

1 ROBERT D. THORNTON (CA 72934)
 rthornton@nossaman.com
 2 MARY LYNN COFFEE (CA 145605)
 3 ASHLEY J. REMILLARD (CA 252374)
 DAVID J. MILLER (CA 274936)
 4 NOSSAMAN LLP
 18101 Von Karman Avenue
 5 Suite 1800
 Irvine, CA 92612
 6 Telephone: (949) 833-7800
 Facsimile: (949) 833-7878
 7

8 Attorneys for Petitioner
 Foothill/Eastern Transportation Corridor Agency
 9

10 **BEFORE THE CALIFORNIA**
 11 **STATE WATER RESOURCES CONTROL BOARD**
 12

13 In the Matter of the Petition of:
 14 THE FOOTHILL/EASTERN
 15 TRANSPORTATION CORRIDOR AGENCY
 16 FOR REVIEW OF ACTION, AND FAILURE
 TO ACT, BY THE CALIFORNIA
 17 REGIONAL WATER QUALITY CONTROL
 BOARD, SAN DIEGO REGION, IN
 18 CONNECTION WITH WASTE DISCHARGE
 REQUIREMENTS, TENTATIVE ORDER
 NO. R9-2103-0007
 19

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

20
 21
 22
 23
 24
 25
 26
 27
 28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

DATED: July 18, 2013

Respectfully Submitted,

NOSSAMAN LLP

By: _____



ROBERT D. THORNTON
MARY LYNN COFFEE
ASHLEY J. REMILLARD
DAVID J. MILLER

Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
1. INTRODUCTION.....	1
2. FACTUAL BACKGROUND	1
A. The Tesoro Extension Project	1
B. Overview of California Environmental Quality Act Review	4
C. The Tentative Order	6
D. Revised Tentative Order.....	8
E. The Regional Board’s Decision	11
3. ARGUMENT	12
A. Standard of Review	12
B. The Regional Board Violated Public Resources Code Section 21167.3 and CEQA Guidelines Section 15050.....	13
(i) Pending Litigation	14
(ii) Legal Standards	15
(iii) The Regional Board’s Determination.....	17
C. The Regional Board Failed to Make Written Findings to Support its Denial of the Tentative Order.....	18
(i) The Regional Board Failed to Make Findings In Violation of Law	18
(ii) The Regional Board Relied on Improper Evidence	21
D. The Regional Board Failed to Comply with Applicable Requirements Regarding the Scope of its Jurisdiction.....	22
4. CONCLUSION	26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Association for Retarded Citizens v. Department of Developmental Services</i> (1985) 38 Cal.3d 384.....	22
<i>Bam, Inc. v. Board of Police Commissioners</i> (1992) 7 Cal.App.4th 1343.....	21
<i>Cal. State Restaurant Assn. v. Whitlow</i> (1976) 58 Cal.App.3d 340.....	22
<i>California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency,</i> No. 37-2013-00049797 (S.D. Super. Ct. March 23, 2006).....	15, 14
<i>Cassady v. Morgan, Lewis & Bockius LLP</i> (2006) 145 Cal.App.4th 220.....	21
<i>City of Lodi v. Randtron</i> (2004) 118 Cal.App.4th 337.....	22
<i>City of Redding v. Shasta County Local Agency Formation Commission,</i> (1989) 209 Cal.App.3d 1169.....	16
<i>Ferdig v. State Personnel Bd.</i> (1969) 71 Cal.2d 96.....	22
<i>La Prade v. Department of Water and Power of the City of Los Angeles</i> (1945) 27 Cal.2d 47.....	21
<i>People ex rel. Attorney General Bill Lockyer and State Park and Recreation Commission v. Foothill/Eastern Transportation Corridor Agency, et al.,</i> No. 06-GIN051371 (S.D. Super. Ct. March 23, 2006).....	14
<i>San Diego Police Officers Assn. v. City of San Diego</i> (1994) 29 Cal.App.4th 1736.....	21
<i>Sierra Club v. City of Hayward</i> (1981) 171 Cal.3d 840.....	20
<i>The People of the State of California, ex rel. Attorney General Kamala D. Karris v. Foothill/Eastern Transportation Corridor Agency, et al.,</i> No. 37-2013-00050001 (S.D. Super. Ct. May 23, 2013).....	15
<i>Topanga Assn. for a Scenic Community v. County of Los Angeles</i> (1974) 11 Cal.3d 506.....	19, 20, 21

TABLE OF AUTHORITIES

	Page(s)
STATUTES	
Code Civ. Proc., § 1094.5	19, 20
Evidence Code, §§ 801-805	18
Gov. Code, § 11405.20.....	18
Gov. Code, § 11425.10.....	21, 22
Gov. Code, § 11425.10, subd. (a)(6).....	19
Gov. Code, § 11425.50.....	19, 21
Gov. Code, § 11445.10-60	18
Gov. Code, § 11445.30.....	18
Gov. Code, § 11513.....	18
Gov. Code, § 66484.3.....	4
Pub. Resources Code, § 13260.....	26
Pub. Resources Code, § 13263	26
Pub. Resources Code, § 21002.1	23
Pub. Resources Code, § 21002.1, subd. (d).....	17
Pub. Resources Code, § 21067.....	4
Pub. Resources Code, § 21069.....	13
Pub. Resources Code, § 21166.....	13
Pub. Resources Code, § 21167.3.....	passim
Pub. Resources Code, § 21167.3, subd. (b).....	13
Pub. Resources Code, § 21167.3, subd. (d).....	17
Water Code, § 13000 <i>et seq.</i>	22
Water Code, § 13050.....	5
Water Code, § 13241.....	6, 23
Water Code, § 13260, subd. (a).....	6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	Page(s)
STATUTES	
Water Code, § 13263.....	22
Water Code, § 13263, subd. (a).....	6
Water Code, § 13320.....	1
Water Code, § 13320, subd. (b)	12
REGULATIONS	
Cal. Code Regs., tit. 14, § 15000 <i>et seq.</i>	13
Cal. Code Regs., tit. 14, § 15050.....	14, 16, 17
Cal. Code Regs., tit. 14, § 15162.....	14, 13
Cal. Code Regs., tit. 14, § 15233.....	13
Cal. Code Regs., tit. 14, § 15381.....	13
Cal. Code Regs., tit. 23, § 648 <i>et seq.</i>	18
Cal. Code Regs., tit. 23, § 648, subd. (a).....	18
Cal. Code Regs., tit. 23, § 648, subd. (b)	18
Cal. Code Regs., tit. 23, § 2052, subd. (c).....	12
Cal. Code Regs., tit. 23, § 3742, subd. (a).....	23
Cal. Code Regs., tit. 23, § 2050.....	1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

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

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

2. FACTUAL BACKGROUND

A. The Tesoro Extension Project

The Tesoro Extension is an approximately 5.5 mile long extension of existing State Route (“SR”) 241 from its current terminus at Oso Parkway to Cow Camp Road immediately north of SR 74 in Orange County (“County”), California. The location of the Project is shown below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Figure 1

(Exhibit 2, p. 52.)

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

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

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

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

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

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

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

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

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

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

24

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

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

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

3 **C. The Tentative Order**

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

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

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

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

4 The Tentative Order’s requirements included:

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

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

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

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

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

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

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

21 **D. Revised Tentative Order**

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

- 26 • Addition of monitoring and reporting requirements to ensure that the
27 compensatory mitigation strategy for the Project is successful, to assess the
28

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

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

19 Regional Board staff testified that the revisions to the Regional Board addressed the
20 Coalition's comments regarding potential effects on the supply of sediment bed material to
21 Chiquita Creek, Gobernadora Creek and San Juan Creek, as well as comments regarding the
22 timing of the Regional Board's approval of certain monitoring and mitigation plans. (Exhibit 6,
23 pp. 17-20.) Regional Board staff further testified that, with these revisions, the mitigation in the
24 Tentative Order "meets the mitigation requirements of CEQA and adequately addresses impacts
25 to waters of the State." (*Id.*, p. 20.) Regional Board staff concluded: "[The] Order contains
26 waste discharge requirements to ensure beneficial uses are maintained or enhanced through
27 mitigation and monitoring requirements for impacts to waters of the State. The waste discharge
28

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

3 Regional Board staff also testified:

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

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

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

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

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

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

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

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

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

11 **3. ARGUMENT**

12 **A. Standard of Review**

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

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

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

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

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

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

11 Section 21167.3 provides:

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

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

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

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

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

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

13 **(i) Pending Litigation**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

(Exhibit 8, ¶2.) On May 22, 2013, the petitioners in the above cases filed motions to reinstate the litigation concerning the FSEIR. In doing so, the parties sought to reinitiate the 2006 challenge to the FSEIR, as well as challenge the F/ETCA's Board of Directors approval of the Addendum in April 2013. The California Attorney General filed similar papers on May 23, 2013. (*The People of the State of California, ex rel. Attorney General Kamala D. Karris v. Foothill/Eastern Transportation Corridor Agency, et al.*, No. 37-2013-00050001 (S.D. Super. Ct. May 23, 2013).) Subsequently, certain of the petitioners in the 2006 cases also filed petitions for writs of mandate challenging the F/ETCA's certification of the Addendum and approval of the Project. (*California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency*, No. 37-2013-00049797 (San Diego Super. Ct.); *The People of the State of California v. Foothill/Eastern Transportation Corridor Agency*, Case No. 37-2013-00050001-CU-WM-NC (San Diego Super. Ct.).)

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

(ii) Legal Standards

The plain text of Public Resources Code section 21167.3 required the Regional Board to assume that F/ETCA's CEQA documentation regarding the Project complied with CEQA. The legislative history also makes it clear that Public Resources Code section 21167.3 was intended to impose stringent limitations on the ability of responsible agencies to question the adequacy of the lead agency's CEQA compliance where CEQA litigation is filed. In its report on the proposed legislation, the Resources Agency opined on the following question: "Should the only 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.”

1 **(iii) The Regional Board's Determination**

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

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

17 Public Resources code section 21167.3 and CEQA Guidelines section 15050 were
18 adopted to avoid the kind of collateral attack on the validity of the FSEIR and Addendum
19 attempted here by the Regional Board.⁶ The Regional Board failed to assume that the FSEIR and
20 the Addendum comply with CEQA and failed to treat F/ETCA's determinations in the
21 Addendum as "final and conclusive." Thus, in light of the Legislature's clear mandate in section
22 21167.3, CEQA Guidelines section 15050, and controlling case law, the Regional Board abused
23 its discretion and acted improperly when it denied the Tentative Order and its decision should be
24 reversed.

25
26
27 ⁶ Notably, counsel for the Regional Board reminded the Board Members of section 21167.3,
28 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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

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

25
26
27 particularly egregious given its decision departed from the Regional Board staff’s
28 recommendations. (See Exhibit 7, p. 1; see also *Bam, Inc. v. Board of Police Commissioners*
(1992) 7 Cal.App.4th 1343, 1346 [noting that “where the decision of the hearing examiner is
rejected,” findings by the decision-maker are critical].)

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

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

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

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

1 relevant water quality control plans that have been adopted, and shall take into consideration the
2 beneficial uses to be protected, the water quality objectives reasonably required for that purpose,
3 or other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.”

4 (*Ibid.*) Water Code section 13241 provides that the Regional Board “shall establish such water
5 quality objectives in water quality control plans as in its judgment will ensure reasonable
6 protection of beneficial uses and the prevention of nuisance”

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

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

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

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

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

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

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

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

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

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

18 **4. CONCLUSION**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: July 18, 2013

Respectfully Submitted,

NOSSAMAN LLP



By:

ROBERT D. THORNTON
MARY LYNN COFFEE
ASHLEY J. REMILLARD
DAVID J. MILLER

Attorneys for Petitioner
FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

LIST OF EXHIBITS

- 1
- 2
- 3 Exhibit 1: California Water Quality Control Board, San Diego Region, Item No. 9, Revised
4 Tentative Order No. R9-2013-0007 Waste Discharge Requirements for
5 Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241)
6 Project, Orange County (June 19, 2013)
- 7
- 8 Exhibit 2: Addendum to the South Orange County Transportation Infrastructure
9 Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report
10 (SCH #2001061046), Tesoro Extension Project, prepared by the Foothill/Eastern
11 Transportation Corridor Agency (February 2013)
- 12 Exhibit 3: Correspondence from Robert D. Thornton, Nossaman LLP on behalf of
13 Foothill/Eastern Transportation Corridor Agency to Darren Bradford, California
14 Regional Water Quality Control Board Re: Foothill/Eastern Transportation
15 Corridor Agency, Tesoro Extension (SR 241) Project, Orange County; Response
16 to Questions for Written Response on Tentative Order No. R9-2013-0007 (March
17 29, 2013)
- 18 Exhibit 4: Reporter's Partial Transcript of Proceedings, California Regional Water Quality
19 Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory
20 Committee, Item No. 8 Water Discharge Requirements: Foothill/Eastern
21 Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County
22 (March 13, 2013)
- 23 Exhibit 5: California Regional Water Quality Control Board Item No. 9, Executive Officer
24 Summary Report, Waste Discharge Requirements: Foothill/Eastern
25 Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange
26 County (Tentative Order No. R9-2013-0007) (March 13, 2013)
- 27 Exhibit 6: Reporter's Partial Transcript of Proceedings, California Regional Water Quality
28 Control Board, San Diego Region, Meeting Notice and Agenda, Legal Advisory
Committee, Item No. 9 Water Discharge Requirements: Foothill/Eastern
Transportation Corridor Agency, Tesoro (SR 241) Extension, Orange County
(June 19, 2013)
- Exhibit 7: California Regional Water Quality Control Board Item No. 9, Executive Officer
Summary Report, Waste Discharge Requirements: Foothill/Eastern
Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange
County (Tentative Order No. R9-2013-0007) (June 19, 2013)
- Exhibit 8: *California State Parks Foundation v. Foothill/Eastern Transportation Corridor
Agency*, San Diego Superior Court Case No. GIN051194 and GIN051371
(Consolidated) Stipulated Order Approving Interim Settlement with Tolling
Agreement and Dismissal Without Prejudice, and Retaining the Court's
Jurisdiction to Set Aside Dismissal and Enforce Interim Settlement (filed January
12, 2011)
- Exhibit 9: **California Regional Water Quality Control Board, San Diego Region, Revised
Meeting Notice and Agenda for June 19, 2013.**

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

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

REVISED TENTATIVE ORDER NO. R9-2013-0007

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

TESORO EXTENSION (SR 241) PROJECT
ORANGE COUNTY**

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

Table 1. Discharger Information

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

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

Table 2: Discharge Location

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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

June 19, 2013

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

TABLE OF CONTENTS

I.	PROJECT INFORMATION	<u>55</u>
II.	FINDINGS	<u>55</u>
III.	DISCHARGE PROHIBITIONS	<u>1212</u>
IV.	CONSTRUCTION BEST MANAGEMENT PRACTICES	<u>1212</u>
V.	POST- CONSTRUCTION BEST MANAGEMENT PRACTICES.....	<u>1414</u>
VI.	RECEIVING WATER LIMITATIONS.....	<u>1616</u>
VII.	COMPENSATORY MITIGATION.....	<u>1616</u>
VIII.	<u>RECEIVING WATER MONITORING</u>	<u>2121</u>
IX.	<u>REPORTING REQUIREMENTS</u>	<u>2424</u>
X.	<u>PROVISIONS</u>	<u>2929</u>
XI.	<u>NOTIFICATIONS.....</u>	<u>3232</u>

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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

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

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

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

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

J. 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. 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. 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~~ have a significant effect on the environment. Therefore, the ~~Final FSEIR~~ incorporated ~~ds~~ mitigation measures ~~that~~ to mitigate many of the Transportation Improvement Project’s effects on the environment to less than significant. For those impacts that the Discharger determined to be unavoidable impacts where mitigation was infeasible, the Discharger adopted a Statement of Overriding Considerations finding that ~~the~~ specific benefits of the project outweighed the unavoidable adverse impacts.

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

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

San Diego Water Board Findings

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

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

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

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

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

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

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

P.R.

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

III. DISCHARGE PROHIBITIONS

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

IV. CONSTRUCTION BEST MANAGEMENT PRACTICES

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

- 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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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]

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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

VI. RECEIVING WATER LIMITATIONS

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

VII. COMPENSATORY MITIGATION

- A. **Duty to Comply.** The Discharger shall retain responsibility for providing compensatory mitigation for the Project as required in this Order and shall direct any agreement(s) to obtain compensatory mitigation services.
- B. **Compensatory Management Plan Development.** The Discharger shall update and finalize the *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, dated October 2012. The HMMP must be received by the San Diego Water Board no later than ~~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

June 19, 2013

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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

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

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

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

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

VIII. RECEIVING WATER MONITORING

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

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

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

- a. If a water body monitoring coalition is established, the coalition shall be responsible for monitoring within the designated water body and for ensuring that appropriate studies and reports required under this Order are completed in a timely manner.
- b. The coalitions shall coordinate with the San Diego Water Board to ensure that all coalition participants are proactive and responsive to potential water quality related issues as they arise during monitoring and assessment.

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

- a. **Quality Assurance Project Plan.** A Quality Assurance Project Plan (QAPP) describing the project objectives and organization, functional activities, and quality assurance/quality control protocols for the water and bioassessment monitoring.
- b. **Conceptual Model.** A Conceptual Model identifying the physical and chemical factors that control the fate and transport of pollutants and receptors that could be exposed to pollutants in the water and sediment. The Conceptual Model will serve as the basis for assessing the appropriateness of the Monitoring Plan design. The Conceptual Model shall consider:

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

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

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

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

VIII.-IX. REPORTING REQUIREMENTS

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

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

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

submitted.

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

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

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

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

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

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

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

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

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

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

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

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

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

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

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

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

Supporting Document No. 9

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

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

June 19, 2013

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

June 19, 2013

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

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

June 19, 2013

Foothill/Eastern Transportation
Corridor Agency
Tesoro (SR 241) Extension
Revised Tentative Order No. R9-2013-0007

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.

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

ATTACHMENT B INFORMATION SHEET

Table of Contents

1.0 Applicant	2
2.0 Project Description	2
3.0 Regulatory Background	33
4.0 California Environmental Quality Act	55
5.0 Water Quality Standards and Prohibitions	66
6.0 Basis for Waste Discharge Requirements	1041
7.0 Mitigation Measures	1041
8.0 Runoff Management Plan (RMP)	1415
9.0 Monitoring and Reporting Requirements	1415
10.0 Public Participation	1415
11.0 Information and Copying	1516
12.0 Submission of Written Comments	1516
13.0 Public Hearing	1617
14.0 Additional Information	1718
15.0 WDR Petitions	1818
16.0 Documents Used in Preparation of the Information Sheet and Order 1818	
17.0 Interested Parties	1919

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

1.0 Applicant

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

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

2.0 Project Description

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

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

Table 1: Jurisdictional Impact Summary

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

3.0 Regulatory Background

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

4.0 California Environmental Quality Act

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

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

5.0 Water Quality Standards and Prohibitions

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

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

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

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

6.0 Basis for Waste Discharge Requirements

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

7.0 Mitigation Measures

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

Mitigation Area A

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

Mitigation Area B

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

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

Establishment and restoration actions for Mitigation Area B are:

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

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

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

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

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

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

F/ETCA
 Tesoro Extension (SR 241) Project
 Order No. R9-2013-0007

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

Table 5. Impact and Compensatory Mitigation Summary

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

8.0 Runoff Management Plan (RMP)

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

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

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

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

9.0 Monitoring and Reporting Requirements

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

10.0 Public Participation

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

Notification of Interested Parties

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

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

11.0 Information and Copying

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

12.0 Submission of Written Comments

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

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

F/ETCA
 Tesoro Extension (SR 241) Project
 Order No. R9-2013-0007

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

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

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

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

13.0 Public Hearing

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

Please note: the San Diego Water Board will not consider this item before

1:00 p.m. On ~~January 17, 2013~~ May 30, 2013, a public hearing notice and copies of the Tentative Order were emailed to all known interested persons and posted on the San Diego Water Board's website. Interested persons are invited to attend the public hearing. Participants in the public hearing will have an opportunity to address the San Diego Water Board members at the hearing subject to reasonable limitations prior to the Board taking action on the Tentative Order.

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

Information and Copying

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

Register of Interested Persons

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

14.0 Additional Information

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

15.0 WDR Petitions

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

16.0 Documents Used in Preparation of the Information Sheet and Order

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

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

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

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

17.0 Interested Parties

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

Damon Nagami
Natural Resources Defense Council
dnagami@nrdc.org

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

Bill Orme
State Water Resources Control Board, Division of Water Quality
BOrme@waterboards.ca.gov

David Zoutendyk
U.S. Fish and Wildlife Service
David_Zoutendyk@fws.gov

Kelly Fisher
California Department of Fish and Game
kfisher@dfg.ca.gov

[Stefanie Sekich-Quinn](#)
[Surfrider Foundation](#)
[Ssekich@surfrider.org](#)

[Michael D. Fitts](#)
[Endangered Habitats League](#)

F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

gostodas1@yahoo.com

[Bill White](#)
[Shute, Mihaly & Weinberger, LLP](#)
White@smwlaw.com

[John Everett](#)
[Office of the California Attorney General](#)
John.Everett@doj.ca.gov

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

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

TESORO EXTENSION PROJECT

LEAD AGENCY:

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY

125 Pacifica, Suite #120

Irvine, California 92618

Contact: Ms. Valarie McFall

949.754.3475

February 2013

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

TABLE OF CONTENTS

Section 1.0: Introduction 1-1

 1.1 Background 1-1

 1.2 Purpose of the Addendum..... 1-8

 1.3 Findings of this Addendum 1-8

 1.4 Conclusion..... 1-8

Section 2.0: Project Description 2-1

 2.1 Project Location and Setting..... 2-1

 2.2 SOCTIIP Preferred Alternative/A7C-FEC-M..... 2-1

 2.3 Proposed Project 2-2

Section 3.0: Environmental Analysis..... 3-1

 3.1 Findings 3-22

 3.2 Lead Agency Determination..... 3-23

LIST OF TABLES

Table 1 Project Permits and Approvals Needed..... 2-6

Table 2 Summary of Project Effects on Biological Resources for the Tesoro
Extension Project Compared to the Preferred Alternative/A7C-FEC-M..... 3-5

Table 3 Summary of Vehicle Miles Traveled and Vehicle Hours Traveled 3-10

Table 4 Daily Greenhouse Gas Emissions..... 3-10

Table 5 Summary of Environmental Impacts 3-24

LIST OF FIGURES (provided at end of document)

Figure 1 Regional Vicinity

Figure 2 Site Vicinity Map

Figure 3 SOCTIIP and Tesoro Comparison

Figure 4 Future Alignment Alternatives

Figure 5 Proposed Project

Figure 6 Typical Cross Section

Figure 7 RMV Planning Areas

Appendices: Appendix A – Applicable Mitigation Measures/Commitments/Conditions

1.0 Introduction

1.0 INTRODUCTION

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

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

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

1.1 BACKGROUND

Subsequent EIR History

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

Proposed Project

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

Changes to Project Addressed in this Addendum

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

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

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

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

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

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

Evaluation of Environmental Impacts

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

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

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

1.2 PURPOSE OF THE ADDENDUM

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

1.3 FINDINGS OF THIS ADDENDUM

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

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

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

1.4 CONCLUSION

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

2.0 Project Description

2.0 PROJECT DESCRIPTION

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

2.1 PROJECT LOCATION AND SETTING

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

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

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

2.2 SOCTIIP PREFERRED ALTERNATIVE/A7C-FEC-M

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

2.3 PROPOSED PROJECT

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

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

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

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

Temporary facilities and activities include:

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

Equipment anticipated for bridge construction would include:

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

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

Project Construction

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

Right-of-Way Acquisition

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

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

Project Permits and Approvals Needed

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

**Table 1
Project Permits and Approvals Needed**

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

3.0 Environmental Analysis

3.0 ENVIRONMENTAL ANALYSIS

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

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project

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

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

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

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

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

Operational Emissions

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

**Table 3
Summary of Vehicle Miles Traveled and Vehicle Hours Traveled**

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

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

**Table 4
Daily Greenhouse Gas Emissions**

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

CO₂ = carbon dioxide; LCFS = Low Carbon Fuel Standard

Notes:
 1. Emissions calculated using EMFAC2011.
 2. Based on traffic volumes provided by Stantec, Inc.

Construction Emissions

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

CEQA Conclusion

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

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

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

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

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

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

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

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

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

identify any impacts to mineral resources; therefore, mitigation was not required. Similar to the Preferred Alternative/A7C-FEC-M, the proposed changes would not result in the loss of availability of a known mineral resource or mineral resource recovery site.

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

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

Noise. The Final SEIR analyzed the Preferred Alternative/A7C-FEC-M's potential for noise impacts due to construction and long-term operations. The Final SEIR determined that the Preferred Alternative/A7C-FEC-M would not result in significant short-term or long-term impacts upon implementation of required mitigation measures. The Final SEIR determined that construction impacts would be less than significant with adherence to mitigation measures, and since impacts would be temporary and no nighttime construction would occur. On a long-term basis, the Final SEIR determined that the Preferred Alternative/A7C-FEC-M would not result in significant impacts as there would be no exceedance of Community Noise Equivalent Level (CNEL) criteria.

The Tesoro Extension Project is not expected to result in new or increased noise impacts in comparison to the analysis provided in the Final SEIR. As noted above, the Preferred Alternative/A7C-FEC-M and the Project generally follow the same alignment through the RMV and share similar design characteristics. Construction noise due to activities within the Project site are expected to be similar since the construction methodology associated with the Project would be substantially the same (e.g., similar design, topography, geologic conditions, and equipment). Mitigation in the Final SEIR requiring limits on days/hours of construction, maintenance and muffling of construction equipment, coordination with affected schools (including Tesoro High School), use of approved haul routes, and provision of a noise complaint office would remain applicable. No nighttime construction would be required for the Project.

On an operational basis, background conditions and traffic volumes identified in the Final SEIR have not substantially changed. The proposed Project is not expected to result in design or operational changes that would result in additional stationary or roadway noise that would substantially alter conclusions within the Final SEIR. The only sensitive receptor immediately surrounding the Project site is Tesoro High School. Under the Project, a noise barrier may be required adjacent to Tesoro High School, consistent with mitigation provided in the Final SEIR. The requirement for a noise barrier would be determined based on the Noise Abatement Criteria (NAC) within the Caltrans Traffic Noise Analysis Protocol (May 2011) and specified within 23 CFR 772.

Noise abatement was considered for the receptor per FHWA/Caltrans requirements. It was determined that a barrier with a height greater than 10' would provide 5 dBA of noise reduction and comply with the FHWA/Caltrans feasibility requirement. However, FHWA/Caltrans criteria require the barrier to cost less than \$55,000 per benefited dwelling unit. For non-residential uses each 100 feet of frontage is equivalent to one dwelling unit. Tesoro High School has approximately 2,000 feet of frontage along the Project. Therefore, the maximum reasonable cost for the barrier is \$1,155,000. The required barrier

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

would need to be approximately 3,700 feet long and the preliminary estimated cost exceeds \$2,000,000 for a 10-foot high wall. While the barrier cost exceeds the reasonable cost limits per FHWA/Caltrans policies, to assess the reasonableness of the barrier consistent with FHWA/Caltrans procedures this finding will be officially documented in a Noise Abatement Decision Report (NADR). This evaluation procedure was also included in Mitigation Measures N-7, N-8 and NC-1 of the Final SEIR. However, the evaluation of whether the barrier is needed has been completed prior to approval of the Project, rather than final design or during construction to ensure full evaluation and disclosure of possible impacts associated with a sound barrier if one had been required. Consistent with what was analyzed in the Final SEIR for the Preferred Alternative/A7C-FEC-M alternative, the Project will not result in a significant noise impact based on Caltrans/FHWA criteria.

