CALIFORNIA WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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REVISED TENTATIVE ORDER NO. R9-2013-0007

WASTE DISCHARGE REQUIREMENTS FOR FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY

TESORO EXTENSION (SR 241) PROJECT ORANGE COUNTY

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

Table 1. Discharger Information

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

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

Table 2: Discharge Location

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

Table 2: Discharge Location Continued

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

Table 2: Discharge Location Continued

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

Table 3: Administrative Information

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

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

Tentative
David W. Gibson
Executive Officer

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I. PROJECT INFORMATION

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

Table 4. Project Information

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

II. FINDINGS

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

A. **Report of Waste Discharge.** The Foothill/Eastern Transportation Corridor Agency (hereinafter Discharger or F/ETCA) is a Joint Powers Agency created by the California State Legislature to plan, finance, design, construct and operate a toll highway system in Orange County, California. The F/ETCA submitted a Report of Waste Discharge (ROWD) to construct the Tesoro Extension (SR 241) (Tesoro Extension or Project), located in Orange County on August 10, 2012. Additional information to complete the ROWD application was received on October 4, 2012 and November 8, 2012. The ROWD was deemed complete on November 14, 2012. The Discharger proposes to discharge fill material to waters of the State associated with construction activity at the Project site.

B. **Project Location.** The Project is an approximate 5.5 mile long extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. The Project is located within an area shown on the Cañada Gobernadora and San Clemente US Geological Survey 7.5-minute quadrangle maps. Attachment A of this Order provides the location of the Project and mitigation sites.

C. **Receiving Waters.** The Project Study Area contains a total of 16.01 acres and 28,747 lineal feet of surface waters of the State and/or waters of the United States, of which a total of 14.35 acres constitute wetlands pursuant to federal Clean Water Act guidance in the United States Army Corps of Engineers (USACOE) Wetlands Delineation 1987 Manual and Supplements, and Title 33, Code of Federal Regulations, Part 328 (33 CFR 328). The receiving waters in

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

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

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

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

F. **Project Mitigation.** The Discharger submitted a compensatory mitigation plan, *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, in October of 2012. To compensate for unavoidable impacts to wetland and non-wetland waters of the State, the

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

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

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

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

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

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

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

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

Discharge Points	Receiving Water Name	Beneficial Use(s) (check these)
1, 2, 3, 4, A_2, A_3, F, G, H	Unnamed tributaries to Cañada Gobernadora Creek	Municipal and Domestic Supply; Industrial service supply; agricultural supply; contact water recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.
J, K, L, T5, T6A, T6E, T7C, T8, IW1, T6W	Unnamed tributaries to Cañada Chiquita Creek	Municipal and Domestic Supply; Industrial service supply; agricultural supply; contact water recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.

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

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

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

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

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

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

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

San Diego Water Board Findings

As a responsible agency under CEQA, (CEQA Guidelines section 15096), ~~T~~the San Diego Water Board has reviewed ~~the lead agency's~~F/ETCA's ~~Final~~ FSEIR, Findings, ~~and~~ Statement of Overriding Considerations, and the Addendum F/ETCA prepared pursuant to CEQA Guidelines section 15164. ~~None of the significant unavoidable environmental impacts triggering the lead agency's adoption of the Statement of Overriding Considerations are within the areas of responsibility of the San Diego Water Board.~~ The San Diego Water Board has considered the environmental effects of the Project, as shown in the FSEIR and the changes identified in the Addendum. The San Diego Water Board finds that since F/ETCA's approval of the Addendum on April 18, 2013, none of the conditions under CEQA Guidelines section 15162 trigger the need for the San Diego Water Board to prepare a subsequent or supplemental EIR in its role as responsible agency under CEQA. Therefore, under CEQA Guidelines section 15050, the decision of F/ETCA, as Lead Agency, is final and conclusive on all persons, including responsible agencies. The San Diego Water Board also finds that none of the significant unavoidable environmental impacts addressed in the FSEIR that led to the F/ETCA's adoption of the Statement of Overriding

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

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

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

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

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

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

~~P.~~R.

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

III. DISCHARGE PROHIBTIONS

A. The discharge of waste, in a manner or location other than as described in the Report of Waste Discharge or findings of this Order, and for which valid waste discharge requirements are not in force is prohibited.

