 offer relief to relieve your family, businesses and commuters
13 along with enabling fire, police and medical workers to
14 respond in a timely fashion to emergency. As to combat
15 gridlock, it will promote the smoother traffic flow and also
16 reduce the air pollution, a win-win for everybody.

17 It also will provide over 2400 jobs in a
18 county with an unemployment rate of nearly 10 percent. And
19 when con- (sic) -- the construction begins this year, the
20 project can't begin soon enough for the thousands of
21 unemployed construction workers and engineers that look
22 forward building this roadway. Moreover, the project
23 qualifies for The Helmets To Hard Hat Programs, which will
24 find work for returning military. These men and women
25 deserve the best that we can offer, as far as providing them

1 jobs. They have served our country so valiantly.

2 So, when Hill said you'd take a look at the
3 people who speak on behalf this project and be positive for
4 your response. Thank you for your time and consideration.

5 CHAIRMAN MR. MORALES: Ma'am, one quick question.

6 Are you speaking on behalf of your entire city
7 council or --

8 MS. KRING: Uhm-m-m -- yes. Several us have
9 been -- I was on the TCA board for many years and I'm back on
10 it now. And the people -- all of the council agrees that
11 this TCA extension should be approved.

12 CHAIRMAN MR. MORALES: (Nod of the head). Thank
13 you.

14 VICE CHAIRMAN MR. STRAWN: Mr. LaMotte.

15 And then -- uh-h-h -- Mr. Ming.

16 UNIDENTIFIED SPEAKER: (Nod of the head),
17 (indicating).

18 VICE CHAIRMAN MR. STRAWN: Mr. LaMotte is next, I
19 believe. And then Mr. Ming.

20 MR. LAMOTTE: Chairman and Board Members, thank
21 you. My name is Steve LaMotte. I'm reading this letter
22 submitted on behalf of Assembly Woman Diane Harding
23 (phonetic).

24 Dear Acting Chairman Strawn, as the
25 California State Assembly member representing the 73rd

1 District, which includes the Cities of South Orange County
2 favorite Aliso Viejo, Coto de Caza, Dana Point, Ladera Ranch,
3 Mission Viejo, Laguna Hills, Laguna Niguel, Rancho Santa
4 Margarita, San Clemente and San Juan Capistrano, I ask you
5 that you support the Foothill Eastern Transportation Corridor
6 Agency's Waste Discharge Requirements. Residents and
7 businesses throughout my district are directly impacted,
8 every day, of the lack of viable al- (sic) -- by the lack of
9 a viable alternative of the Interstate 5. Because there is
10 no alternative route from the I-5, completing the Tesoro
11 Extension is a crucial component to the over issue (phonetic)
12 mobility plan designed to help mitigate end the traffic
13 congestion route outwards. Included with the traffic that
14 would benefit the residents, businesses and visitors
15 construction of nearly five-mile extension off the premium
16 (phonetic), 2,000 Orange County jobs and an additional 400
17 and 7 jobs statewide. Job creation and traffic relief are
18 both desperately needed.

19 In addition to the jobs and it has mobility
20 throughout the region, Tesoro Extension has extremely minimal
21 impact on waters regulated by the State, less than half an
22 acre. This project will also benefit the region's air
23 quality, as identified in South Coast air quality management
24 district's 2012 air quality management. I strongly encourage
25 you to approve the TCA WDR application. Sincerely, Diane

1 Harding, Assembly Woman. Thank you.

2 MR. MING: Chairman and Board Members, my name is
3 Robert Ming. I am the Mayor of the City of Laguna Niguel. I
4 would love to give a you wake-up call, if I could. I know
5 it's been a long day, already. And I won't take too much
6 more of your time.

7 I wanted to remind you that Laguna Niguel has
8 implemented a number of novel and effective water quality
9 projects in our city. These include everything from -- from
10 repairing right-of-way (phonetic) projects to wetland --
11 (inaudible) -- projects. Now, we place a great deal of
12 importance on green belts and waterways and -- and of
13 preserving the view of national environment for our
14 residence. As I reviewed this project and the mitigation
15 site on the measures TCA's taken to mitigate special water
16 quality and issues, I'd like to strongly recommend that you
17 approve this permit.

18 I would -- as I look at the approaches that
19 they have taken, I see the same kind of dedication to
20 (unintelligible) exclusion, the comprehensive approaches that
21 we've used in Laguna Niguel that has served us well. And it
22 may be tempting, today, to focus on other issues. I know
23 endangered species are a concern (unintelligible). I
24 encourage you to focus on your primary issue, which is
25 water. And, as you look at the water quality control

1 measures in this project, I think they are impeachable and
2 they're what people should be doing in these projects. And I
3 expect others to follow this example in the future.

4 I think it'll be a good precedent. It
5 contains a strong investment and innovative solutions while
6 implementing all of these (unintelligible) measures to
7 produce the balanced and simple results. And I strongly urge
8 you to grant this permit so that we can have this Tesoro
9 project proceed. The City of Laguna Niguel would appreciate
10 it. So, thank you, very much.

11 VICE CHAIRMAN MR. STRAWN: Mr. Pain?

12 MR. LECKNESS: Actually -- uh-h-h -- Leckness.
13 Councilman Leckness, from Mission Viejo.

14 VICE CHAIRMAN MR. STRAWN: And do we have a card?
15 The green one -- (mumbled)

16 MR. LECKNESS: Uh -- uh -- no, I do not have a
17 card.

18 UNIDENTIFIED SPEAKER (FEMALE): He should have. He
19 should have -- (inaudible) -- Dave should have the -- they
20 should have one. They should have the pack.

21

22 (Simultaneous speech; unintelligible.)

23

24 MR. LECKNESS: Okay, thank you.

25 Good afternoon, Chairman Morales, Vice Chair

1 Strawn and Board Members. My name is Dave Leckness. I have
2 the honor serving for the City Council for the City of
3 Mission Viejo. I'm here to speak, today, in support of TCA's
4 WDR application. In Mission Viejo and other cities, TCA has
5 a very impressive and long history of environmental
6 sensitivity. I'm also on the board of the Orange County
7 Vector Control.

8 That's the rats, birds, mosquitos, all the
9 bugs.

10 THE PUBLIC EN MASSE: (Laughter).

11 MR. LECKNESS: I remember, 20 years ago, when
12 people voiced their concern over the construction of the
13 first toll road, that they feared the water waves and the
14 wildlife would suffer from the roadway. Uh-h-h -- they
15 figured that the dears and the gnats and the -- uh-h-h -- the
16 mosquitos would all disappear. Have proved not to be true.

17 THE PUBLIC EN MASSE: (Laughter).

18 MR. LECKNESS: We used to have pockets of still
19 standing water. That was the occasional water source for --
20 uhm -- for our animals out there. And it was a breathing
21 ground, the still water was the breathing ground for the
22 mosquitos.

23 Today, 20 years later, with the building of
24 the toll roads, now we have our official water sources that
25 are -- uh-h-h -- they provide all of the -- a lot of the

1 water for the wildlife and is the year around water source.
2 And these animals have benefited from this and we see that
3 with the robust population. We call that "artificial, but
4 beneficial."

5 And mosquitos from that area are virtually
6 nonexistent, now, because of the -- well, how we've taken
7 care of that the waterways and wildlife are in better shape
8 today than were -- than they were before the roads were
9 built. If progress is done correctly, it's beneficial to
10 both the animals and the bugs. The toll roads might be
11 artificial but they're very very beneficial to our people,
12 our residents and the animals. They're artificial, but
13 beneficial. Just a reminder, this project has less than a
14 half acre of impact to the waters regulated by the State.

15 I urge you to support TCA's Waste Discharge
16 Requirement Application and get the Tesoro Extension on the
17 road to completion. Mission Viejo thanks you.

18 BOARD MEMBER (MR. ANDERSON): Do you mind? David,
19 do you mind just filling out the form?

20 MR. LECKNESS: Yes, I will.

21 BOARD MEMBER (MR. ANDERSON): Thank you.

22 MR. LECKNESS: I get it back here (indicating)?

23 BOARD MEMBER (MR. ANDERSON): (Nod of the head).

24 VICE CHAIRMAN MR. STRAWN: Now, Mr. Pain.

25 MR. PAIN: Apologize to the -- uh -- council

1 members and mayors I'm jumping in front of you.

2 Good afternoon, Chairman Morales, Vice
3 Chairman Strawn, Board Members, my name is Martin Pain. I
4 served as District Director for California State Senator
5 Mamie Walters. And, of course, we'd like to welcome you to
6 the 37th district for which she represents. It is my
7 pleasure to be here, today, and to speak strongly in support
8 of the Tesoro Extension.

9 This project meets the critical needs for the
10 congestion relief in this region that will soon be
11 experiencing all the growth that we have already discussed in
12 the Rancho Mission Viejo area, with upwards of 30,000 people
13 eventually residing in that area. This clearly reinforces
14 the need to improve the mobility in this area. The extension
15 offers much needed relief for the malingered (phonetic)
16 families, businesses and commuters. And, more importantly,
17 speaking as the -- for our first responder, the ability for
18 our first responders: the police, fire and medical personnel
19 to respond to those who are in need of their services when
20 seconds count and lives literally hanging in the balance.
21 The Tesoro Extension utilizes the multi-conventional approach
22 to strong water treatment that should be a model for other
23 highway projects, including the porous pavement that has been
24 brought up numerous times.

25 The extension -- uh-h-h -- extend --

1 detention basins that are designed to capture, hold and
2 gradually release the storm waters to reduce the possibility
3 of downstream erosion. The flow splitters, to direct water
4 into the Austin sand filters, that will remove the harmful
5 pollutants before they reach the water waves. And, of
6 course, the vegetative slopes. The -- uh -- will also filter
7 the storm water before reaching the major water ways. On
8 behalf of Senator Walters, I stand with those who live and
9 work here in the 37th District and urge you to strongly
10 approve the TCA's application for the WDR ap- -- application
11 and enhance the mobility of the transportations here in our
12 area.

13 Thank you very much.

14 VICE CHAIRMAN MR. STRAWN: Okay.

15 And -- uh -- Mr. Puckett, City of Tustin.

16 MR. PUCKETT: Mr. Chairman and the Members of --
17 (unintelligible). Thank you for coming north, so we can have
18 an opportunity to speak.

19 My name is Charles Puckett and I am former
20 Mayor and current Mayor Pro Temp for the City of Tustin. I
21 moved to Tustin in 1975. The population was only 22,000.
22 The population is 76,000, now. And we needed roads to --
23 (Pause) -- go along with that growth.

24 We're -- we have the I-5 and the I-55
25 intersect, in Tustin. In 1991, when I was mayor, we

1 completed the Jamboree extension through the Marine Base,
2 which took a lot of the traffic off of the roads. This year,
3 we will complete Tustin Ranch Road, through the Marine Base,
4 which will eliminate a lot of the traffic congestion.

5 The toll road extension is necessary and
6 required for this -- the community, at 30,000, which is going
7 to be completed in South County (sic). It's going to help
8 traffic flow through this -- to move a lot more smoothly and,
9 therefore, reduce a lot of air pollution. So, we greatly
10 wish that you would support this -- uh -- this permit.
11 'Cause this project is definitely needed. Thank you.

12 VICE CHAIRMAN MR. STRAWN: Ms. Reardon , City of
13 Mission Viejo.

14 And then Mr. Scheffel, from Dana Point.

15 MS. REORDON: Good afternoon, ladies and
16 gentlemen. And I wanna thank you in having sat and presided
17 over public hearings. This is probably the longest public
18 hearing that I can even imagine. So, thank you for
19 patience.

20 My name is Rhonda Reordon. I am currently
21 the Mayor of Mission Viejo. Be reflective to the chairs up
22 here now, was also a former mayor. So we do speak on behalf
23 of the entire city council of Mission Viejo.

24 We are a city of 95,000 plus residents. And
25 we love living in Mission Viejo. And I have to tell you that

1 the Tesoro Extension is absolutely essential to us as a
2 community; but it is also essential to the other communities
3 that we provide arterial for, as they come and -- they go to
4 and from where they live to the I-5.

5 We have -- we have four arterials, direct
6 arterials: Crown Valley Parkway, Oso Parkway, La Paz and
7 Alicia. Those are four direct ones. And we have two
8 indirect ones, which are Avery Parkway, by way of Margarite;
9 and Los Aliso, by way of Alicia and ElToro Road. All of
10 those, ladies and gentlemen, are impacted. All of them
11 congested. And I would not say, would not guess but they are
12 on their way to being gridlocked.

13 We serve parts of Foothill Ranch, Rancho Mi-
14 (sic) -- Rancho Santa Margarita, Coto de Caza, Las Flores,
15 Ladera Ranch and the new community of Rancho Mission Viejo
16 that are coming with 14,000 new homes. I'm a reality vehicle
17 (phonetic) elected official. I believe in solving problems.
18 We have an opportunity to solve our problem. For all of
19 those communities, including Mission Viejo and including any
20 of the residents who uses the 5 freeway, I'm supporting the
21 Tesoro Extension.

22 I support everything that my colleagues
23 elected officials have said. I don't wanna repeat that and
24 waste your time. But I will say this to you: It is our
25 responsibility as elected officials to look out for today,

1 tomorrow and our future of or residents. It is absolutely
2 essential that we do what we can, on our part, to help with
3 our infrastructure to support development.

4 If people are against development, that is a
5 whole 'nother issue and that needs to be dealt with up
6 front. Okay. But once development has been approved, like
7 Rancho Mission Viejo, we have to deal with that. The reality
8 is there's going to be 30,000 people out there in the next
9 few years. That is -- or that is my -- one of my main
10 concerns.

11 We do not have the luxury of being mynopic
12 (phonetic). Short sightedness is not something that we can
13 do right now. I ask you, I beg you on behalf our residents,
14 to please grant our application. Thank you very much.

15 THE PUBLIC EN MASSE: (Clapping of hands).

16 VICE CHAIRMAN MR. STRAWN: Mr. Scheffel.

17 And then Mr. Schwing (phonetic)?

18 THE PUBLIC (MR. GARDNER): I'm not Schott
19 Scheffel. I'm Richard Gardner. I happen to live in
20 Capistrano Beach, which is part of Dana Point.

21 VICE CHAIRMAN MR. STRAWN: Did -- do we have a
22 card?

23 Could you -- (interrupted)

24 THE PUBLIC (MR. GARDNER): I stated at a Holiday
25 Inn.

1 THE PUBLIC EN MASSE: (Laughter).

2 THE PUBLIC (MR. GARDNER): Yes, you do have a card
3 from me. I have a -- I signed a card and --

4 VICE CHAIRMAN MR. STRAWN: Mr. Gardner, we're --

5

6 (Laughter commenced throughout. Simultaneous
7 speech; unintelligible.)

8

9 VICE CHAIRMAN MR. STRAWN: -- dealing with
10 government official persons --

11 THE PUBLIC (MR. GARDNER): I'm no longer elected.
12 I -- I was unsuccessful, in my campaign.

13 THE PUBLIC EN MASSE: (Laughter).

14 VICE CHAIRMAN MR. STRAWN: Can we -- (laughter).
15 Could you -- well, if you have a card in here, we will get
16 you -- to you at the end of --

17 THE PUBLIC EN MASSE: I'll wait. I'm patient.

18 VICE CHAIRMAN MR. STRAWN: Thank you, sir.
19 Appreciate that.

20 So, who's next here? Mr. Schwing (phonetic)?

21 MR. SCHWING: Mr. Schwing, yes.

22 THE PUBLIC (UNIDENTIFIED): Good try (giggle).

23 MR. SCHWING: Good afternoon, Chairman and Members
24 of the San Diego Regional Water Quality Board. My name is
25 Mark Schwing. In my 17th year of service on the Irvine City

1 Council, four of those years were served as mayor. I'm here
2 to urge your approval of the water quality permit, submitted
3 by the TCA, for the Tesoro Extension.

4 I'll be brief as possible because you've heard
5 many of these things before. The environmental water issues
6 considered for this extension are state of the art. The
7 extended detention basin, the porous pavement, the Austin
8 sand fillers (sic) and the flow splitters, you've heard all
9 that before. Very few roads in California have this many
10 current features.

11 As elected officials, we have to deal with the
12 problems of today and the needs for tomorrow. The Tesoro
13 Extension does that. It'll meet the transportation needs of
14 30,000 residents of a new community, occupying 14,000 blowing
15 (phonetic) ins. It will provide emergency access for first
16 responder units. It will provide jobs for over 2,000 Orange
17 County residents and returning veterans.

18 It is indicative (phonetic) to review this
19 permit and approve it as soon as possible. Thank you very
20 much.

21 VICE CHAIRMAN MR. STRAWN: Mr. Sal aria.

22 And then a Mark Wyla.

23 And that's all I have for government cards
24 here. If there is --

25 UNIDENTIFIED SPEAKER (FEMALE): (Raise of hand).

1 MR. GIBSON: (Raise of hand).

2 VICE CHAIRMAN MR. STRAWN: You -- your name, sir?

3 MR. GIBSON: Charles Gibson, Santa Margarita Water
4 District.

5 VICE CHAIRMAN MR. STRAWN: We'll get you next.

6 MS. BIAS: Hi, my -- my name is Heather Bias. And
7 I am used to being up and giving this out. I'm here
8 representing my boss, Senator Mark Wyla. And I wish to read
9 his firm request for your approval of the circulation of
10 transportation (sic) -- Transportation Corridor Agency's
11 Application for the Water Discharge Requirement Permit,
12 mitigation for the Tesoro Extension Project in Orange
13 County.

14 Our district includes the Cities of Rancho
15 Santa Margarita, Mission Vie jo, San -- San Juan Capistrano,
16 San Clement and unincorporated area Lad era Ranch; and then,
17 currently under construction, Rancho Mission Vie jo. These
18 communities only have one route, north and south, I-5. It's
19 dangerous for any community to rely on only -- on only one
20 freeway. And an alternate route is desperately needed. And
21 trust me, I know, because I live there.

22 Not only would this extension create an
23 alternate route for residents, it will create more than 2400
24 jobs. Now, at this time, the tax payers in this State are
25 being gouged in every direction. This project can be built

1 without using tax dollars for planning of construction. The
2 Tesoro Extension has a minimal impact to the waters regulated
3 by the State. Project will also benefit the region's air
4 quality, as identified by the South Coast Air Quality
5 Management District 2012 Air Quality Management Plan.
6 Strongly encourage you to improve T- -- approve TCA's Water
7 Discharge Requirement application.

8 Thank you.

9 VICE CHAIRMAN MR. STRAWN: Mr. Gibson, I have your
10 card.

11 MR. GIBSON: Thank you. I'll -- I'll be brief. I
12 wanna thank you, very much, for the courtesy of allowing me
13 to appear.

14 My name is Chuck Gibson, I was recently
15 elected in November as a non-incumbent to the Santa Monica
16 Water District. I'm the new kid on the block and I don't
17 represent the entire district. I'm speaking on my own behalf
18 and on behalf of the 155,000 customers, as we don't represent
19 districts, we represent at large. So, I'm speaking on my own
20 behalf on this. And, as a resident of Ladera Ranch and
21 co-founder of the City Council in Ladera Ranch and they have
22 -- I know they have a letter on file with you in this
23 regard.

24 I wanna say that I've read the entire
25 litigation report and many of the comments have been

1 presented. We sat through your hearing. And I believe, very
2 strongly, that the water quality -- (mumbled) -- storm water
3 management -- uh-h-h -- measures that are being taken will
4 leave the area better off after the project. One must ask
5 oneself, "Will we be better, after this project, than we are
6 today?" If we leave this alone and don't do anything, we'll
7 take a few members. The answer is "absolutely, they won't be
8 better.

9 They will only be better with this. We have
10 the resources to do the project, now. I do encourage you to
11 take your time. I respect your judgment. I heard some very
12 great questions. But, please, I implore you to approve the
13 discharge permit.

14 Thank you.

15 VICE CHAIRMAN MR. STRAWN: Thank you. Anybody
16 else.

17 Unless I missed somebody we have had all the
18 government speakers.

19 THE PUBLIC EN MASSE: (Clapping of hands).

20 VICE CHAIRMAN MR. STRAWN: Are there anymore
21 speakers that are here from the governmental agency?

22 Sir?

23 THE PUBLIC (MR. GARDNER): I'm not government
24 speaker -- (interrupted)

25 VICE CHAIRMAN MR. STRAWN: Oh, well, we have more

1 -- we have the rest of the speaker cards. We're just trying
2 to get to the --

3 UNIDENTIFIED SPEAKER: Here's one.

4

5 (Simultaneous speech; unintelligible.)

6

7 VICE CHAIRMAN MR. STRAWN: Do we have a card?

8 MS. RAMSEY: Yes.

9 VICE CHAIRMAN MR. STRAWN: And your name was?

10 MS. RAMSEY: My name's Lisa Ramsey. I'm from
11 CalTrans.

12 VICE CHAIRMAN MR. STRAWN: Okay..

13 MS. RAMSEY: Good afternoon, board members. My
14 name is Lisa Ramsey. I'm the act- (sic) -- Acting Deputy
15 District Director of the Capitol (phonetic) Program in
16 CalTrans District 12. Existing 51 miles of toll road have
17 been planned, financed, aligned and built by TCA and then
18 turned over to CalTrans as part of the State Highway System.
19 It is anticipated that Thetor- (sic) -- Tesoro Extension will
20 become part of the State Highway System, State Route 241.
21 And will follow a similar development process, as we have had
22 in prior segments of this facility.