The County of Orange has established outdoor and indoor noise standards applicable to schools and are presented in Tables VIII-2 and VIII-3 of the Orange County Noise Element (2005). The standards are presented in terms of the Leq(t). That is the A-weighted equivalent sound level averaged over a period of “t” hours defined to match the hours of operation of the given use. For a school, the interior noise standard is an Leq(10) of 45 dBA and the exterior standard is an Leq(10) of 65 dBA. The noise modeling shows that the future unabated peak hour Leq(h) is projected to be 60 dBA or less on the school grounds. Buildings complying with modern energy efficiency standards provide at least 20 dB of outdoor-to-indoor noise reduction. Therefore, peak hour indoor Leq(h) noise levels will be less than 40 dBA. The Leq(10) is less than the peak hour Leq(h). Therefore, future noise levels at the school will not exceed the County of Orange Noise Standards and the Project will not result in a significant noise impact based on local noise policies.

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

Population and Housing. Analysis within the Final SEIR concluded that the Preferred Alternative/A7C-FEC-M could potentially contribute to impacts relating to facilitating or supporting growth in the study area. The facilitated growth, in and of itself, is not an adverse impact. However, the effects of this facilitated growth could result in impacts on a variety of areas, including agricultural resources, hydrology/drainage, water quality, air quality, noise, biological resources, aesthetics, cultural resources, recreation, mineral resources, public services, and utilities and services. The Final SEIR concluded that the displacement of housing or people would not occur, since none exists between Oso Parkway and Cow Camp Road.

While the Tesoro Extension Project would provide transportation infrastructure and serve local and regional traffic needs, it would not result in substantial growth-potential effects. The RMV is the only reasonably foreseeable development proposed in the site vicinity. Within the RMV property, the alignment passes through PAs 2N and 2S, where residential development is proposed, consistent with the approved Ranch Plan; refer to [Figure 7](#). The Project’s growth-potential effects would occur within the overall distribution and intensity of development approved by the County under the proposed RMV plan. RMV’s plans show circulation elements with and without an extension of the SR 241 Toll Road and the development areas in the land use plan do not shift, intensify or change under the with and without scenario. The buildout of RMV would occur with or without the Project, and The Ranch Plan’s growth inducing effects have been previously analyzed within the EIR prepared for the RMV Ranch

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

Plan that was certified by the County in 2004. Other opportunities for future growth within the Project area beyond the RMV are limited. As such, the Project would not result in growth inducing impacts. Additionally, the Project would not result in the loss of existing housing or displacement of residents. The Ranch Plan depicted an alignment of the SR 241 extension as shown on the MPAH; however, the EIR for The Ranch Plan acknowledged that if another alignment is selected, the development plan would accommodate the selected alignment. The Ranch Plan was approved at a General Plan or conceptual level plan, with development areas shown as “bubbles” with no grading plan or placement of residential units or buildings. Development on the Ranch will not occur without additional, more detailed planning through an Area Plan process with the County of Orange. The future Area Plans can site development away from the Tesoro Extension Project while staying within the development bubbles. In addition, F/ETCA and RMV have been coordinating on the Tesoro Extension Project as it relates to RMV’s approved development. As noted on Figure 3, these minor design alterations include a potential maximum shift of 500 feet for a distance of approximately 2,500 linear feet to the east to avoid impacts to an existing irrigation reservoir currently utilized by RMV. In addition, a slight shift of approximately 800 feet to the west for a distance of approximately 4,500 linear feet near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. Thus, no conflicts with The Ranch Plan would occur under the proposed Project, and no disruption or division of future development would occur.

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

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

Public Services. The Final SEIR included an analysis of the Preferred Alternative/A7C-FEC-M’s potential impacts related to public services. The Final SEIR concluded that no significant impacts to public services would occur, and identified a range of mitigation measures to minimize impacts to below significance.

The proposed Project would not result in additional impacts to public services beyond those identified in the Final SEIR. As noted above, the RMV is the only reasonably foreseeable development proposed in the site vicinity. Within the RMV property, the alignment passes through PAs 2N and 2S, where residential and/or commercial development have been approved. The Project’s growth-potential effects would occur within the overall distribution and intensity of development approved by the County under the proposed RMV plan. RMV’s plans show circulation elements with and without an extension of the SR 241 Toll Road and the development areas in the land use plan do not shift, intensify or change under the with and without scenario. The buildout of RMV would occur with or without the Project, and The Ranch Plan’s growth inducing effects have been previously analyzed within the EIR prepared for the RMV Ranch Plan that was certified by the County in 2004. Other opportunities for future growth within the Project area beyond the RMV are limited. As such, the Project would not result in growth inducing impacts that would result in additional demand for public services. Thus, demand for fire protection, law enforcement, schools, recreational services, or other public services is not expected to increase in comparison to the analysis in the Final SEIR. Generally, the Project is expected to result in

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

beneficial impacts in regards to fire protection and law enforcement, since the Project would consist of a new roadway providing enhanced regional access for emergency vehicles.

While minor design alterations have been incorporated into the Project, there would be no change in impacts to public services in comparison to the conclusions of the Final SEIR. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized on the RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and are void of any unique features or characteristics related to public services that would alter the conclusions reached within the Final SEIR.

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

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

Recreation. The Final SEIR included an analysis of the Preferred Alternative/A7C-FEC-M's impacts to recreational resources, and concluded that significant and unavoidable impacts would occur in the portion of the Preferred Alternative/A7C-FEC-M south of Cow Camp Road. These significant and unavoidable impacts apply to temporary occupancy and permanent acquisition of property, short-term noise, short-term air quality and long-term visual impacts. However, these impacts would occur in areas outside of the Tesoro Extension Project alignment, south of Cow Camp Road (e.g., within Donna O'Neill Land Conservancy or recreational areas along the coast). Thus, the Final SEIR did not identify any significant effects to recreational resources for the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road.

The proposed Project would not result in additional impacts to recreation beyond those identified in the Final SEIR. There are no public or private parks, recreational facilities, or wildlife refuges that would be directly impacted by the Project. Although Tesoro High School is located adjacent to the Project alignment and is equipped with sports fields, a swimming pool, and gymnasium, this facility is not considered accessible to the general public. In addition, the Project would not result in any adverse impacts related to these facilities on the Tesoro High School campus.

In addition, recreational facilities associated with buildout of the RMV would not be affected by the Project. The Ranch Plan was approved at a General Plan or conceptual level plan, with development areas shown as "bubbles" with no grading plan or placement of residential units or buildings. Development on the Ranch will not occur without additional, more detailed planning through an Area Plan process with the County of Orange. The future Area Plans can site development away from the Tesoro Extension Project while staying within the development bubbles. Thus, no conflicts with The Ranch Plan would occur under the proposed Project, and no impacts to proposed recreational facilities would occur.

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

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

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

Transportation/Traffic. The Final SEIR included a detailed analysis of potential transportation/traffic impacts for the Preferred Alternative/A7C-FEC-M. The analysis reviewed potential impacts related to short-term construction, long-term freeway/tollway mainline operations, arterial roads, and freeway/tollway ramps. The Final SEIR determined that the Preferred Alternative/A7C-FEC-M did not result in any significant impacts in regards to long-term operations, and that no mitigation was required. However, the Final SEIR identified a significant and unavoidable impact regarding short-term construction traffic, due to the movement of construction equipment and workers to and from the site, materials movement, and diversion of traffic on existing roadways.

The Project is anticipated to result in similar short-term construction impacts in comparison to the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road. The Project would incorporate the same range of construction traffic mitigation measures as outlined in the Final SEIR. These measures include preparation of a Construction Traffic Management Plan (CTMP), which would implement designated haul routes, notification through signage and public outreach, and construction scheduling outside of peak traffic hours, among others. In addition, since the Tesoro Extension Project and the Preferred Alternative/A7C-FEC-M generally follow the same alignment, share similar design characteristics, and would require a similar construction methodology, it is expected that earthwork quantities would be similar between Oso Parkway and Cow Camp Road, which would require a similar amount of construction equipment, workers, and materials movement. Although earthwork quantities associated with the Project are expected to be balanced, and haul trip lengths would be substantially reduced in comparison to the Preferred Alternative/A7C-FEC-M due to the shorter length of the proposed extension, it is expected that a significant and unavoidable impact would remain.

Updated traffic analysis conducted for the Project indicates that a potential impact could occur at the intersection of Antonio Parkway/La Pata Avenue and Ortega Highway.¹⁰ A PDF has been incorporated into the Project that would consist of the reconfiguration of the eastbound approach to the intersection to provide one through lane, a shared through/right-turn lane, and a separate right turn lane. This PDF

¹⁰ Tesoro Extension Project Traffic Analysis, Stantec Inc.

**Addendum to the SOCTIP Final SEIR
Tesoro Extension Project**

would require restriping of the eastbound approach, and no R/W acquisition would be required. Upon implementation of this PDF, long-term operational impacts related to the Tesoro Extension Project would be less than significant.

Similar to the Preferred Alternative/A7C-FEC-M, a number of beneficial effects would also occur with the Project. These beneficial effects include: 1) peak hour traffic reductions on I-5¹¹; 2) elimination or reduction in deficiencies in the Antonio Parkway and Ortega Highway arterial corridors¹²; and 3) improved local and regional accessibility, resulting in reduced vehicle miles and vehicle hours traveled (refer to Table 3, above).

While minor design alterations have been incorporated into the Project, no changes in traffic impacts are anticipated. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized on the RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and would not affect circulation during short-term construction or long-term operations.

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

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

Utilities and Service Systems. The Final SEIR included an analysis of the Preferred Alternative/A7C-FEC-M's potential impacts related to utilities and service systems. The Final SEIR concluded that no significant impacts to utilities and service systems would occur, and identified a range of mitigation measures to minimize impacts to below significance.

The Project would not result in additional impacts to utilities and service systems beyond those identified in the Final SEIR. There are a number of utility lines and utility facilities in the study area that may be affected, including wastewater, water, electrical, and communication facilities. During construction of the Tesoro Extension Project, utilities and service systems, which may be impacted at locations where lines and facilities are within and adjacent to the disturbance limits would be relocated or protected in place. During final design and in consultation with utility providers, a determination would be made as to which of the identified utilities would be relocated and plans for the relocations would be developed. In further consultation with utility providers, some obsolete utility facilities may be removed at the request of the provider. Utilities that are not removed or relocated would be protected in place during construction.

¹¹ Tesoro Extension Project Traffic Analysis, Table 5-1, Stantec Inc.

¹² Tesoro Extension Project Traffic Analysis, page 4.3, Stantec Inc.

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

While minor design alterations have been incorporated into the Project, no change impacts to utilities and services would occur. The proposed alignment may be shifted slightly to the east to avoid impacts to an existing irrigation reservoir currently utilized for ranching activities by RMV, and would be shifted to the west near the southerly terminus of the Project would occur in order to avoid impacts to an earthen streambed. The areas affected by these minor design alterations are similar to the Preferred Alternative/A7C-FEC-M and are void of any unique development, utilities, or other characteristics that would alter the conclusions reached within the Final SEIR.

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

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

Cumulative Impacts. The Final SEIR included an analysis of cumulative impacts as required under CEQA. The Final SEIR analyzed two primary categories of cumulative projects, consisting of cumulative land development projects and cumulative transportation projects. In comparison to the Tesoro Extension Project, the scope of the cumulative analysis and associated geographic range within the Final SEIR was much larger, since the SOCTIIP build alternatives generally extended substantially further south of Cow Camp Road. As noted within Table 5.4-1, Summary of Cumulative Projects and Potential Cumulative Impacts of the Final SEIR, the SOCTIIP build alternatives were determined to have the potential to result in adverse cumulative effects related to the conversion of agricultural land, cultural resources, visual resources, military resources, mineral resources, paleontological resources, landfill capacity, and recreation resources. As addressed in the Addendum, the Project does not result in any significant impacts, with the exception of visual resources. Therefore, the Project would not contribute to cumulative impacts at the same level that the Preferred Alternative/A7C-FEC-M would have done.

The proposed Project would not result in adverse cumulative impacts not previously discussed in the Final SEIR. The range and severity of cumulative impacts associated with the Project is expected to be less than or similar when compared to the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road. As noted above, the scope and geographic range of cumulative analysis associated with the Tesoro Extension Project are substantially reduced when compared to the SOCTIIP build alternatives. In addition, since the time the Final SEIR was certified (February 2006), the economic recession has affected the rate and scale of growth and associated development activities occurring within the Project area. As a result, the overall intensity of cumulative land development projects is still within the overall projections in the Final SEIR. Although a portion of the primary land development project in the vicinity of the Project site (RMV Ranch Plan) is currently under construction, build out of the Ranch Plan was considered as part of the Final SEIR's cumulative analysis. Moreover, the Final SEIR also considered cumulative transportation projects that included regional MPAH and state highway facilities, some of which are in proximity to the Project site and could result in cumulative impacts (e.g., the La Pata Avenue Gap Closure and the I-5/Ortega Highway Interchange). As such, cumulative effects associated with these transportation facilities were also previously considered as part of the Final SEIR.

Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project

The proposed Project would not affect any military resources, since the Tesoro Extension would not extend through MCB Camp Pendleton. In addition, as discussed in detail within this Addendum, it has been determined that no new or more severe individual impacts would occur when comparing the Tesoro Extension Project to the Final SEIR. Due to the similar degree of individual environmental impacts and nature of cumulative land development/transportation projects in the Project vicinity, cumulative Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of the Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR.

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

3.1 FINDINGS

As described above and outlined in Table 5, Summary of Environmental Impacts, the proposed Project would not result in new or increased impacts as compared to those that were identified in the Final SEIR. The Preferred Alternative/A7C-FEC-M alignment and the proposed Project share similar design characteristics, generally follow the same alignment through the RMV, and encounter similar environmental conditions. The Tesoro Extension Project includes similar PDFs and relevant mitigation measures from the Final SEIR that would remain applicable (refer to Appendix A, Applicable Mitigation Measures/Commitments/Conditions).

The Project does not require major revisions to the Final SEIR, nor does it result in new information of substantial importance that was not known at the time of certification of the Final SEIR. Based upon the evidence included in this Addendum, the proposed Tesoro Extension Project would not result in significant effects not discussed in the Final SEIR, nor would impacts be more severe, new, or different and no previously rejected mitigation measures are found to be feasible.

It is the Lead Agency's finding that the previous environmental document, with this Addendum, may be used to fulfill the environmental review requirements of the Project. Because none of the factors in CEQA Section 21166 apply, a subsequent or supplemental EIR is not required.

**Addendum to the SOCTIIP Final SEIR
Tesoro Extension Project**

3.2 LEAD AGENCY DETERMINATION

On the basis of the analysis provided within this environmental document:

I find that the minor changes to the Project would not result in significant individual or cumulative effects not discussed in the SOCTIIP Final SEIR. In addition, Project impacts would not be more severe, new, or different and no previously rejected mitigation measures are found to be feasible in comparison to the analysis of Preferred Alternative/A7C-FEC-M between Oso Parkway and Cow Camp Road within the Final SEIR. Thus, a Supplemental or Subsequent EIR is not required under *CEQA Guidelines* Section 15163 and an ADDENDUM to the Final SEIR is appropriate.

x

I find that changes to the Project and/or circumstances under which the Project would be undertaken have occurred, which may result in more severe, new, or different environmental impacts as described under *CEQA Guidelines* Section 15162. Minor additions or changes are required to make the Final SEIR adequately apply in the changed situation. Thus, a SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT is required under *CEQA Guidelines* Section 15163.

I find that changes to the Project and/or circumstances under which the Project would be undertaken have occurred, which may result in more severe, new, or different environmental impacts as described under *CEQA Guidelines* Section 15162. Thus, a SUBSEQUENT ENVIRONMENTAL IMPACT REPORT is required under *CEQA Guidelines* Section 15162.



Signature

Valarie McFall, Director, Environmental Services

Printed Name

Foothill/Eastern Transportation Corridor Agency

Agency

February 15, 2013

Date

**Table 5
Summary of Environmental Impacts**

Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/ATC-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
Aesthetics	<p>Impact: A reduction in visual quality and conflicts with existing visual/aesthetic policies.</p> <p>Finding: Significant and unavoidable impact.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, page 7-40.</p> <p>Visual and aesthetic impacts within the Project site would be similar due to the similar alignments, design characteristics, and construction methodology. While minor alterations in design occur, the overall change in the aesthetic characteristics of the vicinity would not be substantial. Note that existing conditions are changing as a result of development of the Ranch Plan.</p>	NO	NO	NO	AS-1 through AS-4 PDF-18-1
Agriculture and Forestry Resources	<p>Impact: Impacts to farmland of prime, unique, and/or statewide importance would occur. However, these impacts would occur south of Cow Camp Road, outside of the Tesoro Extension Project's study area.</p> <p>Finding: Significant and unavoidable impact.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, page 7-7.</p> <p>No farmland of prime, unique, or statewide importance would be affected. No forest land exists within or adjacent to the site.</p>	NO	NO	NO	AG-1 and AGC-1
Air Quality	<p>Impact: CO, HC, NO_x and PM₁₀ impacts during construction would exceed SCAQMD thresholds. NO_x emissions during long-term operation would also exceed SCAQMD thresholds.</p> <p>Finding: Significant and unavoidable impact.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, page 7-20.</p> <p>Construction emissions due to activities within the corridor are expected to be similar since the construction methodology associated with the Project would be substantially the same (e.g., similar design, topography, geologic conditions, and equipment). But, the total construction emissions would be only a portion of those addressed in the SOCTIIP SEIR, since the Tesoro Extension Project is 5.5 miles, shorter than the full ATC-FEC-M. On an operational basis, background conditions and</p>	NO	NO	NO	AQ-1 through AQ-7

Note: Impact findings within Table 5 for the Preferred Alternative/ATC-FEC-M apply to the entire previously-proposed alignment from Oso Parkway to I-5. In certain instances, resources and impacts may not occur within the Tesoro Extension Project site (Oso Parkway to Cow Camp Road).

Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/A7C-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
Biological Resources	<p>traffic volumes identified in the Final SEIR have not substantially changed. Although the Project represents a new roadway within a currently undeveloped area, it would result in regional transportation and air quality benefits. The proposed Project would remain a Transportation Control Measure as the Project is one of the activities included in the SCAG 2012-2035 RTP/SCS that reduces air pollutant emissions by providing relief of existing and projected congestion. These activities generally include toll roads, express lanes, high occupancy vehicle lanes, and dedicated truck toll lanes.</p> <p>Impact: Impacts to wetlands and Waters of the U.S. would be mitigated. Impacts to sensitive plants, plant communities, and habitat fragmentation/wildlife corridors would occur.</p> <p>Finding: Significant and unavoidable impact.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, page 7-24, 7-25, and 7-33.</p>	NO	NO	NO	<p>TE-1 through 7;-10; 12 through 15; 18 through 22; 25 through 29; TE-SWF-1 through 3; WV-1 through 20; 22 through 39; WW-1 through 11; CDFG-1 through 63; CDFG-A1; -A2; PDF-11-1; -11-2;-18.2</p>
Cultural Resources	<p>The Tesoro Extension Project shares a similar alignment and similar biological conditions would be encountered, except that the Tesoro Extension Project avoids impacts to wetlands and Waters of the U.S. Relevant biological mitigation measures from the Final SEIR would remain applicable.</p> <p>Impact: A7C-FEC-M would not result in significant impacts to archaeological, historical, or paleontological resources.</p> <p>Finding: Less than significant impact with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-37 and 7-45.</p> <p>No resources eligible for the National Register of Historic Places would be significantly impacted by the Project. Final SEIR measures related to paleontological resources would remain applicable.</p>	NO	NO	NO	<p>AR-1 through 3; HR-1; P-1 through 3</p>
Geology/Soils	<p>Impact: A7C-FEC-M would not result in significant impacts related to temporary impacts or long-term geological hazards.</p> <p>Finding: Less than significant impact with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, page 7-43.</p>	NO	NO	NO	<p>G-1 through 5</p>

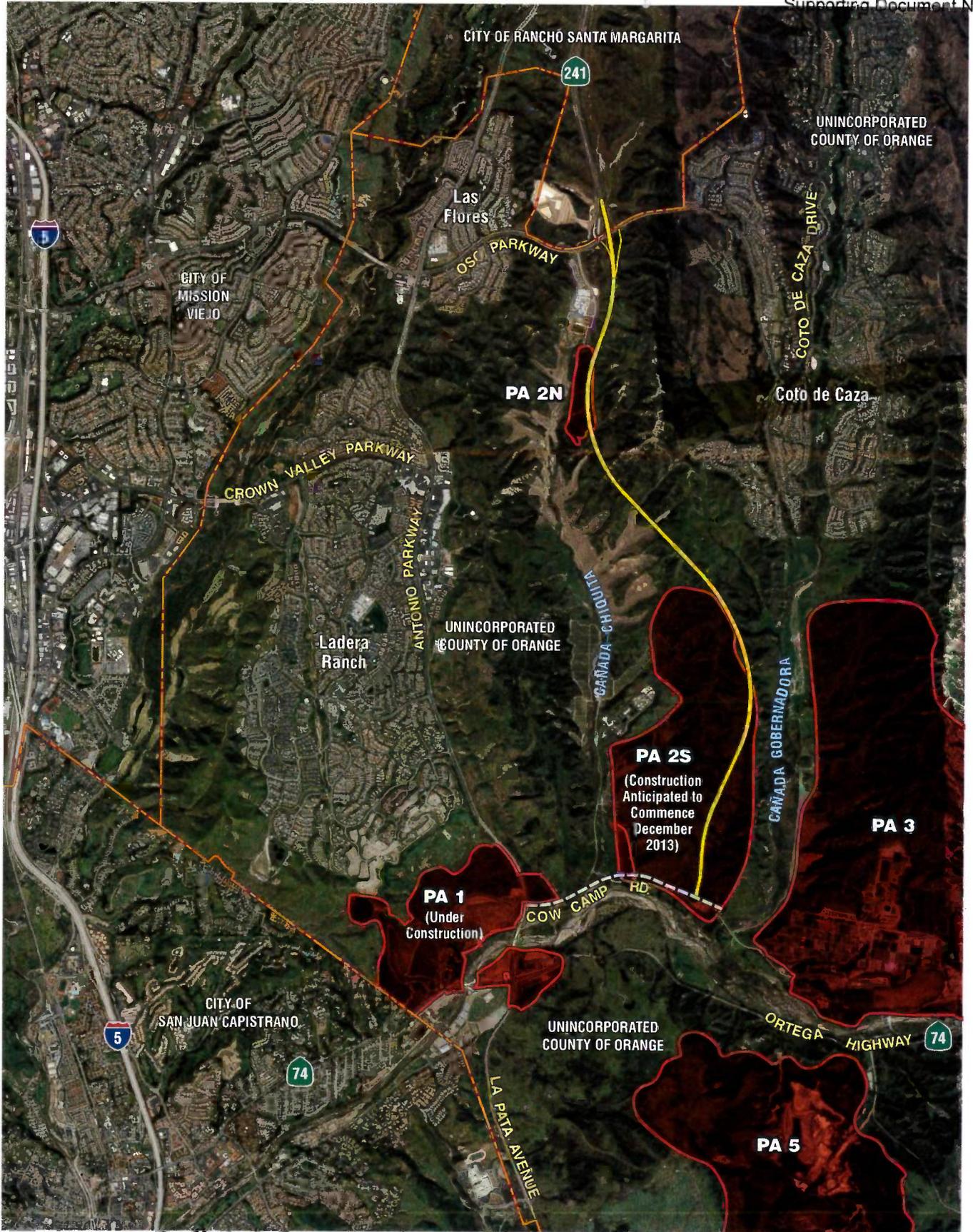
Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/A7C-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
Greenhouse Gas Emissions	<p>The Tesoro Extension Project shares a similar alignment and similar geologic/soil conditions would be encountered. Similar construction/operational measures would be incorporated to minimize impacts.</p> <p>Impact: Not addressed in SOCTIIP SEIR. Studies conducted for the California Coastal Commission demonstrated that the A7C-FEC-M would not result in significant impacts related to GHG emissions or consistency with applicable plans, policies, and regulations.</p> <p>Finding: Not addressed in the SOCTIIP CEQA Findings. Subsequently determined to be a less than significant impact, and confirmed in this Addendum.</p> <p>Reference: N/A</p>	N/A	N/A	NO	N/A
Hazards & Hazardous Materials	<p>Impact: No documented hazardous materials sites were determined to exist along A7C-FEC-M between Oso Parkway and Cow Camp Road.</p> <p>Finding: Less than significant impact with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, page 7-38.</p>	NO	NO	NO	HM-1; -2; -5 through 10; -18
Hydrology/Water Quality	<p>The Project generally follows the same alignment and would encounter similar existing conditions in relation to hazardous materials. Updated technical analysis indicates no Recognized Environmental Conditions (RECs) exist within site boundaries. The Project would not involve the routine use or disposal of large quantities of hazardous materials and would not interfere with implementation of an emergency response or evacuation plan.</p> <p>Impact: Project design features (PDFs) minimize impacts to a less than significant level.</p> <p>Finding: Less than significant impact with mitigation.</p>	NO	NO	NO	WQ-1 through 6 WDR-1 through 7; PDF-9-1 through 9-9

Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/A7C-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
Land Use/Planning	<p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-23 and 7-24.</p> <p>The Project would require a similar range of BMPs/PDFs and would also be in compliance with existing State standards for water quality under the NPDES program.</p> <p>Impact: The OCTA oversees the County's circulation plan, known as the MPAH. The MPAH is reflected in the local General Plans of the individual cities and the County of Orange. Each jurisdiction is responsible for implementing the MPAH part of its General Plan Circulation Element within its jurisdictional boundary. FIETCA has no jurisdiction over land use, but will work with the County of Orange and OCTA to update the MPAH.</p> <p>Finding: Less than significant impact.</p>	NO	NO	NO	NO
	<p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-5.</p> <p>The Tesoro Extension Project is now consistent with the alignment shown on the MPAH. The Ranch Plan accounts for development of the Project and no land use conflicts would occur. The proposed refinements would not result in a significant impact related to any conflict with an applicable land use plan, policy, or regulation. The Project would not require the acquisition of any existing homes or businesses. Mitigation within the Final SEIR would remain applicable to the Tesoro Extension Project.</p>				
Mineral Resources	<p>Impact: The A7C-FEC-M alignment between Oso Parkway and Cow Camp Road would not affect mineral resources.</p> <p>Finding: Less than significant</p>	NO	NO	NO	N/A
	<p>The Project site is not located within an area of known mineral resources, either of regional or local value.</p>				
Noise	<p>Impact: A7C-FEC-M would not result in significant short-term or long-term noise impacts upon implementation of required mitigation measures. The Final SEIR determined that construction impacts would be less than significant with adherence to mitigation measures, and since impacts would be temporary and no nighttime construction would occur. On a long-term basis, the Final SEIR determined that A7C-FEC-M would not</p>	NO	NO	NO	N-1 through 8, NC-1

Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/A7C-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
	<p>result in significant impacts as there would be no exceedance of Community Noise Equivalent Level (CNEL) criteria.</p> <p>Finding: Less than significant with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-12.</p> <p>Construction noise due to activities within the corridor are expected to be similar since the construction methodology associated with the Project would be substantially the same (e.g., similar design, topography, geologic conditions, and equipment). On an operational basis, background conditions and traffic volumes identified in the Final SEIR have not substantially changed. The proposed Project is not expected to result in design or operational changes that would result in additional stationary or roadway noise that would substantially alter conclusions within the Final SEIR.</p>				
Population/Housing	<p>Impact: A7C-FEC-M could potentially contribute to impacts relating to facilitating or supporting growth.</p> <p>Finding: The facilitated growth, in and of itself, is not an adverse impact.</p> <p>Reference: SOCTIIP Final SEIR, Section 6.0, pages 6-23 and 6-24.</p> <p>The Project's growth-potential effects would occur within the overall distribution and intensity of development approved by the County under the proposed RMV plan. RMV's plans show circulation elements with and without an extension of the SR 241 Toll Road and the development areas in the land use plan do not shift, intensify or change under the with and without scenario. The buildout of RMV would occur with or without the Project, and The Ranch Plan's growth inducing effects have been previously analyzed within the EIR prepared for the RMV Ranch Plan that was certified by the County in 2004. Other opportunities for future growth within the Project area beyond the RMV are limited. As such, the Project would not result in growth inducing impacts. Additionally, the Project would not result in the loss of existing housing or displacement of residents.</p>	NO	NO	NO	YES
Public Services	<p>Impact: The A7C-FEC-M alignment between Oso Parkway and Cow Camp Road would not significantly affect public services.</p> <p>Finding: Less than significant with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-46.</p> <p>The Project is not anticipated to result in substantial growth inducement. Thus, demand for fire protection, law enforcement, schools, recreational services, or other public services is not expected to increase. Generally, the Project is expected to result in beneficial impacts in regards to fire protection and law enforcement, since the Project would consist of a new roadway providing enhanced regional access for emergency vehicles.</p>	NO	NO	NO	PS-1 through 9; -13

Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/A7C-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
Recreation	<p>Impact: A7C-FEC-M would significantly impact recreational resources. However, these resources are outside of the Tesoro Extension Project alignment, south of Cow Camp Road (e.g., within The Donna O'Neill Land Conservancy or recreational areas along the coast). Thus, the Final SEIR did not identify any significant effects to recreational resources for A7C-FEC-M between Oso Parkway and Cow Camp Road.</p> <p>Finding: Significant and unavoidable impact.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-48.</p> <p>The proposed Project would not result in additional impacts to recreation beyond those identified in the Final SEIR. There are no public or private parks, recreational facilities, or wildlife refuges that would be directly impacted by the Project. Although Tesoro High School is located adjacent to the Project alignment and is equipped with sports fields, a swimming pool, and gymnasium, this facility is not considered accessible to the general public. The Project would not result in any adverse impacts related to these facilities on the Tesoro High School campus. In addition, recreational facilities associated with buildout of the RMV would not be affected by the Project. The Ranch Plan was approved at a General Plan or conceptual level plan, with development areas shown as "bubbles" with no grading plan or placement of residential units or buildings. Development on the Ranch will not occur without additional, more detailed planning through an Area Plan process with the County of Orange. The future Area Plans can site development away from the Tesoro Extension Project while staying within the development bubbles. Thus, no conflicts with The Ranch Plan would occur under the proposed Project, and no impacts to proposed recreational facilities would occur.</p>	NO	NO	NO	R-5
Transportation/Traffic	<p>Impact: A7C-FEC-M would not significantly impact tollway, highway, or arterial operations.</p> <p>Finding: Less than significant impact with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-4.</p> <p>A potential Project impact could occur at the intersection of Antonio Parkway/La Paiz Avenue and Ortega Highway. Mitigation has been incorporated into the Project that would consist of the reconfiguration of the eastbound approach to the intersection to provide one through lane, a shared through/right-turn lane, and a separate right turn lane. Upon implementation of this mitigation measure, impacts related to the Tesoro Extension Project would be less than significant. Mitigation for temporary construction impacts (i.e., preparation of a CTMP) would remain applicable to reduce traffic impacts during the construction process. Similar to A7C-FEC-M, a number of beneficial effects would also occur with the Project. These beneficial effects include: 1) peak hour traffic reductions on I-5; 2) elimination or reduction in deficiencies in the Antonio Parkway and Ortega Highway arterial corridors; and 3) improved local and regional accessibility, resulting in reduced vehicle miles and vehicle hours traveled.</p>	NO	NO	NO	CT-1

Environmental Issue	Impacts Analysis and Findings for Preferred Alternative/A7C-FEC-M and Reference	Does Proposed Project Involve New or Substantially More Severe Impacts?	Any New Circumstances Involving New or Substantially More Severe Impacts?	Any New Information Requiring New Analysis or Verification?	Prior Environmental Document's Mitigation Measures Implemented or Addressing Impacts?
Utilities/Service Systems	<p>Impact: No significant impacts to utilities and services systems would occur with implementation of recommended mitigation.</p> <p>Finding: Less than significant impact with mitigation.</p> <p>Reference: SOCTIIP Final SEIR, Section 7.0, pages 7-46.</p> <p>During construction, any existing utilities which may be impacted would be relocated or protected in place. In consultation with utility providers, some obsolete utility facilities may be removed at the request of the provider. Utilities that are not removed or relocated will be protected in place during construction.</p>	NO	NO	NO	U-1; U-2



-  Proposed Extension
-  Approved RMV Development Area

TESORO EXTENSION PROJECT
Site Vicinity Map
 CEQA ADDENDUM

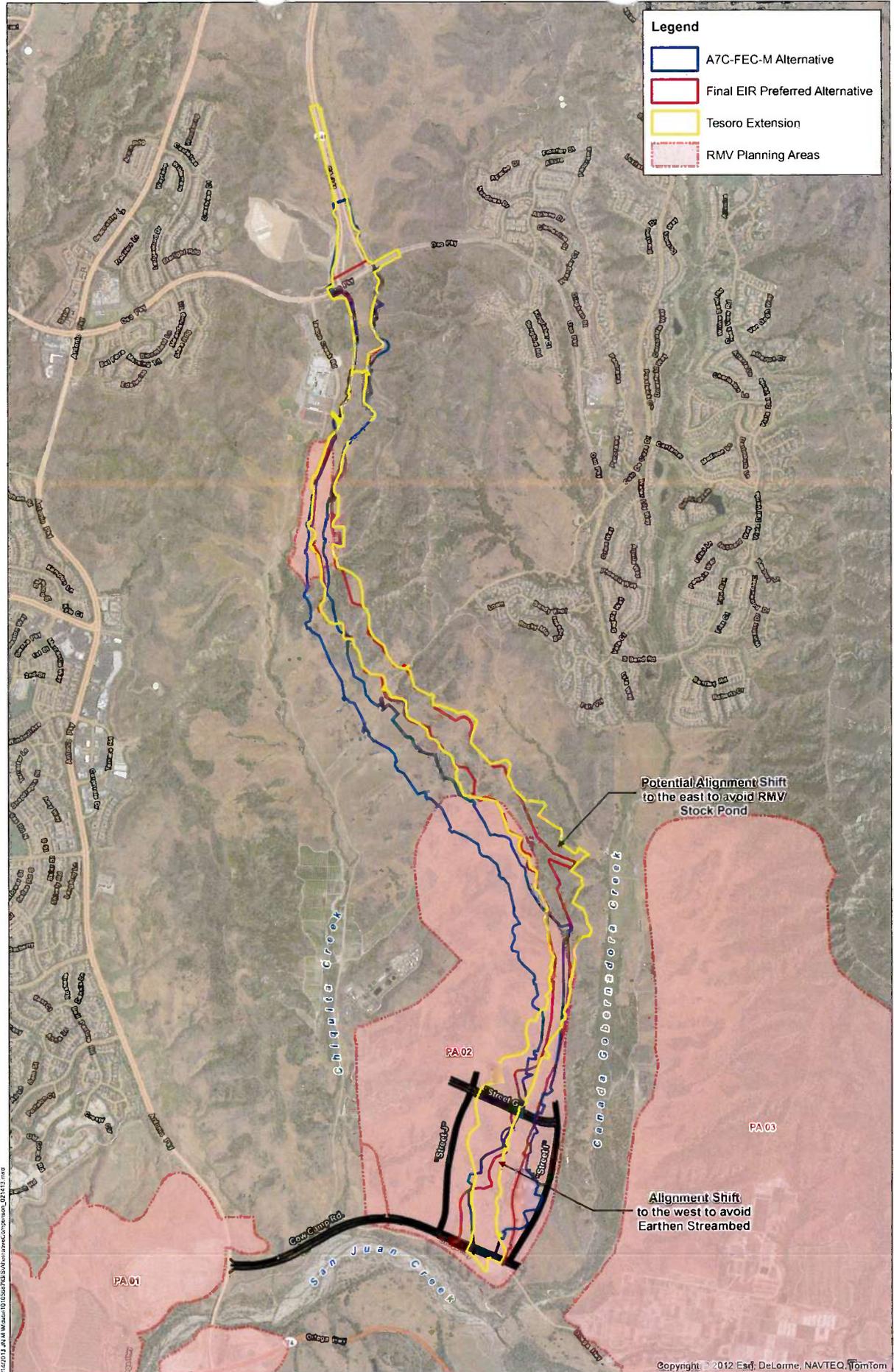
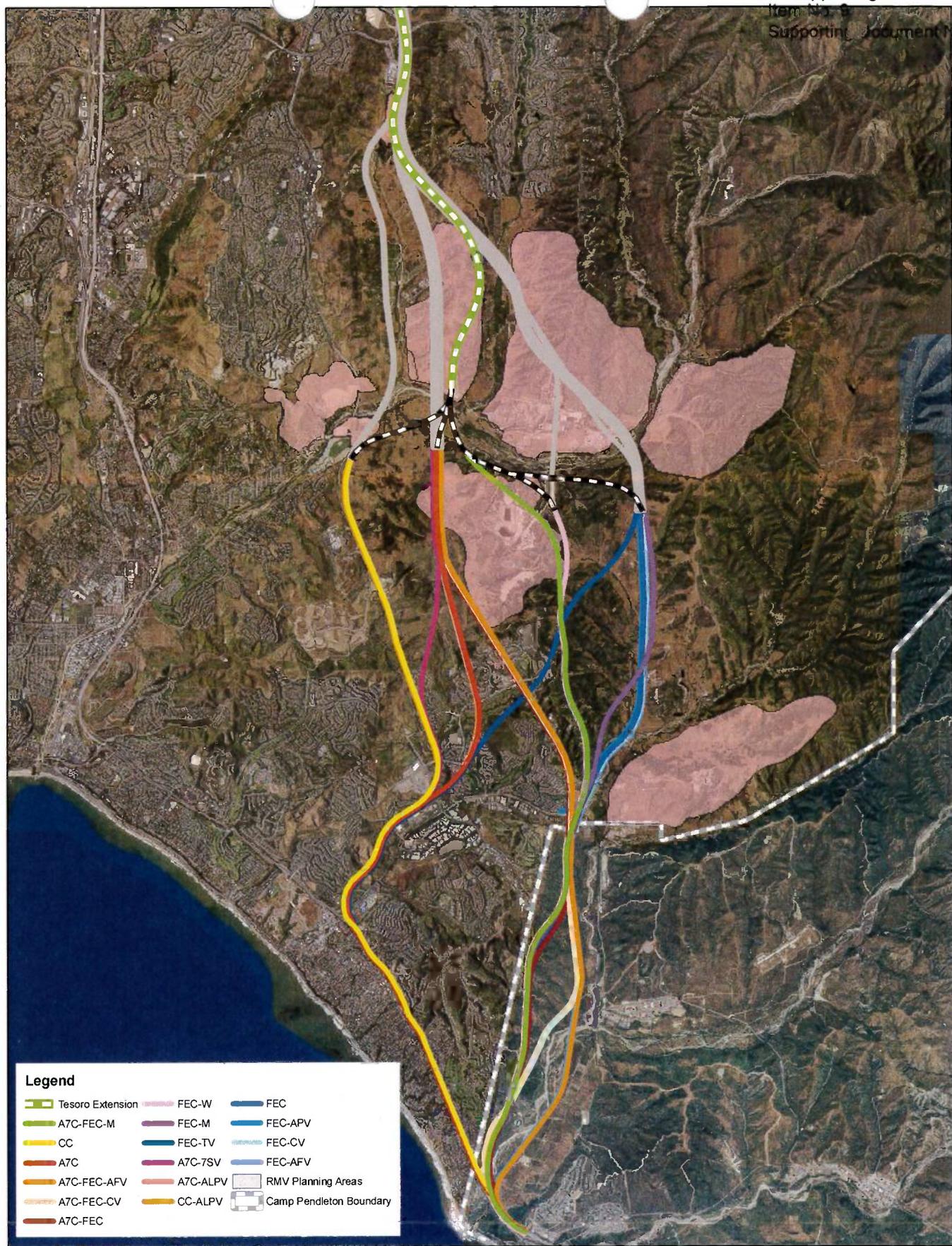


Figure 3



Legend

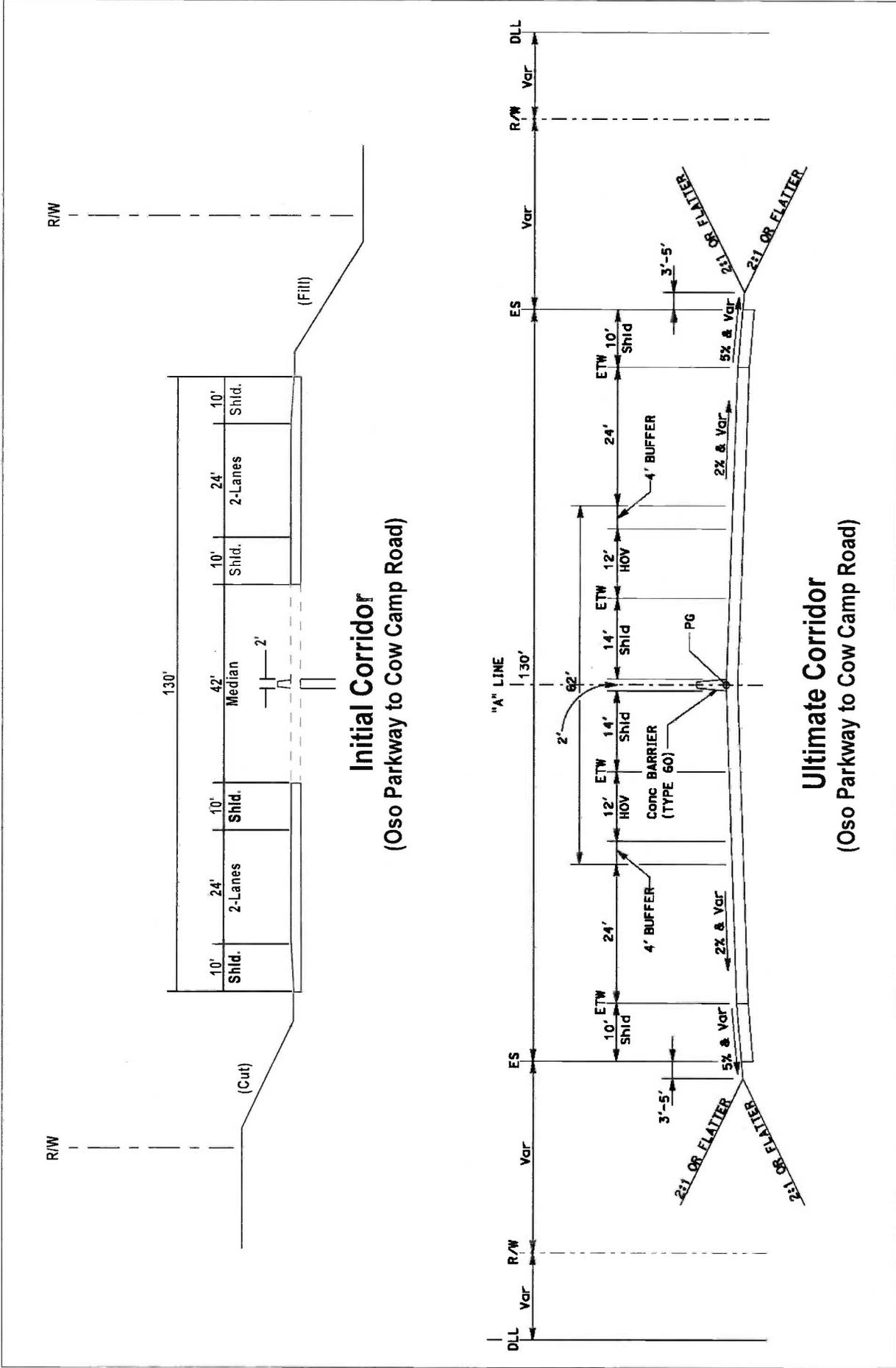
Tesoro Extension	FEC-W	FEC
A7C-FEC-M	FEC-M	FEC-APV
CC	FEC-TV	FEC-CV
A7C	A7C-7SV	FEC-AFV
A7C-FEC-AFV	A7C-ALPV	RMV Planning Areas
A7C-FEC-CV	CC-ALPV	Camp Pendleton Boundary
A7C-FEC		



2/14/13 JN 129895-18793 MAS

TESORO EXTENSION PROJECT
Future Alignment Alternatives
 CEQA ADDENDUM

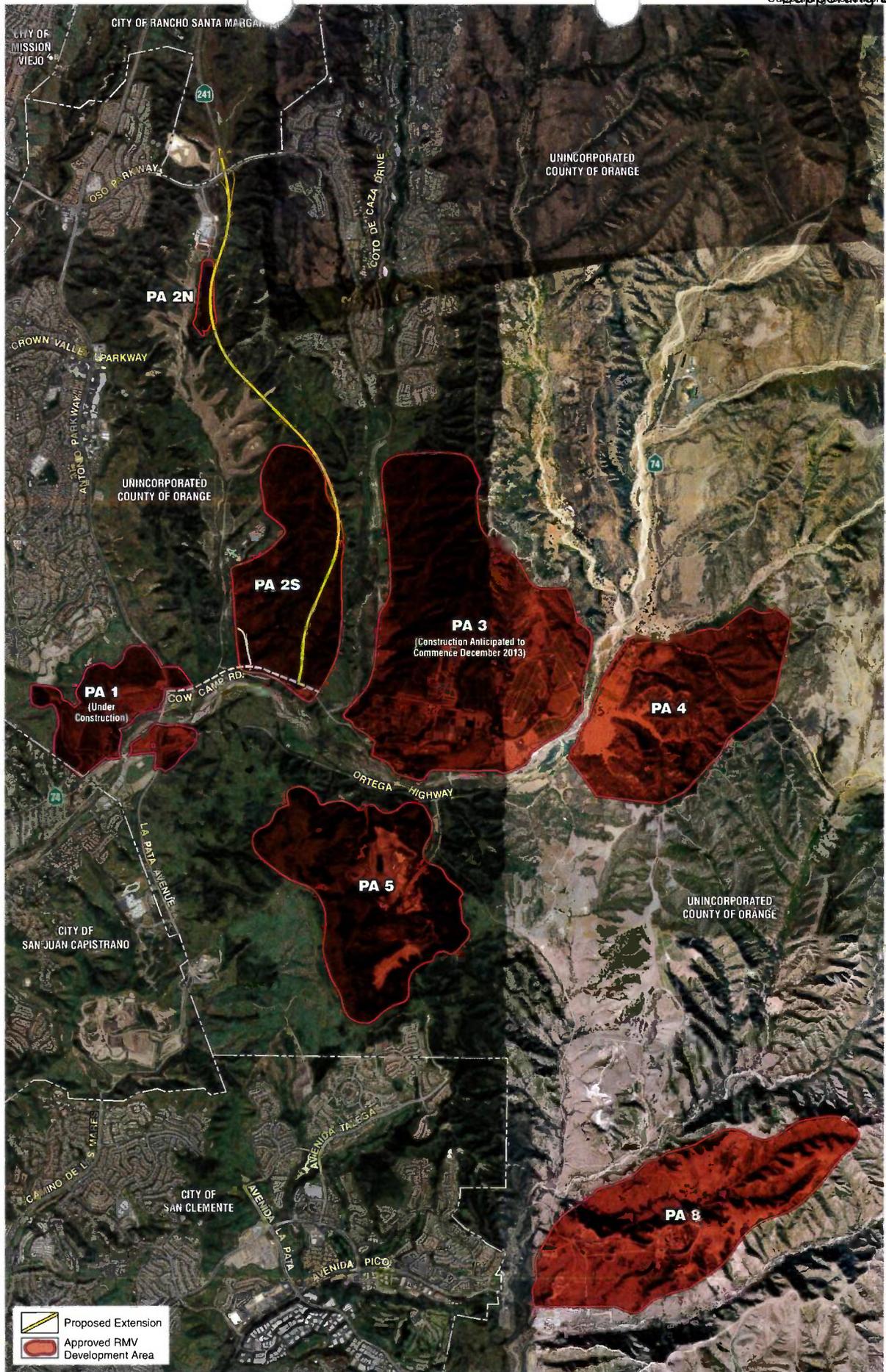
Figure 4



Source: TCA 2012
 not to scale
 2/13/13 JN 129695-16793 MAS

TESORO EXTENSION PROJECT
Typical Cross-Section
 CEQA ADDENDUM

Figure 6



APPENDIX A
APPLICABLE MITIGATION
MEASURES/COMMITMENTS/CONDITIONS

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

This Appendix includes all applicable mitigation measures and commitments from the SOCTIIP Final SEIR, and the Tesoro Extension Section 1602 Streambed Alteration Agreement and anticipated Waste Discharge Requirement (WDR) permit. It should be noted that the WDR is not final, so the anticipated conditions (WDR-1 through WDR-7) could change and will be revised, if necessary, to reflect the final approvals. Where mitigation measures/commitments/ conditions have been revised as shown in this table, the revisions generally reflect tailoring the measure to current conditions within and around the footprint and the Project design; no revisions shown on this table change the effectiveness of the mitigation measure.

Mitigation Measures/Commitments/Conditions

NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
Agriculture		
AG-1	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During final design, and in coordination with RMV and its agricultural leaseholders, the contractor will finalize the realignments of access roads on the ranch to provide cattle and equipment crossings to minimize impediments to cattle movement and routine agricultural operations and normal business activities.</p>	2006 SOCTIIP FSEIR, Section 4.3.4.3
AGC-1	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Prior to the start of any construction activity, written notification will be provided to agricultural property owners or leaseholders immediately adjacent to the disturbance limits for the SOCTIIP build Alternative Project. The notification is to indicate the intent to begin construction, including an estimated date for the start of construction. This notification shall be provided at least three, but no more than 12, months prior to the start of construction activity.</p>	2006 SOCTIIP FSEIR, Section 4.3.4.4
Air Quality		
AQ-1	<p>During construction, contractor specifications shall incorporate directions to contractors to control fugitive dust. Fugitive dust shall be controlled by regular watering, paving construction roads, or other dust preventive measures, as defined in SCAQMD Rule 403. After clearing, grading, earth moving or excavation the following activities will be performed by the construction contractor:</p> <ul style="list-style-type: none"> a. Seeding and watering will be performed until viable vegetation cover is in place in inactive areas. b. Soil binders will be spread. c. Areas will be wet down sufficiently to form a crust on the surface. Repeated soakings will be performed as necessary to maintain this crust. d. Reduce speeds to 10 to 15 mph in construction zones on unpaved areas. 	2006 SOCTIIP FSEIR, Section 4.7.4.2 SCAQMD Rule 403
AQ-2	<p>During construction, measures contained in Tables 1 and 2 of SCAQMD Rule 403 will be implemented by the construction contractor. Control of particulate emissions from construction activities is best controlled through the requirements contained in SCAQMD's Rule 403, Tables 1 and 2. This potentially results in a much higher reduction of particulate emissions than if the air monitoring option contained in Rule 403 was employed.</p> <p>[The air monitoring option requires monitoring around the project site, and as long as pollutant levels do not exceed threshold limits, no pollutant emission reduction measures are employed. The measure would be triggered prior to the initiation of grading.]</p>	2006 SOCTIIP FSEIR, Section 4.7.4.2 SCAQMD Rule 403
AQ-3	<p>During construction, the contractor shall be responsible for sweeping all public streets adjacent to the project site once a day if visible soil materials are carried to adjacent streets (recommend water sweepers with reclaimed water). This condition would apply to those areas where construction traffic leaves the project site and travels onto public roadways.</p>	2006 SOCTIIP FSEIR, Section 4.7.4.2 SCAQMD Rule 403
AQ-4	<p>During construction, the contractor shall be responsible for installing wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash trucks and any equipment leaving the site each trip.</p>	2006 SOCTIIP FSEIR, Section 4.7.4.2 SCAQMD Rule 403
AQ-5	<p>During final design, contractor specifications shall require that contractors implement the following measures:</p> <ul style="list-style-type: none"> - Use low emission mobile construction equipment. - Maintain construction equipment engines by keeping them tuned. - Use low sulfur fuel for stationary construction equipment. This is required by SCAQMD Rules 431.1 and 431.2. 	2006 SOCTIIP FSEIR, Section 4.7.4.2 SCAQMD Rule 403

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<ul style="list-style-type: none"> - Utilize existing power sources (i.e., power poles) when feasible. This measure would minimize the use of higher polluting gas or diesel generators. - Configure construction parking to minimize traffic interference. - Minimize obstruction of through-traffic lanes. When feasible, construction should be planned so that lane closures on existing streets are kept to a minimum. - Develop a traffic plan to minimize traffic flow interference from construction activities (the plan may include advance public notice of routing, use of public transportation and satellite parking areas with a shuttle service). - Include in construction grading plans a statement that work crews shut off equipment when not in use. - Support and encourage ridesharing and transit incentives for the construction crew. 	
AQ-6	During construction, any material deposited onto paved roads due to a major storm event must be removed within 72 hours of the event by the contractor. Additional time is allowed for mudslides or similar events that block traffic over the material. In the event of road closures due to mudslides or other overwhelming accumulations of material, public access should be restricted until all the material is removed.	2006 SOCTIIP FSEIR, Section 4.7.4.2 SCAQMD Rule 403
AQ-7	During construction, the contractor shall be responsible for implementing a control measure which specifies three "preventive" and one "mitigative" control option(s) that would be mandatory of all unpaved road connections with paved public roads. The four mandatory control options include: <ul style="list-style-type: none"> - Paving the last 100 feet from an unpaved roadway connection with a paved road. - Chemical stabilization of the last 100 feet from an unpaved roadway connection with a paved road at sufficient frequency and concentration to maintain a stabilized surface at all times. - Installation of dirt removal devices (e.g., tire cleaning device, grizzlies, etc.) - Cleaning of public paved road surface at any time visible track-out occurs. 	2006 SOCTIIP FSEIR, Section 4.7.4.3
Archaeological Resources		
AR-1	<p>Prior to the start of construction activity, a qualified archaeologist shall be retained by the F/ETCA or other implementing agency/agencies to perform subsurface test level investigation and surface collection for all archaeological sites that have not had formal determinations of eligibility for listing on the NRHP. The test level report evaluating the site shall include a discussion of significance (scientific data potential), integrity (location, physical characteristics, and condition), mitigation recommendations, and cost estimates. Final mitigation shall be carried out based on the report recommendations, input by FHWA and SHPO, and a determination as to the site's disposition by the F/ETCA with concurrence of the FHWA.</p> <p>Possible recommendations made by a qualified archaeologist include, but are not limited to, preservation, data recovery, or no mitigation necessary. In addition, F/ETCA or other implementing agency/agencies shall retain a qualified Native American monitor to be present during the evaluation excavations for sites within the project area. Preference will be given to experienced Native American monitors who are members of the local tribal groups identified as having cultural ties to the study area.</p>	2006 SOCTIIP FSEIR, Section 4.16.4.2
AR-2	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>In conjunction with the final design, the F/ETCA or other implementing agency/agencies shall retain a qualified archaeologist to complete a suitable historic property treatment plan for all eligible cultural resources that will be impacted by the SOCTIIP Project. A final report of the data recovery operation shall be submitted to the F/ETCA, Caltrans, and FHWA prior to any grading in the archaeological site areas. In addition, F/ETCA or other implementing agency/agencies shall retain a qualified Native American monitor to be present during the treatment program for sites within the project area. Preference will be given to experienced Native American monitors who are members of the local tribal groups identified as having cultural ties to the study area.</p>	2006 SOCTIIP FSEIR, Section 4.16.4.2
AR-3	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Prior to the start of construction activity, the F/ETCA or other implementing agency/agencies shall retain a qualified archaeologist. The archaeologist shall establish procedures (monitoring plan) for archaeological resource surveillance, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the cultural resources, as appropriate. <i>Environmentally Sensitive Areas (ESAs) will be established and protected through fencing or other means prior to construction.</i> The archaeologist shall also be present at the pre-grading conference to explain the established procedures based on a preapproved monitoring plan. If additional or unexpected archaeological resources are discovered, a qualified archaeologist shall determine</p>	2006 SOCTIIP FSEIR, Section 4.16.4.2