B. The discharge of sand, silt, clay, or other earthen materials from any activity in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

C. The treatment, storage, or disposal of waste in a manner that creates a pollution, contamination or nuisance, as defined by Water Code section 13050, is prohibited.

D. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit it's being transported into the waters, is prohibited unless authorized by the San Diego Water Board

E. The Discharger must comply with all applicable Discharge Prohibitions contained in Chapter 4 of the Basin Plan, incorporated into this Order as if fully set forth herein.

IV. CONSTRUCTION BEST MANAGEMENT PRACTICES

A. Prior to the start of the project, and annually thereafter, the Discharger must educate all personnel on the requirements in this Order, including pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.

B. The Discharger must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.

C. The Discharger, and/or all legally responsible parties in the Project construction area, must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, and any subsequent revisions thereto.

D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to Water Code 13260.

E. Discharges of concentrated flow during construction or after completion of the Project must not cause downstream erosion or damage to properties or stream habitat.

F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.

G. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving waters. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.

H. Cofferdams and water barrier construction shall be adequate to prevent seepage into or from the work area. Cofferdams or water barriers shall not be made of earth or other substances subject to erosion or that contain pollutants. When dewatering is necessary to create a temporary dry construction area, the water shall be pumped through a sediment-settling device before it is returned to the water body. The enclosure and the supportive material shall be removed when the work is completed, and removal shall proceed from downstream to upstream.

I. All areas that will be left in a rough graded state must be stabilized no later than two weeks after completion of grading. The Discharger is responsible for implementing and maintaining BMPs to prevent erosion of rough graded areas. Hydroseed areas must be revegetated with native species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at http://www.cal-ipc.org/ip/inventory/weedlist.php. Follow-up seed applications must be made as needed to cover bare spots and to maintain adequate soil protection.

J. Except as authorized by this Order, substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous

materials.

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

V. POST- CONSTRUCTION BEST MANAGEMENT PRACTICES

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

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

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

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

2. **RMP Implementation**. The Discharger shall implement the updated RMP as unless otherwise directed in writing by the San Diego Water Board. All post-

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

C. All post-construction structural treatment BMPs, including, but not limited to, vegetated swales and media filters, must be regularly inspected and maintained in perpetuity per manufacturers' specifications for proprietary structural devices, and at frequencies no less than those recommended by the California Storm Water Quality Association (CASQA)[1] guidance for non-proprietary measures. At a minimum, the Discharger must comply with the following:

1. Final maintenance plans for the vegetated swales must be developed and implemented based on CASQA guidance.

2. Flow-based treatment BMPs (e.g., media filters and vegetated swales) must be inspected at a minimum monthly from October through April and at least twice from May through September each year.

3. Retention basins must be maintained as necessary to prevent nuisance conditions, including those associated with odors, trash, and disease vectors. Such maintenance shall not compromise the ability of the basins to perform water quality treatment required by this Order.

4. Records must be kept regarding inspections and maintenance in order to assess the performance of the systems and determine whether adaptations are necessary to protect receiving waters.

D. Bridges, culverts, dip crossings, or other stream crossing structures shall be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the Project. Storm drain lines/culverts and other stream crossing structures shall be designed and maintained to accommodate at least a 100-year, 24-hour storm event, including associated bedload and debris with a similar average velocity as upstream and downstream sections. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be open bottom or embedded and backfilled below the grade of the stream greater than or equal to a depth of 1 foot.

E. If groundwater dewatering is required for the Project, the Discharger shall enroll in and comply with the requirements of San Diego Water Board Order No. R9-2008-0002 NPDES No. CAG919002, *General Waste Discharge Requirements For Groundwater Extraction Waste Discharges From Construction, Remediation,*

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

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

VI. RECEVING WATER LIMITATIONS

A. The receiving water limitations set forth below for the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks are based on applicable water quality standards contained in the Basin Plan and federal regulations and are a required part of this Order. Project activities shall not cause or contribute to violation of these receiving water limitations.

1. **Water Quality Objectives.** Water quality objectives applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks established in Chapter 3 of the Basin Plan shall not be exceeded.