23 Once TCA completes the designed construction,
24 they will relinquish the facility to CalTrans for operation
25 and maintenance. The creek will -- water quality orders and

1 the signing (phonetic) of the Tesoro Extension include the
2 statewide general construction permit, which CalTrans has
3 become subject to in July 2010. And for the post-
4 instructions, the CalTrans NS-4 permit, that was adopted by
5 the State Waters Board of September 19, 2012 as Water Quality
6 Order of 2012.011 will become effective on July 1, 2015. The
7 Orange County toll road extension, a successful partnership
8 between CalTrans and TCA, this provides a great relief from
9 congestion in the South County (sic), (nod of the head).

10 Thank you.

11 VICE CHAIRMAN MR. STRAWN: Thank you.

12 If you could spell your name for me, so I can

13 -- (interrupted)

14 MS. RAMSEY: R-a-m-s-e-y.

15 VICE CHAIRMAN MR. STRAWN: Okay.

16 MS. SKORPANICH: Good afternoon. Mary Ann

17 Skorpanich, OC Watershed Manager from the County of Orange.

18 I'm here, today, to speak on an item before you.

19 Specifically, with respect to the Municipal Storm Water

20 permit issued by your board to the cities in South Orange

21 County, the County of Orange and the Orange County Foot

22 Control District. And, specifically, in support of the Post-

23 Construction Best Management Practices that you added for

24 this project to include compliance with the modert wall (sic)

25 -- Model Water Qualities Management Plan for South Orange

1 County, as well as the South Orange County Hydromodification
2 Plan. It was developed by those permittees as their
3 compliance program for your permit.

4 The County thinks it makes absolute sense to
5 have the same standards apply to both the municipalities as
6 well as this project and other projects like it. We think
7 that -- that our product is -- is very good. You heard quite
8 a bit of detail about it, from one of the speakers this
9 morning. So, I won't go into much detail about it. But we
10 do support having the project comply with that same plan that
11 we do.

12 Thank you.

13 CHAIRMAN MR. MORALES: Thank you. And I -- I'm
14 sorry. But we're gonna take a brief break, 3 to 4 minutes,
15 so that our court reporter can change out her paper. Your
16 comments are so great, they're taking up a lot of space.

17 THE PUBLIC EN MASSE: (Laughter).

18
19 (Heretofore, break commenced. Off the record
20 2:27 p.m. Proceedings resumed 2:35 p.m.)

21
22 CHAIRMAN MR. MORALES: We're going to get started
23 in a couple of minutes, in order to talk about the
24 presentation's going to proceed. At this point, I'll let
25 Gary Strawn explain our procedures and -- (giggle) --

1 everything that we've received in terms of cards and so
2 forth.

3 VICE CHAIRMAN MR. STRAWN: Yeah, I -- I'm gonna
4 start here with a -- with an explanation. The next group up
5 will be the red cards. And, again, I put it in alphabetical
6 order.

7 And I heard some complaints about the
8 ordering of things today. But I -- I wanna make it clear and
9 I guess I shoulda known this ahead of time, based on the
10 amount of duplicate paperwork we got to read before this
11 committee. 'Cause I have this (show of document) many
12 duplicate cards today. Okay?

13 Many cards were filled out three times. They
14 were the same person with different colored cards. I know it
15 was -- somebody sort of did it in some automated fashion.
16 But it's made it very difficult for us to deal with the
17 speakers. And, basically, if you have a complaint about
18 the -- the order of things, take it up with whoever did all
19 these cards for ya.

20 With that said, if -- if you -- the -- the
21 next set of speakers will be those red cards, which
22 supposedly are densely the -- um -- proposed order. And
23 we'll start those, again, in alphabetical order. And we're
24 gonna go to two minutes?

25 THE PUBLIC (MR. GARDNER): I'll be next.

1 VICE CHAIRMAN MR. STRAWN: I -- I -- I would say
2 this, if our government speakers could pretty much stay below
3 two minutes, I would hope that our -- that my fellow citizens
4 could take that as a challenge --

5 UNIDENTIFIED SPEAKER (FEMALE): Yes.

6 VICE CHAIRMAN MR. STRAWN: -- and try to not
7 repeat what has been said before you.

8 CHAIRMAN MR. MORALES: Okay. And one final
9 thing -- and -- uh-h-h -- it -- we will be taking folks in
10 alphabetical order. So, while we appreciate folks wanting to
11 speak, if you're standing in line, unless your name is coming
12 up -- and you will hear it before it's your turn to speak,
13 prior to the person in front of you -- uhm-m-m -- it -- it --
14 ya know, just -- (nod of the head). You're gonna have to
15 wait a little bit. We're sorry to do it like the school
16 yard, you know, starting with the letters "A." But there's
17 really no sufficient way to deal with it.

18 VICE CHAIRMAN MR. STRAWN: (mumbled) -- duplicate
19 call.

20 The first three in this section will be
21 Mr. Babski and Ms. Bradford and then Mr. Carlton.

22 If you're here?

23 CHAIRMAN MR. MORALES: I'm sorry. I can't -- I
24 believe we may have had one error --

25 UNIDENTIFIED SPEAKER: Two additional speakers.

1 CHAIRMAN MR. MORALES: -- two additional and I --

2

3 (Simultaneous speech; unintelligible.)

4

5 VICE PRESIDENT MR. STRAWN: Okay.

6 CHAIRMAN MR. MORALES: And I apologize, because we
7 broke so that we could -- uh-h-h -- and -- and your name
8 was?

9 MR. CHIDSEY: Darin Chidsey, with Southern
10 California Association of Governments?

11 VICE CHAIRMAN MR. STRAWN: Was it a green card?
12 Or?

13 MR. CHIDSEY: Green card.

14 VICE CHAIRMAN MR. STRAWN: Okay. Go 'head.

15 MR. CHIDSEY: Okay. Chair and Board Members, thank
16 you very much for the opportunity to address you today. My
17 name is Darin Chidsey, from the Southern California
18 Association of Governments. I'm here representing our
19 Executive Director Hasana Crawder (phonetic) who,
20 unfortunately, could not be here today.

21 SCAG recommends that the board approves this
22 permit for the Tesoro Extension, because of congestion air
23 quality and economic recovery benefits provided for the local
24 area and to the region by this project. This project has
25 been part of the region- -- Regional Transportation Plan and

1 Air Quality Strategy since 1991. This project include -- was
2 included in the 2,000 and 12 Regional Transportation Plan and
3 sustainable community strategy which was approved by our
4 regional council, in April, unanimously. The plan sets forth
5 a coordinated transportation and landing strategy set to meet
6 the regional State, Federal, mobility, air quality and
7 greenhouse gas requirements. It was approved at the State
8 and at the Federal level.

9 And, as I noted, this 2012 regional
10 transportation plan sustainable community strategy was the
11 most elaborate bottoms-up regional planning process in our
12 agency -- agency's history. The project meets the critical
13 need for congestion relief in the area and will soon
14 experience growth. It will support approximately 14,000 new
15 homes and associated population of employment near the Ortega
16 Highway.

17 Air quality benefits are also very important
18 for this project. It's listed in our regional transportation
19 plan as a transportation control measure, as well as in the
20 South Coast Ozone Air Quality Command. The Federal Clean Air
21 Act requires transportation control measures be implemented
22 in a timely matter. The receipt of the Water Board permit is
23 a critical step towards the products and -- (sic) -- prod-
24 (sic) -- (clearing throat) -- excuse me -- to project
25 implementation.

1 The economic recovery benefits are also very
2 important. The region here at SCAG has been a strong
3 component of regional economic development. It's been more
4 active in this area. Our regional council has studied and
5 advocated for the benefits of the historic (phonetic) and
6 transportation projects delivery, spur (phonetic) and
7 maintain economic recovery.

8 Attuned economists recently studied the
9 recent economy will show that Orange County might not recover
10 all the jobs that it had at its peak employment in 2,007
11 until 2014. This project could help assist with that and
12 move that number closer to today. The project would create
13 over 2,000 jobs, in Orange County. With the construction
14 plan to begin this year, the project can't begin soon enough
15 for the thousands of unemployed construction workers and
16 engineers who look forward to building this structure.

17 Additionally, this public toll facility does
18 not rely on the scare -- State and Federal tax -- (mumbled).
19 Financing was a key component of our Regional Transportation
20 Plan and infrastructure problems -- projects with alternative
21 financing methods (phonetic) it is key strategy -- in the
22 adoption of regional transportation plan (mumbled).

23

24 (Heretofore noted for the record, speaker
25 mumbled at this point; unintelligible.)

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MR. CHIDSEY: Yet, thank you very much for your time and efforts. And support this environmentally sound project that supports our RTPSCS. We urge you to approve the project. Thank you very much.

BOARD MEMBER MR. ABARBANEL: I have a couple of questions, if I might. Since you're from SCAG have the RTP view point of this, did you describe to us in a whole project, instead of just Tesoro Extension?

MR. CHIDSEY: Yeah, the -- the entire project was -- it had been included, as I said, in our regional transportation (mumbled) since 1991, when the entire network was built.

BOARD MEMBER MR. ABARBANEL: Right. I understood that you said it was there. Since it's been there since 1991, we've had 22 years to figure out what the entire project is.

Could you tell us what the entire project is?

MR. CHIDSEY: In -- in what -- "the entire project" is in a -- meaning the exact -- (interrupted)

BOARD MEMBER MR. ABARBANEL: Tesoro Extension does not go to I-5, would it? What is the entire project that gets this road to I-5?

MR. CHIDSEY: Uh-h-h -- I -- I -- I don't have that answer (shake of the head). I apologize for that. So, the

1 -- the -- (interrupted)

2 BOARD MEMBER MR. ABARBANEL: So, your --

3 MR. CHIDSEY: -- the extension does --

4

5 (Simultaneous speech; unintelligible.)

6

7 BOARD MEMBER MR. ABARBANEL: Let me ask my second
8 question, then.

9 MR. CHIDSEY: Okay.

10 BOARD MEMBER MR. ABARBANEL: The SCAG RTP, you say
11 it was approved.

12 MR. CHIDSEY: Right.

13 BOARD MEMBER MR. ABARBANEL: The SANDAG RTP was not
14 approved because state attorney general said it violated
15 AB-32. Part of this project, if it does go to -- to the I-5,
16 may very well go to the SANDAG region. Does that mean that
17 there is no project, because it hasn't been approved by the
18 Attorney General?

19 I'm look quite confused about what the
20 project is.

21 MR. CHIDSEY: Okay.

22 Our -- our original transportation plan was
23 approved and the project within our region was approved.
24 With that, our -- there -- there was no challenge --
25 (inaudible) -- Attorney General, for that question. So.

1 BOARD MEMBER MR. ABARBANEL: Okay. Okay. Thank
2 you, Mr. -- (interrupted).

3 MR. CHIDSEY: Thank you.

4 MR. SIMPSON: Good afternoon, Mr. Chairman. I'm
5 Dave Simpson with the Orange County Transportation
6 Authority.

7 VICE CHAIRMAN MR. STRAWN: What was the last name,
8 again?

9 MR. SIMPSON: Simpson.

10 VICE CHAIRMAN MR. STRAWN: (Nod of the head).

11 MR. SIMPSON: "Simpson," S-i-m-p-s-o-n.

12 I'm here on behalf of our CEO, Daryl Johnson,
13 who's regrets he couldn't be here today. But I would like to
14 add that -- uh -- if I can, under a minute and perhaps a
15 couple of new things.

16 We do appreciate the pros- (sic) of the --
17 process of the advancing and large infrastructure project.
18 And there's a fine roll in it, here, in the -- (mumbled) --
19 today, that you're considering would be (mumbled) to you. As
20 you deliberate on that, we wanted to let you know that OCTA
21 has long supported the toll roads projects and, especially,
22 this -- uh -- this specific project. It's not only a -- is
23 part of that RTP that was referenced, which is also part of
24 the Orange County Long Range Transportation Plan where TCA
25 has played an active role in, over the years.

1 It's also modeled after a Measure "M" Water
2 Quality Program, which we are very proud of that -- uh --
3 here, in Orange County. And we believe that TCA has done an
4 outstanding job -- uhm-m-m -- on -- on all their projects.
5 They have a long history of balancing mobility needs with the
6 needs of the environment and -- and we applaud that in our
7 and lock this step with them on -- on all projects. We
8 believe also that their vision for support of our long range
9 transportation plan and an interim program that talks about
10 reducing greenhouse gases through BR, such things as Bus
11 Rapid Transit and the like is something to be considered
12 about their environmental stewardship.

13 And, lastly, we're -- we hope that the facts
14 and their long history of environmental stewardship will lead
15 this board, ultimately, to the approval of the permit. With
16 that, thank you for your time.

17 VICE CHAIRMAN MR. STRAWN: Now, I think we're up to
18 Mr. Babski and Ms. Bradford?

19 UNIDENTIFIED SPEAKER (FEMALE): Art had to leave.

20 VICE CHAIRMAN MR. STRAWN: Okay.

21 Mr. Carlton.

22 THE PUBLIC (MR. GARDNER): (Snap of fingers) Paul
23 Carlton, not here.

24 VICE CHAIRMAN MR. STRAWN: Mr. Cadwallader?

25 MR. CADWALLADER: Good afternoon. My name is Craig

1 Cadwallader and I'm here representing the Surf Rider
2 Foundation, South Bay Chapter. And I'd like to expand a
3 little bit on what -- uh-h-h -- Surf Riders California policy
4 manager -- uhm-m-m -- the seekage (phonetic) and the other
5 Safe San Onofre Coalition members mentioned about coastal
6 sediment. I've been heavily involved in coastal sediment
7 issues, a little farther north from here, which included
8 Broad Beach where they're trying to replenish their beach
9 because the sand has eroded. The re- (sic) -- uhm-m-m -- we
10 have quinate (phonetic) sand sources because of dams, because
11 of hardening of the coast and we aren't getting new sands
12 up.

13 Broad Beach is going to pay twenty million
14 dollars to restore their beach, because they're not getting
15 sand. I'm concerned that the San Juan Creek, any kind of
16 sediment restriction coming out of there will impact. We
17 also have an issue of sea level rise, which I haven't heard
18 anybody talk about. And I remember, very distinctly, the
19 82/83 El Nino Storm that's carved our beaches away. We have
20 some sediment reserves, offshore, which I consider a sand
21 bank.

22 But, if we continue to half off the
23 resources, we're gonna pay the price. The coastal -- the
24 ocean and coastal economy is huge. We generate -- uh -- that
25 area generates huge revenue for the State and I think

1 everybody in the State benefits from that. I wouldn't wanna
2 do anything to cut that back. I've discussed this with City
3 Councils, with neighborhood councils, with the State Lands
4 (phonetic) Commission, the L.A. County Beaches and Harbors
5 Commission. And, I actually -- also with the California
6 Coastal Commission during the public -- uhm-m-m -- comment
7 time.

8 I've gotten support from just about everyone
9 that agrees with that. And we need to do something to manage
10 the sediment. And anything, such as this project, if it's --
11 if it's interfering with the sediment going into the ocean, I
12 think you need to rethink this and I would urge you to deny
13 the permit and keep these curtains open for -- (mumbled).
14 Thank you.

15 VICE CHAIRMAN MR. STRAWN: Julia Chun-Heer?

16 UNIDENTIFIED SPEAKER (FEMALE): She also had to
17 leave.

18 VICE CHAIRMAN MR. STRAWN: Sorry about that
19 (whispering). Uhm-m-m --

20 Mr. Collamar.

21 Mr. Irby.

22 CHAIRMAN MR. MORALES: Who's after that
23 (whispering)?

24 MR. IRBY: Thank you, Board Members. And thanks
25 for the opportunity to speak before you. My name is Drew

1 Irby. I'm past President of South Coast Chapter of Trout
2 Unlimited. And, also, I'm a glutton for punishment. I'm
3 also the State chap- (sic) -- State chairman of -- (mumbled)
4 -- Unlimited of California, that serves over 10,000 members
5 in this State.

6 I might take a little of my time to answer
7 some of the questions earlier. I also took the oath.

8 Mr. Strawn, you said, "Is there any bio
9 assessments done?" The South Coast Chapter did do a bio
10 assessment back in 2,006. It's called "The 2,006 San Juan
11 Watershed Plan." And there is some habitat studies on that,
12 in that plan. I can get that to ya, if you'd like.

13 Also, Ms. Sharon, you asked about the steel
14 head. It is a Migratory Core 1 Stream (unintelligible)
15 Fisheries. Steel heads are in there every year. Just like
16 the swallows, in San Juan Capistrano, they come back. And it
17 is still a viable steel head stream.

18 The State has spent over two million dollars
19 in fish passage and creek stabilization projects down on
20 Trabuco, which is a trip to San Juan. And we were very
21 active and have been, since 2,005, our chapter, in
22 restoration projects.

23 Now, the oldest -- as the oldest cold water
24 conservation group in the country, our mission is to protect,
25 reconnect, restore, sustain local watersheds for the next

1 generation; and that includes watershed enhancement for
2 stabilization projects. I'm in -- I'm here today, as I was
3 in Del Mar in 2,009, representing the voice of a fish.
4 There's nobody else here to represent them. They're iconic
5 steel head.

6 Uhm-m-m -- southern steel head is a re- (sic)
7 -- remarkable resilient animal, living in 70 degree water.
8 And they come back again, every single year, to the San Juan
9 and Trabuco Creeks as well as other Southern California
10 streams -- coastal streams. And our position is just like it
11 was in 2,009, we're not against the toll road, per se, just
12 build it some place else.

13 It -- it -- it's -- you know, there's
14 alternatives. There's been alternatives on the record, since
15 this that time and even before that time; and they're not
16 being considered. Uhm-m-m -- ya know, it doesn't vote well
17 for the fish as a discharge. We understand the CEQA
18 process. We were involved in the CEQA process for our own
19 projects down there.

20 We understand what it means. But we just feel
21 that there's just not enough there to guarantee good water
22 quality for the fish and the stream. Without a goal in site,
23 as well as other people have brought up -- this gentleman,
24 (indicating) Mr. Henry brought this up as well, "What's the
25 end -- what's the end goal of this project?" If it's gonna

1 come -- come down and impact our streams and so forth, we
2 have to say that we're against this project.

3 Thank you very much.

4 THE PUBLIC EN MASSE: (Clapping of hands).

5 VICE CHAIRMAN MR. STRAWN: I think my fellow board
6 members would tell you there's other people talking for the
7 fish, too.

8 Uhm -- Ms. Elia. Penny Elia?

9 UNIDENTIFIED SPEAKER (FEMALE): She had to go.

10 VICE CHAIRMAN MR. STRAWN: Denise Erkeneff.

11 And then, after her, Mr. Franklin.

12 MS. ERKENEFF: Good afternoon, Regional Board.

13 My name is Denise Erkeneff. I'm a residence of Dana Point.
14 And I'm here also representing the Surf Rider Foundation,
15 South Orange County Chapter. We're one of the largest
16 chapters in Surf Rider's worldwide footprint.

17 We have over 3,000 local members in South
18 Orange County alone. Surf rider also has over 50,000
19 supporters in California and 80,000 surf rider members in the
20 United States. And I'm here representing the local chapter
21 that would be affected by this ill-fated toll road.

22 First of all, as a -- as a taxpayer, I think
23 it was really suspect that all but really one of the elected
24 officials didn't disclose publicly that they are on the TCA
25 Board. And so, you know, from the get-go, it's very suspect

1 that they didn't divulge that and they're predisposed and
2 biased to the toll road. With that said, you know, we've
3 been over this ill-fated toll road in numerous hearings,
4 since 2,006. The last hearing was actually, security quoted,
5 over 6400 people that showed up at Del Mar.

6 So, the public has speaking out -- has spoken
7 out against the toll road in thou- (sic) -- in the thousands
8 of numbers. This is another blatant attempt by the toll
9 road, the TCA, to circumvent CEQA and to also circumvent the
10 public process. And I urge to you deny that permit on that
11 basis. Thank you.

12 THE PUBLIC EN MASSE: (Clapping of hands).

13 VICE CHAIRMAN MR. STRAWN: Mr. Franklin and --
14 uhm-m-m -- Graham Hamilton.

15 Bill Holmes.

16 And a Ryan Johnson, after that.

17 UNIDENTIFIED SPEAKER (FEMALE): Ryan had to leave,
18 as well.

19 VICE CHAIRMAN MR. STRAWN: Mr. Franklin here?

20 MR. HAMILTON: Hello, my name is Graham Hamilton.

21 And I serve as the Chairman of the Board for the Los Angeles
22 Chapter of the Surf Rider Foundation. Thank you for having
23 us all here and allowing me the opportunity to speak.

24 It's clear that, in order to push through a
25 project that was resoundingly rejected by the California

1 Coastal Commission and the Bush Administration, that the
2 Transportation Corridor Agency is trying to circumvent State
3 and Federal law through segmentation. And I would like to
4 suggest today that, if the TCA and its supporters are really
5 concerned about reducing traffic congestion, they should
6 start thinking beyond highways.

7 Community leaders, today, have cried with
8 anxiety and excitement, "Growth, growth, growth." And
9 population growth here in Southern California shows no signs
10 of growing. But if building more toll roads is the only
11 solution, it will be -- it won't be long before these prized
12 communities are nothing by highways. There's nothing wrong
13 with building roads. We have to be clear and forthright
14 about why and where and how they're going to be built.

15 TCA has been trying to utilize this toll road
16 for well over a decade, now. And, after consistent rejection
17 at the State and Federal level, they've chosen to obfuscate
18 their plan and misrepresent their intention. What is clear
19 is that TCA doesn't seem to understand or simply refuses to
20 acknowledge the full environmental impact of this shady
21 project.

22 THE PUBLIC EN MASSE: (Laughter).

23 MR. HAMILTON: The San Juan Creek and surrounding
24 watershed is already severely impaired ecological system.
25 Even if the TCA can ensure all of their mitigation proposals,

1 there's no question that this project will ultimately push
2 this highly sensitive environment beyond repair.