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	appropriate actions, in cooperation with the F/ETCA, for testing and/or data recovery. The archaeologist shall submit a follow-up report to the F/ETCA that shall include the period of inspection, an analysis of any artifacts found, the results of any testing or data recovery, and the present repository of the artifacts. In addition, F/ETCA or other implementing agency/agencies shall retain a qualified Native American monitor to be present during ground-disturbing construction activities within the project area. Preference will be given to experienced Native American monitors who are members of the local tribal groups identified as having cultural ties to the study area.	
Aesthetics		
AS-1	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Adjacent landforms affected shall be re-contoured to a 2:1 slope or as determined appropriate through geotechnical investigation to provide a smooth and gradual transition between modified landforms and existing grade and to minimize the appearance of manufactured grading. Use of crib-type retaining walls in place of slopes shall be minimized, except where necessary to provide greater landform diversity, reduce fill slopes, minimize long, flat slope surfaces or potentially salvage rock outcroppings. In areas where sensitive habitat is not prevalent, the top and toe of the slope edges shall be rounded to reduce the angular effects of manufactured grading. The top of slopes where the surface breaks the horizon or ridgeline shall be undulated to avoid a straight edge along the skyline. For slopes greater than 20 m (65.6 feet), Terrace drains shall be used to break up slope surfaces. The F/ETCA shall prepare Aesthetic Design Guidelines for the project, similar to the guidelines for the San Joaquin Hills Transportation Corridor and the Foothill/Eastern Transportation Corridor. It is not possible to provide these guidelines at this stage of the project. The guidelines will be developed during final design of a preferred Alternative. The Design Guidelines shall specifically address grading, berm design, slopes, benches and the incorporation of sound and retaining walls. These Guidelines will be used in conjunction with the Landscape Design Guidelines described in measure AS-2 to minimize the visual impacts of the build Alternatives.</p>	2006 SOCTIIP FSEIR, Section 4.18.4.2
AS-2	The F/ETCA shall prepare Landscape Design Guidelines that will specify plant species that will either be seeded or planted on all exposed areas such that these areas will blend with the surrounding vegetated areas. Native vegetation shall be placed in appropriate locations and densities to fit into the natural setting. Landscaping with varied height and species diversity shall be used and material selection, location of native plant materials and sculptured grading shall emulate the adjacent natural setting. Terrace drains shall be screened with periodic placement of native plant materials in a random manner to help blend these drainage facilities into the slope and not unintentionally emphasize these facilities. The Landscape Design Guidelines will include the locations of the shrubs and/or vining species, where appropriate, at the base of soundwalls to blend these structures as much as possible with the surrounding areas. All landscaping treatments and materials shall be consistent with the Landscape Design Guidelines.	2006 SOCTIIP FSEIR, Section 4.18.4.2
AS-3	Lighting per Caltrans policies and procedures as set forth in the Caltrans Traffic Manual shall be installed by the F/ETCA along the corridor. Lighting shall be such that Partial Interchange Lighting (PIL) with two electroliers at each interchange ramp, positioned per Caltrans standards, is provided. Additional and/or supplemental lighting shall be provided where necessary for safety. Toll collection plazas and their adjacent roadways shall be continuously lit. The mainline corridor shall not be continuously lit.	2006 SOCTIIP FSEIR, Section 4.18.4.2
AS-4	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>In conjunction with operation of the corridor Alternatives, light shall be applied as effectively as possible by the F/ETCA, minimizing both the glare of any light source and the spillover of light onto areas outside of the corridor right-of-way. The vertical or horizontal illuminance from roadway lighting sources shall not illuminate any surface outside of the right-of-way greater than 1/10 of the road's average horizontal illuminance. On the segment through The Donna O'Neill Conservancy, there shall be no illumination of any surface in The Conservancy outside the right-of-way of the SOCTIIP Alternative due to roadway lighting sources installed by the F/ETCA.</p>	2006 SOCTIIP FSEIR, Section 4.18.4.2
Construction		
CT-1	A Construction Traffic Management Plan (CTMP) will be developed during final design by the F/ETCA. The CTMP will include, but not be limited, to: <ul style="list-style-type: none"> - Identification of designated haul routes in consultation with the affected local jurisdictions. - Limiting construction truck and haul traffic to designated routes only. - Public information and promotional activities including distribution of newsletters, brochures, 24- 	2006 SOCTIIP FSEIR, Section 3.6.1

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>hour information hot line and press releases. The F/ETCA will coordinate with businesses adjacent to the construction areas and prepare plans for improving carpooling, transit and other shared ride services.</p> <ul style="list-style-type: none"> - The use of fast track construction techniques to speed construction times. - Construction scheduling (start/stop times, major materials deliveries, export hauling, etc.) should be scheduled to avoid AM and PM peak traffic periods on adjacent streets to the extent feasible, so that the majority of construction related traffic occurs outside of peak commuting times. <p>Identification of alternative routes and routes across the construction areas for emergency and school vehicles developed in coordination with the affected agencies.</p> <ul style="list-style-type: none"> - Changeable message boards and alternative route signs should be used. - Identification of additional traffic enforcement (increased patrols), as needed to ensure public safety in the vicinity of construction areas and detour routes. - Coordination and implementation of improved/modified signal timing and synchronization at intersections near the construction area and along routes adversely affected by construction traffic. - Installation of visual barriers or paddle screens around construction areas to help reduce "rubbernecking" by travelers. - Coordinate with Caltrans and local agencies to ensure that signage for haul routes, detour routes and public information is consistent. 	
Earth Resources		
G-1	<p>Prior to final design a design level geotechnical report will be prepared. This report will document potential soil-related constraints and hazards such as slope instability, settlement, liquefaction or related secondary seismic impacts that may be present. Acceptance of the report will be subject to approval by the F/ETCA and other agencies that may have jurisdiction. A minimum factor of safety of 1.5 shall be used to determine the final slope configuration. The report shall also include:</p> <ul style="list-style-type: none"> - Evaluation of potentially expansive soils and recommendations regarding construction procedures and/or design criteria to minimize the effect of these soils on the development of the corridor. <p>The design level geotechnical studies will identify potentially liquefiable areas and provide recommendations for mitigation. Any areas that require mitigation would be within the disturbed areas, and no additional impacts would result.</p>	2006 SOCTIIP FSEIR, Section 3.6.1
G-2	In conjunction with final design, it will be demonstrated that side slopes shall be designed and graded so that the potential for surface erosion of the engineered fill is not increased from natural conditions.	2006 SOCTIIP FSEIR, Section 4.20.4
G-3	In conjunction with construction activity, native vegetation with good soil-binding characteristics and low water requirements will be planted on engineered slopes to reduce erosion and slope instability.	2006 SOCTIIP FSEIR, Section 4.20.4
G-4	A quality assurance/quality control plan will be maintained during construction. This will include observing, monitoring and testing by a geotechnical engineer and/or geologist during construction to confirm that geotechnical/geologic recommendations are fulfilled, or if different site conditions are encountered, appropriate changes are made to accommodate such issues.	2006 SOCTIIP FSEIR, Section 4.20.4
G-5	A detailed review will be made to locate all groundwater wells within the project footprint. Any groundwater wells that occur within the project footprint will be abandoned properly during project construction. As may be required, (i.e., for active wells), the water supply provided by the well will be replaced. Replacement water may be provided by a variety of means, such as installing a new well or a connection to municipal supply.	2006 SOCTIIP FSEIR, Section 4.20.4
Hazardous Materials		
HM-1	Groundwater testing for the presence of pesticides, nitrates, metals and petroleum hydrocarbons will be required by the Regional Water Quality Control Board (RWQCB) prior to construction in all areas where excavation may extend into groundwater based on final design criteria. All wastewater generated during construction will meet all applicable requirements of the RWQCB prior to disposal.	2006 SOCTIIP FSEIR, Section 4.17.4.2
HM-2	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>In areas immediately adjacent to existing roads proposed for construction (arterials), soil samples will be collected and analyzed for lead concentrations during final design, consistent with "Lead Testing Recommendations for Districts with Aerially Deposited Lead (ADL) Variance" (Caltrans 2001), "Invoking the Aerially Deposited Lead Variance" (Caltrans, no date), DTSC "Variance 00-H-VAR 07", and Standard Special Provision SSP 19-900, S5-740. If lead-affected soil is found, the results/conclusions will be included in the Site Investigation Report, the Standard Special Provisions (SSP) and the Material Information Handout (MIH). The SSP and MIH will be incorporated in design specifications and will include measures to safeguard public health before and during construction.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>Depending on the concentrations and volumes encountered, excavation and disposal of lead-impacted soil may be required. If such excavation is indicated, procedures for handling and disposal will be included in the design specifications. Soil contaminated with ADL will be removed and disposed of, in concurrence with the variance issued to the California Department of Transportation (Caltrans) by the California Department of Toxic Substances Control (DTSC). This material may be reused for embankment fill, retaining wall backfill and/or capped with an appropriate amount of clean fill material. Depending on the concentrations and volumes encountered, excavation and disposal of lead-impacted soil may be required. If such excavation is indicated, procedures for handling and disposal will be included in the design specifications. Soil contaminated with ADL will be removed and disposed of, in concurrence with the variance issued to the California Department of Transportation (Caltrans) by the California Department of Toxic Substances Control (DTSC). This material may be reused for embankment fill, retaining wall backfill and/or capped with an appropriate amount of clean fill material.</p> <p>Specifically, DTSC granted Caltrans a variance in 2000 to allow for the use of some lead contaminated soils for fill and backfill during construction of freeway improvements, provided that Caltrans' handling and use of those soils are consistent with the conditions, limitation and requirements described in that variance. A copy of that variance is available for review at the Caltrans District 12 office. This variance is valid through September 22, 2005 per Caltrans and will need to be renewed. It is anticipated that all of the lead contaminated soil in Project the SOCTIIP study area affected by the Alternatives would be used during the construction of the proposed project. Although there is not expected to be the need to remove and dispose of any lead contaminated soil off site during construction, any excess contaminated soil would be disposed of consistent with all applicable federal, state and local regulations.</p>	
HM-5	<p>Consistent with the requirements of the South Coast Air Quality Management District (SCAQMD), asbestos sampling and notification will be implemented prior to any demolition or renovation of existing bridges, road structures or buildings. All asbestos containing building waste materials will be properly handled and disposed of consistent with all applicable federal, state and local regulations. Formal notification to SCAQMD will be made at least 10 days before any demolition work, regardless of whether or not asbestos is known to be present.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2
HM-6	<p>If any existing thermoplastic or painted traffic stripes on existing roads are proposed for removal, testing of those stripes will be performed prior to construction to assess the level of lead and chromium. The testing will identify specific actions that will be implemented to safely remove and dispose of these stripes. It is also possible that some components of bridges or other highway infrastructure may include asbestos-containing materials (ACMs). Building materials in all structures slated for demolition will be surveyed for asbestos content before demolition begins and any materials found to be ACMs will be removed (abated) before demolition, as described in measure HM-5.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2
HM-7	<p>All construction activities will be required to comply with existing federal, state and local regulations regarding the handling, use, storage and disposal of hazardous materials, including specific regulations on response in the event of accidental release as determined by a qualified Biologist.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2
HM-8	<p>If leakage or damage from existing utilities is identified during construction, appropriate containment and remedial measures will be implemented, as necessary, in consultation with the affected utility provider and in compliance with existing local, state and federal regulations.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2
HM-9	<p>During final design, an updated regulatory database report will be obtained and regulatory records for identified sites of concern, such as leaking underground storage tank locations, will be reviewed. The intent of obtaining and reviewing this updated information will be to evaluate changes in, or the progress of, ongoing monitoring and remediation activities at those properties within or immediately adjacent to the disturbance limits for the selected Alternative. The results of this additional database and records review will be used in developing the final construction plans and schedules.</p> <p>Depending on the location, nature, concentrations and potential risk of chemically affected soil identified prior to and/or grading activities, remedial measures, consistent with the measures provided here, may be necessary to minimize impacts to the environment and the public associated with changes in the updated status of identified sites of concern.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2
HM-10	<p>The removal of underground storage tanks, if any are affected, will be coordinated by the facility tenant or property owner (which could be the current owner, the F/ETCA, Caltrans or the applicable local jurisdiction), and regulatory closure would be directed and approved by the applicable local oversight regulatory agency. These local oversight regulatory agencies may include the Orange County Health Care Agency, San Diego Hazardous Materials Management District and/or the San Diego and/or Santa Ana Regional Water Quality Control Boards (RWQCBs). Appropriate mitigation</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	will include monitoring the progress of UST closure activities through periodically updating the regulatory database review.	
HM-18	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>If previously unknown hazardous materials or objects that could contain hazardous materials (such as an undocumented underground storage tank) are discovered during construction, construction personnel will notify F/ETCA immediately and implement measures to control and characterize the materials encountered, including notification of hazardous materials emergency response personnel as appropriate. Characterization of the possible hazardous materials will be similar to the provisions of HM-12. The construction contractor will provide for this contingency in the Health and Safety Plan for the project.</p>	2006 SOCTIIP FSEIR, Section 4.17.4.2
Noise		
N-1	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During construction, the construction contractor will be responsible for limiting hours of construction in a manner consistent with the Orange County Noise Ordinance. This Ordinance prohibits construction and grading activities during the hours of 8:00 PM and 7:00 AM on weekdays and Saturdays, or at any time on Sunday or a Federal holiday in circumstances where the ordinance noise standards may otherwise be exceeded. The impact analysis indicates that the restriction of construction hours would typically occur when pile driving is within 850 m (2,800 ft) of noise sensitive land uses, heavy grading occurs within 1,500 m (5,000 ft) of noise sensitive land uses, and when general construction occurs within 275 m (900 ft) of noise sensitive land uses. However, these distances are only a guide due to the large variation in construction activities. In all cases, compliance with the Orange County Noise Ordinance and/or any applicable City Noise Ordinance is the critical requirement.</p> <p>However, there may be a potential need to conduct nighttime pile driving during construction of corridor Alternatives that have a direct connection with I-5 and the Alternatives which widen I-5. Where proposed pile driving for I-5 requires a lane closure, it is anticipated that this work will need to be performed at night to minimize associated traffic congestion. Nighttime pile driving will only be allowed on review of the construction plans for the Project the corridor Alternatives by the F/ETCA for the other Alternatives by the implementing agency to confirm that appropriate noise attenuation measures are in place, including appropriate notification of the public.</p> <p>Any project construction activities planned between 7:00 PM and 7:00 AM on MCB Camp Pendleton will require approval from the F/ETCA in consultation with the Commanding General of Camp Pendleton. For any portion of this project that may be constructed on MCB Camp Pendleton in San Diego County (outside the area of jurisdiction of the Orange County Noise Ordinance or outside the area of jurisdiction of San Clemente's Noise Ordinance), approval of the planned hours of construction, including any need to perform nighttime pile driving, will rest solely with the Commanding General of Camp Pendleton.</p>	2006 SOCTIIP FSEIR Section 4.6.4.1
N-2	During construction activities, the construction contractor will ensure that the construction vehicles and equipment shall be maintained properly in tune as required by local ordinances. Additionally, each internal combustion engine used on the job shall be equipped with a "residential" or "hospital" grade muffler.	2006 SOCTIIP FSEIR Section 4.6.4.1
N-3	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Prior to construction activities in the vicinity of any school, the construction contractor shall be responsible for developing an agreement with Fallbrook Union Elementary School District, Camp Pendleton and private school operators, as appropriate, that would mitigate construction noise levels in classrooms and playfields at the affected schools to an agreed to construction noise performance standard. Each agreement shall be completed prior to the initiation of any grading on construction within 600 m (2,000 ft) of the school grounds. Examples of noise mitigation options include construction of temporary soundwalls, and limitation of some of the noisiest construction activities to periods when the schools are closed (e.g., the summer for the two public schools).</p>	2006 SOCTIIP FSEIR Section 4.6.4.1
N-4	Prior to construction activities, the construction contractor shall establish haul routes that avoid passing through or adjacent to residential and school areas to the extent feasible. In general, truck routes should be directed away from residential areas and onto the I-5 to minimize the construction truck intrusion. If haul routes must pass through residential areas, haul route traffic should be limited	2006 SOCTIIP FSEIR Section 4.6.4.1

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	to daytime hours (7 AM to 8 PM). The haul routes will be developed in conjunction with the applicable local jurisdictions.	
N-7	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During final design of the selected Alternative, Project the F/ETCA or the implementing agency/agencies will prepare a final noise analysis based on the detailed and finalized design developed during final design for the selected Alternative Project. Feasibility considerations for each sound barrier must meet FHWA/Caltrans criteria including a minimum of 5 dB of noise reduction at the impacted receiver. Additional feasibility considerations are (1) topography, (2) access requirements for driveways, ramps, etc; (3) the presence of cross streets, (4) other noise sources in the area and (5) safety considerations. The TCA or the implementing agency/agencies will finalize noise mitigation requirements for the selected Alternative and coordinate design with the local agency. As appropriate, the Final Noise Assessment Technical Report and the sound barrier/berm height recommended in the Final Noise Assessment Technical Report will serve as a guideline in determining the final barrier height requirements. Other pertinent information from the Final Noise Assessment Technical Report will be incorporated into final design as appropriate.</p> <p>The Final Noise Assessment Technical Report will provide specific recommendations that will then be incorporated into the Construction documentation (i.e. final design) for building purposes.</p>	2006 SOCTIIP FSEIR Section 4.6.4.1
PDF-6-1	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During construction, the F/ETCA or the implementing agency/agencies shall implement permanent sound barriers, including walls, berms or combinations of walls and berms. The sound barrier and/or supplemental berm must provide a minimum of 5 dB of noise reduction at the impacted receiver as refined during final design. The locations of these proposed sound barrier/berms are shown on Figures by Alternative in Appendix K. The construction contractor will be responsible for constructing the sound barrier/berm for the selected Alternative and as refined during final design. The design and specifications of the sound walls, shown on Figures 5-2-79 through 5-2-82 (Appendix H of the EIS/SEIR), on MCB Camp Pendleton shall be approved by the Commanding General of Camp Pendleton.</p>	2006 SOCTIIP FSEIR Section 4.6.4.1
NC-1	During final design, the F/ETCA shall determine the reasonableness of soundwall/berm placement and consider the life cycle of the sound barrier, the potential environmental impact of the mitigation, opinions of impacted residents, input from the public and local agencies, and social, economic and environmental factors consistent with the FHWA/Caltrans feasibility criteria.	2006 SOCTIIP FSEIR Section 4.6.4.3
Paleontological Resources		
P-1	Prior to the start of any earthmoving activity, an Orange County Certified (OCC) Paleontologist will be retained to conduct pre-grading salvage of any significant exposed fossils identified by the OCC Paleontologist prior to any heavy equipment activity in a particular area. Paleontological monitoring of brush removal shall be performed by a qualified paleontologist, under the supervision of an OCC Paleontologist, to locate and salvage additional significant fossil remains not previously visible. The OCC Paleontologist shall prepare a paleontological technical report that includes methodology, results, and an inventory list of significant fossils recovered.	2006 SOCTIIP FSEIR, Section 4.23.4.2
P-2	Prior to the start of any earthmoving activity, an OCC Paleontologist shall be retained to establish procedures, following these mitigation guidelines set forth in this Paleontological Resources Technical Report, for paleontological resource monitoring by qualified paleontological monitors during grading, and procedures for temporarily halting or redirecting work to permit the sampling, identification and evaluation of the fossils as appropriate. The OCC Paleontologist shall also establish emergency procedures applicable to the discovery of unanticipated significant paleontological resources (e.g. large specimens or significant concentrations of specimens as determined by the OCC Paleontologist). The OCC Paleontologist shall be present at the pre-grading conference to explain the established procedures to the construction contractors.	2006 SOCTIIP FSEIR, Section 4.23.4.2
P-3	<p>During all construction activities which involve soil disturbance, the following activities will be conducted:</p> <p>a. An Orange County Certified Paleontologist will be retained to supervise monitoring of construction excavations and to produce a mitigation plan for the proposed project. Paleontological monitoring will include inspection of exposed rock units and microscopic examination of matrix to determine if fossils are present. The monitor will have authority to temporarily divert grading away from exposed fossils in order to recover the fossil specimens.</p>	2006 SOCTIIP FSEIR, Section 4.23.4.2

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>b. If microfossils are present, the monitor will collect matrix for processing. In order to expedite removal of fossiliferous matrix, the monitor may request heavy machinery assistance to move large quantities of matrix out of the path of construction to designated stockpile areas. Testing of stockpiles will consist of screen washing small samples (approximately 90 kilograms, or 200 pounds) to determine if significant fossils are present. Productive tests will result in screen washing of additional matrix from the stockpiles to a maximum of 2,700 kg (6,000 lbs) per locality to ensure recovery of a scientifically significant sample.</p> <p>c. Younger Quaternary Alluvium, San Onofre Breccia and Quaternary Landslide Deposits have a low or indeterminate paleontological sensitivity level, and will be spot-checked in a periodic basis to insure that older underlying sediments are not being penetrated and fossils are not being exposed. All earth-moving in the Williams Formation, Silverado Formation, Santiago Formation, Sespe Formation, Vaqueros Formation, Sespe/Vaqueros Undifferentiated, Topanga Formation, Monterey Formation, Capistrano Formation, Niguel Formation, Older Quaternary Alluvium and Quaternary Marine and Non-Marine Terrace Deposits will be monitored full-time. The moderate to high paleontological sensitivity of these formations requires a maximum effort to recover fossils.</p> <p>d. The Orange County Certified Paleontologist will prepare monthly progress reports to be filed with the client and the lead agencies.</p> <p>e. Recovered fossils will be prepared to the point of curation, identified by qualified experts, listed in a database to allow analysis, and deposited in a designated repository such as a County of Orange facility, which shall have the first right-of-refusal of the collection, or the Natural History Museum of Los Angeles County or San Diego Natural History Museum.</p> <p>f. At each fossil locality, field data forms will record the locality, stratigraphic columns will be measured and appropriate scientific samples submitted for analysis.</p> <p>g. The Orange County Certified Paleontologist will prepare a final mitigation report to be filed with the client, the lead agencies, and the repository.</p>	
Public Services		
PS-1	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During final design, the F/ETCA will refine the design to the extent feasible based on engineering judgment and design standards to avoid or minimize the temporary use during construction and the permanent acquisition of land currently occupied by public services and utilities. In the event that the temporary use or permanent acquisition of this property cannot be avoided through design refinements, other mitigation measures identified for the compensation of temporary and permanent use of public services and utilities property will apply to the build Alternatives Project.</p>	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-2	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During construction, in areas subject to wildland fires as determined by the OCFA, or the MCB Camp Pendleton Fire Department for areas on MCB Camp Pendleton, the contractor will be required to install signs around construction sites warning of high fire risk and of area closings during the high fire season as declared by OCFA or the MCB Camp Pendleton Fire Department.</p>	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-3	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>During operation of the Corridor Caltrans will install signs along the new or improved road segments in areas subject to wildland fires as determined by the OCFA, or the MCB Camp Pendleton Fire Department for areas on MCB Camp Pendleton, warning of high fire risk and of area closings during the high fire season declared by OCFA and the MCB Camp Pendleton Fire Department.</p>	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-4	<p>Emergency call boxes will be installed along the road in undeveloped areas of high and extreme fire hazard, consistent with existing OCFA, Orange County Transportation Authority, Caltrans, F/ETCA and/or local jurisdiction, as appropriate, policies on emergency call boxes.</p>	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-5	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension alignment).</i></p> <p>During construction of a build Alternative the Project, the contractor will be required to maintain access to the existing fire road grid for the OCFA, and the MCB Camp Pendleton Fire Department</p>	2006 SOCTIIP FSEIR, Section 4.24.4.2

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	for areas on MCB Camp Pendleton.	
PS-6	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> During final design, the long term preservation/provision of access to the existing fire road grid for the OCFA, and the MCB Camp Pendleton Fire Department for areas on MCB Camp Pendleton, will be incorporated in the facility design, in consultation with the OCFA and the MCB Camp Pendleton Fire Department.	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-7	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> During construction, the contractor will implement fuel modification techniques as required by the OCFA, and the MCB Camp Pendleton Fire Department in areas on MCB Camp Pendleton, in areas of fire hazard as determined by the OCFA and the MCB Camp Pendleton Fire Department.	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-8	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> During final design, the F/ETCA, Caltrans and/or the City of San Clemente, as appropriate, will coordinate the addition of OPTICON or other traffic pre-emption devices as used in the City of San Clemente with the City's traffic engineer. These devices will be provided at impacted intersections, as identified in the Traffic Technical Report, to reduce impacts to fire, medical emergency and law enforcement response times.	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-9	During construction the F/ETCA will require the contractor to coordinate all temporary ramp closures and detour plans with fire, emergency medical and law enforcement providers to minimize temporary delays in response times.	2006 SOCTIIP FSEIR, Section 4.24.4.2
PS-13	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> Prior to construction of a build Alternative which if the Project will generate excess fill, the contractor will be required to offer fill for use in other development projects or to area landfills as daily cover. Land filling of excess soil and rock material will be considered the option of last resort.	2006 SOCTIIP FSEIR, Section 4.24.4.2
Recreation Resources		
R-5	During final design, the F/ETCA will provide for crossings of planned lateral Class I and existing and planned Class II bicycle trails, as well as hiking and equestrian trails at master planned locations across the road alignments. These trail crossings will be designed and constructed according to the standards of Caltrans and the applicable local jurisdictions. Final design will include directions to contractors related to minimizing potential disruptions to existing bicycle, riding and hiking trails during construction, as feasible.	2006 SOCTIIP FSEIR, Section 4.5.4
Socioeconomics		
SE-1	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> During final design, the F/ETCA will refine the design to the extent feasible based on engineering judgment and design standards to avoid or minimize the permanent acquisition of land currently occupied by residential and non-residential users. In the event that the temporary use or permanent acquisition of this property cannot be avoided through design refinements, other mitigation measures identified for the compensation of temporary and permanent use of residential and non-residential property will apply to the build Alternatives Project.	2006 SOCTIIP FSEIR, Section 4.4.4
Threatened and Endangered Species		
TE-1 WV-1 WW-1	Prior to construction, the F/ETCA shall designate a Project Biologist responsible for overseeing biological monitoring, regulatory compliance, and restoration activities associated with construction of the selected alternative in accordance with the adopted mitigation measures and applicable law.	2006 SOCTIIP FSEIR Section 4.12.4
TE-2 WV-2 WW-2	During final design of the project, the Project Biologist shall review the design plans and make recommendations for avoidance and minimization of sensitive biological resources. The F/ETCA Environmental and Engineering Staff shall determine the implementation of those recommendations.	2006 SOCTIIP FSEIR Section 4.12.4
TE-3 WW-3 CDFG-30	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i>	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	A Biological Resources Management Plan (BRMP) shall be prepared prior to construction. The BRMP shall provide specific design and implementation features of the biological resources mitigation measures outlined in the resource agency approval documents. Issues to be discussed in the BRMP shall include, but are not limited to, resource avoidance, minimization, and restoration guidelines, performance standards, maintenance criteria, and monitoring requirements. The Draft BRMP shall be submitted to the USFWS, NMFS, CDFG, USACOE, RWQCB, FHWA and Caltrans for review to the extent required by permit by such agencies. The primary goals of the BRMP are to ensure that (1) the long-term perpetuation of the existing diversity of habitats in the project area and adjacent urban interface zones and minimize offsite or indirect effects; (2) the project is not likely to jeopardize the continued existence of any federally listed or state-listed endangered or threatened species; and (3) impacts to endangered and threatened species are minimized and mitigated to the maximum extent practicable. The BRMP shall contain at a minimum specific construction monitoring programs for thread-leaved brodiaea, arroyo toad, <i>southwestern willow flycatcher</i> , coastal California gnatacher, and least Bell's vireo. and Pacific pocket mouse.	
TE-4 WV-5	During grading activities and construction operations, the Project Biologist shall prepare a monthly biological monitoring letter report summarizing site visits, documenting adherence or violations of required habitat avoidance measures, and listing any necessary remedial measures. The report shall be submitted to the F/ETCA and/or other implementing resource agencies.	2006 SOCTIIP FSEIR Section 4.12.4
TE-5	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> Chain-link, wire mesh with metal poles, or similar fencing of at least 2.1 m (seven ft) in height will be erected on both sides of the selected alternative from the underpass entrance to a distance of at least 1.0 km (0.62 mile) along the corridor to "funnel" wildlife to the underpass area and to minimize wildlife attempts to cross the roadway surface. Fence height up to three m (10 ft) in height will be used in areas deemed appropriate by the Project Biologist, F/ETCA, USFWS, FHWA and Caltrans. In addition, in areas known to support the arroyo toad, a permanent mesh fence shall be installed at the base of the chain-link fence for at least 1.0 km (0.62 mile) to keep the toads from entering onto the roadway surface. The width and the height of the wildlife bridges specified in this mitigation measure are those provided by Caltrans as minimum standards. This approach is appropriate and such detail can be provided during further discussions for final design of the Project and only for the selected project. To demonstrate the success of this approach, the F/ETCA has monitored seven wildlife undercrossings during the fall and spring of each year since 1999. The wildlife undercrossings are along the Foothill and Eastern Transportation Corridors and consist of bridges as well as large diameter culverts. Methods used to document the presence and diversity of wildlife using the undercrossings include scent stations, spotlight surveys, general scat surveys, and direct observations. The data have shown that there is a considerable amount of wildlife within the study area using the undercrossings. The wildlife observed using the undercrossings includes mountain lions, bobcats, coyotes, gray foxes, and mule deer. This usage demonstrates the overall success of the undercrossings in allowing wildlife continued movement throughout the region. In summary, preliminary results indicate that wildlife is continuing to use the undercrossings along the Toll Roads.	2006 SOCTIIP FSEIR Section 4.12.4
TE-6	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> Prior to construction of the selected alternative Project , focused sensitive plant species surveys shall be conducted to determine the distribution of sensitive plants within the impact area of the selected alternative so appropriate avoidance, and seed collection and salvage measures for thread-leaved brodiaea can be implemented. This measure will ensure that the biologist obtains the current onsite conditions, just prior to construction, to maximize avoidance. Surveys shall be conducted from March through June which is the blooming period for this species. Locations of thread-leaved brodiaea species shall be mapped and shown on construction drawings and identified as ESAs. During final design, temporary access roads will be sited with the approval of the Project Biologist so as to avoid or minimize impacts to sensitive plant populations.	2006 SOCTIIP FSEIR Section 4.12.4
TE-7	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> a. Prior to construction (e.g., clearing, grubbing or grading), focused surveys for the thread-leaved brodiaea shall be conducted during the flowering period for this species (approximately March	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