2. **Priority Pollutant Criteria.** Priority pollutant criteria applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks promulgated by the USEPA through the a) National Toxics Rule (NTR) (40 CFR 131.36 promulgated on December 22, 1992 and amended on May 4, 1995) and b) California Toxics Rule (CTR) (40 CFR 131.38, (65 Fed. Register 31682-31719), adding Section 131.38 to Title 40 of the Code of Federal Regulations, on May 18, 2000) shall not be exceeded.

VII. COMPENSATORY MITIGATION

A. **Duty to Comply.** The Discharger shall retain responsibility for providing compensatory mitigation for the Project as required in this Order and shall direct any agreement(s) to obtain compensatory mitigation services.

B. **Compensatory Management Plan Development.** The Discharger shall update and finalize the *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, dated October 2012. The HMMP must be received by the San Diego Water Board no later ~~June 14~~July 26, 2013 and prior to the start of Project construction. The finalized and updated HMMP shall contain the following elements to the satisfaction of the San Diego Water Board:

1. A description of the legal arrangements and instruments for financial assurance, protection, and management that will be used to ensure the long term protection of the compensatory mitigation sites in perpetuity.

2. A description of the interim and long-term management and reporting plans for the compensatory mitigation sites including but not limited to:

a. A description and schedule of maintenance, after initial construction, to support achievement of performance standards and maintenance for any other purpose.

b. A detailed long-term plan that specifies how the site will be used, how the site will be maintained, who will be responsible for the work, and a schedule for all activities.

c. Management measures that will be implemented to ensure long-term sustainability after performance standards have been achieved; the responsible party for implementing the management measures; and long-term financing mechanisms; as well as the conditions that will trigger certain maintenance needs or management activities. Compensatory mitigation sites shall be designed to be self-sustaining when mature to the maximum degree practicable.

3. A description of the factors considered during the site selection process. This should include consideration of watershed needs, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation site.

4. A map of suitable scale and description to identify the ecological characteristics of the compensatory mitigation sites and how that replaces the functions and services of the Project impact sites. This may include descriptions of historical and existing plant communities, historical and existing hydrology, soil conditions, and other site characteristics appropriate to the type of water body proposed as mitigation.

5. A description of the amount and form of financial assurance (e.g. performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments) to be provided, including a brief explanation of the rationale for this determination.

6. Detailed written specifications and work descriptions for the development of the compensatory mitigation sites, including at a minimum, timing, sources of water (include proof of pertinent water right(s), if applicable), methods for establishing desired plant communities, and erosion control measures.

7. A description and schedule of maintenance requirements to ensure the continued viability of the aquatic resources once initial construction is completed.

8. A description of ecologically based, and measureable, performance standards that will be used to determine whether the compensatory mitigation objectives are being met.

9. A description of the factors or parameters that will be monitored to determine whether the compensatory mitigation is on track to meet performance standards and whether adaptive management is needed. A schedule for monitoring and reporting must be included.

10. A description of how the compensatory mitigation sites will be managed, in perpetuity after performance standards have been achieved, to ensure the long-term sustainability of the resource. The description shall identify the long-term finance mechanisms and the party responsible for long-term management.

11. An adaptive management plan that includes a management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation sites. The adaptive management plan must be of sufficient detail to guide decisions for revising the compensatory mitigation plans and implementing corrective measures as necessary to address both foreseeable and unforeseen circumstances.

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

1. Notify the San Diego Water Board of its intent to initiate the actions included in the HMMP; and

2. Comply with any conditions set by the San Diego Water Board.

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

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

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

1. The construction of the compensatory mitigation projects must be completed no later than 18 months following the initial discharge of dredge or fill material into waters of the State. The Discharger shall submit a written notification to the San Diego Water Board providing the date of the initial discharge of dredge or fill material into waters of the State. This notification must be received by the San Diego Water Board no later than five (5) days following the initial discharge. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10 percent of the cumulative compensatory mitigation for each month of delay.

2. Within 6 months of the start of Project construction, the Discharger shall document that adequate funding to purchase and maintain the compensatory mitigation sites exists to satisfy the compensatory mitigation requirements of the Project as described in the HMMP in perpetuity.

3. Mitigation maintenance and monitoring programs required and approved by the San Diego Water Board shall begin upon completion of construction of the compensatory mitigation projects.