3 With that being said, on behalf of clean
4 streams, sediments, salmonides (phonetic), surfers and the
5 Los Angeles Chapter of the Surf Rider Foundation, I would ask
6 you to deny this permit. Thank you.

7 THE PUBLIC EN MASSE: (Clapping of hands).

8 VICE CHAIRMAN MR. STRAWN: Mr. Holmes?

9 Mr. Machado?

10 Robin Pozniakoff?

11 Jeff Rizzie?

12 Robert Siebert.

13 UNIDENTIFIED SPEAKER: Here we go.

14 THE PUBLIC (MR. RIZZIE): Hi, my name is Jeff
15 Rizzie. I'm not affiliated with anybody. I'm just a
16 concerned citizen. And I've been opposed to this toll
17 road -- toll road extension for 10 years now. Found out all
18 the hearings and all the meetings and I'm -- just can't
19 believe it hasn't died yet.

20 I'm a teacher. I teach at high school. I'm
21 married. I live in Orange County and I'm a commuter.

22 And I'm also a union member. And I have -- I
23 mention that, because I notice a -- (mumbled) -- union
24 members who had a slogan on their shirt that said, "Good
25 roads equal good jobs." Problem is, 241's not a good road.

1 Plain and simple.

2 They make a claim that it's 25 percent of the
3 highway in Orange County. But I notice they didn't say it
4 carries 25 percent of the traffic. You don't have to look at
5 a traffic flow map to see that their -- the -- their roads
6 carry a fraction of what's on the freeways. And that -- and
7 they also mentioned that they've been around since 1986.
8 Yet, in 2,013, our freeways are still a mess.

9 So, after 50 more miles of toll road, they
10 haven't solved their transportation needs yet. And it
11 doesn't seem like a real good traffic route, to me. So, in
12 my opinion, the right way to go here is to fix I-5, improve
13 connecting roads, operate on that transit. And I realize
14 there's some hurdles to overcome. But that -- see, that's
15 the direction we need to be moving in.

16 As far as some of the environmental issues
17 that have come up, today, I'm not Ph.D. I didn't study
18 geology yet -- (inaudible) -- the questions. And, as I
19 mentioned, I teach high school. But uhm -- uh -- you know, I
20 heard promises about them creating open space. It's already
21 open.

22 We don't -- we don't need you for that.
23 Thank you, though.

24 THE PUBLIC EN MASSE: (Laughter).

25 THE PUBLIC (MR. RIZZIE): I do know enough to know

1 that you can improve the environment with concrete, with
2 steel. And highways don't improve water quality, ever, for
3 the most part. All right? So, when the TCA says that this
4 is the most environmentally -- (mumbled) -- and friendly
5 option, I think that's not quite accurate. I think the most
6 environmental and friendly option would be not to build this
7 road at all, not to billdoze (sic) -- bulldoze -- excuse me
8 -- or scam remaining open space or pay to drive highways that
9 doesn't solve our traffic problems:

10 Thank you.

11 THE PUBLIC EN MASSE: (Clapping of hands).

12 BOARD MEMBER (MS. KALEMKIARIAN): One question.

13 Either you can answer it or someone of (unintelligible).

14 What is the "safe trestles" (phonetic) for?

15 THE PUBLIC (MR. RIZZIE): "Safe trestles?" This
16 a -- uh -- a part of the coalition. And I've -- I've been a
17 volunteer. I'm not a -- a member of the organizations. I'm
18 not on the board of any of the organizations. But I've been
19 volunteering for quite a while. But this is just part of
20 their coalition.

21 Trus- (sic) -- "trestles" is -- is part of
22 the surf break (phonetic) that will be affected by the runoff
23 from -- from their highway.

24 BOARD MEMBER (MS. KALEMKIARIAN): Oh, so --

25 (unintelligible) by itself?

1 THE PUBLIC (MR. RIZZIE): Yes, right.

2 BOARD MEMBER (MS. KALEMKIARIAN): Thanks.

3 VICE CHAIRMAN MR. STRAWN: Thank you.

4 UNIDENTIFIED SPEAKER: That's an old T-shirt.

5 That was 2,006.

6 UNIDENTIFIED SPEAKER: Quite a long time.

7

8 (Simultaneous speech throughout audience;
9 unintelligible.)

10

11 VICE CHAIRMAN MR. STRAWN: Mr. Siebert?

12 THE PUBLIC (MR. SIEBERT): I live in Orange and not
13 really close to coast. But I have visited this area, often,
14 and like it as it is. The last speaker pointed out that the
15 area is already open.

16 And a prior speaker, maybe 10 or 15 back,
17 pointed out that -- that if TCA could manage the water so
18 well that if it's not enough to keep the mosquito going but
19 there's plenty for deer and bigger now, some think it's a
20 pretty neat trick. And, if they can pull that off, maybe we
21 can -- maybe should let them have at it.

22 Besides that, of course, I didn't -- I got
23 involved in this issue back, first time and the second time;
24 and then I got tired of it. But I don't know how many times
25 you have to beat this thing down before you have to give up

1 on it. It pre- (sic) -- pretends that it -- and it -- to
2 some degree, it may help with the traffic; but I don't know.

3 If ya talk about coming west on Ortega
4 Highway, yeah, it would help. Because everyone gets
5 (unintelligible) when it gets near San Juan. But people who
6 come west usually go east the next day. And where that
7 funnel is backwards, then it makes it worst. I don't see any
8 big gain there, at all.

9 I don't wanna repeat everything that everyone
10 else has said. But I -- I really didn't think that better
11 projects can be had. Serious talks are now being held on the
12 San Diego to Los Angeles section of Amtrak. That -- there is
13 work that could be done there, substantial work, that won't
14 really affect the surrounding countryside, like, changing the
15 tunnel system down at San Di- (sic) -- near San Diego.

16 If you get more people on -- on trains and
17 fewer in cars and on freeways, I think the road will be a
18 better place. And that's all I have to say. Thank you.

19 CHAIRMAN MR. MORALES: Just -- just for the record,
20 that speaker's full name is Robert Siebert.

21 THE PUBLIC (MR. SIEBERT): Robert. "S," like Sam,
22 i-e-b, like "boy," e-r-t, like "Tom."

23 VICE CHAIRMAN MR. STRAWN: Jack Skinner and then a
24 Nancy Skinner.

25 And I believe, after that, there's a Mr. Taff

1 (phonetic). But I think he may have already left.

2 THE PUBLIC (MR. SKINNER): Members of the board and
3 Chairman, my name is Dr. Jack Skinner. My interest is
4 internal medicine, but a specially swimmer-related
5 illnesses.

6 I'm here to just make a couple of focal (sic)
7 comments. One is that, under the 404 Permit, oftentimes the
8 -- - the Corps will allow off-site repair and habitat
9 exchange. I have a book here (show of document) that was
10 written by the Corps. They went back and looked at these
11 mitigated -- mitigation projects, here in Orange County, that
12 had been issued regarding off-site mitigation. And when they
13 went there, some of the projects never were starts.

14 Some of the projects were clearly just dead
15 trees, because water was being pumped to them at a higher
16 level; and there was no natural flow to the waters of these
17 areas. But what is really disturbing is that there was no
18 real oversight of these projects. And what I would strongly
19 ask that, if -- if one's gonna give some type of permit for
20 off-site mitigation, clearly, they focus on -- it has to be
21 checked frequently. It has to guarantee that it's performing
22 its function and that it's written into the -- the agreement,
23 so that CalTrans can't walk away from it. Uh -- whether it's
24 in two years, three years, they're responsible and they have
25 to keep it going.

1 Now, the second thing that's kind of
2 interesting, just from a -- (inaudible) -- standpoint. And
3 I've heard so much talk about water quality and everything.
4 I think we all know that San Juan Creek is on a 303(d) list.
5 We know that people that swim in water that's exiting San
6 Juan Creek have a higher rate of swimmer-related illnesses
7 than swimming in other parts of California. So, they -- they
8 were the worst. And this has been proved with an
9 epidemiological study. And the inner concite house
10 (phonetic) and the Tico-po (phonetic) environmentalists are
11 obviously high enough to be on that 303(d) list.

12 Everybody is bragging about all of these
13 filters that are being completed. How they're doing this
14 filter, putting in a sand filter or gravel filter. But
15 that's not taking out the pathogens or the fecal chloroform
16 (phonetic) or the inner concite (phonetic). I think one has
17 to be certain that, before you put in these things that,
18 clearly -- clearly the -- the floats that are coming off have
19 had inner concite (phonetic) fecal chloroform removed or,
20 otherwise, you're making a situation worse. It's -- uh --
21 uhm-m-m -- actually uhm-m-m -- make -- and, clearly, this
22 needs to be clarified as to the effect -- efficacy of this,
23 because we're talking about water quality.

24 We know, already, they're getting illnesses
25 at a higher rate in this creek. And if, indeed, fecal

1 chloroform are in or outside are making it through this
2 treatment process, it -- I don't think you've made that much
3 head- (sic) -- headway of all this bragging with these filter
4 mechanisms. Thank you.

5 BOARD MEMBER (MR. ANDERSON): Doctor, can I just
6 get one?

7 THE PUBLIC (MR. SKINNER): Yeah.

8 BOARD MEMBER (MR. ANDERSON): Just a quick
9 question. Are you familiar with the Austin filters and if
10 they do reduce or increase bacteria?

11 THE PUBLIC (MR. SKINNER): No, I -- I'm not. But I
12 -- you keep talking about gravel filters. Unless it's got
13 some type of membrane removal technique, you're not gonna
14 take out the -- the pathogens that we're talking about. So,
15 when you're bragging about the rock filters -- uh-h-h -- uh -
16 - it -- it -- it doesn't take much science to realize that
17 that's -- that's not gonna take the thing out, the things
18 you're worried about.

19 BOARD MEMBER (MR. ANDERSON): All right.

20 THE PUBLIC (MR. SKINNER): Normal viruses,
21 especially. Yes, that's what's made responsible for 90
22 percent of the swimmer-related illnesses that you hear about.

23 BOARD MEMBER (MR. ABARBANEL): Dr. Skinner, is it
24 possible for you to leave the reference to the Army Corps of
25 Engineers document -- (interrupted)

1 THE PUBLIC (MR. SKINNER): Yes, I've got it right
2 here.

3 BOARD MEMBER (MR. ABARBANEL): -- with our staff,
4 so that we could have a look at it, right here?

5 THE PUBLIC (MR. SKINNER): Sure. Uh-h-h -- will
6 you give it back?

7 THE PUBLIC EN MASSE: (Laughter).

8 BOARD MEMBER (MR. ABARBANEL): I -- we don't even
9 really think we're really gonna take it from you. But we
10 just want the title, so we can get our own copy.

11 THE PUBLIC (MR. SKINNER): Well, you know, it's
12 hard to get. Because I had -- it's a thesis that was
13 written. And, to get that thesis, I had to write to
14 Chicago. But Mike Sudall (phonetic) wrote it, with the
15 Corps. But let me give it to ya and somebody, please, bring
16 it back.

17 THE PUBLIC EN MASSE: (Laughter).

18 BOARD MEMBER (MR. ABARBANEL): I'll put it on your
19 door step. Thank you.

20 VICE CHAIRMAN MR. STRAWN: Mrs. Skinner.

21 THE PUBLIC (MRS. SKINNER): Good afternoon,
22 Mr. Chairman, Members of the Board. My name is Nancy
23 Skinner. My husband and I have been involved in water
24 quality issues for about 25 years. But I'm not really -- I'm
25 not really here on the water quality so much as I am here to

1 tell you that, from a private citizen's point of view, it's
2 just very discouraging to see what has happened with this
3 toll road.

4 We all went down to Del Mar to express our
5 concerns about it and -- uh -- fortunately, the Coastal
6 Commission and Department of Commerce recognized that it was
7 not the right thing to be doing. And here we are -- any
8 reasonable person recognizes that the -- the -- that the
9 first steps to finishing probably the same design.

10 Now, the -- I have talked to people with the
11 TCA -- what's the name of you, again? "Toll road," I'll just
12 call you that -- uh -- (giggle) --

13 THE PUBLIC EN MASSE: (Laughter).

14 THE PUBLIC (MRS. SKINNER): -- now, today. And
15 they are saying they don't really know what's gonna be the
16 next part. Well, I -- how can you begin to tell what to do
17 if you don't know what the next part's gonna be? We had a
18 State and anti-degradation policy, that is a good one. And I
19 don't think you should evaluate it, just on this one
20 assessment you have.

21 If it's -- if we were to follow the same plan
22 -- plan as we had before, you're going to be impacting San
23 Mateo Creek, the trestles area, (mumbled) the end of San
24 Mateo, a number of other areas that's on this plan as I
25 understand it, anyway. And it seems like you have to

1 evaluate the anti-degradation policy based on that entire
2 area. Let's find out where they're gonna go, first, before
3 you approve this segment of that toll road. That's my appeal
4 to you. I really think that's important, that we recognize
5 what they're gonna be doing.

6 I would like for them to be doing something
7 different than what they did before, but not in the same area
8 where it takes it down to I-5. I don't think that solves the
9 problem, anyway. I think we need to be up parallel to I-5,
10 all the way down to San Diego that's comfortable. That would
11 be my hope, anyway. Thank you very much.

12 VICE CHAIRMAN MR. STRAWN: With that, I believe
13 we've gone through everyone with a red card?

14 Oh, we have one more.

15 THE PUBLIC (MS. HEWITT): I wasn't going to speak.
16 But my side has been poorly represented because everybody had
17 to leave early.

18 THE PUBLIC EN MASSE: (Laughter).

19 THE PUBLIC (MS. HEWITT): I'm not enjoying what
20 you're laughing about. I didn't hear the joke. Maybe you
21 let me hear it.

22 UNIDENTIFIED SPEAKER: To beat traffic.

23 THE PUBLIC (MS. HEWITT): Oh. No, jobs.

24 Thank you. My name is Gayle Hewitt
25 (phonetic). And I'm here to oppose this permit being given

1 to the TCA. I don't know if any of you live in this area and
2 if you travel on the 241. But there is very little traffic
3 on that highway to justify doing another segment and to
4 severely impact the environment that it's going to need to
5 displace -- uh -- to make the highway.

6 We've fought this so many times and it's
7 just -- it's like cancer. It keeps coming back. And I feel
8 like I'm at a TCA fraternity instead of an) environmental
9 fraternity, because they had to leave; they couldn't stay.
10 And I'm very upset about this whole process.

11 We've defeated it and they're trying to
12 circumvent the decisions that were made, previously, because
13 they didn't like them. There's money behind all of this, not
14 the environment. And I'm going to take a stand against money
15 and favor the environment. Because this is where we have to
16 live and this is what we need to care about. We need to care
17 about the environment more than money.

18 Now, this is money driven. If you want a
19 highway for traffic alleviation, then make it a free road in-
20 (sic) -- instead of a toll road; and we can do that. In
21 fact, they had to approve those plans prior to allowing
22 14,000 homes to be built in Rancho Santa Margarita. That had
23 to be a precursor to being allowed to build, in the first
24 place, a road system.

25 So, we don't need a toll road. We need free

1 roads. And we need to protect the environment from all the
2 people that want to be greedy and just are in it because they
3 care about money or they care about their own agenda; and
4 they're not looking at bigger picture. I wanna look at the
5 bigger picture and I wanna protect our environment.

6 Thank you very much for your time.

7 THE PUBLIC EN MASSE: (Clapping of hands).

8 VICE CHAIRMAN MR. STRAWN: Thank you.

9 And I do wanna state for the record that,
10 even though a lot of people had to leave early, we do have
11 records of their speaker cards. And, so, that will be
12 recorded that they were here to speak.

13 Yes.

14

15 (Heretofore, board members conferred.

16 Pause in Proceeding 3:12 p.m.)

17

18 VICE CHAIRMAN MR. STRAWN: Next, we're gonna
19 start down the green cards, which are people supposedly in
20 favor. Although, there seems to be a little mix up here.

21 Mr. Bodenhamer. And then he'll be followed
22 by Darren Blume.

23 UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): Hi. I'm
24 actually here -- uhm-m-m -- Schott Scheffel, city council
25 member of Dana Point. I filled out a card. But he wasn't

1 able to stay. So, I'm here to read the letter on his
2 behalf.

3 That's okay?

4 CHAIRMAN MR. MORALES: (Nod of the head).

5 VICE CHAIRMAN MR. STRAWN: I think so.

6 UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL):

7 Okay.

8 BOARD MEMBER: Did -- do we have card for you?

9 Or --

10 UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): For --
11 (mumbled) -- for Schott Scheffel. Yeah, he told me -- he
12 should already --

13

14 (Simultaneous speech; unintelligible.)

15

16 UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): --

17 have a card. I tried to called, but I --

18 CHAIRMAN MR. MORALES: It --

19 THE WITNESS: Okay, thank you.

20 I'm a member of the Dana Point City Council,
21 but currently serving as vice chairman of San Joaquin Hills
22 Transportation Corridor Agency Board of Directors. I'm
23 writing to urge your support for the Waste Discharge
24 Requirement Permit submitted by the Foothill Eastern
25 Transportation Corridor Agency for the Tesoro Extension

1 Project in Orange County. I support needed and well-planned
2 transportation projects, such as this one, because I
3 recognize how good infrastructure projects help build
4 prosperous communities. With a large scaled residential and
5 commercial construction already underway at Rancho Mission
6 Viejo, it is vital that the I-5 has an alternative route for
7 people to travel.

8 Southbound needs to be the Tesoro Extension of
9 the 241 corridor. Currently, I-5 is the only north-south
10 non-artil (sic) -- or non-arterial route available for
11 residents and businesses in the South Orange County. I-5
12 also serves as a primary route for movement of goods to and
13 from Mexico and Ports of Los Angeles, San Diego and Long
14 Beach.

15 TCA proposes to create, restore and/or enhance
16 34.82 acres of habitat for .4 acres of impact the Tesoro
17 Extension will have on surface waters of the State.
18 Additionally, TCA has committed to building the five-mile
19 Tesoro Station, utilizing Best Management Practices. These
20 BMPs will maintain existing drainage flow pattern and treat
21 all (unintelligible) runoffs the maximum extent practicable
22 before discharging to receiving waters in order to maintain
23 existing beneficial uses and meet water quality objectives
24 established by the Regional Board and the Water Quality
25 Control Plan for the San Diego basin.

1 I understand the need for viable
2 transportation project and encourage you to approve TCA's WDR
3 application. Sincerely, Schott Scheffel.

4 CHAIRMAN MR. MORALES: Thank you (nod of the head).

5 UNIDENTIFIED SPEAKER (FOR MR. SCHEFFEL): (Nod of
6 the head).

7 MR. BODENHAMER: Good afternoon. I'm Mark
8 Bodenhamer. I'm the CEO of the San Juan Capistrano Chamber
9 of Commerce. I wanted to join everyone else and thank you
10 for coming up to Orange County today. It really helped out a
11 lot of people.

12 The City of San Juan Capistrano is unique in
13 Orange County. We're surrounded by many communities which
14 were master planned with roads which were laid out to
15 accommodate certain number of residents that was planned at
16 the beginning.

17 Our community and its roadways were mostly
18 laid out over 200 years ago by the founders of the Mission
19 San Juan Capistrano. This great preserve, though, it was
20 laid, the Rail line, San Juan Creek, other geographical
21 sediments (phonetic) and numerous historical landmarks.
22 There simply isn't room to enhance or reconfigure the
23 roadways in our town to accommodate the growth of the
24 region.

25 Due to that, we're already underserved by the

1 transportation in the structure of town and the surrounding
2 area there are 14,000 homes planned for Rancho Mission
3 Viejo. A gentlemen, earlier, suggested that building this
4 toll road will encourage new growth. It isn't about
5 encouraging growth. It's about dealing with reality that's
6 happening here.

7 Orange County is a desirable area to live
8 in. It's going to continue to grow, whether we like it or
9 not. Rancho Mission Viejo is going to be built. There's
10 going to be 14,000 homes, 30,000 residents and that's coming
11 whether we like it or not. We need this viable piece of
12 traffic and infrastructure to help accommodate the reality of
13 what's here now and what's coming in incoming years.

14 In addition to the traffic benefits, we see
15 immense value in providing secondary route to get out of the
16 area, if something major happens on I-5. (Mumbled) --
17 economic impact of this project and the jobs it's gonna
18 create will be very helpful to our local economy. Our
19 organization has traditionally supported the full completion
20 of the 241. But our board wanted to take a specific look at
21 this part of the project, because it'll have a direct and
22 immediate impact on -- (mumbled). They voted unanimously to
23 support this segment of the project, because it's gonna have
24 great benefit to us, to the communities east of us, to
25 traffic in our town, opening -- (inaudible) -- and jobs and

1 economic development in San Juan Capistrano.

2 BOARD MEMBER (MR. ABARBANEL): Since your board
3 voted for the entire project --

4 MR. BODENHAMER: Yes, sir.

5 BOARD MEMBER (MR. ABARBANEL): -- could you tell
6 us what that is, please?

7 MR. BODENHAMER: The board voted to take a
8 position to -- (mumbled) -- the completion of the 241, all
9 the way to the I-5 so that it connected on the eastern
10 corridor down to an area south of San Clemente. Because
11 they, as you know, I think -- (mumbled) -- difference is that
12 it's not been determined exactly where. There is a process
13 that is ongoing, dealing with a number of government
14 agencies, municipalities, the Navy, Camp Pendleton. It's a
15 complicated decision figuring out the appropriate place to
16 put it. Once -- once that's been determined, we'll take a
17 look at the specific route and make a final decision on
18 that.