State Route 241
 Tesoro Extension Project
 Applicable Mitigation Measures/Commitments/Conditions

Addendum to the Final SOCTIIP
 Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>through June). The locations of plants identified within the disturbance limits shall be recorded with a Global Positioning System (GPS) unit with sub-meter accuracy. The soils containing thread-leaved brodiaea shall be tested to determine soil texture, and organic matter, and transported to a native plant nursery for germination and propagation.</p> <p>b. Prior to construction, soil containing thread-leaved brodiaea corms within the impact area shall be collected from the specific locations where thread-leaved brodiaea plants were observed the prior spring by personnel experienced in the salvage of corms. Areas of soil 0.6 m by one m by 0.6 m (two ft by three ft by two ft) deep or one m by 1.3 m by 0.6 m (three ft by four ft by two ft) deep shall be collected and transported for placement in an appropriate translocation site selected by the Project Biologist. The translocation site shall be located in a conservation area within an open space dedication area within the region and shall have similar soils, aspect, slope, and hydrology to the donor site (i.e., the site from which thread-leaved brodiaea corms were collected).</p> <p>c. Relocation success will be monitored for ten five-years. The number of relocated plants that will emerge in any one year is variable and will depend on seasonal rainfall. Relocation will be considered successful when 10 percent of the relocated population emerges and sets viable seed in any monitoring year. The success criteria may vary as determined by the Project Biologist in consultation with botanists and USFWS staff with recent experience in brodiaea transplantation methodologies in the region.</p>	
TE-10	<p><i>(This measure has been revised from its original form in the Final SEIR to address only upland habitat for this species, since the Tesoro Extension Project will not impact breeding [riparian] habitat for this species).</i></p> <p>An Arroyo Toad Resource Management Plan (ATRMP) will be prepared and will comply with the requirements of Section 7(a)(2) of the Federal Endangered Species Act. The ATRMP will be incorporated into the BRMP, and action items identified in the plan will be implemented by F/ETCA and monitored by the Project Biologist. The plan shall include measures detailing how the impact area will be surrounded with a silt fence in <u>areas adjacent to areas known to support the arroyo toad. The locations of areas known to support arroyo toads shall be identified in the ATRMP and on the ESA maps.</u> enclosure, and how arroyo toads will be removed and relocated from the construction impact area during the breeding season (when they are detectable by vocalizations) and placed in suitable habitat either upstream or downstream of the selected alternative during construction.</p> <p>The ATRMP will identify areas pre-construction surveys adjacent to and within the Project. of collection, suitable areas for temporary housing, and restoration guidelines to be in place prior to release of toads to their original location. The plan shall be submitted to the USFWS to the extent required by such agency. The locations of areas known to support arroyo toads shall be identified in the ATRMP and on the ESA maps to comply with the requirements of the biological opinion.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-11	<p><i>(This measure has been revised from its original form in the Final SEIR to address only upland habitat for this species, since the Tesoro Extension Project will not impact breeding [riparian] habitat for this species).</i></p> <p>Prior to initiating any ground-disturbing activities in occupied/suitable habitats, or habitats proximal to suitable or occupied habitats for arroyo toad, <u>in upland areas in the vicinity or adjacent to occupied habitat,</u> exclusionary fencing shall be installed around <u>on</u> the perimeter of the construction area <u>closest to the creek supporting this species.</u> Fencing or screening approximately 60 cm (two ft) in height (30 cm [one ft] of which will be buried below the surface) shall be installed to prevent arroyo toads from entering the area after the onset of construction. The fencing will be installed at least 14 days prior to the initiation of work and must be made of a material appropriate to preclude any arroyo toads from entering the construction area. Fencing will be removed each winter during construction and at the end of project construction. Vehicle use will be restricted within areas known to support populations of the arroyo toad that are shown on the ESA maps. Fencing will remain in place during construction and will be allowed to be removed at the end of Project construction or when focused surveys have determined that the species does not occur within one mile of the proposed impact area.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-12	<p><i>(This measure has been revised from its original form in the Final SEIR to address only upland habitat for this species, since the Tesoro Extension Project will not impact breeding [riparian] habitat for this species).</i></p> <p>The Project Biologist shall conduct three focused arroyo toad surveys within the fenced construction</p>	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>site for arroyo toads a minimum of 14 nights prior to initiating project construction. If climatic conditions are not appropriate for arroyo toad movement during the surveys, the Project Biologist may attempt to illicit a response from the arroyo toads, during nights with temperatures of 13°C (55°F) or greater, by spraying the project area with water to simulate a rain event. During construction, arroyo toads surveys will be performed a minimum of once per week and on all nights where the combination of rain/humidity and temperature would increase the movement of arroyo toads.</p> <p>If arroyo toads are <i>incidentally</i> found within the construction side of the exclusionary fencing, arroyo toads will be removed by the Project Biologist and relocated from the construction impact area and placed in suitable habitat either upstream or downstream of the construction area as outlined in the Arroyo Toad Resource Management Plan.</p>	
TE-13	<p>The Contractor shall locate staging areas for construction equipment outside of areas within the jurisdiction of the USACOE or CDFG known to support arroyo toad to minimize impacts to sandy creek benches that may provide aestivating habitat for the arroyo toad to avoid taking any individuals.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-14	<p><i>(This measure has been revised from its original form in the Final SEIR to address only upland habitat for this species, since the Tesoro Extension Project will not impact breeding [riparian] habitat for this species).</i></p> <p>When conducting construction and/or other ground-disturbing activities in arroyo toad-occupied habitats or in adjacent upland areas proximal to known arroyo toad habitats, the Contractor shall cover all grubbing spoils or other grading debris with plastic sheeting to prevent arroyo toads from opportunistically burrowing in these exposed and friable soil piles. This sheeting must be placed on the soil piles before sunset and shall remain on (during nighttime hours) for the duration of the construction/ground disturbing activities. The areas where these measures must be implemented shall be determined by the Project Biologist in coordination with the USFWS. If the sheeting does not remain in place due to unforeseen circumstances, (inclement weather or other disturbances) a biologist will monitor the soil piles for the arroyo toad. Any arroyo toads found within the soil piles will be removed and relocated as outlined in the Arroyo Toad Resource Management Plan.</p>	
TE-15	<p><i>(This measure has been revised from its original form in the Final SEIR to address only upland habitat for this species, since the Tesoro Extension Project will not impact breeding [riparian] habitat for this species).</i></p> <p>The Contractor shall not drive upon construction roads or other roads/surfaces <u>within 300 feet of adjacent</u> to arroyo toad occupied habitat after sunset. If the site must be accessed, a biologist permitted to handle arroyo toad must be present in the vehicle to identify any individuals on the road and the vehicle shall not exceed a speed of 16 km per hour (10 miles per hour) within these areas.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-18	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>To minimize and offset adverse effects of the selected alternative <u>Project</u> on the coastal California gnatcatcher, habitat suitable for this species (as determined by the Project Biologist) shall be grubbed from the project footprint area from September to February if feasible (generally outside the breeding season for these species). The Project Biologist shall survey the suitable habitat within the areas to be grubbed one day prior to any vegetation disturbance to determine the location and numbers of coastal California gnatcatchers. The Project Biologist will be on-site and present during all suitable habitat clearing and removal activities to minimize the potential for individual coastal California gnatcatchers to be wounded or killed during the clearing of habitat.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-19	<p>If grubbing activities are unavoidable during the coastal California gnatcatcher breeding season, which is between February and August, the following measures will be implemented:</p> <p>Surveys by the Project Biologist will be conducted a minimum of three times on separate days after the initiation of the nesting season to determine the presence of coastal California gnatcatchers, nest building activities, egg incubation activities, or brood rearing activities. These surveys will be conducted within the week prior to the initiation of brushing, grading, or other construction activities. One survey will be conducted the day immediately prior to the initiation of work. The USFWS will be notified in writing seven days prior to the initiation of surveys.</p> <p>If no nest(s), nesting behavior, or brood rearing activities are detected, work may commence. Prior to and during work activities, the Project Biologist will locate any individual coastal California</p>	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>gnatcatchers on-site and direct operators to begin in an area away from the birds. The pattern of brushing/grubbing activities will be designed to optimize opportunities for flushed birds to be directed towards the open space areas in the vicinity of the impact area.</p> <p>During construction, no activity will occur within approximately 150 m (500 ft) of active nests.</p>	
TE-20	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>To minimize and offset adverse effects of the selected alternative <u>Project</u> on the least Bell's vireo, suitable habitat for this species, as determined by the Project Biologist, shall be grubbed from the impact area from 16 September to 14 March (generally outside the breeding season for this species), if feasible.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-21	<p>If grubbing activities between 15 March and 15 September (generally within the breeding season for the least Bell's vireo) are unavoidable, the following contingency measures will be implemented:</p> <p>a. Surveys by the Project Biologist will be conducted a minimum of three times on separate days after the initiation of the nesting season to determine the presence of least Bells' vireos, nest building activities, egg incubation activities, or brood rearing activities. These surveys will be conducted within the week prior to the initiation of brushing, grading, or other construction activities. One survey will be conducted the day immediately prior to the imitation of work. The USFWS will be notified in writing prior to the initiation of surveys.</p> <p>b. If no nest(s), nesting behavior, or brood rearing activities are detected, work may commence. Prior to and during work activities, the Project Biologist will locate any individual least Bell's vireos on-site and direct operators to begin in an area away from the birds. The pattern of brushing/grubbing activities will be designed to optimize opportunities for flushed birds to be directed towards the open space areas in the vicinity of the impact area.</p> <p>c. During construction, no activity will occur within approximately 150 m (500 ft) of active nests.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-22	<p>a. To minimize indirect disturbance of nesting least Bell's vireos, the Contractor will not engage in any construction activities within 61 m (200 ft) of occupied least Bell's vireo habitat between the hours of 0600 and 1100 every day during the peak nesting period of 1 April to 15 July of any given calendar year if said construction activities result in noise readings greater than 60 dBA measured at the edge of the territory of the vireo in the area.</p> <p>b. For construction, temporary or permanent noise barriers may be installed under the direction of the Project Biologist and USFWS to reduce noise levels. The Project Biologist shall be responsible for monitoring the noise level.</p> <p>c. The Project Biologist shall be responsible for all noise monitoring reports which shall include, at a minimum, (1) baseline noise measurements at known least Bell's vireo nesting sites within riparian communities within the impacts area, prior to construction, (2) the effect construction noise has on nesting pairs in the vicinity of construction, (3) baseline noise measurements at known nesting adjacent to the alignment, prior to traffic, and (4) the effect traffic noise has on nesting pairs in the vicinity of the selected alignment. These reports will be submitted to the F/ETCA or other implementing agencies.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-25 MV-11	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>To <u>partially</u> mitigate impacts, the F/ETCA has identified additional habitat preservation and restoration activities in the Upper Chiquita Canyon Conservation Area. The Upper Chiquita Canyon Conservation Area consists of approximately 478.7 hectares (1,182 acres) created by the F/ETCA to mitigate biological impacts resulting from construction of the FTC N <u>and other projects</u>. Of these 478.7 hectares (1,182 acres), 327 credits have been set aside as a mitigation bank for future project impacts. The Conservation Area was originally under substantial threat for development and the resources within the Area have been conserved, but otherwise would have been lost or substantially degraded. In addition, the Upper Chiquita Canyon Conservation Area provides opportunities for preservation activities consisting of additional habitat for oak woodland and sensitive plant species.</p> <p>There are also opportunities for restoration activities on site that would include additional acres of</p>	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>oak woodland, non-wetland drainages, coastal sage scrub, coastal sage scrub/native perennial grassland ecotone, and native perennial grassland habitats. These opportunities for preservation and restoration activities would also serve to mitigate impacts on sensitive plants for the SOCTIIP Alternatives <i>Project</i>.</p> <p>a. Impacts to scrub communities (and all sub-types thereof except floodplain sage scrub) shall be mitigated through the use of scrub mitigation credits in the Upper Chiquita Canyon Conservation Easement area and additional preservation (if necessary). The Upper Chiquita Canyon Conservation Easement area currently contains 327 mitigation credits approved by the USFWS and CDFG. The scrub areas impacted by the <i>Project</i> selected alternative will be mitigated by a combination of roadway slope revegetation and habitat credits at a to-hectare ratio of 2.54:1 for a total of 227 habitat credits at Upper Chiquita Canyon Conservation Easement and 69.23 acres of roadway slope revegetation. 0.40 ha impact or one two and a half Upper Chiquita Canyon Conservation Easement mitigation credit for every 1.0 ac lost).</p> <p>b. Any additional scrub areas restored within the Upper Chiquita Canyon Conservation Easement area may be added to the credit total, with the approval of the USFWS, and applied to the mitigation ratio accordingly. The F/ETCA and the USFWS shall determine the criteria for the establishment of the new credits for the restored areas pursuant to the Upper Chiquita Canyon Conservation Bank Agreement which was entered into with the USFWS and the CDFG.</p> <p>c. Any scrub areas that are impacted by the selected alignment and that have not been mitigated by the use of the Upper Chiquita Canyon Conservation Easement mitigation credits (i.e., impact area exceeds mitigation credits available) shall be mitigated through preservation or <i>revegetation at a ratio of 2.5:1 mitigation to impact ratio 1:1 (0.4 ha [one ac] for every 0.4 ha [one ac] lost)</i>, or other mitigation requirement that is necessary to meet the regulatory standards of an applicable state or federal regulatory program, depending on the quality of the habitat impacted.</p>	
TE-26 WV-12	<p>Impacts to native grasslands shall be mitigated at a 1:1 ratio through either preservation or restoration in designated open space (e.g., Upper Chiquita Canyon Conservation Easement). Should restoration be proposed, the restoration areas shall be located in areas deemed appropriate by the project biologist for native grassland restoration. Restoration areas shall occur within dedicated open space areas including, but not limited to, the Upper Chiquita Canyon Conservation Easement area. The restoration program for native grassland areas shall be included in the BRMP and shall include the following measures.</p> <ul style="list-style-type: none"> - Site analysis for appropriate soils. - Site preparation specifications based on site analysis, including but not limited to grading, and weeding. - Specifications for plant and seed material appropriate to the locality of the mitigation site and the timing of restoration activities. - Specifications for site maintenance to establish the habitats, including but not limited to weeding and temporary irrigation. <p>Restoration areas shall be considered successful at five years if the following standards are achieved:</p> <ul style="list-style-type: none"> - The site does not require substantial maintenance for at least two consecutive years during the monitoring period. - The site must exhibit evidence of natural recruitment of native species, including plant reproduction and/or setting of seeds. - Soil at the site exhibits a level of beneficial arbuscular mycorrhizal fungi that is comparable to an appropriate reference site, as demonstrated through soil infestivity potential. - Absolute percent cover of native species is comparable to the absolute cover of native species at an appropriate reference site within an 80 percent confidence limit. - An index of species diversity of the restored and/or created habitat areas is statistically comparable to an appropriate reference site within an 80 percent confidence limit. <p>Monitoring shall be conducted for five years (or less if site meets success criteria as designated above earlier) to ensure successful establishment of native grassland vegetation within the restored areas. If success standards are not met, remedial measures, hydroseeding, or introduction of container stock shall be implemented as directed by the Project Biologist.</p>	2006 SOCTIIP FSEIR Section 4.12.4
TE-27 WV-38	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Impacts to floodplain sage scrub, riparian herb, and other sub-types within the Vernal Pools, Seeps,</p>	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>and Wet Meadows and Marsh plant communities shall be mitigated at a 1:1 ratio or other ratio that compensates for functions and values. Mitigation shall consist of creating the above mentioned community types in the approximate proportions in which they currently exist within the impact area or as otherwise required by the resource agencies. Creation areas shall occur within dedicated open space areas including, but not limited to, the Upper Chiquita Canyon Conservation Easement area. The creation program for the above areas shall be included in the BRMP and shall include the following measures.</p> <ul style="list-style-type: none"> - Site analysis for appropriate soils and hydrology. - Site preparation specifications based on site analysis, including but not limited to grading, and weeding. - Soil and plant material salvage from impact areas, as appropriate to the timing of impact and restoration as well as the location of restoration sites. - Specifications for plant and seed material appropriate to the locality of the mitigation site. - Specifications for site maintenance to establish the habitats, including but not limited to weeding and temporary irrigation. <p>Creation areas shall be considered successful if the following standards are achieved:</p> <ul style="list-style-type: none"> • The site does not require substantial maintenance for at least two consecutive years during the monitoring period. - The site must exhibit evidence of natural recruitment of native species, including plant reproduction and/or setting of seeds. - Absolute percent cover of native species is comparable to the absolute cover of native species at an appropriate reference site within an 80 percent confidence limit. - An index of species diversity of the restored and/or created habitat areas is statistically comparable to an appropriate reference site within an 80 percent confidence limit. <p>Monitoring shall be conducted for five years (or less if success criteria are met as designated above earlier) to ensure successful establishment of hydrophytic vegetation within the restored/created areas by wetland species. If success standards are not met, remedial measures, seeding, or introduction of container stock shall be implemented as directed by the Project Biologist.</p>	
TE-28 WV-39	<p>Impacts to riparian scrub, woodland, and forest communities (as defined in Section 5.0 of the NES) shall be mitigated by mitigation of such communities at a 1:1 ratio or other ratio that compensates for functions and values. Mitigation areas shall occur within dedicated open space areas including, but not limited to, the Upper Chiquita Canyon Conservation Easement area as determined by the Project Biologist. The restoration program shall be detailed with the BRMP.</p> <p>Prior to restoration of these communities, hydrological testing and monitoring of the creation site shall be conducted to determine that sufficient hydrology exists to support the community. If necessary, a temporary irrigation program shall be incorporated into the mitigation design to ensure successful establishment of the community.</p> <p>The following performance standards shall apply for the restoration of these areas (except for southern coast live oak riparian forest). Restoration shall be considered successful if:</p> <ul style="list-style-type: none"> - The site does not require substantial maintenance for at least two consecutive years during the monitoring period. - The site must exhibit evidence of natural recruitment of native species, including plant reproduction and/or setting of seeds. - Absolute percent cover of native upper and mid canopy species is 70 percent in forest scrub communities and five percent in woodland communities. - An index of species diversity of the restored areas is statistically comparable to an appropriate reference site within an 80 percent confidence limit. <p>For southern coast live oak riparian forest, the following standards shall apply:</p> <ul style="list-style-type: none"> - The site does not require substantial maintenance and meets the success criteria established for this community for at least two consecutive years during the monitoring period. - The site must exhibit evidence of natural recruitment of native species, including plant reproduction and/or setting of seeds. - Absolute percent cover of native upper and mid canopy species is 50 percent, with five percent cover from oak trees. - An index of species diversity of the restored areas is statistically comparable to an appropriate reference site within an 80 percent confidence limit. 	2006 SOCTIIP FSEIR Section 4.12.4

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	Monitoring shall be conducted for a minimum of <i>five ten</i> years to ensure successful establishment of the restored areas. If success standards are not met, remedial measures including introduction of additional container stock and adjusting of irrigation shall be implemented as directed by the Project Biologist.	
TE-29 WV-40	Impacts to open water shall be mitigated at a 1:1 ratio by the creation of wetlands and impounded features to be incorporated into the herbaceous riparian habitat. The open water mitigation areas shall be located at a site determined by the Project Biologist to have hydrology sufficient to support the desired open water feature. Appropriate hydrological and soils testing shall be performed to ensure that the created open water area function properly. Creation of open water areas shall be maintained as part of the herbaceous riparian habitat restoration.	2006 SOCTIIP FSEIR Section 4.12.4
TE-SWF-1	<u>Flycatcher Avoidance Measure #1.</u> To avoid adverse effects on the southwestern willow flycatcher, suitable habitat for this species, as determined by the Project Biologist, shall be grubbed from the impact area from 16 September to 14 March (generally outside the breeding season for this species).	Tesoro BA (November 2012), Section 4.5.3.
TE-SWF-2	<u>Flycatcher Avoidance Measure #2.</u> If grubbing activities between 15 March and 15 September (generally within the breeding season for the southwestern willow flycatcher) are unavoidable, the following contingency measures will be implemented: a) Surveys by the Project Biologist will be conducted a minimum of three times on separate days after the initiation of the nesting season to determine the presence of southwestern willow flycatcher, nest building activities, egg incubation activities, or brood rearing activities. These surveys will be conducted within the week prior to the initiation of brushing, grading, or other construction activities. One survey will be conducted the day immediately prior to the initiation of work. The USFWS will be notified in writing prior to the initiation of surveys. b) If no nest(s), nesting behavior, or brood rearing activities are detected, work may commence. Prior to and during work activities, the Project Biologist will locate any individual southwestern willow flycatchers on-site and direct operators to begin in an area away from the birds. The pattern of brushing/grubbing activities will be designed to optimize opportunities for flushed birds to be directed towards the open space areas in the vicinity of the impact area. c) During construction, no activity will occur within approximately 150 meters (500 feet) of active nests.	Tesoro BA (November 2012), Section 4.5.3.
TE-SWF-3	<u>Flycatcher Avoidance Measure #3.</u> To minimize indirect disturbance of nesting southwestern willow flycatchers, the Contractor will not engage in any construction activities within 200 feet of occupied southwestern willow flycatcher habitat between the hours of 0600 and 1100 every day during the peak nesting period of 1 April to 15 July of any given calendar year if said construction activities result in noise readings greater than 60 dBA measured at the edge of the territory of the southwestern willow flycatcher in the area. a) For construction, temporary or permanent noise barriers may be installed under the direction of the Project Biologist and USFWS to reduce noise levels. The Project Biologist shall be responsible for monitoring the noise level. b) The Project Biologist shall be responsible for all noise monitoring reports which shall include, at a minimum, (1) baseline noise measurements at southwestern willow flycatcher nesting sites within riparian communities within the impacts area, prior to construction, (2) the effect construction noise has on nesting pairs in the vicinity of construction, (3) baseline noise measurements at known nesting adjacent to the alignment, prior to traffic, and (4) the effect traffic noise has on nesting pairs in the vicinity of the selected alignment. These reports will be submitted to the F/ETCA or other implementing agencies.	Tesoro BA (November 2012), Section 4.5.3.
Utilities		
U-1	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> As early as possible during final design, the F/ETCA will consult with each utility provider/owner to avoid or reduce potential impacts on existing and planned utilities through design refinements. Should impacts be unavoidable, all affected facilities shall be relocated or protected in place prior to, during or after construction, as appropriate, and in accordance with the methods and designs approved by the affected utility provider/owner. For utilities located on MCB Camp Pendleton, as	2006 SOCTIIP FSEIR Section 4.24.4.2.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	early as possible the F/ETCA will consult with and receive approval from the Marine Corps on any utility relocations or realignments prior to discussing the proposed activities with utility providers. <i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i>	
U-2	Consistent with requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the F/ETCA will negotiate with utility providers whose facilities will be temporary used, <i>relocated</i> , and/or permanently acquired to determine appropriate action and/or compensation to mitigate for the temporary use, <i>relocation</i> and/or permanent acquisition of their property-easement rights.	2006 SOCTIIP FSEIR Section 4.24.4.2.
Water Quality		
WQ-1	The F/ETCA will preserve to the extent feasible existing vegetation at areas on the construction site where either no construction activity is planned or where it will occur at a later date. The vegetation will be preserved according to the California Storm Water BMPs Municipal Handbook (1993) as listed in the RMP. <i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i>	2006 SOCTIIP FSEIR Section 4.9.6.2.
WQ-2	The F/ETCA will implement construction site BMPs as appropriate, during construction of the proposed project. These BMPs are described in the California Best Management Practice Handbooks for Construction (March 2003, revision pending), Caltrans, SWMP and Storm Water Quality Handbooks. BMP categories include measures for temporary sediment control, temporary soil stabilization, scheduling, preservation of existing vegetation, conveyance controls, wind control, temporary stream crossings and waste management as well as many other measures which may be implemented during construction of a highway project. These measures are consistent with requirements set forth under the California State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 (General Construction Permit (NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance activities Order No. 2009-0009-DWQ, NPDES No. CAS 000002), which governs storm water and non-storm water discharges during construction activities, as well as with those requirements set forth in the Caltrans Permit Order No. 99 - 06 - DWQ (CAS 000003). These BMPs are directed at reducing storm runoff pollutants and eliminating non-storm water discharges.	2006 SOCTIIP FSEIR Section 4.9.6.2.
WQ-3	Prior to start of soil-disturbing activity at the project site, a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) will be prepared in accordance with and to partially fulfill the General Construction Permit. The SWPPP will be prepared per the SWPPP and Water Pollution Control Program (WPCP) Preparation Manual, (Storm Water Quality Handbooks, November 2000.) The SWPPP will meet the applicable provisions of Sections 301 and 402 of the CWA by requiring controls of pollutant discharges that utilize best available technology (BAT) which is economically achievable and best conventional pollutant control technology (BCT) to reduce pollutants. The SWPPP will be implemented concurrently with commencement of the soil-disturbing activity. The SWPPP will need to be certified in accordance with the signatory requirements of the General Construction Permit.	2006 SOCTIIP FSEIR Section 4.9.6.2.
	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i>	
WQ-4	Emergency planning for highway spills will be addressed by both operational and structural BMPs. The F/ETCA will take primary responsibility for spill clean-up and contingencies during construction and operation of the project, though coordination with other agencies will be necessary. Operational BMPs include immediate emergency notification through 911 during a spill event. After emergency notification, the following notifications will occur: - The local fire department and the Orange County Fire Authority will then be notified, and emergency actions (road closures, medical evacuation, cleanup of hazardous materials, etc.) will be taken; if the spill occurs on or affects MCB Camp Pendleton, these authorities will be notified. - If the spill is above the Reportable Quantity (RQ), the State Office of Emergency Services (800.852.7550) will be contacted and a control number provided. The National Response Center (800.424.8802) will be contacted to comply with Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requirements. The California Hazardous Material Incident Reporting System (CHMIRS) (916.427.4287) will be notified (assuming the spill volume is more than four liters (two gallons)) and appropriate forms filled out.	2006 SOCTIIP FSEIR Section 4.9.6.2.