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

1. The Discharger must provide a copy of the Conservation Easement for the compensatory mitigation sites to the San Diego Water Board no later than 6 months following issuance of this Order. The Conservation Easement Deed shall indicate the "Grantor" (property owner) and "Grantee" (holder) of the Conservation Easement.

2. Pursuant to Civil Code Section 815, and Government Code Sections 65965-65968, the holder of the Conservation Easement for Mitigation Area B, per the existing easement agreement with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (CDFW), shall continue to be held by the Discharger (See Attachment F). For Mitigation Area A, the holder of the Conservation Easement shall be the Reserve at Rancho Mission Viejo. The Discharger shall provide documentation to the

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

3. Each Conservation Easement must ensure that the property designated for compensatory mitigation will be retained in perpetuity and maintained without future development or encroachment on the site or activities which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the State that it supports. The Conservation Easement or other appropriate legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.

4. The Conservation Easement must provide the Assessor's Parcel Numbers for all of the properties in the compensatory mitigation sites.

5. Recordation of the Conservation Easement shall occur no later than ten (10) days after the Discharger receives concurrence from the San Diego Water Board, and any other agency with jurisdiction, that the Compensatory Mitigation Sites have achieved the performance criteria set forth in the approved Final Habitat Mitigation and Monitoring Plan (approved Final HMMP) required in sections VII.B and VII.C of this Order.

6. Endowment funding for the interim and long-term management of the compensatory mitigation sites must meet the following requirements:

    a. Pursuant to California Civil Code section 815.3 and California Government Code section 65965 et seq., the Discharger shall hold an endowment for purposes of funding long-term management of the compensatory mitigation sites.

    b. The Discharger shall include a line item in its annual budget for the interim and long-term management of the compensatory mitigation sites and segregate funds as necessary to ensure compliance with the long-term management requirements of the Conservation Easement and the approved Final HMMP.

    c. The Discharger must provide the San Diego Water Board with proof of full funding for the endowment fund for the interim and long-term

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

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

1. No later than 6 months from the issuance of this Order, the Discharger shall provide the San Diego Water Board an irrevocable letter of credit or proof of another form of financial assurance acceptable to the San Diego Water Board in an amount determined by the San Diego Water Board to be sufficient for the value of (1) the acquisition of sites in the land required for compensatory mitigation, (2) the estimated cost of obtaining the Conservation Easement, (3) the estimated cost of construction of the compensatory mitigation projects, and (4) the estimated cost of achieving establishment and compliance with the performance measures set forth in the approved Final HMMP. The Discharger shall prepare a draft financial assurance instrument and submit it to the San Diego Water Board for its approval no later than 90 days following issuance of this Order. The financial assurance instrument shall allow the San Diego Water Board to immediately draw on the financial assurance instrument if the San Diego Water Board determines in its sole discretion that the Discharger has failed to meet its mitigation obligations.

2. The Discharger's bank shall finalize and execute the financial assurance instrument after the San Diego Water Board approves the draft financial assurance instrument.

3. If the Discharger has not met its mitigation obligations within 60 days prior to the financial assurance instrument'sexpiration date, the Discharger shall confirm with its bank that the expiration date will be extended. If the bank elects not to extend the expiration date, the Discharger shall establish a new financial assurance instrumentto replace the original financial assurance instrument. The new financial assurance instrument shall be subject to the San Diego Water Board's approval following the same procedure described in the requirements above. The Discharger shall maintain a financial assurance instrument in place, as described above, until the Discharger has met its mitigation obligations.

VIII. RECEIVING WATER MONITORING

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

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

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

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

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

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

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

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

(1) Points of discharge into the segment of the water body or region of interest;
(2) Direction of predominant currents;
(3) Historic or legacy conditions in the vicinity;
(4) Nearby land uses or actions;
(5) Beneficial uses of the receiving waters;
(6) Potential constituents of concern;
(7) Potential receptors of concern; and
(8) Other sources or discharges in the immediate vicinity.

c. **Bioassessment.** The Monitoring Plan shall include provisions for bioassessment monitoring using the professional level non-point source protocol of the California Stream Bioassessment procedure[2] to assess effects of the project on the biological integrity of receiving waters.

d. **Spatial Representation**. The Monitoring Plan shall be designed to ensure that the sample stations are spatially representative to evaluate positive or negative site specific impacts on watershed conditions resulting from the Tesoro Extension Project within the water body segment or region of interest.

e. **Existing Data and Information.** The Monitoring Plan design shall take into consideration existing data and information of appropriate quality.

f. **Monitoring Frequency**. The Monitoring Plan shall include a schedule for completion of all sample collection and analysis activities and submission of the Receiving Water Monitoring Reports described in Reporting Requirements section IX.F of this Order.