19 But, in general concept, we think it's
20 necessary for the region and for our town to have that
21 completed. Connect the I-5.

22 THE PUBLIC EN MASSE: (Clapping of hands).

23 VICE CHAIRMAN MR. STRAWN: And then -- um --
24 Mr. Burke.

25 And, after him, Mr. Davis.

1 MR. BLUME: My name is Darren Blume. I'm a project
2 manager for Flatiron Construction Company. And we are the
3 largest road contractors in California. In my 25 years of
4 experience in the construction industry, I've had the
5 unfortunate experience of seeing our environmental process
6 get hijacked by a very vocal but minority portion of our
7 population to delay the development or infrastructure
8 process. And population growth will come, whether we like it
9 or not.

10 I think that boards like yourself are --
11 uhm -- responsible to our community to have the development
12 in the best way possible. And the Tesoro Project does that.
13 Gold standard -- uhm-m-m -- uh -- for water treatment, for
14 the runoff, for the entire environmental process. And the
15 construction of this project will actually improve our
16 environment by minimizing congestions throughout different
17 parts of the community. And so, with that, I'll urge you to
18 move the process forward so our society can improve in that
19 area.

20 Thank you.

21 VICE CHAIRMAN MR. STRAWN: Thank you.

22 MR. BURKE: Good afternoon. My name is Mike
23 Burke. I'm President of the San Clemente and Southern Orange
24 County -- (mumbled) -- I've been for 30 years. And I'm also
25 urban planner. I probably -- I think that I think like

1 hundreds of thousands of people in Orange County and,
2 particularly, in Southern Orange County, that this roadway --
3 uh-h-h -- even if it's a small five-mile extension or if it's
4 ultimately extended further than, that it's a critical part
5 of our transportation needs. And I think, repeatedly,
6 through various transportation planning organizations, those
7 needs of the county have been identified and -- and the
8 answers'll be sought by lots and lots of experts who are
9 focused on that. And -- uhm -- it's interesting to me that
10 the discussion today is so much about what is the right kind
11 of highway that surfs out Orange County.

12 Because my opinion is we have agencies that
13 are focused on that purpose and who, quite frankly, are --
14 are best suited to do that. That's not why I'm standing up
15 here. The reason why that I came today is because I'm
16 speaking about -- uhm-m-m -- water quality's important to me,
17 personally, as to -- and to all my neighbors in San Clemente,
18 you know, we -- uhm -- adopted attacks on ourselves, to -- to
19 water quality and you think it's literally important --
20 (mumbled).

21 The toll road's extension to the Torsor (sic)
22 -- to Tesoro, in my observation, is the best most
23 comprehensive water quality program that's been -- on any
24 highway seen anywhere. Currently, in the past or that I know
25 about for the future, I think you should approve this -- our

1 petition, because -- not just because it merits it on its
2 own. But it also, it's a fabulous example for other highway
3 projects and regional facility -- (inaudible) -- projects
4 that you can show the living breathing example of how to do
5 things right. I'd like to share that thought with you today
6 and that's why I'm here.

7 So, thank you for your time and thank you for
8 coming to Orange County and -- and allowing us -- to make it
9 easier for all of us just to talk -- talk to you. Thank you.

10 VICE CHAIRMAN MR. STRAWN: Davis. And then Brad
11 Fowler. Followed by Richard Gardner.

12 MR. DAVIS: I'm shocked that there is not more
13 than one Davis here today.

14 I'm Bill Davis. I'm the environmental
15 advisor for the Southern California Contractor's Association,
16 which is the only all union civil construction operation in
17 Southern California. All over, our contractors employ the
18 union people that have been at this meeting today. And
19 several of 'em will be on this project if you will all
20 consent to it's -- it's -- uh -- construction.

21 I wanna thank you, very much, for having this
22 meeting today (indicating) here. Otherwise, I would have
23 faced a five to six hour drive to San Diego. Because the I-5
24 is really hard to get through, particularly, in the San Juan
25 Capistrano area.

1 As we gather for meetings like this, I -- I
2 try to think about your role. I'm sure that you're tired,
3 probably a little grouchy around the edges by now. And I
4 just urge you to take a philosophy -- uh -- at this. I
5 thought about it, this morning. And I thought that you all
6 represented, in a way, Diogenes (phonetic).

7 He was a 4th century Greek philosopher who
8 would carry a lantern through streets, in Athens, in the day
9 light. And people wanted to know why he was wasting all of
10 that oil. And he said that he was looking for the truth. He
11 was looking for an honest man. And, to find the truth, you
12 all are gonna have to rely on the facts that are presented to
13 you, not the opinion or passions that you've seen before you,
14 in -- in this hearing, so far.

15 The facts seem kind of simple. I mean, we're
16 talking about a five-mile road that will, in fact, service
17 14,000 new home. But --- and everybody talks about 30,000
18 people. But I'm thinking there might be more than two people
19 in every house. It's gonna be a road to the future, for that
20 section of Orange County.

21 And Orange County is rising from the ashes of
22 the great recession. In fact, it is the leading housing
23 construction county in the State of California, right now.
24 That Rancho Mission Viejo project is actually getting under
25 away. People are getting equipment out there and fill pads

1 and streets and sewers and waters; and then they'll build the
2 houses. And they need access to the rest of Southern
3 California.

4 And the only access they'll have, if this
5 road is not approved, would be I-5 coming through San Juan
6 Capistrano, which is already a mess to get through. The
7 facts are simple. The opinions and passions are complex.
8 And I know that you will have to sort through all that. I
9 appreciate you taking the time and -- uh-h-h -- and granting
10 us all the time to talk with you today. Thank you.

11 VICE CHAIRMAN MR. STRAWN: So, Mr. Fowler? I don't
12 see 'em.

13 Mr. Gardner, followed by Mr. Hernandez.

14 THE PUBLIC (MR. GARDNER): You don't wanna take a
15 break, do you (laughter)?

16 EN MASSE: (Laughter).

17 CHAIRMAN MR. MORALES: This'll be a good time, now
18 that you mention it.

19 THE WITNESS: (Laughter), gee.

20 I'm Richard Gardner, from Capistrano Beach, a
21 long time watershed advocate, water quality advocate. And
22 I'm the Director of Water District for about 16 years. I'm a
23 Southern California transit advocate, for almost as long.
24 Also member of steel head, did the surveys for the steel head
25 restoration plans.

1 I'm into the watershed, that's what I like to
2 do. I take my grand kids hiking all the time. I,
3 unfortunately, did not get a good review of the tentative
4 order because I was -- I thought it might displayed on TCA
5 website. I was looking for other information, the actual
6 transportation part of this project or an EIR. I couldn't
7 find it. I couldn't get a response from TCA, so that was a
8 difficult problem.

9 But I did read the tentative order on your
10 website. I thank you. The reason I have a green one there
11 is because I think you did a great job and I think you -- you
12 know, you should commend staff on that effort. I did come
13 with a few comments.

14 And I -- I think you did a good job on the
15 wetlands creation and also on this -- we'll call it
16 pretreatment -- (inaudible) -- or virus wells or other
17 wetlands treatment. Wetlands -- of course, wetlands
18 treatments does -- can reduce bacterial concentration by over
19 90- -- 98 percent. So, I'm aware of what a good treatment
20 plan you have here. But, as the state of the art, I'm not
21 sure, because that keeps change.

22 For instance, in the next canyon over, the
23 Kinyata (phonetic) Gobernadora, we now have a complete catch
24 thing -- system, where all the runoff comes in, it's caught,
25 captured and pumped in to be reused as recycled water. So,

1 maybe, that's the state of art. But that was six years ago.
2 The real state of the art might be that some of this water
3 could be sequestered and actually become for (inaudible).

4 So, for that, I just met with the San Juan
5 Beach and authority committees for many years. And I also
6 voted to approve ground water treatment plans in San Juan,
7 led, captured and use 5,000 acres (mumbled) feet, a year, in
8 drinking water. With things in perspective, we have a
9 project here before you that involves a hundred acres of
10 impervious or road service. At a hundred acres, figuring of
11 one-inch rainfall, that we're looking at 8,000 or -- or -- or
12 8- -- uh-h-h -- I think it's somewhere around 8 acre a feet
13 in an hour or somewhere around three million gallons of -- of
14 water, coming down. That's how much water it is, three
15 million gallons.

16 So-o-o-o (sic) -- you know, the question's how
17 many rooms of this size are we talking about? This is your
18 water quality. I'm trying to restrict my comments to water
19 quality not to the transportation issues; or whether it
20 should be free road, whole road or where the road should go.
21 That's a different issue.

22 It shouldn't be even before you, even though
23 you've asked a good question. Ya know. What's this
24 project? But I'm not going there. I'm going to the
25 waterside.

1 From the waterside, you might have a
2 sur-vestral (phonetic), three things. The long-term watering
3 program, I think you're over restrictive in asking for a
4 monthly water monitoring. That might be too much. I think
5 you need a adaptive management, so that you can modify that
6 and reduce the monitoring requirements placed on whoever the
7 entity is that does this. That entity, I think, should be a
8 resource conservation district that would exist long term and
9 not a (sic) entity, like the TCA, that could be disbanded, at
10 any time, and being made a department under OCT or some other
11 government function.

12 So, the -- the other thing is, that water I
13 was talking about should be ground water recharge. Your
14 tentative permit does not show that the two -- the -- the two
15 that flow off of there is the storm flows. But what happened
16 to the ground water recharge flows? The ground water
17 recharge flows have been impacted.

18 Finally, I think you should put in the plan
19 that it have an integrated component. We now know that doing
20 integrated projects worked better. This doesn't have
21 integrated. It's not integrated. It's a toll road and a
22 runoff. Done.

23 You need to look at integrated, for water
24 resource. And then, finally, that -- uh -- well, you've got
25 the adapted management comment, so that we can keep getting

1 better.

2 And thank you for ratcheting it down,
3 Mr. Gibson.

4 VICE CHAIRMAN MR. STRAWN: Mr. Hernandez.

5 And, then, Mr. -- uh-h-h -- Ms. Hodges.

6 (Reviewing card). This one's a little hard
7 to read. It begins with an "L." (Giggle), something "Lek"
8 -- "Lekness" (phonetic) or something.

9 And a Mr. Lowe.

10 Who -- who do we have next, here?

11 MR. LOCHRIE: I'm Dr. Bill Lochrie. Maybe that's
12 what that -- uh -- L-o-c-h-r-i-e.

13 UNIDENTIFIED SPEAKER: Just go 'head, Bill.

14 MR. LOCHRIE: Okay. Anyway, I just want to --
15 uh-h-h -- the reason I'm here -- first of all, give you
16 background. My name is Dr. Bill Lochrie. Lived in Orange
17 County for approximately 40 years. And I'm a retired
18 engineer program manager for the Boeing Company.

19 And -- uhm -- the main reason I'm here,
20 you've heard all the other stuff. You've heard that this
21 great environmental protection, they've gone to extremes to
22 protect the other environment. No tax dollars are involved
23 in this project. It's going to immediately provide quick
24 jobs.

25 The thing I want to emphasize is, I'm looking

1 for the real long term. And, that is, the quality of life to
2 improving the quality of life for the -- the people of Orange
3 County, my kids that are here, my grandchildren that are
4 here.

5 And the example that I wanna give, I moved
6 here in the 60's. Started out in Downey, California; North
7 American Aviation. Little land, 200, 300 people. We picked
8 up, moved to Anaheim. And, in eight years, very very good
9 quality of life, terrific.

10 We got people from all over the country to
11 move here. We went from 300 people to 30,000 people, in
12 eight years. One of the largest avionics companies in the
13 world, actually, our next division of Northern American which
14 eventually became Rockwell and, now, it's Boeing.

15 But the important thing there is, it provides
16 that you had the infrastructure and everything that allowed
17 people to come here. When they came here and interviewed,
18 they wanted to work here. And, right now, we've gone from
19 200,000 people in aerospace industry, in the 80's. We're
20 down to, like, 20-, 25,000 thousand. Now, these are high
21 leverage jobs.

22 Every job like that generates four other
23 jobs. So, those 200,000 aerospace jobs mean a million jobs
24 in southern -- in California, and most of it in Southern
25 California. We're now down to about 10 percent of that.

1 And, if we don't stop the bleeding, unemployment situation is
2 just gonna get worse for this state. Believe me, I've seen
3 it. I've been involved in decisions since we moved out of
4 the State.

5 You've got to improve. There's a lot of
6 things you go in and make your decisions like that. But,
7 certainly, the infrastructure's one of 'em. And you cannot
8 have people jammed up on the freeways and say, "Oh, I'm gonna
9 stay and I don't wanna live here in Southern California.
10 We're gonna move to someplace else."

11 That's what's happening. People are voting
12 with their feet, right now, and leaving the State. And you
13 people can help out, by approving this and letting this
14 project go on. Thank you.

15 VICE CHAIRMAN MR. STRAWN: There may be a little
16 confusion. And some of you that are in favor are wondering
17 why you didn't -- are not in order. It's because the same
18 people that did all these cards, in triplicate, and put 'em
19 on the wrong colored card. So, unfortunately, you're gonna
20 come next.

21 Mr. Madrigal.

22 Mr. Mangione.

23 Barbara (phonetic)?

24 And then a Mr. Salerno.

25 THE PUBLIC (MR. MANGIONE): Good morning. Thank

1 you for giving us the opportunity. I wasn't going to speak.
2 So, I really don't have a prepared statement. But I've heard
3 a lot of talk about this -- (interrupted)

4 BOARD MEMBER (MR. ABARBANEL): Name?

5 THE PUBLIC (MR. MANGIONE): John Mangione. I'm a
6 resident of Capistrano Beach?

7 VICE CHAIRMAN MR. STRAWN: And you took the oath?

8 THE PUBLIC (MR. MANGIONE): Yes, I did (raise of
9 hand). Thank you.

10 I heard all this talk about bacteria coming
11 down. And about 20, 25 years ago, I had a boy scout troop
12 down there. And I had a professor from UCI, who was an
13 environmental scientist. And it was the first time I ever
14 heard -- uh -- the -- the first rain water, don't put your
15 hands in the water. This stuff has the accumulation of
16 summer long animal, bird droppings and everything else in
17 that water.

18 Don't even go swimming after the first rain.
19 Let it -- let it wash out there, a little bit. I -- I never
20 realized that.

21 But, you know, that bacteria existed long
22 before the toll road did. And the toll road, the -- the sand
23 swales and all that, I mean, toll roads give oil particles
24 and -- and maybe some solid particles from tires and you --
25 you know, that's what that's trying to catch. Right next to

1 San Juan Creek is probably the largest horse boarding
2 facility in Orange County. I've heard up to -- it was a
3 thousand, 2,000 horses up. They do rodeos, great thing,
4 great events.

5 They do rodeos. They do steeple chase things
6 there. Those horses are walked and -- and -- uh-h-h -- in
7 that creek bed, as far as I know, they don't use toilets.
8 You know, the droppings just happen.

9 EN MASSE: (Laughter).

10 THE PUBLIC (MR. MANGIONE): And now I've heard
11 that the baby beach in Dana Point and -- and the beach in
12 Doheny, there's so many sea gulls there, that it's becoming a
13 problem with the sea gull droppings. And -- and -- and you
14 know, I applaud the environmentalist and the watershed
15 folks. I live down there. I like to see these things
16 protected. I think this -- this roadway -- I also want.

17 I'm in favor of this road. I think this
18 roadway has done -- gone a long way to mitigate these
19 problems. But those problems are there. They exist. I'd
20 love to see us do some work in San Juan, as -- as wetlands
21 restolate (sic) -- restoration maybe put some muscles in
22 there or do something to get that -- that bacteria waste from
23 animals outa there.

24 But I -- I'm not so sure we should be blaming
25 the toll road for that. Thank you.

1 THE PUBLIC (MR. MARGO): I'm not sure that you
2 called my name, "Margo"?

3 VICE CHAIRMAN (MR. STRAWN): I think I did.

4 No?

5 Probably a blue card. And we're gonna get to
6 you after a couple more.

7 Uhm-m-m -- Mr. Salerno?

8 THE PUBLIC (MR. SALERNO): Right here.

9 Yeah. I'm prepared, also. Nice to see all
10 of you.

11 You know, I've heard about the frogs and I've
12 heard about the steel head trout, which sounded -- uh --
13 nice. But -- uh -- my deal is with the -- and I represent
14 Cement Masons Local 500, Santa Ana. I've been a cement mason
15 since 1966.

16 I had a detour with Vietnam and I became a
17 combat medic, which probably changed my whole life and the
18 way I see people. After you've seen the arms and legs and --
19 and -- uh -- uh - intestines and had to work on everything
20 from rotten feet to -- you -- ya know, everybody went through
21 me before they went to the doctor.

22 When I got back, there was times -- and it
23 (sic) still are times that a guy'll fall down in a restaurant
24 and I'll run to 'em and another guy runs to 'em; and I tell
25 them I was combat medic in Vietnam and he tells me, "I'm a

1 doctor." So, I get up and leave. And I'll never forget the
2 last time. He says, "Thanks Doc," on the way out.

3 I work with a lot of people that are really
4 hurting, right now. They've got three or four or five kids
5 at home. Big families, like in the 50s where I grew up. And
6 they need jobs. And I listened to the TCA. It sounds like
7 they've done a really good job.

8 The engineers and all the scientists are
9 figuring everything out. And -- uh-h-h -- and I'm -- I
10 support this 241 a hundred percent. And I'd like to have our
11 cement masons out there. Thank you very much.

12 THE PUBLIC EN MASSE: (Clapping of hands).

13 VICE CHAIRMAN (MR. STRAWN): Phil Schwartz and
14 then a Susan Singh.

15 And we're done with the green and we'll start
16 down the blue.

17 We get a break, he says?

18 THE PUBLIC (MR. SCHWARTZE): Chairman, Members of
19 the Board, I'm Philip Schwartz. Actually, I was standing
20 here on Monday night. I'm -- with the Costa Mesa City
21 Council, with the project.

22 Chairman, 40 years ago, I got out of graduate
23 school. And was hired by the City of San Juan Capistrano as
24 their first trained city planner. When I moved there, there
25 were no signalized intersections and no supermarket. As you

1 can see, the place has changed a lot over those years.

2 Subsequent to that, I went on to run the
3 planning department, in Anaheim. And, while I was doing
4 that, I served three terms as a councilman in San Juan
5 Capistrano; was on LAFCO (phonetic), for eight years; and,
6 during that period, incorporated the Cities of Mission Viejo,
7 Laguna Niguel and Dana Point. During that time, I was also
8 President of the Orange County League of Cities.

9 And I'm telling you all this just to show you
10 that I'm giving you 40 years of perspective. I have a long
11 view. I believed in balanced infrastructure. And I'm
12 providing you what I believe to be the true big picture.

13 Well, after 40 years of living in San Juan
14 Capistrano, I moved to North San Diego County. I'm now a
15 resident of Bonzo, me and my horses, down there. And I drove
16 up, just like you guys did today.

17 It's very clear to me that we need the Tesoro
18 Extension piece. A very long and complicated project.
19 Actually, I was running the environmental impact report. Did
20 the original 241 extension, some 25 years ago.

21 And I believe this extension is necessary. I
22 think it is simple and it will alleviate a lot of traffic
23 impacts that are there. Ultimately, it will provide,
24 hopefully, a link that will ultimately connect down at the
25 5. That's a whole 'nother public -- (unintelligible) -- that

1 you guys are gonna have. I think it is a very viable action,
2 I hope that this court will take some action on that.

3 And as a separate and aside, I want you to
4 know that I'm very irked at some something that occurred here
5 at the podium few minutes ago. And that was, I am working as
6 an environmental planner and a land planner for a large
7 property owner who is trying to contribute to and be a major
8 portion of what the folks at Trout Unlimited are doing. And
9 for them stand here and tell you that the impacts of what's
10 going on with Tesoro Extension are lessening the impacts
11 being proposed by the Trout Unlimited folks is completely
12 bogus. There's no way that that's happening. And I applaud
13 what the Trout Unlimited folks are trying to do.

14 I think the long range plan that they've got
15 is gonna work. But either they don't understand what they're
16 doing or they don't understand what they -- TCA is trying to
17 accomplish, by doing this extension. It's a side view of
18 something that's going on. I would hope that you would
19 approve the extension. And I'll be back here in another 25
20 years, or whatever.

21 I'll ride up. I'll ride my horse up the
22 Bonzo. Just to come to the club (phonetic) experience.
23 Hopefully, improve that extension also, when and if we ever
24 get it before you. Thank you very much for having us up here
25 today.

1 VICE CHAIRMAN MR. STRAWN: Suzanne.

2 THE PUBLIC (MS. SINGH): Good afternoon, Chair,
3 Vice Chair and Board Members.

4 My name is Suzanne Singh and I serve as the
5 President Rancho Santa Margarita Chamber of Commerce. And it
6 is pleasure to be here, today, to speak in support of the
7 Tesoro Extension. Economic growth and job creation has
8 always been a focus of the Rancho Santa Margarita Chamber of
9 Commerce. And in the past several years, this priority has
10 been heightened due to the economic downturn.

11 The Tesoro Extension is crucial to the
12 economic growth of our local business community. This five-
13 mile extension will allow an entirely new customer and client
14 base to discover Rancho Santa Margarita and help to sustain
15 our businesses. Our business community accounts for a
16 significant amount of tax revenue that supports the
17 importance of government programs that enhance the life of
18 our residents and businesses throughout the region. The
19 Tesoro Extension will create many jobs and provide economic
20 growth for our region. Businesses throughout South Orange
21 County and Northern San Diego County are impacted, daily, by
22 the lack of an alternative route to the I-5 Freeway.