Appendix A

State Route 241 Tesoro Extension Project Applicable Mitigation Measures/Commitments/Conditions

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	Structural BMPs consist of mechanisms within water quality BMPs to prevent large spills from reaching watercourses. These BMPs could consist primarily of operation valves at outlet works (e.g., from basins) that could be closed in an emergency. In this event, cleanup of hazardous materials and pollutants will be required within the basins to remove contaminated materials.	
WQ-5	When an alternative is selected for implementation an Operations, Maintenance and Monitoring Plan will be developed in consultation with the appropriate agencies, i.e. Caltrans. Maintenance objectives for project BMPs will be addressed and formalized in the Operation, Maintenance and Monitoring Plan. Caltrans will monitor the BMPs to ensure maintenance objectives are being met. Details of the monitoring will comply with Caltrans Storm Water Policy and requirements of the 401 Certification with Caltrans as the holder of the statewide permit for state highways.	2006 SOCTIIP FSEIR Section 4.9.6.2.
WQ-6	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> For the Corridor Alternatives <u>Project</u> , the F/ETCA will monitor Caltrans' maintenance of the BMPs for five years to assure compliance with maintenance criteria and schedules. The F/ETCA will provide annual reports to the Regional Water Quality Control Boards documenting the maintenance of the BMPs.	2006 SOCTIIP FSEIR Section 4.9.6.2.
WV-4 WW-5 CDFG-21	During grading activities and/or construction operations, the Project Biologist shall conduct monitoring within and adjacent to sensitive habitats including installation of protective devices (silt fencing, sandbags, fencing, etc.), installation and/or removal of creek crossing fill, construction of access roads, vegetation removal, column installation, false work installation and removal, and other associated construction activities, as deemed appropriate by the Project Biologist.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-6	Prior to the commencement of grading activities or other activities involving vegetation/habitat removal, the Project Biologist shall attend preconstruction meetings with construction foremen, bridge engineers, and the F/ETCA to confirm that all environmental conditions are discussed. Monthly, or on an as needed basis, new construction personnel shall complete an educational program. Issues to be covered will include, but are not limited to, environmental measures for avoiding impacts to sensitive biological resources, ESAs, waste disposal, vehicle transportation routes, seasonal restrictions, fueling/maintenance restrictions, and other relevant topics.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-7	In conjunction with final design, the Project Biologist shall work closely with the Contractor to develop native plant palettes for revegetation areas adjacent to the roadway that abut natural open space and will be implemented by the Contractor. Final landscape design plans, which will be approved by the F/ETCA, shall reflect the following and shall be incorporated into the BRMP: <ul style="list-style-type: none"> - The landscaping along the corridor in open space (non-urban) areas shall be a mix of native, non-invasive, drought tolerant plant species from the scrub, grassland, and chaparral communities. All plants used shall comply with federal, state, and county laws requiring inspection of infestation. The vendor shall provide certification of inspection from the County of Orange and/or San Diego department of agriculture. The Project Biologist shall also inspect all plants before accepting delivery. - The landscaping community type installed shall be consistent with the plant communities that occur in the vicinity of the intended landscape area. - Seeds, cuttings, and potted plants shall be collected from local plant material as appropriate, supplemented by material from native plant nurseries. The seed vendor shall furnish certification that the seed has been tested for purity by a certified seed laboratory and does not contain seed of any non-native, invasive species. - Native California plant species found in the project area shall be used. Invasive, noxious weed, or non-native species identified on the State of California List of Noxious Weed Species or the California Exotic Pest Plant Council Exotic Pest Plants (CalEPPC) of Greatest Ecological Concern in California List shall not be used in landscaping along open space areas. - All mulches used shall be free of invasive species seed. - Landscape areas shall be subject to maintenance during plant establishment (i.e., non-native species removal) that will be directed by the Project Biologist. However, the landscape areas shall not be subject to performance standards and will not be subject to mitigation in the future if construction occurs. - Temporary low-volume irrigation systems, using reclaimed water (where available), shall be included in the final design of the selected alternative. <p>Portions of the landscaped areas within the Caltrans maintenance area and adjacent to the roadway may be subject to fuel modification requirements, which may preclude the use of many project-indigenous species. In these instances, plant palettes may contain both the California native plant cultivars which will be purchased and indigenous plant species found in the project</p>	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	area. This is due to the limited number of indigenous plant species included within the Orange County Fire Authority Fuel Modification Plant List.	
WV-8 WW-4	In conjunction with the development of final plans and specifications for construction, or other activities involving vegetation/habitat removal, the Project Biologist shall review and approve the contractor's map of all sensitive habitats (Environmentally Sensitive Areas) within 152.4 meters (500 feet) of the grading limits on the grading plans. The ESA maps shall be prepared by the construction contractor's qualified biologist and approved by the F/ETCA. All ESAs to be avoided and performance standards established by the resource agencies shall be clearly noted on the grading, construction, and landscape plans. Additionally, the landscape plans shall indicate that plant materials be local southern Orange County natives.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-9	Caltrans procedures shall be followed for the protection of ESAs. These procedures are: (1) no construction access, parking, or storage of equipment or materials will be permitted within marked ESAs or other jurisdictional areas; (2) to the maximum extent practicable, construction access points shall be limited in proximity to protected habitat; (3) waste, dirt, and trash shall not be deposited on protected habitat; (4) vehicle transportation routes shall be confined to the narrowest practicable area in areas adjacent to marked, protected habitats during construction/operations activities, (5) no construction personnel shall be permitted access to these areas except for the purpose of invasive species removal without the Project Biologist's approval, and (6) disposal of trash adjacent to ESAs shall be removed/emptied on a daily basis.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-10	Prior to the commencement of grading activities or other activities involving vegetation/habitat removal, the Project Biologist shall field verify that protective fencing (t bar/yellow rope and silt fencing when construction is upslope from sensitive habitat) has been installed along the disturbance limits. Additionally, the Project Biologist shall verify that all other Caltrans procedures for ESAs, identified and mapped on grading plans, have been installed by the construction contractor. These protective fences shall be field verified by the Project Biologist on a regular basis.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-13	<p>a. F/ETCA will mitigate impacts to coast live oak and elderberry woodland communities by replacing, creating, restoring, or preserving (1) 0.4047 ha (one ac) of the identified resource for every 0.4047 ha (one ac) of the applicable resource impacted by the project, or (2) such other mitigation requirement that is necessary to meet the regulatory standards of an applicable state or federal regulatory program. Preservation and restoration areas shall occur within dedicated open space areas including, but not limited to, the Upper Chiquita Canyon Conservation Easement area as determined by the Project Biologist.</p> <p>b. The restoration program shall be detailed with the BRMP. Prior to restoration of these communities, hydrological testing and monitoring of the creation site shall be conducted to determine that sufficient hydrology exists to support the community. If necessary, a temporary irrigation program shall be incorporated into the mitigation design to ensure successful establishment of the community. The RMP will address issues of detention and settlement basin design for mitigation requirements in relation to water quality.</p> <p>The following performance standards shall apply for the restoration of elderberry woodland areas. Restoration shall be considered successful if:</p> <ul style="list-style-type: none"> - The site does not require substantial maintenance for at least two consecutive years during the monitoring period. - The site must exhibit evidence of natural recruitment of native species, including plant reproduction and/or setting of seeds. - Absolute percent cover of native upper and mid canopy species is 70 percent. - An index of species diversity of the restored areas is statistically comparable to an appropriate reference site within an 80 percent confidence limit. <p>For coast live oak woodland, the following standards shall apply:</p> <ul style="list-style-type: none"> - The site does not require substantial maintenance and meets the success criteria established for this community for at least two consecutive years during the monitoring period. - The site must exhibit evidence of natural recruitment of native species, including plant reproduction and/or setting of seeds. - Absolute percent cover of native upper and mid canopy species is 50 percent, with five percent cover from oak trees. - An index of species diversity of the restored areas is statistically comparable to an appropriate reference site within an 80 percent confidence limit. <p>Monitoring shall be conducted for five years (or less if success criteria are met earlier) to ensure</p>	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	successful establishment of the restored areas. If success standards are not met, remedial measures including introduction of additional seed and/or container stock and adjusting of irrigation shall be implemented as directed by the Project Biologist.	
WV-14	In conjunction with construction activity, the Contractor shall control dust accumulation on natural vegetation at the source of disturbance by standard dust control measures (Mestre Greve Associates 2003).	2006 SOCTIIP FSEIR Section 4.11.4.
WV-15	Prior to final design of the selected alternative, the Project Biologist shall ensure that the location of the proposed wildlife bridges and culvert identified in the NES will provide adequate travel capabilities, contain adequate vegetation cover, have adequate daylight, and have appropriate fencing to encourage animals to use these underpasses. Upon selection of and refinement to, the selected alternative, smaller culverts and bridges that will be necessary to provide drainage and/or avoid impacts to jurisdictional areas shall also be designed, at the direction of the Project Biologist, to promote local and regional wildlife movement.	2006 SOCTIIP FSEIR Section 4.11.4.
	<p>Prior to, or in conjunction with, the permit of application and/or process, Caltrans (Environmental and Maintenance) and resource agencies are to be given an opportunity for review and approval of the design of wildlife movement bridges, undercrossings, and culverts.</p> <p>The width and the height of the wildlife bridges specified in this mitigation measure are those provided by Caltrans as minimum standards. This approach is appropriate and such detail can be provided during further discussions and only for the selected project. To demonstrate the success of this approach, the F/ETCA has monitored seven wildlife undercrossings during the fall and spring of each year since 1999. The wildlife undercrossings are along the Foothill and Eastern Transportation Corridors and consist of bridges as well as large diameter culverts.</p> <p>Methods used to document the presence and diversity of wildlife using the undercrossings include scent stations, spotlight surveys, general scat surveys, and direct observations. The data have shown that there is a considerable amount of wildlife within the study area using the undercrossings. The wildlife observed using the undercrossings includes mountain lions, bobcats, coyotes, gray foxes, and mule deer. This usage demonstrates the overall success of the undercrossings in allowing wildlife continued movement throughout the region. In summary, preliminary results indicate that wildlife is continuing to use the undercrossings along the Toll Roads.</p>	
WV-16	<p>a. Wildlife bridges and culverts shall be designed to provide approaching animals a clear view of the habitat or horizon on the opposite site of the structure. The minimum width at the base of the wildlife bridge or culvert shall be six m (20 ft). The minimum vertical clearance shall be 5.2 m (17 ft) from the floor of the bridge/culvert to the bottom of the structure. No artificial lighting shall be installed or used in or around the bridge/culvert, unless otherwise required to meet Caltrans approval. The ground surface of the wildlife bridges and culverts shall be constructed with a slope ratio of 1:1.5 (V:H).</p> <p>b. Dirt or natural vegetation substrates, rather than concrete or other human-made material, will be placed along the bottom of the bridges or culverts as reasonably feasible.</p> <p>c. Vegetation naturally occurring on the side slopes to the entrances to the underpass will not be removed, to the extent feasible. Where natural vegetation at underpass entrances does not occur, is minimal, or has been removed as a result of bridge or culvert construction, vegetation shall be planted along the slopes that match the closest intact native vegetation. Low-lying shrubs and/or small trees native to the area will be planted to encourage wildlife use of the underpass.</p> <p>d. The appropriate vegetation-type and quantity will be determined by the Project Biologist during construction of the underpass and will consist, at a minimum, of appropriate large shrubs and trees that will achieve at least 1.5 m (five ft) in height at maturity. The replanting will occur during the final stages of underpass construction or immediately following construction in the appropriate season for planting. The planting of vegetation at bridges over drainages shall be compatible with flood control requirements.</p> <p>e. Materials such as rip-rap will not be used in or around the underpass entrances unless required by hydrology/hydraulic conditions.</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-17	Prior to operation of the corridor, chain-link, wire mesh with metal poles, or similar fencing of at least 2.1 m (seven ft) in height will be erected on both sides of the selected alternative from the underpass entrance to a distance of at least 1.0 km (0.62 mile) along the corridor to "funnel" wildlife	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>to the underpass area and to minimize wildlife attempts to cross the roadway surface. Fence height up to three m (10 ft) in height will be used in areas deemed appropriate by the project biologist, F/ETCA, USFWS, FHWA and Caltrans.</p> <p>Wildlife fencing adjacent (100 m/328 ft) to wildlife movement underpasses will be inspected semiannually to identify and repair any gaps or tears in the fence caused by erosion, storm events, vandalism, burrowing animals, or other means that could allow wildlife access onto the roadway surface. F/ETCA will be responsible for the wildlife fencing for the first three years of completing the corridor, with Caltrans assuming responsibility thereafter.</p>	
WV-18	<p>Prior to operation of the corridor, road signs indicating the potential for deer and mountain lion movement shall be installed where indicated by the Project Biologist, due to the potential for wildlife to circumvent the wildlife fencing.</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-19	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>All bridges and culverts in the final design plan will be monitored for a period of three years to document the effectiveness of use. Target species to be evaluated shall be determined by the Regulatory permits, including: USFWS, USACE and CDFG, specific to each bridge and culvert. Wildlife movement studies will be conducted at each underpass twice each year for at least eight weeks during the periods between March and May and between September and November. The studies will begin during the first full time period (beginning with March or September) occurring after the opening of the corridor. Reports will be prepared and submitted to the F/ETCA annually. Based on results of surveys, recommendations to enhance wildlife use of underpasses shall be provided as appropriate (i.e., fencing modification, vegetation enhancement, or clearing, etc.).</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-20	<p>In conjunction with final design, the F/ETCA shall incorporate low-light design features, where feasible, adjacent to the following sensitive wildlife habitats: bridges or culverts within wildlife corridors, and scrub, riparian, and woodland communities. One or more of the following design options shall be used, if feasible, recognizing the constraints of roadway lighting requirements: (1) low-intensity street lamps, (2) low-elevation light poles, or (3) shielding by internal silvering of the globes or external opaque reflectors. Design features shall meet Caltrans approval.</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-22	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Prior to construction of the selected alternative <u>Project</u>, focused sensitive plant species surveys shall be conducted to determine the distribution of sensitive plants within the impact area of the selected alternative so appropriate avoidance (for all sensitive plant species), and seed collection and salvage measures (for Coulter's saltbush, intermediate mariposa lily, southern tarplant, and many-stemmed dudleya) can be implemented. This measure will ensure that the biologist obtains the current onsite conditions, just prior to construction, to maximize avoidance. Surveys shall be conducted during the appropriate time of year (i.e., during the flowering period for each species). Locations of sensitive plant species shall be mapped and shown on construction drawings and identified as ESAs. During final design, temporary access roads will be sited with the approval of the Project Biologist so as to avoid or minimize impacts to sensitive plant populations.</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-23	<p>a. During the spring prior to grubbing or grading (or as determined by the Project Biologist), the limits of individual populations of Coulter's saltbush to be impacted shall be flagged and individual plants shall be marked with pin flags to facilitate the locating of individual plants after flowering. Prior to construction, seeds shall be collected from Coulter's saltbush plants from approximately June through October from ripened seed heads, for later propagation, by personnel experienced in collection of native seed and native plant propagation. This seed shall be stored by a certified seed bank. An appropriate site within the upper Chiquita Canyon Conservation Area or other area shall be identified for the seeding of this species by the Project Biologist. The site shall have similar soils, slope, aspect, and microhabitat characteristics as the site with occupied Coulter's saltbush to support this species.</p> <p>b. Prior to construction, 75 percent of the Coulter's saltbush plants within the area to be impacted shall be translocated to an appropriate site within the Upper Chiquita Canyon Conservation Area or within an appropriate open space dedication area within the region. Prior to the salvage operation, the number of Coulter's saltbush plants to be relocated shall be determined by the Project Biologist. The site can be the same or a different site than is used for the distribution of seed, but shall have similar soils, slope, aspect, and microhabitat characteristics as the site with occupied Coulter's saltbush. A bulldozer or loader shall be used to remove the top 30 cm (one ft) of soil, including all plant material which shall be loaded on flatbed trucks and transported to the receiver site. The</p>	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>Project Biologist shall coordinate all salvaging and relocation effort so that these operations occur in the appropriate season for maximum success.</p> <p>c. Re-establishment of Coulter's saltbush will be monitored for five years. The survival of relocated plants will be recorded each year. Relocation will be considered successful when the survivorship of the relocated plants has stabilized with a 50 percent survival rate, and establishment of seedlings from the seeded material is documented.</p>	
WV-24	<p>a. Intermediate mariposa lily seed shall be collected from populations to be impacted. Prior to grubbing or grading (or as otherwise determined by the Project Biologist), the limits of individual populations to be impacted shall be flagged and individual plants shall be marked with pin flags to facilitate locating individual plants after flowering. Seed shall be collected in late July or early August from ripened seed heads, for later propagation or hand seeding, by personnel experienced in the collection of native seed and native plant propagation.</p> <p>b. Seed collection shall be conducted during two successive years and the following three-year program shall be implemented to ensure the likelihood of success. Propagated mariposa lilies typically exhibit a germination rate of 80 percent; this percentage shall be used to determine the number of seeds to be collected to ensure production of the same number of plants as shall be impacted by construction. The propagated plants shall be grown for two years to allow the bulbs to reach optimal size prior to transplantation. The remaining seed not used for propagation from the first year of seed collection shall be divided in half with one-half hand broadcast during the first year and the remaining one-half hand broadcast the following year.</p> <p>c. The propagated plants shall be introduced (over the three-year program), using at least a 2:1 ratio, into appropriate habitat in open space dedication areas, or as directed by the Project Biologist. Seeding shall occur in similar areas. Site selection shall be based on the presence of suitable habitat as determined by the Project Biologist. Bulbs from the propagated plants shall be planted at the end of the second growing season. The same program shall be followed for seed collected during the second year. Planting of bulbs and hand broadcasting of seed shall be performed in September or October.</p> <p>d. Re-establishment of intermediate mariposa lily will be monitored for three years following initial planting of the propagated plants and seeding. The survival of the plants will be recorded each year. Establishment of the population will be considered successful when the survivorship of the relocated plants has stabilized with a minimum 10 percent flowering in any one year of the monitoring period and establishment of seedlings from the seeded material is documented.</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-25	<p>a. Areas determined to have appropriate hydrology and soil chemistry (salinity) shall be reseeded with seed collected from populations of southern tarplant. Southern tarplant is restricted to saline, vernal mesic areas, often along the margins of estuaries or areas of high salinity. The Project Biologist shall identify candidate areas within open space areas that exhibit suitable conditions for introduction of the tarplant.</p> <p>b. For one year prior to construction as feasible, the F/ETCA shall have southern tarplant seed collected by personnel experienced in collection of native seeds. Seed collection shall be conducted during successive years from September through December. One-half of the first years' collected seed shall be hand broadcast at the reintroduction site with the remaining one-half stored in appropriate conditions for introduction the following year. Seed collected during the second season shall be stored for potential later use in the event that success standards are not met following the seeding during years one and two.</p> <p>c. Because southern tarplant is an annual species, population numbers are expected to naturally fluctuate from year to year depending upon environmental conditions. Reseeded areas shall be monitored for three years following the initial seeding. Establishment shall be considered successful if plant densities during any of the three years of monitoring are comparable to densities of the impacted populations based on sampling quadrants. If established populations do not achieve comparable densities of impacted populations, additional reintroduction sites shall be identified and stored seed, obtained during the collection period, shall be introduced into additional sites over a two-year period (as in the initial reintroduction program described above).</p> <p>The additional sites shall be monitored for three years and shall be considered successful if population numbers at all of the sites achieve densities of impact areas. If established populations</p>	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	have not reached the density threshold following the addition of supplemental sites, further remedial measures shall be implemented as determined appropriate by the Project Biologist.	
WV-26	<p>a. Many-stemmed dudleya caudexes and seed shall be collected from populations to be impacted. Prior to grubbing or grading (or as otherwise determined by the Project Biologist), the limits of individual populations to be impacted shall be flagged and groups of plants shall be marked with pin flags to facilitate the locating of individual plants after flowering. Seed shall be collected in late July or early August from ripened seed heads, for later propagation or hand seeding, by personnel experienced in the collection of native seed and native plant propagation. Twenty-five percent of the seeds collected will be stored with Rancho Santa Ana Botanical Gardens (RSABG) by their standard agreement. The remainder of the seed will be used to establish the dudleya population as described below.</p> <p>b. Caudexes shall be harvested for later planting, using appropriate screens or mesh and shall be conducted by individuals experienced in the salvage of many-stemmed dudleya. Where possible, caudexes will be salvaged by removing soil blocks containing marked dudleya. Both seed and collected caudexes shall be replanted and established at an appropriate site within an open space dedication area at the direction of the Project Biologist.</p> <p>c. Monitoring of the established populations shall be conducted for three years. The propagated caudexes shall be introduced (over the three-year program), using at least a 1:1 ratio. Establishment shall be considered successful if planted/seeded populations total 75 percent of the impacted populations and the population demonstrates recruitment of seedlings. If planted/seeded populations do not achieve 75 percent of the impacted populations, additional collection of seed shall be performed and additional caudexes will be propagated. If planted/seeded populations do not achieve 75 percent thresholds, further remedial measures shall be implemented as recommended by the Project Biologist.</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-27	Before entering or leaving the construction site, all construction equipment shall be inspected for evidence of invasive species and/or their seeds. Should any plants and/or seeds be detected, the equipment will be washed to ensure no invasive species and/or their seeds will be brought into or removed from the site.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-28	Prior to construction, substantial populations of invasive plant species identified on the State of California List of Noxious Weed Species and the California Exotic Pest Plant Council Exotic Pest Plants (CalEPPC) of Greatest Ecological Concern in California List adjacent to the grading limits shall be mapped.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-29	<p><i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>The Project Biologist shall prepare an invasive species management program to be incorporated into the BRMP. The program shall discuss the invasive species within landscaping and mitigation areas to be eradicated or controlled and eradication methods, which may include mowing, hand removal, or herbicide application. Removal of invasive plant species on the State of California List of Noxious Weed Species with Pest Rating A shall be required, at the direction of the Project Biologist. Eradication, containment, or control of all invasive plant species on the State of California List of Noxious Weed Species with Pest Rating B shall be at the discretion of the Project Biologist. The program shall also address invasive species identified in the California Exotic Pest Plant Council Exotic Pest Plants of Greatest Ecological Concern in California List and methods for their control.</p> <p>The potential for contribution of funds to such programs as the Arundo Removal Program to assist with removal of giant reed or other species from riparian habitats such as San Juan Creek shall also be addressed. The program shall also discuss monitoring of the landscaped and mitigation areas to ensure invasive species are properly controlled or eradicated. The maintenance of the mitigation sites along the corridor will be under the supervision of the Project Biologist (Executive Order 13112, Feb. 3, 1999).</p>	2006 SOCTIIP FSEIR Section 4.11.4.
WV-30	Before and during construction (as appropriate), the Project Biologist shall conduct focused nocturnal and diurnal surveys within suitable habitat between February and May (a minimum of one week prior to the onset of construction) to determine the presence or absence of the western spadefoot toad in the impact area. Any western spadefoot toads found within the impact area will be relocated outside the construction area by the Project Biologist. In areas where western spadefoot toads were found, fencing or screening approximately 1.5 m (five ft) in height (with one m (three ft) buried below the surface) will be installed to prevent western spadefoot toads from entering the area after the onset of construction.	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
WV-31	Before and during construction (as appropriate), the Project Biologist shall conduct focused nocturnal and diurnal surveys within suitable habitat between February and May to determine the presence or absence of the southwestern pond turtle in the impact area. Southwestern pond turtles observed prior to and during construction within and adjacent to the project footprint will be relocated outside of the construction area either upstream or downstream from the selected alternative by the Project Biologist. In areas where Southwestern pond turtles are found, fencing or screening approximately 1.5m (five ft) in height (with 0.2m [0.5 ft] buried below the surface) will be installed to prevent southwestern pond turtles from entering the area after the onset of construction. Fencing/screening will remain in place from June through August. "southwestern pond turtles removed from the construction area will be relocated in such a way that the exclusions fences will not isolate any animals from the aquatic parts of their habitat."	2006 SOCTIIP FSEIR Section 4.11.4.
WV-32	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> During grading activities, two-striped garter snakes observed within and adjacent to the impact area will be relocated outside of the construction area either upstream or downstream of the <i>Project selected alternative</i> by the Project Biologist.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-33	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> To minimize and offset adverse effects of the selected alternative <i>Project</i> on the San Diego cactus wren, suitable habitat for this species (as determined by the Project Biologist) shall be grubbed from the project footprint area from September to February if feasible (generally outside the breeding season for this species). The Project Biologist shall survey the suitable habitat within the areas to be grubbed one day prior to any vegetation disturbance to determine the location and numbers of San Diego cactus wrens. The Project Biologist will be on-site and present during all suitable habitat clearing and removal activities to minimize the potential for individual San Diego cactus wrens to be wounded or killed during the clearing of habitat.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-34	If grubbing activities between February and August (generally within the breeding season for San Diego cactus wren) are unavoidable, the following measures will be implemented: a. Surveys by the Project Biologist will be conducted a minimum of three times on separate days after the initiation of the nesting season to determine the presence of San Diego cactus wrens, nest building activities, egg incubation activities, or brood rearing activities. These surveys will be conducted within the week prior to the initiation of brushing, grading, or other construction activities. One survey will be conducted the day immediately prior to the initiation of work. The USFWS will be notified in writing seven days prior to the initiation of surveys. b. If no nest(s), nesting behavior, or brood rearing activities are detected, work may commence. Prior to and during work activities, the Project Biologist will locate any individual San Diego cactus wrens on-site and direct operators to begin in an area away from the birds. The pattern of brushing/grubbing activities will be designed to optimize opportunities for flushed birds to be directed towards the open space areas in the vicinity of the impact area. c. During construction, no activity will occur within approximately 150 m (500 ft) of active nests.	2006 SOCTIIP FSEIR Section 4.11.4.
WV-35	Prior to construction activity, the Project Biologist shall survey the construction limits for the presence of occupied raptor nests and nest burrows (for burrowing owls). Occupied raptor nests/burrows shall be mapped on the construction plans by the Project Biologist. The Project Biologist will visit the nest/burrow site at the beginning of the nesting season to verify the use of the nests/burrows for that particular year. If nesting activity begins at any nest site, then the active nest/burrow(s) will be protected as an ESA until nesting activity has ended to ensure compliance with Section 3503.5 of the CDFG Code. To protect any active nest/burrow sites, the following restrictions on construction are required between February and June (or until nests are no longer active as determined by the Project Biologist): (1) clearing limits will be established a minimum of approximately 150 m (500 ft) in any direction from raptor nests/burrows (or as otherwise determined by the Project Biologist); and (2) access and surveying will not be allowed within approximately 300 m (900 ft) of nests/burrows (or as otherwise determined by the Project Biologist).	2006 SOCTIIP FSEIR Section 4.11.4.
WV-36	Prior to construction activity, the Project Biologist shall survey the construction limits for the presence of occupied breeding coyote, bobcat, or mountain lion dens. In the event that an occupied breeding coyote, bobcat, or mountain lion den is located within the impact area, then grading and construction operations shall be redirected temporarily around the den for a distance of approximately 150 m (500 ft) or as otherwise determined by the Project Biologist. The dens shall be resurveyed by the Project Biologist within the last month of the breeding seasons of these	2006 SOCTIIP FSEIR Section 4.11.4.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	species to verify completion of the breeding cycle. Dens shall be removed during the non-breeding season only.	
WV-37	During the spring and summer (May through August) prior to the habitat removal, a qualified bat biologist shall survey all potential roosting habitat proposed for removal by the proposed construction. If a roost is found, the animals will be evicted and the resource sealed or removed so the bats cannot return and would be forced to find alternative roost sites. Tree removal shall be conducted between September and November to avoid hibernating bats (December through February) and maternity season (May through August) if feasible.	2006 SOCTIIP FSEIR Section 4.11.4.
Waters of the U.S. and Wetlands		
WW-6	Final design and construction shall restore the perennial river and stream channels and ephemeral drainages and washes to their original contours upon completion of construction where feasible, with the exclusion of areas of permanent impact.	2006 SOCTIIP FSEIR, Section 4.10.5.1
WW-7	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> During all construction activities, the Contractor shall ensure that construction equipment or vehicles shall not be stored in areas defined as ESAs, including areas within the jurisdiction of the USACOE and/or CDFG. There shall be no fueling, lubrication, storage, or maintenance of construction equipment within 46 meters (150 feet) of CDFG or USACOE-jurisdictional areas. Construction equipment staging/storage shall be located in previously disturbed or non-native areas to the maximum extent possible.	2006 SOCTIIP FSEIR, Section 4.10.5.1
WW-8	During all construction activities, the Contractor shall ensure that no waste material shall be discharged to any CDFG or USACOE jurisdictional areas. Spoil sites shall not be located within any CDFG or USACOE jurisdictional areas, or in areas where it could be washed into any surface water body.	2006 SOCTIIP FSEIR, Section 4.10.5.1
WW-9	Prior to final design, the Contractor shall prepare the final construction Runoff Management Plan (RMP). The plan shall address the final location of facilities to route and detain corridor runoff for the purpose of maintaining peak flows and flow velocities downstream of the Alignment at existing rates and preventing project pollutants from reaching improved and unimproved downstream drainages. County of Orange Best Management Practices (BMPs) will be included in these runoff facilities of the Alternatives as determined appropriate by the Design Engineer. The final RMP will contain provisions for changes to the plan (e.g., alternative mechanisms, plant materials) if necessary during project design and/or construction phases to achieve the stated goals and performance standards at an equal or greater level. The RMP will address issues of detention and settlement basin design for mitigation requirements in relation to water quality. The plan shall be submitted to the Regional Water Quality Control Board (RWQCB), Caltrans, and the Orange County Environmental Management Agency (OCEMA) Environmental Planning Division for review and comment. (RMP, Psomas 2003.)	2006 SOCTIIP FSEIR, Section 4.10.5.1
WW-10	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> The Contractor shall locate staging areas for construction equipment outside of areas in the jurisdiction of the USACOE or CDFG to minimize impacts to sandy creek benches.	2006 SOCTIIP FSEIR, Section 4.10.5.1
WW-11	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> Prior to final design, the F/ETCA shall prepare a jurisdictional delineation documenting the Waters of the U.S. and wetlands, CDFG, and GGG-jurisdictional impacts for the selected alternative. Prior to final design, the F/ETCA shall prepare a functional assessment of the wetland mitigation plan according to the tenets of the USACOE Regulatory Guidance Letter 02 2 to assure that the functions and values have been replaced and that no net loss of waters and wetland values occur. Habitat replacement guidelines shall be developed to identify and quantify habitats that will be removed along with the locations where habitats will be restored or relocated to ensure no net loss.	2006 SOCTIIP FSEIR, Section 4.10.5.1
CDFG – 1600 Streambed Alteration Agreement Conditions		
CDFG-1	The agreed work includes activities associated with the Project Location and Project Description that is provided above. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including the Final Natural Environmental Study for the South Orange County Transportation Infrastructure Improvement Project (P&D Consultants, Inc., December 2003), Jurisdictional Determination and Wetlands Delineation Technical Assessment for	2008 SAA 1600-2006-0182-R5, Page 3 Extension and Amendment 1 of Lake or SAA