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

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

    a. Notify the San Diego Water Board at least fourteen days in advance of the beginning of sample collection activities.; and

    b. Comply with any conditions set by the San Diego Water Board with respect to sample collection methods, such as providing split samples.

~~VIII.~~ IX. REPORTING REQUIREMENTS

A. Mitigation and monitoring reporting must be conducted for the compensatory mitigation sites and submitted to the San Diego Water Board prior to December 1st of each year. The Discharger shall provide a report to the San Diego Water Board after the completion of baseline surveys of aquatic resources at the compensatory mitigation sites. The Discharger shall also provide annual reports for the compensatory mitigation sites during the management period for the first five years and until all long-term performance measures identified in the approved HMMP have been met to the satisfaction of the San Diego Water Board. The reports must (1) document conditions at the mitigation sites so that changes can be tracked and management issues identified and addressed and (2) include the following information:

1. The following identification numbers in the header or subject line: Place ID No. 785677, Order No. R9-2013-0007;

2. The names, qualifications, and affiliations of the persons contributing to the report;

3. A status report on the construction of the Project;

4. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data, including at a minimum:

    a. Topographic complexity characteristics at each mitigation site;
    b. Upstream and downstream habitat and hydrologic connectivity; and
    c. Width of native vegetation buffer around the entire mitigation site.

5. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;

6. Other items specified in the approved HMMP;

7. Results of general compensatory mitigation sites conditions, global positioning system (GPS) recordation of jurisdictional waters, and changes in hydrology. Any recommendations for habitat enhancement measures, changes in the monitoring program, or issues such as weed removal and erosion control;

8. An annual monitoring report, prepared by the easement holder, documenting compliance with the conservation easement. At the discretion of the Conservation Easement holder, the report may be prepared and submitted as a separate report or the information may be submitted to the San Diego Water Board in the Annual Compliance and Effectiveness Report prepared for the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan and Southern Subregion Habitat Conservation Plan;

9. Photo documentation must be conducted in accordance with the State Water Resources Control Board Standard Operating Procedure 4.2.1.4.[3] The Discharger must conduct photo documentation of the Project site, post construction BMPs, and mitigation areas prior to, during, and after Project construction. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced. The report must include a compact disc that contains digital files of all the photos (*jpeg file type or similar);* and

10. Documentation that Project information has been uploaded to the California Wetlands Portal at http://www.californiawetlands.net/tracker/.

B. **California Rapid Assessment Method.** The California Rapid Assessment Method (CRAM) must be utilized at the impact and mitigation sites prior to impacts to establish pre-project baseline conditions. In addition, CRAM must be utilized at the mitigation sites at years 3 and 5 following completion of the mitigation site construction and continuing until success criteria have been met. The results of the CRAM assessment must be submitted each year with the Annual Monitoring Reports and data must be uploaded into eCRAM (http://www.cramwetlands.org).

C. **Geographic Information System Reporting**. The Discharger must submit Geographic Information System (GIS) shape files of the impact and mitigation areas with the annual report. All impact and mitigation areas shape files must be polygons. Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points. GIS metadata must also be

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

submitted.