23 This project will help to alleviate some of
24 those issues. Environmental impact studies have shown that
25 the projects have a minimal impact and the storm water runoff

1 is something that is being proposed is state of the art and
2 creates a runoff flow that mimics nature both in water
3 quality and in the water's delivery. TCA's going above and
4 beyond to ensure that this roadway is built to the highest
5 environmental standard while providing the needed regional
6 mobility and traffic relief that is required for residents
7 and businesses throughout Southern California. I urge you to
8 support the TCA Waste Discharge Requirement Application and
9 get the Tesoro Extension on the road to completion.

10 Thank you for your time.

11 THE PUBLIC EN MASSE: (Clapping of hands).

12 CHAIRMAN MR. MORALES: Okay. We're gonna take a
13 short five-minute break.

14 THE PUBLIC (UNIDENTIFIED): (Indicating), on deck.

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

16 THE PUBLIC (MS. MAYNARD): I'm an "M." I -- I
17 think I made out a green card.

18 VICE CHAIRMAN MR. STRAWN: Your name was?

19 THE PUBLIC (MS. MAYNARD): Penny Maynard.

20 CHAIRMAN MR. MORALES: Come on (hand gesture). Go
21 'head, ma'am.

22 And then we're taking a five-minute break.

23 THE PUBLIC (MS. MAYNARD): Oh, thank you. Thank
24 you.

25 My name is Penny Maynard and I'm representing

1 the San Clemente Chambers of Commerce. And I'm here to urge
2 your support for the WDR permit submitted by TCA for the
3 Tesoro Extension Project, in Orange County. The reasons for
4 the San Clemente Chamber's support for the Tesoro Extension
5 Project includes the fact the good infrastructure grows the
6 economy. The Rancho Mission Viejo Commercial and Residential
7 project is here with ensuing increase in traffic. And the
8 fact that the I-5 is the only -- is now the only north-south
9 route to South Orange County for business and residence.

10 This project would exist -- would ease the
11 existing congestion on I-5, while seeing the route extension
12 grow. San Clemente is a bottleneck for I-5 on weekends and
13 the summer traffic. When there have been emergency closures
14 on I-5, I have personally seen from my office window, bumper-
15 to-bumper traffic on El Camino Real impacting negatively
16 these little beaches -- (unintelligible) -- are different and
17 on our local residents' quality of life. Tesoro Extension
18 Project, with the previously approved Lapada Extension would
19 significantly improve this situation.

20 The Tesoro Extension Project will meet work
21 quality objectives established by the region board and the
22 board of quality control pan -- plan for the San Diego basin
23 and should be seen as a model for other projects with its
24 less than a half acre of impact and a multiple method for
25 storm water treatment that's being proposed. Again, I urge

1 your support for the WDR Permit for the Tesoro Extension
2 Project. And I thank you for the opportunity to be heard.

3 VICE CHAIRMAN MR. STRAWN: In my defense, there is
4 a blue card. You may have also done a green one, but I had
5 to pick one or the other. So.

6 THE PUBLIC (MS. MAYNARD): Okay.

7 VICE CHAIRMAN MR. STRAWN: Thank you, ma'am.

8 When we come back, there'll be a Ms. -- uhm
9 -- a John Adams -- or Jim Adams, excuse me. And then Mary
10 Adams for starters.

11 CHAIRMAN MR. MORALES: All right. Five-minute
12 break.

13
14 (Heretofore, short recess commenced. Off the
15 record 3:46 p.m. Proceedings resumed
16 3:55 p.m.)

17
18 VICE CHAIRMAN MR. STRAWN: Jim Adams.

19 THE PUBLIC (MR. ADAMS): Yes, sir, Mr. Chairman.

20 Good afternoon, Mr. Chairman, Members of the
21 Board. My name is Jim Adams. I'm a Council Representative
22 for the Los Angeles, Orange County Building and Construction
23 Trade Council. And, yes, I did take their oath -- orth
24 (sic) -- the oath earlier today.

25 Our council represents affiliated construction

1 unions and the membership exceeds a hundred forty thousand
2 highly skilled craftsmen and women in the construction
3 industry. We are here, today, to support the Tesoro
4 Extension of the 241 Toll Road.

5 It goes without saying that the construction
6 industry has suffered through a devastating time, over the
7 past several years. Unemployment is high. Ours is even
8 higher. As much as 40 percent hard working men and women,
9 most supporting family, were laid off with few opportunity to
10 use their skills. However, I'm here today because we have
11 some light at the end of the tunnel.

12 The 241, as you've heard earlier, will bring
13 some 2400 jobs. We plan to break ground toward the end of
14 this year. These are good jobs. These are construction jobs
15 for workers, engineers and hundreds of suppliers. We live in
16 this community and we cherish the environment, along with
17 everyone else.

18 Our organizations have communicated, very
19 closely, with the development of this project. And, based on
20 our experience and many other construction projects, we are
21 struck by how farsighted and professional the planning has
22 been for Tesoro. It will use the most modern and effective
23 method to preserve our environment. Your staff knows full
24 well that there are few projects at this magnitude and design
25 to protect our surroundings. This project is ready to go

1 today. You can make a decision which lights the fire under
2 our economy in the many years where they appear to be no
3 opportunity.

4 And, finally, I wanna make you aware that our
5 organization's involved with the Helmets to Hard Hat
6 Program. As a matter of fact, you heard that term used by
7 many individuals. Our National Building Trade Department
8 founded that organization. The building trade created it.
9 And we are committed to hiring veterans. And that goes
10 without saying, we do it.

11 Your vote, today, will help our veterans. We
12 respectfully ask that you will approve the permit. Thank
13 you.

14 THE PUBLIC EN MASSE: (Clapping of hands).

15 CHAIRMAN MR. MORALES: Sir, if you don't mind.

16 THE PUBLIC (MR. ADAMS): Yes, sir.

17 CHAIRMAN MR. MORALES: First of all, thank you
18 for --

19 THE PUBLIC (MR. ADAMS): Yeah.

20 THE COURT: -- speaking into the microphone.

21 THE PUBLIC (MR. ADAMS): Absolutely.

22 EN MASSE: (Laughter).

23 CHAIRMAN MR. MORALES: Consider a career of sports
24 casting, if the road doesn't get built.

25 But could you tell me a little more about the

1 -- the Helmets to Hard Hats Program?

2 THE PUBLIC (MR. ADAMS): The Helmets --

3 CHAIRMAN MR. MORALES: 'Cause we have heard about
4 it. But --

5 THE PUBLIC (MR. ADAMS): The Helmets to Hard Hats
6 was a program that got started by our national department,
7 many many years ago. It had suffered, in these last several
8 years, because of recession. Because we don't have the jobs
9 to create, to turn these people on to.

10 Our local union still work with -- through
11 Camp Pendleton and Los Alamitos Base. But, unless we have
12 jobs, if there are not local jobs here, we can't put those
13 folks to work. We can't bring 'em in, if we can't employ
14 'em.

15 CHAIRMAN MR. MORALES: So --

16 THE PUBLIC (MR. ADAMS): These are -- these are
17 career paths. This is not just holding a sign, directing
18 traffic. This is about iron workers, electricians and
19 plumbers, et cetera.

20 CHAIRMAN MR. MORALES: All right. Thank you.

21 THE PUBLIC (MR. ADAMS): Thank you.

22 VICE CHAIRMAN MR. STRAWN: So, if I can follow on
23 that, you -- you participate in the transition programs, on
24 the bases, where the guys are exiting out of the military and
25 you -- you recruit there?

1 THE PUBLIC (MR. ADAMS): The organizations that we
2 represent will reach out to veterans on a regular basis. But
3 when the economy is slow, (shake of the head) we can't reach
4 out. We can't bring people in. We've got people here, that
5 -- there was -- I'm sorry a lot of the guys had to leave.

6 But the labor's union was here. And it was
7 all the guys in the orange shirts that was over here earlier
8 here today. Had people sleeping in their cars. That's how
9 bad it is. But we can't take our members that are sleeping
10 in their cars and bring the veterans in.

11 We don't have jobs for either one, right
12 now. That's why this project is so important.

13 THE PUBLIC (UNIDENTIFIED): I'm with the
14 electricians. We go to taps out, down at Camp Pendleton.
15 Yes, we do that.

16 VICE CHAIRMAN MR. STRAWN: Mary Adams.
17 Jancee Aellia. Sorry for butchering that last
18 name.

19 CHAIRMAN MR. MORALES: Next?

20 VICE CHAIRMAN MR. STRAWN: Next will be Beth
21 Apodaca.

22 THE PUBLIC (KAREY): Jancee was here earlier but,
23 unfortunately, had to leave. I'd like to have her letter
24 read into the record.

25 VICE CHAIRMAN MR. STRAWN: Your name, ma'am?

1 THE PUBLIC (KAREY): My name is Karey.

2 I am a San Clemente resident. I live in
3 Toleka. I'm here, today, to voice my support for the Tesoro
4 Extension. Having the toll road continue close to the Ortega
5 Highway where the Lapada will soon connect from San Clemente
6 is very exciting for San Clemente residents.

7 My husband, kids and I moved to San Clemente
8 four years ago. Since then, I rarely get visits from my
9 parents and siblings who live in the Inland Empire, because
10 of the traffic on the 5, to get to San Clemente. This
11 extension and the Lapada continuation would get them here
12 much quicker and easier. It would also get those of us who
13 -- that work out of town to work quicker during the rush
14 hours; and help us not feel trapped in our own city on the
15 weekends because of gridlock.

16 But the most important reason that I am
17 supportive of the Tesoro Extension is because, with the
18 Lapada Extension, it gives San Clemente residents an
19 alternative way in and out of our city, in case of
20 emergency. I work in Newport Beach. And, if there were ever
21 an emergency, I could get to my kids quicker and we'd have an
22 alternate way out of town. The Lapada Extension, alone, only
23 gets us to the Ortega Highway where we'd be sitting in
24 traffic once again. The toll road extension is also needed
25 to continue the flow of traffic.

1 I know there are people here that are against
2 this five-mile extension of the toll road. They feel, if you
3 allow this portion, you are approving the continuation of the
4 toll road all the way to the 5. Correct me if I'm wrong, but
5 doesn't each section have to go through an approval process
6 such as this one? Therefore, allowing the Tesoro Extension
7 does not guarantee any additional extension. I would hope
8 that you would approve this extension, on its own merits, for
9 the benefit of many residents in San Clemente and the
10 surrounding communities, instead of these "what if" concerns
11 being raised that have no validity here today.

12 Thank you.

13 VICE CHAIRMAN MR. STRAWN: Beth Apodaca.

14 Hamid Bahadori.

15 And the next will be a Mike Balsamo.

16 THE PUBLIC (MR. BALSAMO): Good afternoon, Chairman
17 Morales, Members of the Board. Sorry, I'm a little
18 congested. So, I can't hear myself. Uhm-m-m -- been a long
19 day.

20 I live in Margarita. I represent the automobile
21 Club of Southern California, Triple A. We've been around for
22 over a hundred and thirty years. We established in 1900
23 (phonetic), in Los Angeles. We have 52 million members
24 nationally, 2 million -- 2.1 million in San Diego and Orange
25 County. Sixty percent of households.

1 Therefore, the issues of traffic safety and
2 mobility are dear and near to our heart and I'm here
3 advocating on behalf of our members for vote pragmatic,
4 practical and good transportation solutions; and this road is
5 one of them.

6 Last year, the California Transportation
7 Commission -- and I'm sharing this information with you, so
8 that you know your decisions, which is focused as established
9 by your own regulations, only the water quality issue. You
10 have ramifications way beyond water quality. And I would
11 like to bring that to your attention.

12 Last year, the California Transportation
13 Commission identified and released their report that
14 identified there is a \$300 billion -- that's a billion with a
15 "B" -- deficiency, the transportation system in California.
16 It's interesting that ten years ago the same commission
17 released the same report, identified \$200 billion deficiency
18 in -- in -- uh -- California trans- (sic) -- uh --
19 transportation system. In ten years, we fell behind by a
20 hundred billion dollars. We simply cannot afford staying on
21 the same trend that we have been on for the last three
22 decades.

23 This road, in addition to providing the
24 regional transportation, needs that are -- addressing the
25 needs that we need in that area. It attracts private

1 financing. It attracts money that is not today is
2 available. The Federal Highway Trust Fund is deficient by
3 \$17 billion, every year. California Transportation funds are
4 practically broke. We cannot even pay the bills that we
5 have.

6 They have used all opportunities to attract
7 all the funding sources that we can to build the
8 infrastructure with the American Society of Civil Engineers
9 has graded in D plus, our national infrastructure. Your
10 decision is focused on water quality. That's not my area of
11 expertise. The experts and the reports are showing that the
12 project is complying with your regulations and your
13 requirements. With less than half an acre of impact, they're
14 all mitigating over 34, almost 34 acres. So, by any measure,
15 that is good.

16 TCA, we have been working with the TCA going
17 back to late 80's, since the formation. And they have an
18 excellent track record. Somebody mentioned here what happens
19 to these mitigations right after they make the promises.
20 Everybody goes home and we all go back.

21 TCA has an excellent track record and they
22 would be happy -- and I'm sure they've offered -- to take you
23 on tours of their previous mitigation sites on other
24 projects. Again, it's late. Thank you very much for your
25 time. It's been a long day. I just wanted to share with you

1 the Auto Club's perspective, as you're making your decision
2 about the water quality impact of this project.

3 To bring -- just to bring to your attention
4 that your decision, in expediting this project, has
5 ramification beyond your issue of water quality. And we
6 respectfully request that you vote favorable and issue the
7 permit. Thank you for your time.

8 VICE CHAIRMAN MR. STRAWN: Jim Bieber.

9 Darren Blume.

10 Mike Bodenhamer.

11 And next will be a Wendy Bucknum.

12 THE PUBLIC (MR. BIEBER): Good afternoon. My name
13 Jim Bieber. I'm a member of the South Orange County Economic
14 Coalition. I live in San Clemente. Part of that, a little
15 -- just up the street, in Costa Mesa is where I have my
16 office. Just up the street, Santa Ana.

17 I'm a daily commuter on the 5 Freeway. I
18 start in San Clemente and I work my way up. And, depending
19 on the time of day and how strict I am, I'll see the whole
20 way on the 5 or I'll take the toll road.

21 If you had a chance, this morning, coming up,
22 you would have seen the strip of road on the 5, between Pico
23 and -- uhm-m -- I would say Dana Point. And, if you look
24 closely you'd see that the road actually looks like a NASCAR
25 track. Where you'll see rubber marks. And go up under the

1 bridge and you'll see it's littered all over the place.

2 It is a dangerous strip of road. And it will
3 continue to remain -- (inaudible) -- that way -- (mumbled) --
4 traffic, during mitigation. My wife was rear-ended on the
5 5.

6 What this road is about is about quality of
7 life. And, this Friday, we're playing the Eyes of March
8 Party, which is kind of a fun thing to add. We've got the --
9 (mumbled) -- present across the county. And we know, for a
10 fact, half of them will not attend. Because they simply just
11 cannot make it to south county, on the 5, during week the
12 night.

13 Such a small thing. But it kinds of leads to
14 -- you know, quality of life is the -- what the option is
15 here. And -- uhm -- the lady on the panel asked, "What is
16 'Save trestles'?" I'm not sure.

17 It seems really weird. But that's what it
18 all comes down to. There is a specific little strip of beach
19 that's frequented by surfers where I live and it's very
20 difficult to access. It is viewed by those people as their
21 own private country club beach. And they'd like it -- and
22 they like this traffic and they like people willing to make
23 it as least accessible as possible to the public.

24 Uh-h-h -- you're two judges (mumbled) -- are
25 not here to judge on social issues or the bigger picture of

1 things. It's just -- (mumbled). You've had some people, you
2 get lot of opinions from the opposition. Any construction
3 will lead to fecal matter in the streams, which will lead to
4 the conclusion of real science, what will it look like with
5 TCA and other experts?

6 Getting back to the original concept of -- of
7 extending the toll road. They've screamed and hollered and
8 cried about how it will devastate the surf life. And they
9 had their own studies and live safer, announce -- (mumbled)
10 -- beaten up on crime. Putting out the surf riders, bunch of
11 bad science. I spoke to the surf rider, people live there.

12 Fix the strips. House of prostitution, a lot
13 of people on pay off. And yet they cite their studies all
14 the time. They pick tourists to strip.

15 So, the credibility goes back to these people
16 are ready to put out funk science, to achieve their goal to
17 make it impossible and detrimental for the majority of people
18 to access trestles.

19 When you go down there, you'll see graffiti
20 written -- and, if you're Black, it will say "No 909ers."

21 THE PUBLIC (UNIDENTIFIED): That's right.

22 THE PUBLIC (MR. BIEBER): And what that is code
23 for is no brown people and no social -- uh --

24 THE PUBLIC (UNIDENTIFIED): That's right.

25 THE PUBLIC (MR. BIEBER): -- poor economic people

1 from the Inland Empire. They don't want 'em there.

2 You'll see "No Asians" written on there. And
3 then "no Kooks," that's spelled with a "K." That's people
4 who are conditioned (phonetic) to surfing. They wanna
5 preserve, not "Trestles," a Trestle culture.

6 I'd like to wrap up by saying that those
7 people from the surf riders, they're -- they're really nice
8 and shiny and clean; but they're really cartoon characters
9 from the 1960s bullies that (inaudible) on the beach, who do
10 and say anything to keep people from accessing that spot of
11 land by encouraging bad traffic for the rest of us.

12 And the vanguard of the people who are in
13 opposition, the only thing worse than the people we saw
14 earlier in the orange shirts who would get jobs by
15 constructing the road would be their families accessing and
16 participating and being on their beach.

17 THE PUBLIC (UNIDENTIFIED): There you go. That's
18 it.

19 THE PUBLIC EN MASSE: (Clapping of hands).

20 THE PUBLIC (MR. BIEBER): And comment. But I
21 consider real science and the validity of the opposition and
22 the bunch (inaudible) that they throw out in the past. Thank
23 you.

24 THE PUBLIC (UNIDENTIFIED): All right. That's
25 what -- what I'm saying.

1 VICE CHAIRMAN MR. STRAWN: Denise Casad will be
2 next.

3 And Duane Cave.

4 THE PUBLIC (MS. BUCKNUM): Hi, I'm Wendy Bucknum.
5 I think I was next.

6 I am a resident of Mission Viejo. So, I'm
7 one of those residents that's actually living the problem
8 with this extension not being done right now. And they
9 mentioned that our council members were on the TCA and
10 they're here representing.

11 We want them on the TCA. We want our council
12 members to represent us at a hearing like that. And I'm
13 actually really happy two of 'em were here. So, I just wanna
14 say that, as a resident and a mom -- and I'm gonna be really
15 quick.

16 I've heard a lot of things today. I'm not
17 gonna repeat 'em. I do definitely want to urge you to
18 approve the TCA Waste Dis- (sic) -- Discharge Requirement
19 Permit Application.

20 The Tesoro Extension, I use the toll road. I
21 use -- I'm a working mom. So I need to get places, here and
22 there. And, if I use them every which way -- (sigh) -- from
23 Sunday, on the weekends, during the week, because sometimes
24 you need to get there fast and that is the option. I have
25 teenagers and I need to get there fast. And I will just

1 leave it at that.

2 THE PUBLIC EN MASSE: (Laughter).

3 THE PUBLIC (MS. BUCKNUM): Uhm -- (Pause). I --
4 uh -- I -- uh -- as you know, they've mentioned they think it
5 would be -- create jobs. Jobs, jobs, jobs are so important,
6 right now, in Orange County, let alone the nation. So, I --
7 that can't be emphasized enough. So, I had to say it again.

8 I do think that this is something that's
9 gonna put people back to work, another city that trickles
10 down where people that -- are being put back to work. And
11 it's gonna help other people, like my husband who owns a
12 small auto restoration business. Help get him business.
13 Things -- and things like that.

14 I -- I really can't understand why anyone
15 would oppose this. I've heard some issues. I understand
16 it's about a half an acre of water -- uhm-m-m -- area or
17 wetlands area. I'm not an expert. So, please don't ask me
18 questions about that.

19 There are few roads in California that it --
20 that -- uh -- looks like provides the high level of
21 environmental protection, that this road would do. We're
22 talking about fish. If this road isn't finished, we're
23 talking about creeks and water quality. There are all those
24 through roads.

25 They were mentioned by my mayor, Rhonda

1 Reardon: Alicia, Oso, Jer- (sic) -- uhm -- there's also a
2 Geronimo that feeds through there. La Paz -- it -- the list
3 goes on and on, Crown Valley, Avery.

4 They go over Oso Creek. They go past a major
5 lake called the Indio Lake. You should be concerned about
6 the water quality, what they have in there with all the
7 additional cars on those roads. What's gonna happen to that
8 water? Those -- that's my -- that's my neighborhood. That
9 affects me.

10 Where is the concern of all these people, for
11 those -- for that, for those bodies of water? And that's a
12 lot more water. Uhm-m-m -- sorry. I was a little excited
13 when they said that. Uhm-m-m -- let's see.

14 Uhm -- I just wanna say that my kids and we
15 participate quite a bit in -- uhm -- the creek clean up and
16 the beach clean ups. That's important to us because, again,
17 that waterway's in our city.

18 My daughter's a surfer. I get what the
19 situation is for the surfers not wanting people in Tesoro.
20 She lives it. She's an inlander. She's from Mission Viejo.
21 She's on the other size of the freeway. They
22 don't want her there. I get it. So, what was said, I've
23 experienced it as a mom. It's kind of disheartening. But I
24 still go there and we do enjoy the beach.