Appendix A

State Route 241
Tesoro Extension Project

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Applicable Mitigation Measures/Commitments/Conditions

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	Impacts Associated With The South Orange County Transportation Infrastructure Improvement Project (Glenn Lukos Associates, Inc., rev. April 6, 2005) and Addendum thereto (Glenn Lukos Associates, Inc., September 26, 2005), and the Notification Package for the Southern Orange County Transportation Infrastructure Improvement Project (A7-FEC-M Alternative), and shall be implemented as proposed unless directed differently by this Agreement.	Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-2	The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency, upon demand.	2008 SAA 1600-2006-0182-R5, Page 4 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-3	The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department's South Coast Office at the address above, ATTN: Streambed Alteration Program - SAA # 1600-2006-0182-R5.	2008 SAA 1600-2006-0182-R5, Page 4 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-4	<i>(This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i> The Operator shall not impact/fill more than 37.69 acres of streambed. Permanent impacts to 23.08 acres consist of 0.20 acre alkali meadow, 0.23 acre arroyo willow forest, 11.88 acres coast live oak riparian woodland, 3.96 acres mulefat scrub, 1.05 acres riparian herb, 1.51 acres southern willow scrub, 0.18 acre southern arroyo willow riparian forest, 1.36 acres southern sycamore riparian woodland, and 2.71 acres unvegetated-streambed. Temporary impacts to 14.61 acres consist of 0.42 acre freshwater marsh, 6.69 acres southern arroyo willow riparian forest, 7.47 acres southern sycamore riparian woodland, and 0.03 acre unvegetated streambed.	2008 SAA 1600-2006-0182-R5, Page 4 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-5	The Project will mitigate using the ratios provided, but the Project has less impacts than stated. Mitigation for areas of permanent disturbance - The Operator shall mitigate the permanent impacts to 2.71 acres unvegetated stream at a replacement-to-impact ratio of 1:1 through the creation of 2.71 acres riparian habitat. The Operator shall mitigate the permanent impacts to 0.20 acre alkali meadow and 1.05 acres riparian herb at a replacement-to-impact ratio of 2: 1 through the creation of 1.25 acres riparian habitat and the creation, restoration, and/or enhancement of 1.25 acres riparian habitat. The Operator shall mitigate the permanent impacts to 3.96 acres mulefat scrub and 1.51 acres southern willow scrub at a replacement-to-impact ratio of 2:1 through the creation of 5.47 acres riparian scrub and the creation, restoration, and/or enhancement of 5.47 acres riparian scrub. The Operator shall mitigate the permanent impacts to 0.41 acre willow forest at a replacement-to-impact ratio of 3: 1 through the creation of 0.41 acre willow riparian habitat and the creation, restoration, and/or enhancement of 0.82 acre willow riparian habitat. The Operator shall mitigate the permanent impacts to 1.36 acres sycamore riparian woodland at a replacement-to-impact ratio of 3:1 through the creation of 1.36 acres sycamore riparian habitat and the creation, restoration, and/or enhancement of 2.72 acres sycamore riparian habitat. The Operator shall mitigate the permanent impacts to 11.88 acres coast live oak riparian woodland at a replacement-to-impact ratio of 3:1 through the creation of 11.88 acres coast live oak riparian habitat and the creation, restoration, and/or enhancement of 23.76 acres coast live oak riparian habitat.	2008 SAA 1600-2006-0182-R5, Page 4 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-6	Mitigation for areas of temporary disturbance - The Operator shall mitigate the temporary impacts to 0.03 acre unvegetated stream at a replacement-to-impact ratio of 1:1 through the restoration of temporarily impacted areas. The Operator shall mitigate the temporary impacts to 0.42 acre freshwater marsh at a replacement-to-impact ratio of 2:1 through the restoration of temporarily impacted areas and the creation, restoration, and/or enhancement of 0.42 acre riparian habitat. The Operator shall mitigate the temporary impacts to 6.69 acres willow riparian forest and 7.47 acres	2008 SAA 1600-2006-0182-R5, Page 4 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	sycamore riparian woodland at a replacement-to-impact ratio of 3:1 through the restoration of temporarily impacted areas and the creation, restoration, and/or enhancement of 28.32 acres of riparian forest/woodland. Restoration of temporary impacts shall include restoring stream morphology to pre-construction conditions where impacts occur and revegetating impacted areas with an appropriate native plant palette.	0182-R5 SOCTIIP (9-20-2012)
CDFG-7	The Operator shall mitigate at a minimum 5:1 ratio for impacts beyond those authorized in this Agreement. In the event that additional mitigation is required, the type of mitigation shall be determined by the Department and may include creation, restoration, enhancement and/or preservation.	2008 SAA 1600-2006-0182-R5, Page 5 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-8	The Operator shall submit a Draft Revegetation/Mitigation Plan for Department review at least one year (365 days) prior to project initiation. The Draft Revegetation/Mitigation plan shall be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. The plan shall include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. The Operator shall receive Department approval of the Revegetation/Mitigation Plan prior to initiation/impacts.	2008 SAA 1600-2006-0182-R5, Page 5 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-9	The Final Revegetation/Mitigation plan shall also be designed to identify and meet the objectives of the successful establishment and long-term survival of riparian oak woodland habitat. The plan should address the introduction of additional shade-adapted native understory species after the first five years of oak tree establishment. Associated understory and early-successional native species must be maintained and monitored along with trees to achieve viable habitat and adequately compensate for biological functions lost. Specific woodland and understory performance criteria for the riparian oak woodland habitat shall be monitored for a minimum of 10 years and shall meet the overall success criteria as described in this Agreement.	2008 SAA 1600-2006-0182-R5, Page 5 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-10	All mitigation shall be installed by the end of the first April following project initiation. Any delay in the mitigation will require an amendment to this Agreement and may result in the application of higher mitigation ratios than currently required by this Agreement to offset the additional temporal loss of habitat function. (The following replaces original Condition 10 above.) 10. Mitigation for permanent impacts, consisting of creation, restoration and enhancement, shall begin at project initiation with site preparation and one or more seasons of exotic species control, followed by planting and seeding. Installation shall be complete no more than two years after initiation. Mitigation for temporary impacts, consisting of restoration and enhancement, shall begin once construction within each temporary impact area is complete and shall be completed no later than the first April following initiation of mitigation activities at that location.	2008 SAA 1600-2006-0182-R5, Page 5 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-11	All planting should be done between October 1 and April 30 to take advantage of the winter rainy season.	2008 SAA 1600-2006-0182-R5, Page 5 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-12	The Operator shall submit a report to the Department, within 45 days after completion of site preparation and planting, acknowledging the completion of the installation phase of the mitigation and documenting its as-built status. The report shall include a plan or map diagram showing the mitigation area and the final as-built locations of plantings, irrigation, and other installations. Photographs from representative vantage points shall also be included to document the as-built	2008 SAA 1600-2006-0182-R5, Page 5 Extension and Amendment 1 of Lake or SAA

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	conditions.	Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-13	<p>To ensure a successful revegetation effort, all plants shall be monitored and maintained for five years, with the exception of coast live oak riparian habitat which shall be monitored and maintained for 10 years, as necessary to achieve a minimum of 100% survival the first year and 80% survival thereafter and/or 75% cover of native woody perennials after 3 years and 90% cover of native woody perennials at the end of the 5th year and thereafter. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years (10 years for coast live oak riparian habitat) after planting. All oak trees shall be monitored for survival annually in years 1 through 5, and in years 7 and 10. Any tree that does not survive shall be replaced in-kind. Replacement trees/plants shall be monitored with the same survival and growth requirements for 10 years after planting.</p> <p>At the completion of the monitoring period, the mitigation site shall have received NO supplemental irrigation for the two consecutive years prior to the completion of the monitoring period, nonnative plants shall not make up more than 5% of the entire cover of the site, no more than 5% of the site shall consist of bare ground and the site shall be free of invasive exotic plant species such as tamarisk.</p>	<p>2008 SAA 1600-2006-0182-R5, Page 5</p> <p>Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)</p>
CDFG-14	The Operator shall have a qualified biologist conduct semiannual surveys of the mitigation area to document the bird, wildlife, and fish use of the site. The surveys shall be conducted in the spring and fall of each year, and at appropriate times of the day. The surveys shall be initiated two years after the revegetation has occurred and shall continue until the monitoring of the mitigation site is completed or a minimum of 5 years. Semiannual summary reports may be submitted to the Department along with, and/or as a component of, the annual monitoring report.	<p>2008 SAA 1600-2006-0182-R5, Page 6</p> <p>Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)</p>
CDFG-15	<p>An annual report shall be submitted to the Department by January 1 of each year for 5 years (with an additional report at years 7 and 10 for coast live oak riparian habitat) after the restoration/planting. This report shall include:</p> <p>(a) the survival, % cover, and height of both tree and shrub species; (b) the number by species of plants replaced; (c) an overview of the revegetation effort; (d) the method used to assess these parameters; and (e) photos from designated photo stations.</p>	<p>2008 SAA 1600-2006-0182-R5, Page 6</p> <p>Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)</p>
CDFG-16	The Operator shall not be released from these maintenance and monitoring obligations until such time as the Operator has requested and received written concurrence from the Department that the success criteria have been met.	<p>2008 SAA 1600-2006-0182-R5, Page 6</p> <p>Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)</p>
CDFG-17	A security (e.g. an irrevocable letter of credit, pledge savings account or CD) for the amount of complete restoration shall be submitted to the department prior to initiation of construction activities. This amount shall be based on a cost estimate which shall be submitted to the Department for approval at least one year (365 days) prior to project initiation. The security shall be approved by the Department's legal advisors prior to its execution, and shall allow the Department at its sole discretion to recover funds immediately if the Department determines there has been a default. The legal advisors can be contacted at (916) 654-3821.	<p>2008 SAA 1600-2006-0182-R5, Page 6</p> <p>Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)</p>
CDFG-18	The Operator shall not remove vegetation within the stream from January 1 to September 15 to avoid impacts to nesting birds. However, the Operator may remove vegetation during this time if a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) conducts a survey for nesting birds within three days prior to the vegetation removal, and ensures no nesting birds shall be impacted by the project. These surveys shall include the areas within 500 feet of the edge of the proposed impact area(s). If active nests are found, a minimum 200-foot (500 feet for raptors) fence barrier shall be erected around the nest site. No habitat removal or any other work shall occur within the fenced nest zone even if the nest continues active beyond September 15. No work shall	<p>2008 SAA 1600-2006-0182-R5, Page 6</p> <p>Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)</p>

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	occur within the fenced zone until the young have fledged and are no longer being fed by the parents. The Operator shall submit the mapped survey results to the Department for review and approval prior to vegetation removal to ensure full avoidance measures are in place.	
CDFG-19	The Operator shall not work within the channel of any stream where native fish do/may occur from October 15 to June 15.	2008 SAA 1600-2006-0182-R5, Page 6 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-20	The Operator shall use temporary construction fencing to identify the agreed limits of disturbance within the stream and adjacent habitat.	2008 SAA 1600-2006-0182-R5, Page 6 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-22	The Operator shall restore the perennial river and stream channels and ephemeral drainages and washes to their original contours upon completion of construction where feasible, with the exclusion of areas of permanent impact.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-23	The Operator shall not return non-native fish, amphibians, or turtles captured during surveys or project activities to the stream.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-24	This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a species listed under the California Endangered Species Act (Fish & Game Code § 2050 et seq.) and/or Federal Endangered Species Act (16 U.S.C. § 1531 et seq.); a species identified by the Department as a species of special concern; or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall occur to any protected species, except as authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such take.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-25	Within one year before project initiation, the Operator shall have a qualified biologist survey the proposed work area to verify the presence or absence of protected species. The results of these surveys shall be provided to the Department, along with copies of all field notes, prior to the initiation of work. The survey technique shall be approved by the Department in writing and the researcher shall have the required permits. The Operator shall have a qualified biologist onsite daily to ensure no impacts occur to protected species. If any protected species could be impacted by the work proposed, the Operator shall obtain the required state and federal threatened and endangered species permits prior to the initiation of project activities.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-26	If a protected species is found in the proposed work area, or is in a location which could be impacted by the work proposed, the Operator shall submit a plan to the Department for review and approval to avoid impacts to this species.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-27	If the work requires that a protected species be removed, disturbed or otherwise impacted, the Operator shall obtain the appropriate state and federal endangered species permits.	2008 SAA 1600-2006-0182-R5, Page 7

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
		Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-28	All submittals required by this Agreement shall be sent to the Department's South Coast Office at the above address: ATTN: Streambed Alteration Program - SAA #1600-2006-0182-R5, unless directed differently by this Agreement.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-29	All Department approvals of plans or documents required by this Agreement shall be in writing, unless specified otherwise.	2008 SAA 1600-2006-0182-R5, Page 7 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-31	The Operator shall provide the Department with a copy of the final construction Runoff Management Plan (RMP) prior to initiation of project activities. The plan shall address the final location of facilities to route and detain corridor runoff for the purpose of maintaining peak flows and flow velocities downstream of the Alignment at existing rates and preventing project pollutants from reaching improved and unimproved downstream drainages. The final RMP shall contain provisions for changes to the plan if necessary during project design and/or construction phases to achieve the stated goals and performance standards at an equal or greater level. The RMP will address issues of detention and settlement basin design for mitigation requirements in relation to water quality.	2008 SAA 1600-2006-0182-R5, Page 8 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-32	The Operator shall provide the Department with a copy of the Storm Water Pollution Prevention Plan (SWPPP) prior to initiation of project activities.	2008 SAA 1600-2006-0182-R5, Page 8 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-33	The Operator shall provide the Department with a detailed construction schedule prior to initiation of project activities. The schedule shall identify the approximate beginning and completion date for each activity within the stream zone. The names, phone numbers, cellular phone numbers, pager numbers of key personnel shall be included in this notification.	2008 SAA 1600-2006-0182-R5, Page 8 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-34	Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily, to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic life.	2008 SAA 1600-2006-0182-R5, Page 8 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-35	Stationary equipment such as cranes, motors, pumps, generators, and welders located within or adjacent to the stream shall be positioned over drip pans.	2008 SAA 1600-2006-0182-R5, Page 8 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-36	The clean-up of all spills shall begin immediately after the spill occurs. The Department shall be	2008 SAA

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	notified immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.	1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-37	If operations require moving of equipment across a flowing stream, such operations shall be conducted without increasing stream turbidity. For repeated crossings, the operator shall install a bridge, culvert, or rock-fill crossing as specified in comments below, and approved by the Department prior to placement.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-38	Areas of disturbed soils with slopes toward a stream or lake shall be stabilized to reduce erosion potential. Planting, seeding and mulching is conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become established, non-erodible materials shall be used for such stabilization. Any installation of non-erodible materials not described in the original project description shall be coordinated with the Department. Coordination may include the negotiation of additional Agreement provisions for this activity.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-39	Any temporary dam or other artificial obstruction constructed shall only be built from materials such as clean gravel which will cause little or no siltation, and shall be approved by the Department prior to construction. Upon completion of the project and after all flowing water in the area is clear of turbidity, the gravel along with the trapped sediment shall be removed from the stream.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-40	During the design phase for each proposed culvert crossing, the Operator shall consider the use of a bridge or open-bottom culvert, where practicable. Where a proposed culvert is replaced by a bridge or open-bottom culvert, the Department shall consider a reduction in the mitigation obligation.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-41	The Operator shall provide the Department with engineering design plans for each culvert or bridge crossing no fewer than 90 days prior to initiation of construction of that crossing. The Operator shall receive Department approval of the plans prior to initiation of construction of that crossing.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-42	The Operator shall provide the Department with a copy of the applicable Caltrans Fish Passage Design Forms, or shall provide the Department with the information required in the Forms in an equivalent format, for each culvert crossing prior to or concurrent with the submittal of engineering design plans.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-43	The Operator shall ensure that each culvert crossing is designed, installed, and maintained in accordance with the Culvert Criteria for Fish Passage (Department of Fish and Game, May 2002), Guidelines for Salmonid Passage at Stream Crossings (National Marine Fisheries Service, September 2001), and Fish Passage Design for Road Crossings (Caltrans, May 2007).	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
		2012)
CDFG-44	In designing each culvert crossing, the Operator shall choose the "Stream Simulation Design Option", as described in the above-referenced fish passage guidelines, where practicable. If the Operator chooses a different design option, the Operator shall submit to the Department information sufficient to support their decision, including an evaluation of the suitability of the area to support native fish and a survey of species present, prior to or concurrent with the submittal of engineering design plans. The Operator shall receive Department approval prior to initiation of construction of the crossing.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-45	Any structure/culvert placed within a stream where fish do/may occur shall be designed, constructed and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish that impedes their upstream or downstream movement. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any aspect of the proposed project results in a long term reduction in fish movement, the operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of fish across the structure.	2008 SAA 1600-2006-0182-R5, Page 9 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-46	The use of grouted rock shall be minimized to the extent practicable.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-47	This Agreement does not authorize the use of gabions within the stream channel.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-48	Plans for design of concrete sills and other features that could potentially impede fish migrations shall be approved by the Department.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-49	Storm drains lines/culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-50	Work must be performed in isolation from the flowing stream. When work in a flowing stream is unavoidable, the stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by the Department. Location of the upstream and downstream diversion points shall be approved by the Department. The Operator shall provide the Department with a draft water diversion plan no fewer than 90 days prior to project initiation for review and approval. The Operator shall receive Department approval prior to initiation of construction of the diversion.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
CDFG-51	Flow diversions shall be done in a manner that shall prevent pollution and/or siltation and which shall provide flows to downstream reaches. Flows to downstream reaches shall be provided during all times that the natural flow would have supported aquatic life. Said flows shall be sufficient quality and quantity, and of appropriate temperature to support fish and other aquatic life both above and below the diversion. Diversions shall be engineered, installed, and maintained to assure resistance to washout and erosion of the streambed and banks. Normal flows shall be restored to the effected stream immediately upon completion of work at that location.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-52	Pump intakes placed in stream/lake water shall be fitted with mesh screens to protect fish and amphibians from injury or death.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-53	The Operator/Contractor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any state or federally listed species, or state listed species of special concern.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-54	Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-55	Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a flowing stream or placed in locations that may be subjected to high storm flows.	2008 SAA 1600-2006-0182-R5, Page 10 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-56	Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require that the work site be isolated and for the construction of silt catchment basins, so that silt, or other deleterious materials are not allowed to pass to downstream reaches. The placement of any structure or materials in the stream for this purpose, not included in the original project description, shall be coordinated with the Department. Coordination shall include the negotiation of additional Agreement provisions.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-57	Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective Department approved control devices are installed, or abatement procedures are initiated.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
		2012)
CDFG-58	Staging/storage areas for equipment and materials shall be located outside of the stream.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-59	Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-60	No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products, or any other substances/materials associated with any project-related activity shall be allowed to contaminate the soil and/or enter into or be placed where they may be washed by rainfall or runoff into a stream or lake. Any of these substances/materials, placed within or where they may enter a stream or lake, by the Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately upon observation of their presence. When operations are completed, any excess materials or debris shall be removed from the work area.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-61	No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-62	The Operator shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of the Operator to ensure compliance.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-63	No equipment maintenance shall be done within or near any stream/lake where petroleum products or other pollutants from the equipment may enter these areas under any flow.	2008 SAA 1600-2006-0182-R5, Page 11 Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012)
CDFG-A1	The Operator shall be allowed to proceed with project activities in phases as long as any pre-impact requirements for submittal of deliverables have been satisfied for that portion of the project where impacts are to occur (e.g., Revegetation/Mitigation Plan, financial security, biological survey results, Biological Resources Management Plan, Runoff Management Plan, Storm Water Pollution Prevention Plan, detailed construction schedule, engineering design plans, Caltrans Fish Passage Design Forms, water diversions plans, etc. As set forth in Conditions 8, 17, 25, 30, 31, 32, 33, 41, 42, 44, and 50, of this Agreement). The Operator shall receive written approval from the	Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012).