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

1. The dates for initiation of Project construction and completion of Project construction;

2. An evaluation, interpretation and tabulation of Project activities detailing the completion of construction and compliance with all requirements of this Order and all applicable mitigation measures contained in the Project's certified Final Environmental Impact Report for the *South Orange County Transportation Infrastructure Improvement Project*;

3. As-built Project drawings no bigger than 11inches x 17inches; and

4. Photos of the completed Project including post-construction BMPs.

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

1. The as-built status of the mitigation sites;

2. Mitigation site topography maps;

3. Planting locations;

4. Pre- and post-construction photos of the mitigation sites; and

5. A survey report documenting the boundaries of mitigation sites.

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

a. Analysis. An evaluation, interpretation and tabulation of the water and bioassessment monitoring data including interpretations and conclusions as to whether applicable Receiving Water Limitations in this Order have been attained at each sample station. The analysis shall also include a discussion of water quality trends, the effects of the Project on receiving waters, and the effectiveness of Project BMPs.

b. Sample Location Map. The locations, type, and number of samples shall be identified and shown on a site map.

c. California Environmental Data Exchange Network. A statement certifying that the monitoring data and results have been uploaded into the California Environmental Data Exchange Network (CEDEN).

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

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

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

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

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

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

1. For a corporation, by a responsible corporate officer of at least the level of vice president; or

2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively; or

3. For a municipality, or a State, federal, or other public agency, by either a principal executive officer or ranking elected official.

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

1. The authorization is made in writing by a person described above;

2. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity; and

3. The written authorization is submitted to the San Diego Water Board.

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

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

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

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

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

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

~~IX.~~ X. PROVISIONS

A. **Duty to Comply.** The Discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; or (c) denial of a report of waste discharge in application for new or revised waste discharge requirements.

B. **Duty to Comply.** The Discharger must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the San Diego Water Board) to support this Order and all subsequent submittals required under this Order and as described herein. The conditions within this Order shall supersede conflicting provisions within such plans, specifications, technical reports and other submittals required under this Order.

C. **Need to Halt or Reduce Activity Not a Defense.** It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

D. **Duty to Mitigate.** The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment, including such accelerated or additional monitoring as may be necessary to determine the

nature and impact of the noncompliance.

E. **Property Rights.** This Order does not convey any property rights of any sort or any exclusive privileges. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations

F. **Inspection and Entry.** The Discharger must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to:

1. Enter upon the Discharger's premises, where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order;

2. Access and copy, at reasonable times, any of the Discharger's records that must be kept under the conditions of this Order;

3. Inspect and photograph, at reasonable times, any of the Discharger's facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this Order; and

4. Sample or monitor, at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code, any substances or parameters at any location where a regulated facility or activity is located or conducted under the conditions of this Order.

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

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

H. **Duty to Provide Information.** The Discharger shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego

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

I. **Duty to Provide Information.** When the Discharger becomes aware that it failed to submit any relevant facts in a Report of Waste Discharge or submitted incorrect information in a Report of Waste Discharge or in any report to the San Diego Water Board, it shall promptly submit such facts or information.

J. **Reopener Provision.** This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

1. Violation of any terms or conditions of this Order.

2. Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts.

3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

4. A change in the USACOE non-jurisdictional determination for the Project that requires the San Diego Water Board's consideration and action upon a CWA section 401 certification application for the Project pursuant to California Code of Regulations, title 23, ~~23 CCR~~ sections 3830 -3869.

K. **Reopener Provision.** The filing of a request by the Discharger for the modification, revocation, reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

L. **Reopener Provision.** The San Diego Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Discharger, if the San Diego Water Board determines that the Project fails to comply with any of the terms or requirements of this Order or if the or if the results of the Project have unintended impacts to water quality.

M. **Transfer of Responsibility.** This Order is not transferable to any person except after notice to the San Diego Water Board. This notice must be in writing and received by the San Diego Water Board at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new Discharger containing a specific date for the transfer of this Order's responsibility and coverage between the current Discharger and the new discharger. This agreement shall include an acknowledgement that the existing Discharger is liable for violations up to the transfer date and that the new discharger is liable from the transfer date on. The San Diego Water Board may

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

N. **Order Availability.** A copy of this Order, the application, and supporting documentation must be available at the Project site during construction for review by site personnel and agencies. A copy of this Order must also be provided to the contractor and all subcontractors working at the Project site.

O. **Enforcement Authority.** In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law.

P. **Investigation of Violations.** In response to a suspected violation of any condition of this Order, the San Diego Water Board may, pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Order to investigate, monitor, and report information on the violation. The only restriction is that the burden, including costs of preparing the reports, must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.

~~X.~~ XI. NOTIFICATIONS

A. These requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to CWA section 402.

B. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.

C. This Order becomes effective on the date of adoption by the San Diego Water Board.