25 I want to say that this private project is

1 14-miles from the coastline. I mentioned about the half an
2 acre of environmental impact. I am -- I'm -- am
3 really amazed why surf riders here, on that piece of water,
4 when there's so much other -- if they're concerned about
5 runoff, the stuff that's gonna happen on the rest of the
6 roadway that I mentioned.

7 They also mentioned alternative
8 transportation -- I'll hurry.

9 CHAIRMAN MR. MORALES: Ma'am.

10 THE PUBLIC (MS. BUCKNUM): They -- the railroad
11 goes along the beach. Do they want us to widen the railroad
12 that goes along their beach? Are you kidding me? I don't
13 want that. I don't think they want that. Anyway, I'll leave
14 it at that.

15 Please approve the TCA's WDR application. And
16 we really wanna get this project started. Thank you so much
17 for your time and for coming here.

18 THE PUBLIC (MS. CASAD): Hello, I'm Denise Casad.
19 I'm a -- (unintelligible) -- Orange County. I'm the Chapter
20 president. And for those of you who may not be aware of our
21 organization, More Professional Appreciation for Advancing
22 Women and Transportation. And for "transportation," I mean
23 all of transportation, not just building roads. We also have
24 people in the water resource society in our organization.

25 But, more importantly, probably, I am a South

1 County resident. I do live in San Clemente. And I do
2 believe that the Tesoro Extension is needed for congestion
3 relief. It's really bad traffic. 'Specially if you're going
4 south, on -- on Friday or trying to go north, (giggle) on
5 Sunday, it gets a little bit daunting and it's a little
6 pretty difficult drive.

7 Anyway, I -- I work in North Orange County. I
8 do take the toll road, pretty much, everyday. And, on the
9 weekend, I see my mother-in-law in Yorba Linda. (Laughter),
10 so.

11 I -- I think that the -- uh-h-h -- that, in
12 addition to all those -- the back traffic that already
13 exists, there is that development. It is going in, breaking
14 (phonetic) from where I was up, going -- (mumbling) --
15 recycling is already started. So, we can't ignore that it's
16 happened and that it's there.

17 Do you need to mitigate for what's coming in
18 and make some traffic improvement? And that does mean, I
19 think, this Tesoro Extension. I know it doesn't have a huge
20 long area. But, as -- as was pointed out earlier, attachment
21 is already going on at Lapada plus, at Tesoro, does give the
22 people in San Clemente an extra way out.

23 When -- when I -- I went shopping on Black
24 Friday. And there was a very bad accident on the 5 Freeway
25 and they closed it for four hours. So, I had gone to a movie

1 after I went shopping and I got stuck for six hour in
2 traffic. And there really isn't another way back down from
3 Aliso Viejo.

4 So, I think that having an alternative at that
5 particular time -- and, yes, it was just a little bit of
6 headache. But, if there is ever a big emergency, it -- it --
7 there's a lot of residents who would have a very hard time
8 getting out of the area. So, I -- for that reason, I -- I
9 think it's important.

10 In addition, I -- I do think that we have an
11 obligation, if we can, to have this project help create the
12 jobs. There are jobs that are more along the STEM line,
13 which is Science Technology Engineering and Math (phonetic).
14 This type of project would provide those types of jobs.

15 And a -- a lot of them are a -- (mumbled) --
16 particular, from the WGS perspective, for women who work in
17 transportation. It's a good career path for them. And it's
18 a good opportunity to get them trained into their field.

19 So, I -- I do understand that you do have
20 concerns with the environment and the water quality. I do
21 believe, having driven the toll roads almost every day and I
22 see them working on it and I see the BMP going on, they are
23 trying to protect the environment control -- (mumbled). And,
24 as pointed out earlier, on the 73, the -- they weren't state
25 of the art, at that time. But as the state of the art

1 changed and we advanced, they have new ways of doing things
2 and they have gone ahead and -- and gone on with the new --
3 (mumbled) -- with them -- (mumbled) -- stuff like that, to
4 repair the pavement.

5 So, I do think that even though it -- we've
6 got the state of the art, now, I think as the water quality,
7 more -- and it's important that you do look at what we're
8 doing now and know that it's great, for now. But we can
9 improve it as the project progresses, if anything changes.

10 So, anyway, I wanted to be short. So, I
11 believe the Tesoro Extension is needed and I appreciate your
12 time.

13 THE BOARD (MR. ANDERSON): One quick question.

14 Do -- do you know if the City of San Clemente
15 took a position?

16 THE PUBLIC (MS. CASAD): The City of San Clemente?

17 THE BOARD (MR. ANDERSON): Yeah.

18 THE PUBLIC (MS. CASAD): Uh-h-h -- I don't know if
19 the City actually took this position. I've heard, today --

20 THE PUBLIC (UNIDENTIFIED): (Shake of the head),
21 that's mine.

22 THE PUBLIC (MS. CASAD): -- from the Chamber of
23 Commerce, things like that. So.

24 THE BOARD (MR. ANDERSON): Okay. That's fine.

25 Thank you.

1 THE PUBLIC EN MASSE: (Clapping of hands).

2 VICE CHAIRMAN MR. STRAWN: Duane Cave.

3 And then -- and then Carolyn Cavecche.

4 And, then, next will be a Don Chadd.

5 CHAIRMAN MR. MORALES: (Nod of the head).

6 THE PUBLIC (MR. CAVE): Okay. Good afternoon,
7 Chairman Morales, Board.

8 My name is Duane Cave. I'm proud to be here,
9 today, as representing the South Orange County Economic
10 Coalition. The coalition was formed to support
11 infrastructure project that will enhance the economic road
12 and quality of life in our region.

13 Our Board of Directors which are made up of --
14 of many of the large top businesses of Southern California,
15 strongly encourages you support TCA's Waste Discharge
16 Requirement Permit Application. Good roads, which equals
17 good jobs, which equal quality, which equal -- (laughter) --
18 I'll get this. Which -- which equal a good economy and
19 quality of life. This project far along that we could break
20 ground, by the end of 2,013, at no taxpayer expense; and it
21 would create, as we've heard, 2400 jobs.

22 Multiple projects are under way in the region,
23 right now, that underscore the critical need for this
24 project. You've heard of the Ortega Wining Project, in San
25 Juan Capistrano? The -- the Rancho Mission Viejo Sendero

1 (phonetic) Project and the Lapada Gap Closure, which is gonna
2 bring more people up north that need a place to go. Tesoro
3 Extension would be the excellent route for them to take. All
4 of these projects are slated to start and be completed
5 between 2,013 and 2,015.

6 The sooner the TCA can start the Tesoro
7 Extension, the sooner we can provide an alternate route to
8 the freeway. The use of local streets and arterials can only
9 cause congestion. We need to match up these projects, from a
10 timing standpoint, and not allow gridlock to happen on our
11 local streets. TCA -- TCA's made a commitment to water
12 quality treatment and ensuring minimal impacts from this
13 project. The economic coalition strongly supports
14 infrastructure projects that strive to achieve the highest
15 level of environmental standards in the industry.

16 On behalf of the South Orange County Economic
17 Coalition, we encourage you to approve TCA's WDR application.
18 Thank you, very much for your time.

19 THE PUBLIC (MS. CAVECCHÉ): Good afternoon,
20 Mr. Chairman and Members of the Board. I really appreciate
21 you coming up from San Diego into central -- South Orange
22 County to hear us today. It's very appreciative. I know
23 it's been a long day for all of you.

24 My name is Carolyn Cavecche. I'm the chairman
25 and the CEO of the Orange County Taxpayers Association. I'm

1 starting to feel like I'm representing the U.S. Endangered
2 Species and that's the California taxpayer.

3 The Transportation Corridor Agency has built
4 their roadway system without tax dollars. Support through
5 user fees -- or what we call them, "user fees." A lot of
6 people are calling them "toll" now. This important and
7 essential transportation infrastructure system was
8 constructed in Orange County, again, at no taxpayer expense.

9 And I heard the term "freeway" used today.
10 And I'm sure you all understand the term "freeway" doesn't
11 mean that it's free. Uhm -- trust me, anything that the
12 State of California builds is not free to the taxpayers. The
13 term "freeway" comes from free movement. Uhm -- the cars are
14 supposed to move freely.

15 I do not consider the I-5 in South Orange
16 County a freeway. Because, trust me, it does not move in a
17 free manner, real any time of the day, weekday or weekend.

18 Uhm -- Orange -- OC tax supports the
19 infrastructure project, like this roadway extension, because
20 it's gonna create thousands of jobs, expand and grow our
21 economy, provide the traffic relief this region needs; and
22 ease access between customers and businesses and between
23 commuters and their homes.

24 Oh, I understand that your purview really is
25 strictly the water quality impact. And I'd really just ask

1 that you listen to the scores of scientists and quality -- or
2 quality engineers who have been studying this issue and has
3 determined that the project's minimal water quality impact
4 can be fully mitigated. But I'm here, today, because I also
5 think it's important that you hear the perspective of the
6 taxpayer.

7 Orange County taxpayers want and need quality
8 infrastructure to protect our quality of life and appreciate
9 the projects, like this, that can be built and supported by
10 those who choose to use them. There are people who do not
11 want this project developed -- uhm -- for a number of
12 reasons. It doesn't matter if we can mitigate it. It
13 doesn't matter if we can build it safely, without using
14 taxpayer's dollars. They do not want this project to be
15 built.

16 Now, I've lived in Orange County almost my
17 entire life. And it -- uhm -- that's a long time now.
18 Probably a short amount of time.

19 THE PUBLIC EN MASSE: (Laughter).

20 THE PUBLIC (MS. CAVECCHÉ): Orange County has
21 grown, tremendously, since the mid-60s. At three million
22 people, we are now one percent of this nation's population.
23 We have to continue to invest in infrastructure. The economy
24 and the jobs in Orange County rely on that.

25 I also wanted to let you know, I served on the

1 Metrolink Board of Directors over the years and a lot of talk
2 has been about improving the transit, up and down that area.
3 The low sand (phonetic) corridor is one of the heaviest of
4 any of the rail corridors in this nations. The problem is,
5 we can't double track to South Orange County because the
6 cities aren't allowing that to happen. So, it's really
7 trying to say, "Well, let's move 'em onto the trains." But,
8 unless we start double tracking, up and down the beach, into
9 the middle of some of the historic quarters of South Orange
10 County, that's not gonna help us either.

11 So, on behalf of the Orange County Taxpayers
12 Association, I ask that you please vote to the Waste
13 Discharge Requirement Permit Application before you. And,
14 again, thank you so much for the time that you put in today.
15 It is very much appreciated.

16 THE PUBLIC EN MASSE: (Clapping of hands).

17 VICE CHAIRMAN MR. STRAWN: Thank you.

18 Don Chadd.

19 And then -- uh-h-h -- Darin "Chidsey"?

20 Chidsey?

21 And a Mike Conte.

22 And then a Ray Diaz.

23 THE PUBLIC (MR. CHADD): Mr. Chairman, Members of
24 the Board, thank you very much for being here today. I -- uh
25 -- honor your volunteer service. And it's very kind of you

1 to come to us and allow this public hearing to occur. My
2 name is Don Chadd. And it's my pleasure to be here today to
3 speak to you in support of the Tesoro Extension.

4 Anecdotally, you heard, earlier, councilman
5 Peter Herzog talk about the Transportation Corridor Agency
6 building in sections at the time. The first section was
7 completed, I was an assistant superintendent Irvine Unified
8 School District, living in Rancho. My commute was 55
9 minutes, because I had to go to the freeway and go to the
10 ElToro Y. When that segment was completed, my commute turned
11 into 20 minutes. And, so, there is wisdom to how they
12 approach the sections.

13 Second, anecdotally, on January 1, I retired
14 as the general manager of Trabuco Canyon Water District,
15 particularly in the San Diego region. We're probably the
16 farther most north- (sic) -- uh -- northern district that you
17 have. I've been before your court, many times.

18 I appreciate water quality and I understand
19 it. And, when I hear of the sand filters and the bio
20 filters, I understand it. And -- uh -- I -- as I understand
21 it, the primary concern to you today is water quality. As
22 I've seen the project, I appreciate it. I think it's state
23 of the art.

24 The capacity that I'm here today is, as
25 president of SANMARG (phonetic), Santa Margarita Landscape

1 and Recreation Corporation, it's a master homeowners
2 association in Rancho Santa Margarita. It's the largest HOA
3 this side of the Mississippi, almost 14,000 homes. And the
4 board of directors of that HOA took the position in strong
5 support of the Tesoro Extension. Largely, because of the
6 limited access in and out of Rancho Santa Margarita that they
7 -- that would greatly benefit the home values that will allow
8 for transportation in a southernly route, other than the
9 limited ways that we have now. And -- uh -- provide for --
10 uh -- quite frankly, economic growth in Rancho Santa
11 Margarita.

12 But we're convinced that we don't even know
13 how beneficial it's going to be. But I'm absolutely
14 convinced that it is going to be beneficial for the toll road
15 extension to be built. And so, with that, I'm going to be as
16 brief as I can. Thank you very much. It's so kind of you to
17 be here.

18 THE PUBLIC EN MASSE: (Clapping of hands).

19 VICE CHAIRMAN MR. STRAWN: Ray?

20 THE PUBLIC (MR. CONTE): Yes, sir.

21 VICE CHAIRMAN MR. STRAWN: Okay.

22 THE PUBLIC (MR. CONTE): I'm Mike Conte.

23 VICE CHAIRMAN MR. STRAWN: Mike.

24 THE PUBLIC (MR. CONTE): (Nod of the head). Yes.

25 Chairman, the Board, thank you very much. My

1 name is Mike Conte. I'm the -- uh -- a residence of Mission
2 Viejo. I'd like to read into the record a letter on behalf
3 of Wesley Pain, Executive Director of the Engineering
4 Contract Association, who was unable to stay here.

5 Chairman Morales, fellow Board Members, since
6 1976, the Engineering Contractors Association, ECA, has been
7 a recognized leader representing the public utility
8 construction industry. Membership of the ECA is drawn from
9 11 Southern California Counties and is made up of contractors
10 and affiliates. Their interests in the sewer and water line,
11 storm drain, pipeline, underground utilities, trenching,
12 excavating and grading tunnels, streets and highway
13 constructions. Our 200-plus member companies represent over
14 3,000 workers and over 7,000 household members. Southern
15 California's economy has suffered, for several years, as a
16 result of a nationwide downturn.

17 Many sectors, including construction, have
18 suffered significant job losses and layoffs that have led to
19 foreclosures and far reaching (inaudible) consequences.
20 Simultaneously, Southern California faces ongoing
21 transportation and traffic relief challenges due to the
22 environmental regulations and restrictions, they have brought
23 a slow permitting process to a nearly standstill. Both of
24 these major economic issues can be improved by investments,
25 such as the Transportation Corridor Agency's Tesoro

1 Extension. Extending the 241, by five miles, will provide
2 additional traffic relief to the region as well as supplying
3 more than 2,000 good paying construction and engineering jobs
4 to the local economy.

5 Design and minimize impacts to the
6 watershed. This project represents sustainable designs and a
7 a tangible and long lasting improvement, the regional
8 transportation system. Our board of directors supports the
9 Tesoro Extension as the immediate investment and local job
10 creation. The benefits of the project's construction are
11 substantial and far reaching.

12 Beyond the immediate creation of jobs, in
13 engineering and construction, the project wants to complete a
14 -- a -- will offer opportunities for economic growth on a
15 regional basis. For example, there are five million square
16 feet of commercial space that are scheduled for development
17 in Rancho Mission Viejo. How valuable will that commercial
18 property be? The customers and the clients can -- can get --
19 can't get there.

20 We can't stress strongly enough how important
21 job creation and private investment are to our membership.
22 Indeed, if in the event of a -- such opportunities for
23 private capitol and infrastructure, maybe the key to
24 addressing Southern California's infrastructure may be a
25 reasonable cost and in a timely matter. We are the asking

1 board to vote to approve the Waste Discharge Permit that TCA
2 has applied for. This means jobs for all of us and much
3 needed support for our growing league construction suggestion
4 transportation system in Southern California. Sincerely,
5 Wesley F. Pain, Executive Director. Thank you very much.

6 THE PUBLIC EN MASSE: (Clapping of hands).

7 VICE CHAIRMAN MR. STRAWN: Okay.

8 Darin -- uh -- Mr. Chidsey? Chidsey?

9 Mr. Diaz?

10 Mr. Esparza? You'll be followed by Emily
11 France and a Kevin Gilhooley.

12 THE PUBLIC (MR. ESPARZA): Good afternoon,
13 Mr. Chairman and Executive Board Members.

14 My name is David Esparza. And I'm a business
15 manager, represent 3,100 members in the city and in Orange
16 County, here -- uh -- 3,100 members. That is, construction
17 craft laborers.

18 I'll be very blunt with you. Our members
19 need to work. Since 2,000 and 7, we have seen unemployment
20 among our members as high as 40 percent. Some occasions,
21 reaching -- reaching its peak up to fifty percent. That's
22 unacceptable. But, finally, we see light at the end of the
23 tunnel.

24 The 241 Tesoro Extension Project gives us
25 hope that the things are gonna be turning around. This

1 project would employ more than 2,000 people in this region
2 alone. Those are fantastic numbers. Numbers that we need to
3 put our men and women back to work. Not only will this
4 project put food on the table for our members, but it (sic)
5 also a vital link that will address the transportation
6 deficiencies in Orange -- in South Orange County.

7 The rest that's living in this area,
8 currently have only one route, north and south Interstate 5.
9 It is inherently dangerous for any communi- (sic) --
10 community to be as reliant on their sole transportation
11 corridor as this committee is on I-5. Bottom Line, the 241
12 Tesoro Extension is desperately needed.

13 As many people have already pointed out, the
14 Tesoro Extension has extremely minimal impact to water,
15 regulated by the State, less than half an acre. This project
16 will also benefit the region's air quality, by helping to
17 alleviate idling cars that we all know has the air
18 pollution.

19 Please do the right thing, today, and approve
20 the permit needed to construct the Tesoro Extension Project
21 and help us put our members back to work in all the trades
22 and craft in the construction field. Thank you for your
23 time.

24 THE PUBLIC EN MASSE: (Clapping of hands).

25 VICE CHAIRMAN MR. STRAWN: Ms. France?

1 THE PUBLIC (UNIDENTIFIED FEMALE): Not here.

2 THE PUBLIC (UNIDENTIFIED MALE): Not here.

3 VICE CHAIRMAN MR. STRAWN: Mr. Gilhhooley.

4 THE PUBLIC (UNIDENTIFIED FEMALE): I believe he
5 left, as well.

6 VICE CHAIRMAN MR. STRAWN: Mr. Guzman.

7 Mr. Haskins.

8 Ms. Holmes.

9 This just says "Staffer Buying (phonetic)
10 Ranch Water District."

11 Heather Johnson.

12 April Josephson.

13 Here's one that says "labor."

14 CHAIRMAN MR. MORALES: Come on up, Ma'am.

15 VICE CHAIRMAN MR. STRAWN: Okay. Went too fast
16 here.

17 THE PUBLIC (MS. JOSEPHSON): Okay. Good afternoon,
18 Chairman Morales, Vice Chair Strawn and Board Members.

19 My name is April Josephson. I'm a resident
20 of Rancho Santa Margarita, a founding member of the Rancho
21 Santa Margarita State Park Committee, an environmentalist and
22 an animal welfare advocate. I have been a resident of South
23 Orange County since 1976. And I'm a graduate of Laguna Beach
24 High School.

25 I supported the efforts that are incumbent --

1 (inaudible) -- check portions of Laguna Canyon Y. I use the
2 241 toll road on a regular basis and have seen, firsthand,
3 the benefits. Which, contrary to some of the claims from
4 those outside of the area, does have a impact on our
5 environment.

6 I'm here today to urge you to approve the
7 TCA's Waste Discharge Requirement Permit application. I am
8 concerned about the future of our area and our environment.
9 I feel strongly that this project is necessary. I support
10 both planned transportation projects, like the Tesoro
11 Extension, because I recognize that structured project helps
12 to build a prosperous community and actually protects our
13 environment.

14 We all wanna live in prosperous communities
15 with the high quality of life. With large scale residential
16 and commercial construction already underway at Rancho
17 Mission Viejo, and an alternate is to I-5 is just vital.
18 That alternate route is just too -- is the Tesoro Extension,
19 the 241 toll role. Currently, the I-5 is the only north-
20 south non-arterial route available for residential business
21 in California (inaudible).

22 I-5 also serves as the primary route for
23 movement and goods to and from Mexico and the ports of Los
24 Angeles, San Diego and Long Beach. The Tesoro Extension will
25 be one of several traffic release requirements that are

1 underway or planned for South Orange County, including the
2 Ortega I-5, the interchange improvement; the Lapada Gap
3 Closure Project; the Pico I-5 interchange improvement; and
4 the I-5 -- (inaudible) -- edition. All of these
5 transportations improvement projects are needed to provide
6 for traffic relief through the region.

7 If you've ever had to drive the I-5 near the
8 South Orange County, during rush hour or on weekends, you
9 know that this route often becomes a virtual parking lot.
10 Not only is it wasteful, but it's dangerous.

11 The cumulative environmental effects and,
12 last of all, cumulative grounds emergency situations pose a
13 great risk to everyone in the region, not just those in the
14 immediate vicinity. The only way to improve and protect our
15 lives, our community, our environment and our future is to
16 properly plan for infrastructure improvement, including the
17 Tesoro Extension 241 toll road. I urge you to support
18 quality of life and mobility by approving the TCA's WDR
19 application.

20 And thank you very much for coming up here to
21 Orange County and allowing us to speak.

22 THE PUBLIC EN MASSE: (Clapping of hands).

23 VICE CHAIRMAN MR. STRAWN: Michael Latham.

24 Victor Lopez.

25 April Josephson. I think I already read

1 that.

2 Hector Madrigal?

3 THE PUBLIC (UNKNOWN): I have Josephson --
4 (inaudible).

5 VICE CHAIRMAN MR. STRAWN: Tom Margo.

6 THE PUBLIC (UNKNOWN): Technically -- third time
7 down the hall.

8 THE PUBLIC (MR. MARGO): Thank you very much. Good
9 evening, Mr. Chairman. And -- it is -- uh -- almost good
10 evening. I'll be brief.

11 My name is Tom Margo. And I was former CEO
12 of the Transportation Corridor Agency, in the interest of
13 fair play. But I'm recently retired, about six months ago.
14 And the reason I'm here today is that I'm a resident of
15 Ladera Ranch, in South Orange County, the -- adjacent to the
16 project area.

17 I have over twenty years of experience as an
18 executive in the transportation agencies in California. And
19 I could give you a hundred reasons why this road should be
20 built. But now that I am retired, the most important reason
21 for me is my grandchild, Avery.

22 I could talk about the extending -- the
23 extension basin, Austin sand filters and coarse pavement.
24 That's part of TCA's water quality mitigation plan, to
25 protect the environment. But while there's a laundry list of

1 scientifically and valid reasons that you, per se, could
2 approve the permit. The most important reason for me to see
3 the 241 extended is that I'd like to spend more time with my
4 granddaughter and less time in traffic.

5 Every day, as I live near the project area, I
6 see the grading construction that Rancho Mission Viejo has
7 going on, right now. In fact, there are houses that are
8 built now. You can see the -- the frame that is up and the
9 bulldozers that are grading. This will be, as you've heard,
10 14,000 homes, five million square feet of the (mumbled) rest
11 of the space. Without the extension, my fear is that the
12 city streets in my community will be impacted significantly.
13 We're already starting to see those impacts.

14 As you know, traffic congestion not only adds
15 more pollutants to the air and negatively impacts our
16 environment, but it slowly degrades our quality of life. Who
17 among us hasn't had the story about a missed school play,
18 being late for a business meeting or arriving at a store five
19 minutes after it closed. All of which means, tomorrow's
20 schedule has to be already rearranged to more trips. These
21 are real impacts to real people who live in this area, as I
22 do. Please vote to approve the permit.

23 I thank you and, hopefully, my granddaughter
24 Avery will as well. Thank you.

25 VICE CHAIRMAN MR. STRAWN: Wes May?

1 Ben Medina.

2 Representative Mission Hospital.

3 We'll need your name and whether you took the
4 oath.

5 THE PUBLIC (MR. NICHOLSON): Yes.

6 My name is Todd, Todd Nicholson. And I'm
7 here representing Ken McFarlane, who is the President and CEO
8 of St. Joseph Health.

9 Good morning, our -- (head gesture). Good
10 afternoon, now.

11 THE PUBLIC EN MASSE: (Laughter).

12 THE PUBLIC (MR. NICHOLSON): I'm reading a letter
13 that -- that Mr. McFarlane wrote.

14 My name is Ken McFarlane. And I'm President
15 and Chief Executive Officer of Mission Hospital, at Mission
16 Hospital Laguna Beach, in Orange -- South Orange County. I
17 strongly urge you to support the Transportation Corridor
18 Agency's Waste Dis- (sic) -- Discharge Permit at the Tesoro
19 Extension Project, in Southern Orange County.

20 Mission hospital is a not for profit 500-plus
21 bed hospital, operated by the St. Joseph Health System. You
22 have the largest medical center in South Orange County and
23 operate the area's only designated trauma center; and, in
24 partnership with Char- (sic) -- children's hospital, operate
25 the only pediatric specialty hospital. Annually, Mission

1 hospital handles a hundred eighty thousand outpatients
2 visits, 1,100 trauma cases and 72,000 emergency room visits.

3 Additionally, we are the nearest trauma center
4 to Camp Pendleton, in North San Diego County. And,
5 consequently, Marines who are victims of trauma are
6 transported to Mission Hospital. With traffic in Southern
7 California the worst in the nation, the gridlock on the I-5
8 grows yearly, causing personal inconvenience, creating safety
9 issues and undermining the quality of life and wellness and
10 freedom we treasure.

11 However and more importantly, gridlock can
12 cause you life, because of the time lost in transporting a
13 trauma victim to Mission Hospital. The bottom line is this
14 proposed five-mile segment from Oso Parkway to San Juan
15 Capistrano, off the Ortega Highway region, the approximately
16 24- -- 2400 jobs. And equally as important, we'll have
17 minimal environmentally less effect on the less than one-half
18 acre you were considering for this permit. The next five-
19 mile segment of the SR 241 will provide an additional highway
20 link, giving patients and trauma victims greater access to
21 health care services. Particularly, for the growing
22 communities to the east of our hospital, this is critical in
23 providing the quality of care that patients need to find
24 emergency basis.

25 We strongly urge you to support this

1 application. It is critical to the well-being and health of
2 all South Orange County residents. Signed, Kenneth
3 McFarlane, President, Chief Executive Officer.

4 VICE CHAIRMAN (MR. STRAWN): Carl Morgan.
5 Debbie Newman.

6 David -- David Ny- -- (sic) -- Nydegger?

7 THE PUBLIC (MR. MCINTOSH): Good afternoon. My
8 name's Martin McIntosh. Mr. Nydegger is one of many people
9 who needed to get down the road to get down south. So -- he
10 asked me to read his statement into the record.

11 My name's David Nydegger. And I'm submitting
12 my comments as Chief Executive Officer of the Oceanside
13 Chamber of Commerce. The Oceanside Chamber of Commerce is on
14 record supporting the approval of the Foothill Eastern
15 Transportation Corridor Agency's Waste Discharge Requirement
16 for the Tesoro Extension Project in Southern California. The
17 City of Oceanside shares the boundary with the southern area
18 of Orange County, as many of our respective residents and
19 business owners employees travel back and forth on a daily
20 basis.

21 Additionally, many of our respective
22 residents travel back and forth, on weekends, to visit family
23 members, to attend events and for recreation and leisure.
24 Currently, the I-5 is the only north-south non-arterial route
25 available for residents and businesses in South Orange

1 County. The extension, along with other Orange County
2 Transportation Projects, create an alternative route that
3 will enable our residents to commute to Orange County without
4 the bottleneck congestion that we typically encounter over
5 the years. This five-mile extension will provide a number of
6 much needed jobs and, as well as provide alternative routes
7 for those traveling from North Orange County to North San
8 Diego County.

9 Please give your utmost consideration to
10 approve the application before you today. Thank you.

11 THE PUBLIC EN MASSE: (Clapping of hands).

12 VICE CHAIRMAN MR. STRAWN: Dennis O'Connor?

13 THE PUBLIC (UNIDENTIFIED): He had to go.

14 VICE CHAIRMAN MR. STRAWN: Orange County

15 Transportation Authority --

16

17 (Simultaneous speech; unintelligible.)

18

19 THE PUBLIC (UNIDENTIFIED): He already spoke for
20 the government.

21 VICE CHAIRMAN MR. STRAWN: Ted Owen?

22 THE PUBLIC (MS. FITZGERALD): I'm obviously not
23 Ted, (laughter). But my name is Smith (phonetic) Fitzgerald
24 and I'm speaking on behalf of Ted Owen, who had to leave. I
25 will read his letter into the record.

1 My name is Ted Owen and I'm the Chief
2 Executive Officer of the Carlsbad Chamber of Commerce. I
3 would like to go on record to express the Chamber's support
4 for the approval of the Transportation Corridor Agency's
5 Waste Discharge Requirement Tesoro -- Tesoro Extension
6 Project in Southern Orange County. The Carlsbad -- (mumbled)
7 -- has been on record supporting this well-planned
8 transportation project.

9 The City of Carlsbad is a destination
10 location, not only for our famous cook (mumbled) resort and
11 hotels, but for our Carlsbad Village, Lego Land, Choir fields
12 and it's -- all of this, just to name a few. Relieving
13 traffic congestion will enable tourists to easily visit our
14 city which will thereby contribute to the overall economic
15 vitality of our city. The toll roads will also enable our
16 residents to commute to Orange County without the bottleneck
17 congestion that we usually encounter. This five-mile
18 extension will provide a number of new jobs, as well as
19 provide alternative routes for those traveling from Orange
20 County to San Diego. Please give your consideration to
21 approval this application for this today.

22 Thank you for your time. Ted Owen.

23 VICE CHAIRMAN MR. STRAWN: Jerry Pabbruwee.

24 Martin Pain.

25 THE PUBLIC (UNIDENTIFIED): He already spoke.

1 He already spoke.

2 VICE CHAIRMAN MR. STRAWN: Tom Rath.

3 Jeff Ruvalcava -- -lacava (sic) (whispering).

4 Sorry.

5 THE PUBLIC (MR. WRATH): My name is Tom Rath. I
6 did take the oath, earlier. I'm a longtime resident of
7 Orange County and a current resident of Lake Forest. I
8 strongly support the Tesoro Extension.

9 I, along with many others, make the commute
10 daily on the I-5. When traffic is light, which is seldom,
11 it's a good commute. The majority of the time, it's very
12 heavily traveled. And, if there's an issue, it -- it just
13 becomes unbearable.

14 The increase -- it increases pollution,
15 increases travel times, causing lost time that's gone
16 forever, causing huge delays. When there is an accident or
17 an emergency, the whole area turns into a parking lot,
18 including all the local streets.

19 We need an alternative route, now. Everyone
20 I know has stories about the I-5 delays, missing their
21 various events and even being late for everything they go
22 to. The number of times this happens is just increasing and
23 we're predicting to increase.

24 The Tesoro Extension is standalalone project.
25 It is our eternity route. It has been on the books for over

1 twenty years and it is long past due. TCA is committed to
2 the latest design and best management practices. TCA has
3 proven their comment to the environment and their runoff
4 compliance from previous projects.

5 14,000 homes have been approved and are
6 currently under construction. Good access is needed. Now,
7 they can -- the gridlock provides an alternative, promotes
8 smoother traffic flow which will reduce air pollution.

9 Your experienced staff has an extensively
10 reviewed the permit application and prepared their findings.
11 Please acknowledge your own staff's expertise and
12 recommendations and approve this application for the County
13 of Orange and for the People of Orange.

14 That -- uh -- as you've seen, by having this
15 hearing here, in Orange County, you can see obviously the --
16 the large majority of people are in support of the Tesoro
17 Extension. And it's a matter of just where the -- the water
18 requirements around its compliance are meeting the -- uh --
19 mandates by both the Regional Water Quality Board's State and
20 Federal requirements. Thank you.

21 VICE CHAIRMAN MR. STRAWN: Now, Mr. Ruvalcava.

22 THE PUBLIC (UNIDENTIFIED): Left.

23 VICE CHAIRMAN MR. STRAWN: Phil Salerno?

24 CHAIRMAN MR. MORALES: You did him this morning.

25 VICE CHAIRMAN MR. STRAWN: It's another dupe?

1 CHAIRMAN MR. MORALES: Yeah.

2 VICE CHAIRMAN MR. STRAWN: Phil Schwartz?

3 THE PUBLIC (UNIDENTIFIED): He's spoken.

4 VICE CHAIRMAN MR. STRAWN: Sam Simms.

5 He'll be followed by Kristin Slocum.

6 And then Curt Stanley.

7 And -- and --

8 THE PUBLIC (MR. SIMMS): Hello.

9 VICE CHAIRMAN MR. STRAWN: And --

10 THE PUBLIC (MR. SIMMS): I'm sorry.

11 CHAIRMAN MR. MORALES: You can go 'head.

12 THE PUBLIC (MR. SIMMS): Well, my name is Sam

13 Simms. I'm an engineer and a QSD. And -- uh -- but more

14 importantly, I am a longtime resident of the City of Mission

15 Viejo. And, since I've lived there, I've seen our traffic

16 just go crazy. To say that no road's needed down there would

17 just be ridiculous. There needs to be a road there.

18 But I kinda wanna step away from that issue,

19 'cause heard enough about that. Yeah, let's talk about why

20 you're really here. You're here for one reason and one

21 reason only: Does this project meet your requirements?

22 That's -- that's your judgment, here. That's

23 the only judgment that you need to be looking at: Does this

24 project meet your requirements?

25 You know, there's a lot of features on this

1 that are the latest technology. You've heard them all. I'm
2 not gonna repeat them again.

3 But you also have to understand that they're
4 gonna be managed and constructed by an agency that has a
5 great history of environmental responsibility. These guys
6 have got an awesome record in that, in fact. So, you need to
7 really consider that, that -- that what they say they will
8 do, they will do. It won't be just left out there. And, as
9 a QSD, I know that roads can be built responsibly and that
10 they can also be managed responsibly.

11 You know the State, just a few years ago, put
12 a lot of time, effort and taxpayer dollars to develop the
13 latest systems that you have and rules and regulations. And
14 all I ask is that -- is that you just trust and have faith in
15 those rules and regulations; that you follow them; that these
16 regulations that were developed, they're gonna work. And
17 that, by issuing this permit, your rules and regulations are
18 gonna make this a great project.

19 So, with that, I would just like to close with
20 the fact that I hope you close hearing here today. But, if
21 you don't, I would request that you have it back here in
22 Orange County. This is where I live. This is where the
23 project lives. This is where you need to be.

24 So, with that, though, I do thank you for your
25 patience. Very long day. I know I'm a "yes," and I had to

1 wait 'til almost the end myself. But -- uh -- thank you for
2 your service and have a great rest of the day and I hope that
3 it will be done. Bye-bye.

4 THE PUBLIC EN MASSE: (Clapping of hands).

5 THE PUBLIC (MS. SLOCUM): Members of the Board,
6 good evening.

7 My name is Kristin Slocum. I'm the
8 Communications Manager of Mobility 21. We're Southern
9 Californian Transportation Advocacy Coalition, representing
10 the transportation and business needs of Southern California,
11 all the way from Ventura County and then north -- the San
12 Diego and Imperial Counties in the south.

13 And I know it's been such a long day. But I
14 obviously am -- am proud to be here to say that Mobility 21
15 strongly supports the 241 Tesoro Extension. 'Cause this
16 project is critical to keep up with our region growing
17 capacity needs, especially with the development of the Rancho
18 Mission Viejo adding 30,000 people to South Orange County.

19 The project will alleviate traffic congestion
20 on the already burdened I-5 Freeway. It's quite an important
21 alternative route, in case of an emergency.

22 Construction almost nearly a five-mile
23 extension will impress terminus near Oso Parkway to Ortega
24 Highway will create more than 2,000 much needed jobs, as
25 you've heard today. And I won't go into all of the details,

1 but -- and, as far as the -- (mumbled) -- statement, TCA has
2 taken great (mumbled) -- for the water quality measures go
3 above and beyond standard requirements.

4 And this project that you referred does not
5 have any wetlands under Federal jurisdiction and are less
6 than a half an acre of impact to waters under State
7 regulation. So, just keeping that really quick, on behalf of
8 Mobility 21, I urge you to approve this permit; so TCA can
9 get to work on -- making the 241 Tesoro Extension relieving
10 congestion, improving jobs and improving our air qualities;
11 and, most importantly, improving our quality of life. Thank
12 you.

13 THE PUBLIC EN MASSE: (Clapping of hands).

14 VICE CHAIRMAN MR. STRAWN: Curt Stanley?

15 THE PUBLIC (MR. STANLEY): Thank you very much.

16 Just in case, I brought my Marco Rubio bottle
17 of water.

18 VICE CHAIRMAN MR. STRAWN: I can see.

19 THE PUBLIC EN MASSE: (Laughter).

20 THE PUBLIC (MR. STANLEY): Don't know how I'm
21 gonna come across. But -- uh -- good afternoon, Chairman
22 Morales and Vice Chair Strawn and Board Members.

23 And -- (Pause) -- Mr. Anderson, I -- I -- was
24 hoping you were going to stand up, when I was speaking.
25 'Cause my wife always thinks you get a standing ovation every

1 time you go up and speak. So, you're one person too soon.

2 But thank you, anyway.

3 My name Curt Stanley and I'm up here as a
4 small business owner and a small business owner that has to
5 travel on the highway, every single day. I will challenge
6 anybody in this audience, including the Board, if you -- to
7 put over 30,000 miles, a year, onto your car. That's what I
8 do.

9 I travel the toll roads, because I want to.
10 I pay the nominal fee, because I want to. And you know why I
11 want to? Because I sell more business when I can get from
12 Point A to Point B in a realistic time.

13 When you make an appointment with -- with
14 somebody, if you're a salesman, it's important you get there
15 on time. And that's what the toll roads can do for me. So
16 that's really important. Especially in this economic
17 downturn, perhaps, some of you have experienced.

18 I definitely have experienced. I lost seven
19 of my top ten customers in the last four years. So that has
20 increased my road time, in my business.

21 I'm also here representing the South Orange
22 County Regional Chambers of Commerce. I was the past chair
23 of that. And I think I brung -- bringing them in, because we
24 are a business oriented organization. And I think, with the
25 economy the way its gone and the downturn, I think that

1 anything we can do to bring in the alternative way for people
2 to get to Point A to make that sale is so amazing.

3 I -- I just don't wanna sit on the freeway,
4 like I have many times. I've even taken side streets, just
5 to avoid it. Because it cost me money. And I'm in
6 business. You may not know I'm old, but I'am.

7 And -- uhm -- I retired ten years ago and now
8 I'm back working full-time. And I didn't plan that, but it
9 happened. Thank God, I've got a lot of energy and most of
10 the time I can smile; and I'm smiling here.

11 In fact, I came here today because I said,
12 "Where am I going?" And this board from San Diego, why am I
13 talking to the board of San Diego about a street that's about
14 five miles from my house? And then I realized that this is
15 the State Board. So, now, I respect that they have something
16 to do.

17 And, by the way, I think you're getting paid
18 today. Because I have been really bored, sitting through
19 this. And, if you're not getting paid, you should be. All
20 right? Thank you very much.

21 I think this support, this project will do
22 nothing but support the economy; and that is so important.
23 My mom told me, when I was little -- (mumbled) -- "Get out of
24 bed in the morning" -- she said another word. But, "Get out
25 of the bed in the morning and go to work; and you will get

1 what you deserve."

2 I just need an easier way to get what I
3 deserve. And I think the extent (sic) of this toll rode --
4 oh, my gosh. I'm over time, already.

5 Okay. So, let's get real. You're here,
6 because of the permit. And I believe what I read here is
7 that the environmental impact study shows that the project
8 has minimal negative effect. The water runoff system, it's
9 state of the art and it mimics the nature.

10 Why would you wanna change mimicking nature?
11 That's what it's all about. So, I ask you humbly but very
12 seriously, as a retired old guy, please, approve the Waste
13 Discharge Application, as presented. You'll be doing the
14 right thing. Thank you very much.

15 And I didn't need my water (show of item).
16 That's really good. Thank you.

17 VICE CHAIRMAN MR. STRAWN: Bryan Starr.

18 And then David Stefandides.

19 And a Michael Walker?

20 THE PUBLIC (MR. STARR): I -- my time. So, I'll be
21 brief.

22 My name's Brian Starr. I'm representing the
23 Orange County Business Council. The business council is --
24 is -- uh -- made up of 200 and 50 of Southern California's
25 largest companies representing 200 and 50 thousand men and

1 women in the region. Employees in the region, about two
2 million, globally.

3 The Orange County business council stands in
4 support of your approval of the TCA application -- uh --
5 through -- for WDR. Permit submitted for the Tesoro
6 Extension Project, in Orange County. The business community
7 in Orange County and throughout the region needs reliable
8 transportation corridors, morbid- (sic) -- mobility is the
9 lifeline of Southern California adopted our economy.

10 The project itself will create more than 2400
11 jobs and, one still -- uhm -- business and labor agree the
12 roadway will enhance economic growth throughout the region.
13 There's 5.6 million square feet of commercial space planned
14 for Mission Viejo. Today, the Interstate 5 Freeway is the
15 only major corridor to South Orange County. Extending the
16 State Route 241 to the area near Ortega Highway will help
17 relieve traffic from the onteri- (sic) -- arterial street, as
18 well as the I-5.

19 From the environmental prospective, the
20 projected is needed to improve regional air quality,
21 according to South Orange County -- oh, I'm sorry -- the
22 South Coast Air Quality Management District. Idling cars
23 create more air pollution, which is why free flowing traffic
24 is crucial both to traffic relief and A reduction to the
25 vehicle carbon emissions. TCA is convinced that building the

1 five-mile extension, using BMPs when it comes storm water
2 runoff. To project impacts a less than a half acre of water
3 that is regulated by the State Board that significant water
4 treatment processes that will be implemented or designed to
5 mimic pre- (sic) -- pre-project flows in water quality. On
6 behalf of the Board of Directors and the Orange County
7 Business Council, we encourage you to approve TCA's WDR
8 Application.

9 THE PUBLIC EN MASSE: (Clapping of hands).

10 VICE CHAIRMAN MR. STRAWN: Would you state your --

11 THE PUBLIC (MR. STEFANDIDES): Dave --

12 VICE CHAIRMAN MR. STRAWN: Would you state your
13 name? So I --

14 THE PUBLIC (MR. STEFANDIDES): I will state it.

15 VICE CHAIRMAN MR. STRAWN: -- won't have to
16 announce it, again.

17 THE PUBLIC (MR. STEFANDIDES): (Laughter). I -- I
18 hear ya. Trust me, I have it. Stefandides, Dave.

19 And I am here on behalf of the Orange County
20 Association of Realtors Board of Directors. They -- well,
21 actually, they gave me a choice. They said, "Dave, you can
22 get in your car and drive to Costa Mesa and talk to the good
23 folks on The Water Quality Control Board or you can get in
24 your car drive south on the 241 to the end. Get a shovel and
25 start digging. Because we need this road completed."

1 The real estate market is picking up, I'm
2 happy to report. And with that renewed interest in homes
3 located in South Orange County. And -- uh-h-h -- inevitably
4 that arises, that creates an interest in viewing properties
5 for sale in South Orange County. And heres an experience
6 that I wish was an exception, but is the rule. And this is
7 from our members.

8 And, since this is a public hearing and
9 you're interested in -- in hearing from the public, let --
10 let me just relate this experience. So, our agents in Dana
11 Point, San Clemente, San Juan Capistrano are often contacted
12 by interested buyers to look at properties and they take them
13 around town, San -- San Clemente's a perfect example. And
14 they show a few properties and they move onto the next and
15 they move onto the next. And each time they're weaning
16 underneath, back and forth of the I-5. And, finally, the
17 perspective buyer says, "I can just jump on the freeway.
18 It's just two exists down."

19 There's an awkward silence. We can't use the
20 freeway on the weekend.

21 THE PUBLIC (UNIDENTIFIED): That's right.

22 THE PUBLIC (MR. STEFANDIDES): Well, okay. In
23 the -- in -- uh-h-h -- the spirit of full disclosure, the
24 agent then shows the perspective buyer the I-5, on Saturday.
25 And the eyes are wide open. The mouth is dropped, as grid --

1 complete gridlock. And the buyer inevitably asks, "Was there
2 an accident?" No.

3 "Was there a construction project?" No,
4 (shake of the head). "Well what's wrong?" This is just how
5 it is. This is how we live, in this part of the South Orange
6 County. "Well, what are ya doing about it?"

7 Well, I understand that they're building a
8 toll road. And we're really excited about that and we're
9 hopeful that they're gonna get started on it, very quickly.
10 "Well, are they?" Well, of course they are. It's the
11 obvious right thing to do.

12 And -- uhm-m-m -- that's all I have. Thank
13 you.

14 THE PUBLIC EN MASSE: (Clapping of hands).

15 VICE CHAIRMAN MR. STRAWN: Walker.

16 And, then, a Meg Waters.

17 THE PUBLIC (MS. WATERS): Hi, there. My name is
18 Meg Waters. And I'm a resident of Dana Point. It's 5:05 and
19 I bet you would love for me to read you a long tome that
20 repeats everything that everybody else has said. Check out
21 this stuff. I'm not gonna do that (giggle), lucky afternoon
22 (laughter).

23 I'm gonna just -- uh -- agree with what
24 everybody has said. But I did bring you a little present.
25 Because you also heard a lot of what my former business

1 partner used to say, "Picking the fly caca out of the pepper
2 about why this road won't meet your standards."

3 But we're looking at the -- a road that was
4 designed to meet or exceed all of your wildest standards.
5 So, this is a biodegradable fido (phonetic) bag that you can
6 put all that extraneous information that made up facts in and
7 keep them nice and neat and out of the water supply; and go
8 ahead and approve this project.

9 Thank you, (show of bag).

10 THE PUBLIC EN MASSE: (Laughter).

11 CHAIRMAN MR. MORALES: All right. That's all of
12 the cards that we have. So, I'll ask is there anybody that
13 didn't speak that filled out a card?

14 Okay. Seeing nobody is stepping forward,
15 we're gonna go ahead and wrap up. We do have a couple of
16 housekeeping items to take care of, before we do wrap up.
17 Uhm -- since -- I don't think there are anymore items on the
18 agenda.

19 Staff does have an opportunity to respond to
20 any comments they heard today and they feel -- uh-h-h -- a
21 response -- or that a response is appropriate, too.

22 NORTHERN WATERSHED UNIT (MS. DORSEY): Yeah, we'd
23 like to --

24 CHAIRMAN MR. MORALES: Please.

25 NORTHERN WATERSHED UNIT (MS. DORSEY): -- a quick

1 statement.

2 My name is Kelly Dorsey. I'm the Senior
3 Engineering Geologist here for the Board. I'll try and make
4 this quick. I know we've been here for a very long time.

5 After the all the testimony we've heard
6 today, staff leaves to revise the minute order. Once the
7 CEQA questions have been addressed, will largely address
8 concerns hydromodification, storm water, BMPs and other
9 impacts related to the project.

10 The mitigation for the impacts of the waters
11 in the State far exceeds the typ- (sic) -- the typical amount
12 of mitigation required for a similar project and will
13 adequately communicate for its project's impacts to waters in
14 the State. And I would like -- I'd like to also address some
15 conturn (sic) -- concerns that came up related to the
16 tentative order itself.

17 And staff would like to address concerns
18 regarding the sediment transport and -- uh-h-h --
19 discharge -- discharge in compliance with their runoff
20 management plan, by proposing to revise the tentative order
21 to require the discharger to update the runoff management
22 plan to ensure that it meets requirements in the new 2012
23 CalTrans Storm Water Project -- uh-h-h -- the -- and the
24 Orange County HMP and WQMP.

25 I know that this -- the runoff measure plan

1 was drafted prior to their knowing that they needed to meet
2 those standards. So -- uh -- we'll -- we would like to have
3 them update that, include that in the order.

4 We would also like to have the discharger get
5 a professional engineer to certificate that the plan does
6 meet all those requirements.

7 Next, I would like to discuss the figure that
8 was presented.

9 Can you hand me that figure there
10 (indicating)?

11 This figure, I know it came up. Everyone had
12 questions about it. From what we know, staff knowledge, is
13 that it says (indicating) "Wagon Wheel Creek," here. Our --
14 from our knowledge, this project doesn't affect Any of the
15 tributaries that lead to Wagon Wheel Creek. We will research
16 this further and -- and get back to you and let you know what
17 actual location of the project is, in relation to Wagon Wheel
18 Creek. But it is our understanding that it -- that it
19 doesn't impact the tributaries to that.

20 And, lastly, I'd like to reflect on some of
21 the comments regarding Cactus Road and the Arroyo Toad. I
22 know this stuff also came up in your agenda package.

23 Uhm-m-m -- we -- we revised the tentative order and the --
24 and the version you have now, as supporting document 17, we
25 revised it to include a public comment period on the

1 mitigation monitoring plan. We're gonna consider those
2 comments and any others we received during that public
3 comment period, in our review of that plan. And we'll relay
4 those concerns so that they show just so they can revise and
5 try to address those concerns.

6 And to wrap it up -- we're almost done. If
7 the staff intends to make some minor changes, like I just
8 said to the tentative order -- uhm-m-m -- regarding the Post-
9 Construction BMPs and Sediment Transport Requirements,
10 respond to any additional written comments that are added to
11 the record. And, lastly, make ourselves available to the
12 Board to make sense of what has definitely proven to be a
13 very contentious item. So, anything we can do for you,
14 please, just let us know.

15 Thank you very much.

16 BOARD MEMBER (MS. KALEMKIARIAN): I don't want an
17 answer to this. I'm just asking for something and, maybe,
18 TCA could do it.

19 I would like, at some point, when we revisit
20 this -- I guess, at the next meeting -- to have an
21 understanding of who's supervising the mitigation, who the
22 (unintelligible) profits are and what their funding is gonna
23 be like; and from where. So that we know what "in pertuity"
24 means. I don't want an answer today. Just -- (inaudible).

25 A. Okay. Thank you.

1 Were there any other questions?

2 CHAIRMAN MR. MORALES: I don't think, at this
3 time -- (interrupted)

4 THE WITNESS: Okay.

5 CHAIRMAN MR. MORALES: Thank you, Ms. Dorsey.

6 THE WITNESS: Great.

7 CHAIRMAN MR. MORALES: I think -- so, we are about
8 to wrap up. But I do want to take a few minutes to con- --
9 confer with our counsel. Because we mentioned that we were
10 going to request further briefing on a couple of items
11 related to the CEQA analysis.

12 So, for those of you that are non-attorneys,
13 feel free to fall asleep.

14 Those of you who will be working on this, we
15 would like -- we can tell ya, at this point, to have your
16 comments to our staff by the end of March, which I'm looking
17 at my calendar is the 29th. That will be the last Friday.
18 So, that's when we will request your written comments in
19 response to some of the questions.

20 The questions will be written out and provided
21 to -- to those of you that are with them and who would want
22 to comment on. And we expect that to be done in -- in the
23 next few days. But they will give you, just a brief, for
24 heads up.

25 Yes, Mr. -- (inaudible).

1 MR. THORNTON: Mr. Chairman, can I just ask for
2 clarification? Is this simply briefing on the legal issues?
3 Or are you entertaining additional factual information? So,
4 I think that's an important clarification.

5 CHAIRMAN MR. MORALES: Well, sometimes it -- it
6 depends on what you mean by "factual in- (sic) --
7 information." A lot of times, you can't brief something
8 legally, without additional facts.

9 I know there were questions by Ms. Hagan,
10 earlier, about whether or not you -- you folks intended to
11 actually do further mitigation. But -- and -- and that's a
12 -- a "yes" or "no" answer. Uhm-m-m --

13 MR. THORNTON: No. We're -- we're happy to respond
14 to that. I guess my -- I guess my question is, you know, is
15 this an invitation for a reopening the commentary? I guess I
16 understood that the Board was closing the commentary and with
17 regard to submission and factual comments on the WDR -- uhm
18 -- and just so we know where we stand, in terms of
19 submission. Had we not been okay to do additional round of -
20 -

21 VICE CHAIRMAN MR. STRAWN: (Shake of the head).

22 MR. THORNTON: -- technical? Or is -- or is -- or
23 the technical submission considered closed at this point?

24 CHAIRMAN MR. MORALES: Well, I don't know that --
25 if we'll consider it closed. But I will say that the only

1 testimony we intend to take, at our next hearing, will be
2 with respect to the questions that we ask you all to
3 address. We specifically came to Orange County to allow
4 folks the opportunity to address the technical and -- and
5 other issues. And it's -- quite frankly -- uhm-m -- you
6 know, I expect that we're gonna see a couple of attorneys and
7 maybe some other folks there; but not as large of a crowd.

8 BOARD MEMBER (MR. ABARBANEL): I assume that
9 questions we have that we may have mention, we can put in
10 writing and submit it to the executive officer and they will
11 be distributed on their own.

12 CHAIRMAN MR. MORALES: (Nod of the head). Yes. I
13 think that if -- uh -- if we had those questions, yes, that's
14 part of our normal process. Which reminds me, I did want
15 to -- particularly, for you all on the TCA side, let you know
16 that the -- uh-h-h -- Dr. Skinner's book, that -- that he
17 provided, we're not entering that into evidence. We didn't
18 rely on it as part of our discussion here. So, we'll be able
19 to return that to him. And it's not part of what we'll be
20 basing --

21 MR. THORNTON: That -- that -- that's sort of
22 the -- one the reasons I -- I had posed the questions,
23 Mr. Chairman. If there isn't going to be any additional
24 technical testimony provided, we request the opportunity to
25 have some opportunity to review and respond to that.

1 That's -- I think that would be the appropriate procedure.

2 STATE BOARD STAFF COUNSEL (MS. HAGAN): I'm not
3 understanding. Respond to what?

4 MR. THORNTON: Well, and -- and then -- in terms of
5 this additional briefing that, apparently, it needs to be
6 submitted by March 20- -- 29th, whether -- whether
7 we're gonna have an opportunity to respond to any decisional
8 or new factual information. Or to -- this is my
9 understanding, that the -- the record is closed, with regard
10 to those issues, at this point.

11 STATE BOARD STAFF COUNSEL (MS. HAGAN): I think it
12 would be useful if we had a brief conference.

13 CHAIRMAN MR. MORALES: Yeah, yeah.

14 STATE BOARD STAFF COUNSEL (MS. HAGAN): And maybe
15 we can clarify what it is -- (interrupted)

16
17 (Simultaneous speech; unintelligible.)

18
19 CHAIRMAN MR. MORALES: Yeah. And what it is we're
20 going to be asking.

21 MR. THORNTON: Okay. Very good --

22 CHAIRMAN MR. MORALES: -- that -- think that may
23 answer your question.

24 MR. THORNTON: Thank you.

25 CHAIRMAN MR. MORALES: All right.

1 So let's take three minutes, this time,
2 folks. Because I really do wanna get us all out of here.

3
4 (Heretofore, short recess commenced 5:14 p.m.
5 Proceedings resumed 5:20 p.m.)

6
7 CHAIRMAN MR. MORALES: All right.

8 So, back on the record.

9 Mr. Thornton, to hopefully answer your
10 question in a lawyerly manner, which we wanna make clear,
11 means absolutely nothing -- (unintelligible) -- I'm going to
12 try. We are going to provide you all with a written set
13 of -- uh -- just a few questions, and we hope to do that by
14 Friday.

15 Uhm-m-m -- to the extent that our staff makes
16 any changes in their proposed order, as Ms. Dorsey has
17 mentioned there might be, you all will be given an
18 opportunity to comment on those of course.

19 To the extent that, in response to the written
20 questions that we pose to you all, which you hopefully get by
21 Friday and we would like answers to by the 29th, if factual
22 information is required to answer some of those questions --
23 uh-h-h -- ya know, please provide it. It's not gonna be
24 precluded from being added to the record. But, ya know,
25 without actually helping to fashion the questions, I can't

1 say at this time whether any of -- any of that new factual
2 information will be necessary. My answer, it's probably not
3 much.

4 Sir?

5 MR. THORNTON: Okay. Thank you, Mr. Chairman.

6 And -- and -- and, beyond that, then -- other
7 than that, responding to those questions, you're not
8 anticipating additional submission of factual -- (inaudible).

9 CHAIRMAN MR. MORALES: No, we're not. And -- uh --
10 ya -- you know, I'm not going to the -- the -- I guess, the
11 length of me disclosing the meeting at this point. But I
12 will say, our next hearing on this, we will notice -- uh-h-h
13 -- notice it, as soon as we figure out where it is going to
14 be. And we anticipate only testimony on it. We'll say
15 "newly raised issues," whether, as a result the -- the
16 modifications to the proposed order or -- uh-h-h -- to the
17 questions that we pose to help us get through the -- the CEQA
18 motion (phonetic).

19 MR. THORNTON: Okay. Thank you, Mr. Chairman.

20 STATE BOARD STAFF COUNSEL (MS. HAGAN): I just have
21 one quick housekeeping matter.

22 Today, when you administered the oath, it was
23 after Mr. Bradford had testified. And I just wanted to --
24 for the record, if you could ask him to confirm that, just
25 that he was telling the truth when he testified this morning.

1 CHAIRMAN MR. MORALES: Mr. Bradford, were you
2 telling the truth?

3 MR. BRADFORD: I was telling the truth.

4 CHAIRMAN MR. MORALES: Thank you.

5 MR. BRADFORD: Thank you.

6 CHAIRMAN MR. MORALES: Okay.

7 I don't believe we have any further business.
8 Nothing agendized. So, with that, I will close this
9 meeting. Thank you.

10

11 (Heretofore, public meeting adjourned. Off
12 the record 5:26 p.m.)

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EXHIBIT 4

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

In the Matter of the Petition of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27
28

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

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

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

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

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

21 DATED: July 18, 2013

22 **Respectfully Submitted,**

23 **NOSSAMAN LLP**

24 By: 

25 ROBERT D. THORNTON
26 MARY LYNN COFFEE
27 ASHLEY J. REMILLARD
28 DAVID J. MILLER

Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

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

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

23 **2. FACTUAL BACKGROUND**

24 **A. The Tesoro Extension Project**

25 The Tesoro Extension is an approximately 5.5 mile long extension of existing State Route
26 ("SR") 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of
27 SR 74 in Orange County ("County"), California. The location of the Project is shown below.
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TESORO EXTENSION PROJECT
Site Vicinity Map

Figure 1

(Exhibit 2, p. 52.)

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **C. The Tentative Order**

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

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

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

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

4 The Tentative Order’s requirements included:

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

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

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

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

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

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

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

21 **D. Revised Tentative Order**

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

- 26 • Addition of monitoring and reporting requirements to ensure that the
27 compensatory mitigation strategy for the Project is successful, to assess the
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effectiveness of BMP strategies in protecting water quality, and to monitor compliance with the receiving water limitations of the Revised Tentative Order;

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

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

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

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

3 Regional Board staff also testified:

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

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

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

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

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

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

21 Following Ms. Kalemkiarian’s comments, Mr. Abarbanel stated: “I think the project
22 that’s in front of us is actually pretty clear. It’s the [SOCTIIP] project that was presented here in
23 2008 Some people might say I made up what the project is, but I went to the website of the
24 Transportation Corridor Authority and it shows the project going all the way through Interstate 5,
25 somewhere kind of in San Diego County. I don’t know if that’s where they’re going to do it. But
26 that’s the goal of their project and they’re asking us to support that, and I cannot.” (*Id.*, pp. 201-
27 202.) Similarly, Regional Board Chair Morales stated, “As I see it, the project as envisioned may
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1 end up [south of San Clemente]; may not. I don't know. I do think it's more than five and a half
2 miles though." (*Id.*, p. 203.)

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

11 3. ARGUMENT

12 A. Standard of Review

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

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

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

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

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

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

11 Section 21167.3 provides:

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

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

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

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

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

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

13 **(i) Pending Litigation**

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

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

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

5 (Exhibit 8, ¶2.) On May 22, 2013, the petitioners in the above cases filed motions to reinstate the
6 litigation concerning the FSEIR. In doing so, the parties sought to reinitiate the 2006 challenge
7 to the FSEIR, as well as challenge the F/ETCA's Board of Directors approval of the Addendum
8 in April 2013. The California Attorney General filed similar papers on May 23, 2013. (*The*
9 *People of the State of California, ex rel. Attorney General Kamala D. Harris v. Foothill/Eastern*
10 *Transportation Corridor Agency, et al.*, No. 37-2013-00050001 (S.D. Super. Ct. May 23, 2013).)
11 Subsequently, certain of the petitioners in the 2006 cases also filed petitions for writs of mandate
12 challenging the F/ETCA's certification of the Addendum and approval of the Project.
13 (*California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency,*
14 *No. 37-2013-00049797 (San Diego Super. Ct.); The People of the State of California v.*
15 *Foothill/Eastern Transportation Corridor Agency, Case No. 37-2013-00050001-CU-WM-NC*
16 *(San Diego Super. Ct.)*.)

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

21 **(ii) Legal Standards**

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

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

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

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

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

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(iii) The Regional Board's Determination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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21

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

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

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

18 **4. CONCLUSION**

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

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

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DATED: July 18, 2013

Respectfully Submitted,

NOSSAMAN LLP

By: 

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FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

1 **LIST OF EXHIBITS**

- 2 Exhibit 1: California Water Quality Control Board, San Diego Region, Item No. 9, Revised
3 Tentative Order No. R9-2013-0007 Waste Discharge Requirements for
4 Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241)
5 Project, Orange County (June 19, 2013)
- 6 Exhibit 2: Addendum to the South Orange County Transportation Infrastructure
7 Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report
8 (SCH #2001061046), Tesoro Extension Project, prepared by the Foothill/Eastern
9 Transportation Corridor Agency (February 2013)
- 10 Exhibit 3: Correspondence from Robert D. Thornton, Nossaman LLP on behalf of
11 Foothill/Eastern Transportation Corridor Agency to Darren Bradford, California
12 Regional Water Quality Control Board Re: Foothill/Eastern Transportation
13 Corridor Agency, Tesoro Extension (SR 241) Project, Orange County; Response
14 to Questions for Written Response on Tentative Order No. R9-2013-0007 (March
15 29, 2013)
- 16 Exhibit 4: Reporter's Partial Transcript of Proceedings, California Regional Water Quality
17 Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory
18 Committee, Item No. 8 Water Discharge Requirements: Foothill/Eastern
19 Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County
20 (March 13, 2013)
- 21 Exhibit 5: California Regional Water Quality Control Board Item No. 9, Executive Officer
22 Summary Report, Waste Discharge Requirements: Foothill/Eastern
23 Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange
24 County (Tentative Order No. R9-2013-0007) (March 13, 2013)
- 25 Exhibit 6: Reporter's Partial Transcript of Proceedings, California Regional Water Quality
26 Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory
27 Committee, Item No. 9 Water Discharge Requirements: Foothill/Eastern
28 Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County
(June 19, 2013)
- Exhibit 7: California Regional Water Quality Control Board Item No. 9, Executive Officer
Summary Report, Waste Discharge Requirements: Foothill/Eastern
Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange
County (Tentative Order No. R9-2013-0007) (June 19, 2013)
- Exhibit 8: *California State Parks Foundation v. Foothill/Eastern Transportation Corridor
Agency*, San Diego Superior Court Case No. GIN051194 and GIN051371
(Consolidated) Stipulated Order Approving Interim Settlement with Tolling
Agreement and Dismissal Without Prejudice, and Retaining the Court's
Jurisdiction to Set Aside Dismissal and Enforce Interim Settlement (filed January
12, 2011)
- Exhibit 9: **California Regional Water Quality Control Board, San Diego Region, Revised
Meeting Notice and Agenda for June 19, 2013.**

EXHIBIT 5

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 conceptional 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.

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What happens?

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

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

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

MR. ABARANEL: Thank you.

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

These revisions include a requirement to update, certify and implement the runoff management plan; a requirement to develop and implement a monitoring program to protect water quality and assess compliance with the receiving water limitations of the tentative order; and changes to the CEQA findings to acknowledge that the CEQA documentation produced by TCA is adequate for the San Diego Water Board, as a 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