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	Department prior to initiating each phase.	
CDFG-A2	The mitigation obligations described in the Agreement for impacts resulting from the project (Conditions 5 through 16) may be met in phases, if the project is constructed in phases. Prior to initiation of impacts for each phase, the Operator shall provide the Department with a detailed accounting of the anticipated impacts for that phase of the project, including acreage, linear feet, habitat type, and the permanent versus temporary nature of the impacts, sub-totaled by drainage. The Operator shall mitigate at the ratios established by Conditions 5 and 6 of the Agreement. For each phase of the project, mitigation-related deadlines in the Agreement that are linked to the initiation or completion of project activities shall be based on the timing of that phase of the project.	Extension and Amendment 1 of Lake or SAA Notification No. 1600-2006-0182-R5 SOCTIIP (9-20-2012).
USFWS Biological Opinion Conditions		
FWS-1a	1a. Because it is anticipated that the toll road construction will not begin for several years and population numbers are anticipated to fluctuate, preconstruction protocol surveys for gnatcatcher and vireo will be conducted within 1-year of project vegetation clearing/grading activities to monitor and report on the number of birds within the action area at the time of project impacts.	2008 USFWS Biological Opinion FWS-OR/MCBCP-08B0352/08F0487 Terms & Conditions 1a
FWS-1b	<i>(This measure has been revised from its original form in the 2008 BO to address the Tesoro Extension Project).</i> F/ETCA will staff a monitoring biologist(s) approved by the Agencies to ensure compliance with all avoidance/minimization measures during initial vegetation clearing/grubbing and project construction (Appendix 1; Measures WV-2, 3). The biologist(s) must be knowledgeable of the biology and ecology of the listed species addressed in this biological opinion (i.e., tidewater goby , arroyo toad, coastal California gnatcatcher, least Bell's vireo, and Pacific pocket mouse FHWA will submit the biologist's name, address, telephone number, resumé, at least three references (i.e., the names and contact information of people who are familiar with the relevant qualifications of the proposed biologist), and work schedule on the project to the CFWO for approval at least 7 days prior to initiating work. The biological monitor(s) shall have the authority to halt/suspend all associated project activities which may be in violation of the terms and conditions of the biological opinion, or to avoid or minimize the unanticipated incidental take of listed species, for as long as necessary to resolve the situation through consultation with this office.	2008 USFWS Biological Opinion FWS-OR/MCBCP-08B0352/08F0487 Terms & Conditions 1b
FWS-2b	2b) For the arroyo toad, the Biological Resources Management Plan and the Arroyo Toad Resource Management Plan (described in Appendix 1, Measure TE10) shall include, at minimum, the following: i. Surveys shall be conducted in accordance with the approved Service protocol. ii. Capture methods shall follow commonly accepted techniques for amphibian field sampling, including: capture by hand, dip-netting, scooping up by container, and pitfall trapping. iii. Amplexing pairs of toads shall not be captured, handled, or disturbed. iv. Toads exhibiting signs of physiological distress shall be immediately released at the relocation site. v. Toads shall be maintained until release in a manner that optimizes their survival. vi. Toads that are to be measured and released shall be handled in an expedient manner with minimal harm. vii. If the take limit associated with construction is reached (i.e., if more than 25 toads are captured within the project footprint during pre-project trapping), construction-related activities with the potential to affect toads will immediately cease, and the CFWO will be contacted. If the take threshold related to capture and release or road mortality is exceeded, the CFWO will be contacted immediately to determine if additional conservation measures are required.	2008 USFWS Biological Opinion FWS-OR/MCBCP-08B0352/08F0487 Terms & Conditions 2b
FWS-3a	3a) Inspect the toad barrier at minimum twice annually with one inspection taking place prior to the typical onset of the rainy season and make any necessary repairs.	2008 USFWS Biological Opinion FWS-OR/MCBCP-08B0352/08F0487 Terms & Conditions 3a
FWS-3b	3b) Implement a monitoring program to track the take of toads from vehicle strikes along the roadway for a period of 5 years following opening of the toll road. This program shall be subject to review and approval by the Service.	2008 USFWS Biological Opinion FWS-OR/MCBCP-08B0352/08F0487 Terms & Conditions 3b

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
FWS-4a	<p><i>(This measure has been revised from its original form in the 2008 BO to address the Tesoro Extension Project).</i></p> <p>To minimize the potential effects of increased fire frequency associated with the toll road, the Biological Resources Management Plan will include a plan to maintain habitat suitability following fires resulting from construction and operation of the toll road (a post-fire plan). The post-fire plan will primarily address potential effects to gnatcatcher associated with burning of coastal sage scrub, but will also address potential effects of fire on habitat for arroyo toad, least Bell's vireo, and Pacific pocket mouse. The plan will include removal of non-native invasive plant species following a fire, erosion control measures, and, if necessary, reseeding and replanting with plants of local genetic stock. The plan will be developed and implemented in close coordination with the CFWO and the property owners most likely to be affected by toll roads (MCBCP and Rancho Mission Viejo). The plan will also estimate costs and identify a funding source for post-fire habitat restoration activities.</p>	2008 USFWS Biological Opinion FWS-OR/MCBCP-08B0352/08F0487 Terms & Conditions 4a
Caltrans – Natural Environment Study Conditions		
NES-12	<p><i>(Included for informational purposes only. Substantially similar to and implemented by WW-7).</i></p> <p>During all construction activities, the contractor shall ensure that construction equipment or vehicles shall not be stored within areas defined as Environmentally Sensitive Areas (ESAs), including areas within the jurisdiction of the ACOE and/or CDFG. There shall be no fueling, lubrication, storage, or maintenance of construction equipment within 46 m (150 ft) of CDFG or ACOE jurisdictional areas.</p>	2003 Final Natural Environment Study for the SOCTIIP Project
NES-13	<p><i>(Included for informational purposes only. Substantially similar to and implemented by WW-8).</i></p> <p>During all construction activities, the Contractor shall ensure that no waste material shall be discharged to any CDFG or USACOE jurisdictional areas. Spoil sites shall not be located within any CDFG or USACOE jurisdictional areas, or in areas where it could be washed into any surface water body.</p>	2003 Final Natural Environment Study for the SOCTIIP Project
Project Design Features		
PDF-2-1	Retaining walls will be provided in some locations along the alignments. Retaining walls can be used to minimize or reduce the amount of grading in areas with substantial topography, or to minimize or reduce right-of-way takes in developed areas. The specific locations of retaining walls will be refined in final design.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-6-1	<p><i>This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project).</i></p> <p>Sound walls to reduce noise impacts on adjacent sensitive land uses under the corridor Alternatives <u>Project</u> will be provided consistent with FHWA, Caltrans, and local noise standards. The locations of the noise walls included in the corridor Alternatives are shown on detailed maps in Appendix K. Some of these noise walls will be outside the disturbance limits and rights-of-way for the corridor Alternatives. Those noise walls would be adjacent to existing sensitive land uses to maximize the noise reduction benefits of these walls for the adjacent sensitive uses.</p> <p>Those walls would be constructed on the affected property, with the permission of the property owner, and would become the property of that property owner. The disturbance limits for these walls would be limited to the area directly adjacent to the walls. The construction access to these wall locations would be from the property owner's access (driveway) from the nearest public road and not from the disturbance limits for the <u>Project</u> build Alternatives. The noise walls for the SOCTIIP build Alternatives, including walls outside the disturbance limits, are shown on the detailed maps in Appendix K.</p>	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-1	<p>If changes in velocity or volume of runoff, the sediment load or other hydraulic changes due to encroachment, crossings, or realignment result in an increased potential for downstream effects in channels, design features to prevent adverse effects are included in the alternatives. These will include one or more of the following (or similar features):</p> <ul style="list-style-type: none"> - Modifications to channel lining materials (both natural and man-made), including vegetation, geotextile mats, rock, and riprap. - Energy dissipation devices at culvert outlets. - Smoothing the transition between culvert outlets/headwalls/wingwalls and channels to reduce turbulence and scour. - Incorporating retention or detention facilities into designs to reduce peak discharges, volumes, and erosive flow. 	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-2	The F/ETCA will implement concentrated flow conveyance systems to intercept and divert surface flows, and convey and discharge concentrated flows with a minimum of soil erosion, both on-site	2006 SOCTIIP FSEIR, Section 2.5.1.7

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	and off-site where applicable. Ditches, berms, dikes and swales will be used to intercept and direct surface runoff to an overside drain or stabilized watercourse.	
PDF-9-3	The F/ETCA will use surface protection to minimize erosion from completed, disturbed surfaces. Surface protection includes but is not limited to vegetative cover or hard surfacing such as concrete, rock, or rock and mortar.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-4	<i>This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project.</i> The F/ETCA will implement EDBs on the SOCTIIP build Alternative to temporarily detain water on the site and allow sediment and particulates to settle out. EDBs will be maintained, monitored and documented per RWQCB and Caltrans requirements and conform to the guidelines set forth in the SWMP. The siting of EDBs requires that sufficient head is available such that water stored in the basin does not cause a backwater condition in the storm drain system, which would limit its capacity. Additionally, high groundwater must be no higher than the bottom elevation of the basin; otherwise, the basin would not drain completely. The siting process also required consideration of sensitive environmental constraints. The EDBs were sited to avoid those areas as well.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-5	The F/ETCA will use surface protection to minimize erosion from completed, disturbed surfaces. Surface protection includes but is not limited to vegetative cover or hard surfacing such as concrete, rock, or rock and mortar.	
PDF-9-6	The F/ETCA will use biofiltration swales and strips, as shown in the RMP, where applicable and in association with EDBs to convey low flow. One of the primary limitations of using bioswales is that they must be used on slopes less than two percent. Due to the terrain and the design of the Alternatives there were very few locations where they could be applied. Bioswales will be maintained, monitored and documented per RWQCB and Caltrans requirements and will conform to guidelines set forth in the SWMP.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-7a	<i>This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project.</i> The build Alternatives <i>Project</i> includes Best Management Practices (BMPs) to control the flow of roadway runoff and treat, to the maximum extent practicable (MEP), roadway runoff before it leaves the project site and enters existing water courses or storm drain facilities. PDFs for the SOCTIIP build Alternatives include BMPs such as extended detention basins (EDBs) and grassy swales. The disturbance and right-of-way limits for the build Alternatives, shown on the detailed maps in Appendix A, include areas for EDBs and other BMPs.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-7b	The PDFs consist of both pollution prevention BMPs and treatment BMPs. Pollution prevention BMPs are used to address design phase elements, construction, and spill mitigation. Treatment BMPs are used in the design to meet regulatory water quality requirements at specific locations. Both pollution prevention and treatment BMPs are included in the build Alternatives to the MEP. Most of the treatment BMPs, such as EDBs, are designed with a safety factor such that they will function in conditions beyond those prescribed by Caltrans National Pollutant Discharge Elimination System (NPDES) permit.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-8	Prior to completion of final design, F/ETCA [Contractor] shall obtain approval of the hydrologic methodology and parameters to be analyzed in the Final Hydrologic Technical Report and incorporated into the Final Location Hydraulic Study from affected jurisdictional agencies.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-9-9	Final design will include refinements to ensure that the bridges will be constructed to span the 100-year floodplain without raising the 100-year base floodplain water surface elevation more than 0.3 meter (1.0 foot), or otherwise causing adverse changes in the extent of the floodplain or the potential for erosion.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-11-1	<i>This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project.</i> Bridges for Wildlife Crossings under the Corridor Alternatives Project. As described earlier in Section 2.5.1.5, the corridor Alternatives <i>Project</i> includes bridge structures that would provide opportunities for wildlife to cross the corridor alignments. These wildlife crossings are intended to link together areas of suitable wildlife habitat that would otherwise be separated by the corridor alignments. Wildlife crossings are shown on the detailed maps in Appendix A and on Figure 4.11-6 later in this EIS/SEIR. Section 4.11 (Affected Environment, Impacts and Mitigation Measures Related to Wildlife, Fisheries and Vegetation) provides additional discussion regarding wildlife and wildlife corridors in the study area and how wildlife movements are accommodated by the bridges in the corridor Alternatives.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-11-2	Utility relocation will be conducted in a manner that is consistent with the operational protocols established in SDG&E's Subregional NCCP, including measures that address general behavior for	2006 SOCTIIP FSEIR, Section 2.5.1.7

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	all field personnel, pre-activity studies and survey work, maintenance, repair and construction of facilities, and construction and maintenance of access roads.	
PDF-18-1	<i>This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project.</i> The corridor Alternatives <i>Project</i> will include pole-mounted lighting at the toll plazas, ramps, and other locations as required by Caltrans standards. Lighting in areas away from the toll plazas, ramps, and other locations as required by Caltrans standards will be minimized to avoid unnecessary light effects in more rural areas adjacent to the corridor. In addition, all lighting along the corridors will be shielded and directed to focus the light on the corridor and its facilities to minimize light leakage outside the corridor limits.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-18.2	<i>This measure has been revised from its original form in the Final SEIR to address the Tesoro Extension Project.</i> The corridor Alternatives <i>Project</i> will include landscaping for unpaved areas within the corridor rights-of-way. Landscaping will focus on native plant species, particularly in areas adjacent to undeveloped land with native plant species. In addition, the landscaping will include design components and plant materials intended to reduce the visual impacts of the corridor alternatives <i>Project</i> on adjacent sensitive uses. Section 4.18 (Affected Environment, Impacts and Mitigation Measures Related to Visual Resources) provides additional discussion of the use of native plant materials and other landscaping to soften views of the corridor.	2006 SOCTIIP FSEIR, Section 2.5.1.7
PDF-TR1	<i>Prior to opening of the Tesoro Extension Project, the F/ETCA shall reconfigure the eastbound approach of the intersection of La Pata Avenue and Ortega Highway. The reconfiguration shall provide one through lane, a shared through/right-turn lane, and a separate right-turn lane.</i>	Feb 2013 Addendum
San Diego RWQCB – Waste Discharge Requirements Compensatory Mitigation¹		
WDR-1	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.	Tentative Waste Discharge Requirements No. R9-2013-0007, Section VII.
WDR-2	B. Compensatory Mitigation Plan. The Discharger shall implement compensatory mitigation as detailed in the Habitat Mitigation and Monitoring Plan for the Tesoro Extension Project, prepared by NewFields, October 2012 (and any subsequent versions reviewed and approved by the San Diego Water Board) at the general locations described in Attachment C of this Order.	Tentative Waste Discharge Requirements No. R9-2013-0007, Section VII.
WDR-3	C. Updated Compensatory Management Plan Development. The Discharger shall prepare and submit a finalized and updated Habitat Mitigation and Monitoring Plan (HMMP) no later June 14, 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. At a minimum, this shall include: 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 needed to ensure long-term sustainability after performance standards have been achieved; the responsible party; 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.	Tentative Waste Discharge Requirements No. R9-2013-0007, Section VII.

¹ WDR-1 through WDR-7 will be updated to reflect the Final Waste Requirement Permit.

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>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.</p> <p>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.</p> <p>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.</p> <p>7. A description and schedule of maintenance requirements to ensure the continued viability of the aquatic resources once initial construction is completed.</p> <p>8. A description of ecologically based, and measureable, performance standards that will be used to determine whether the compensatory mitigation objectives are being met.</p> <p>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.</p> <p>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.</p> <p>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 should 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.</p>	
WDR-4	<p>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.calipc.org/ip/inventory/weedlist.php</p> <p>Follow-up applications shall be made, as needed, to cover bare spots and to maintain adequate soil protection.</p>	Tentative Waste Discharge Requirements No. R9-2013-0007, Section VII.
WDR-5	<p>E. Timing of Compensatory Mitigation. The Discharger shall implement the compensatory mitigation projects in accordance with the tasks and schedule described below:</p> <p>1. The construction of the compensatory mitigation projects must be completed no later than 12 months following the initial discharge of dredge or fill material into waters of the State. 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.</p> <p>2. If the Discharger is unable to implement the compensatory mitigation described in this Order within 12 months following the initial discharge, the Discharger will be in violation of this Order and subject to administrative civil liabilities under the California Water Code, section 13350.</p> <p>3. Within 6 months of the start of Project construction, the Discharger shall provide for adequate funding to purchase and maintain the compensatory mitigation sites to satisfy the compensatory mitigation requirements of the Project as described in the HMMP in perpetuity.</p>	Tentative Waste Discharge Requirements No. R9-2013-0007, Section VII.
WDR-6	<p>F. Conservation Easement. The Discharger must comply with the following requirements:</p>	Tentative Waste Discharge

Appendix A

**State Route 241
Tesoro Extension Project
Applicable Mitigation Measures/Commitments/Conditions**

Addendum to the Final SOCTIIP
Subsequent Environmental Impact Report

Mitigation Measures/Commitments/Conditions		
NO.	DESCRIPTION OF COMMITMENT	COMMITMENT SOURCE
	<p>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.</p> <p>2. For the purposes of independent review, the holder of the Conservation Easement shall not be the Discharger. The Discharger shall provide sufficient funds to the holder of the Conservation Easement to allow the holder to monitor the compensatory mitigation sites in perpetuity and to ensure compliance with the conservation easement and report to the agencies. Funds shall be provided by the Discharger to the holder no later than 18 months of issuance of this Order.</p> <p>3. The Conservation Easement must ensure that the property 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.</p> <p>4. The Conservation Easement must provide the Assessor's Parcel Numbers for all the properties in the compensatory mitigation sites.</p> <p>5. Endowment funding for the interim and long-term management of the compensatory mitigation sites must meet the following requirements:</p> <ul style="list-style-type: none"> i The endowment holder shall not be the Discharger. ii 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 of issuance of this Order. 	<p>Requirements No. R9-2013-0007, Section VII.</p>
WDR-7	<p>G. Letter of Credit. The Discharger must comply with the following requirements to use a letter of credit as a form of financial assurance:</p> <p>1. No later than 6 months of issuance of this Order, the Discharger shall provide the San Diego Water Board an irrevocable letter of credit 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 amount of the endowment fund, and (3) the estimated amount of the conservation easement endowment. The Discharger shall prepare a draft letter of credit and submit it to the San Diego Water Board for its approval no later than 90 days following issuance of this Order. The letter of credit shall allow the San Diego Water Board to immediately draw on the letter of credit if the San Diego Water Board determines in its sole discretion that the Discharger has failed to meet its mitigation obligations.</p> <p>2. The Discharger's bank shall finalize and execute the letter of credit after the San Diego Water Board approves the draft letter of credit.</p> <p>3. If the Discharger has not met its mitigation obligations within 60 days prior to the letter of credit's expiration date, the Discharger shall confirm with its bank that the expiration date will be extended. If the bank elects not to extend the expiration date, the Discharger shall establish a new letter of credit to replace the original letter of credit. The new letter of credit 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 letter of credit in place, as described above, until the Discharger has met its mitigation obligations.</p>	<p>Tentative Waste Discharge Requirements No. R9-2013-0007, Section VII.</p>



ATTORNEYS AT LAW

18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
T 949.833.7800
F 949.833.7878

Robert D. Thornton
rthornton@nossaman.com

Refer To File #: 060182-0162

March 29, 2013

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241)
Project, Orange County; Response to Questions for Written Response on
Tentative Order No. R9-2013-0007

Dear Mr. Bradford

This letter provides the response of the Foothill/Eastern Transportation Corridor Agency ("F/ETCA") to the California Regional Water Quality Control Board, San Diego Region ("Water Board") Questions for Written Response on Tentative Order No. R9-2013-0007 dated March 15, 2013.

1. HOW DOES TCA DEFINE THE PROJECT FOR WHICH THE SAN DIEGO WATER BOARD IS BEING ASKED TO ISSUE WASTE DISCHARGE REQUIREMENTS? IS THAT DEFINITION OF THE PROJECT THE SAME FOR PURPOSES OF CEQA EVALUATION?

A. Answer.

F/ETCA defines the project for which the San Diego Water Board ("Water Board") is being asked to issue waste discharge requirements as the modification of the South Orange County Transportation Infrastructure Improvement Project ("SOCTIIP") to construct and operate a 5.5 mile extension of the existing State Route (SR) 241 and is referred to herein as the "Tesoro Extension". The Tesoro Extension extends existing SR 241 for 5.5 miles from Oso Parkway to Cow Camp Road in the vicinity of Ortega Highway (SR 74). The above definition is also the definition of the Project for the purposes of the California Environmental Quality Act ("CEQA"). Other details regarding the Tesoro Extension are included in the Addendum approved by the F/ETCA and previously provided to the Water Board.

For the convenience of the Water Board, the location of the Tesoro Extension is shown in Figure 1 on the following page (from information previously provided to the Water Board).

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 2



 <p>not to scale</p>	<table border="0"> <tr> <td data-bbox="487 1774 568 1816"></td> <td data-bbox="568 1774 730 1816">Project Area</td> </tr> <tr> <td data-bbox="487 1816 568 1869"></td> <td data-bbox="568 1816 730 1869">Approved RMV Development Area</td> </tr> </table>		Project Area		Approved RMV Development Area	<p>TESORO EXTENSION PROJECT Site Vicinity Map</p>
	Project Area					
	Approved RMV Development Area					

1018192 JK 1/2006 10792 MAR3

Figure 1

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 3

The Tesoro Extension includes four general-purpose travel lanes, two in each direction. The travel lanes will be twelve feet wide. The initial corridor will have a 130 foot width, including shoulders, climbing lanes and a 42 foot median as shown in the typical cross-section in Figure 2 on the following page.

Mr. Darren Bradford
 California Regional Water Quality Control Board,
 San Diego Region
 March 29, 2013
 Page 4

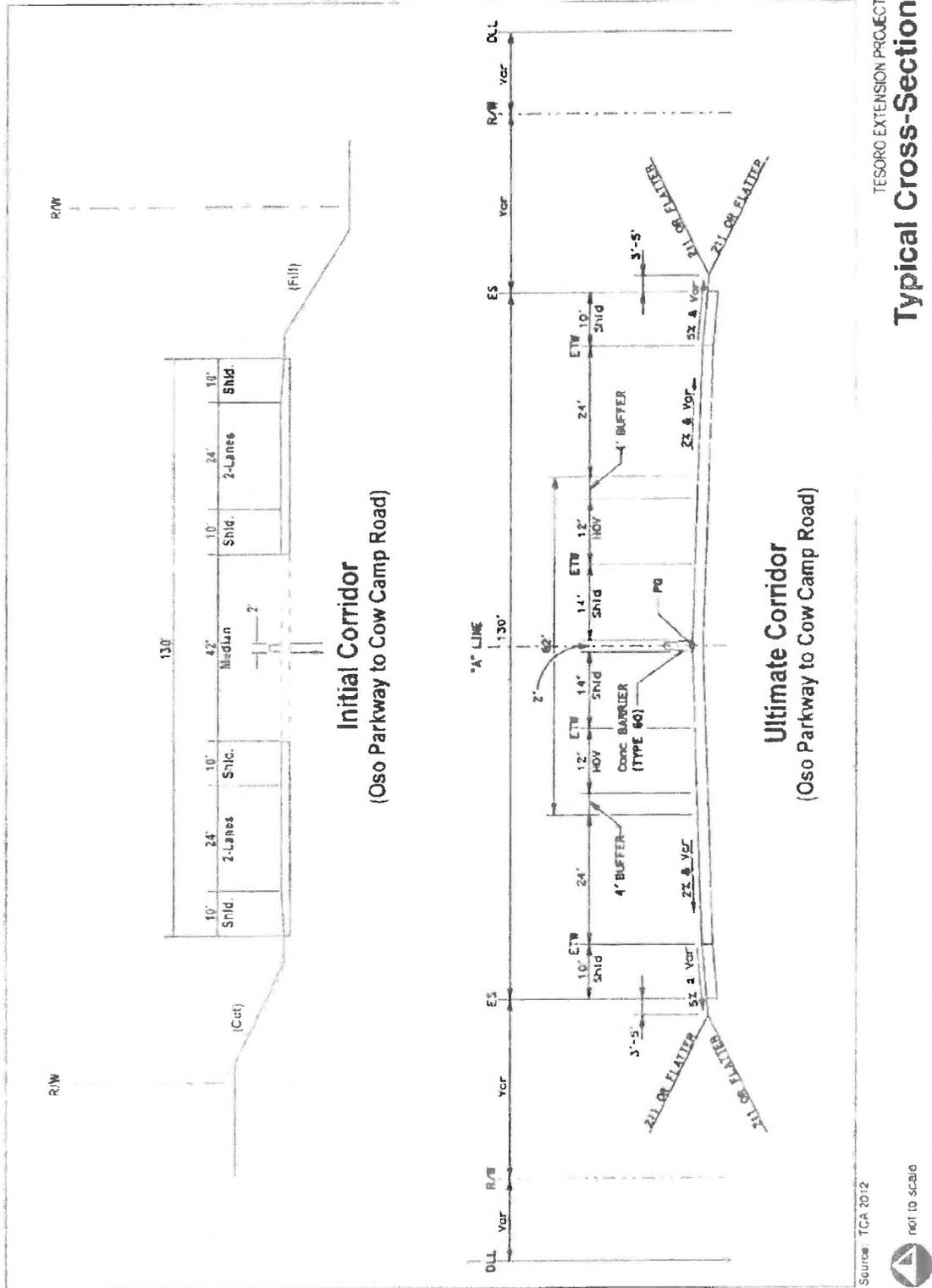


Figure 2

Source: TCA 2012
 not to scale
 2013.04.29.005-1103.MXD
 TESORO EXTENSION PROJECT
Typical Cross-Section

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 5

The center median offers opportunities for future bus rapid transit, light rail, or additional lanes as traffic conditions warrant. SR 241 is a State Highway Route and is part of the State Highway System. The Project will be owned and operated by the California Department of Transportation upon opening of the roadway to traffic. The toll collection facilities will be operated by the F/ETCA. Further details of the Tesoro Extension were provided in TCA's application to the Water Board submitted August 10, 2012, and in the California Environmental Quality Act ("CEQA") Addendum, provided to the Water Board on February 15, 2013.

B. Discussion.

1. Overview of CEQA Documents.

The Tesoro Extension is substantially the same as alignments previously evaluated between Oso Parkway and Ortega Highway in prior environmental documents. Four CEQA documents have been prepared evaluating the extension of SR 241:

- 1981 – Environmental Impact Report 123. EIR 123 analyzed establishment of a transportation corridor at a programmatic level in the southeast portion of Orange County. The County of Orange certified EIR 123 and added the Foothill Transportation Corridor (now designated as SR 241) to the County Master Plan of Arterial Highways.
- 1991 – TCA EIR No. 3 analyzed alignment alternatives for extensions of SR 241.
- 2006 – The South Orange County Transportation Infrastructure Improvement Project ("SOCTIIP") Final Subsequent Environmental Impact Report ("FSEIR") described and analyzed extensions of SR 241 of varying lengths and connections, along with non-corridor alternatives such as widening the I-5 freeway.
- 2013 – The Addendum to the 2006 FSEIR evaluates the Tesoro Extension's modifications to the SOCTIIP and whether the modifications proposed by the Tesoro Extension require the preparation of a subsequent or supplemental EIR. The Addendum concludes that the Tesoro Extension will **not** have any new significant impacts, or more severe significant impacts, that were not addressed in the 2006 SOCTIIP FSEIR and thus CEQA prohibits the F/ETCA and the Water Board from requiring the preparation of a subsequent or supplemental EIR.¹

The Tesoro Extension is also addressed in other CEQA/National Environmental Policy Act (NEPA) documents, including the Southern Subregion HCP EIR/EIS certified by the County of Orange and approved by the U.S. Fish and Wildlife Service, and the Special Area

¹ Pub. Resources Code, § 21166; Cal. Code Regs., tit. 14, § 15162 (hereinafter "Guidelines"). Unless otherwise noted, subsequent statutory citations are to the Public Resources Code § 21000 et seq.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 6

Management Plan Environmental Impact Statement approved by the U.S. Army Corps of Engineers²

2. Tesoro Extension Objectives and Purpose and Need.

In the FSEIR for the SOCTIIP, the Project was described broadly to encompass a variety of transportation infrastructure improvements, including multiple variations that extended SR 241. The SOCTIIP Purpose and Need, which was adopted by the U.S. Army Corps of Engineers, the Environmental Protection Agency, the U.S. Fish and Wildlife Service and the Federal Highway Administration, is to "provide improvements to the transportation infrastructure system that would help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement and future traffic demands on I-5 and the arterial network in the study area."³

The SOCTIIP alternatives evaluation process included alternatives that would extend SR 241 for varying distances and to varying termination points. Six of the alternatives did not extend to the I-5. These alternatives included variations with three terminating at Ortega Highway and three terminating in the vicinity of Avenida Pico in San Clemente.⁴

The alternatives evaluated in the SOCTIIP FSEIR included constructing the SOCTIIP in the configuration and substantially within the same alignment of the Tesoro Extension as well as other extensions of the SR 241 south of Ortega Highway.

The Addendum to the SOCTIIP FSEIR was submitted to the Water Board on February 15, 2013. The Addendum evaluates the changes to SOCTIIP proposed in the Tesoro Extension, and also evaluated the cumulative impacts of the potential future extension of the SR 241 to the I-5.⁵

3. The Tesoro Extension is a Modification of the SOCTIIP. Thus, Section 21166 and Guidelines Sections 15050(c) and 15062 Govern the Water Board's Consideration of the CEQA Issue.

The Tesoro Extension is a modification of the SOCTIIP described in the 2006 FSEIR. Therefore, section 21166 and Guidelines sections 15050(c) and 15162 govern the Water Board's review of the Tesoro Extension under CEQA. Guidelines section 15050(c) provides that the determination of the lead agency whether to prepare an EIR "shall be final and conclusive." Indeed, counsel to the project opponents conceded that CEQA section 21166 and Guidelines section 15050(c) governs in this circumstance.⁶

² See Addendum to the SOCTIIP Final SEIR, Tesoro Extension Project (2003) pp. 1-1 - 1-5 (hereinafter "Addendum"). In these answers, we focus on the 2013 Addendum and the 2006 SOCTIIP FSEIR.

³ SOCTIIP FSEIR, Section 1.5.2, pp. 1-16.

⁴ See SOCTIIP FSEIR, Table 1.7-1, p. 1-23; Table 1.7-2, p. 1-24.

⁵ See TCAs' February 20, 2013 letter to the Water Board which summarizes the manner in which cumulative impacts have been addressed.

⁶ Letter from Shute, Milhaly & Weinberger to Water Board dated February 25, 2013.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 7

Section 21166 and a long line of cases interpreting this section make it clear that responsible agencies are **prohibited** from requiring the preparation of a supplemental or subsequent EIR unless the responsible agency finds that the changes to the project or changed circumstances will result in significant new environmental effects or an increase in the severity of significant effects identified in the EIR.⁷ Changes to a project or changes in circumstances are not sufficient to allow an agency to require a subsequent or supplemental EIR unless the changes also cause significant new impacts or a substantially more severe significant impact.⁸

In *Melom v. City of Madera* (2012) 183 Cal.App.4th 41, a site plan for a shopping center was changed to reduce some retail spaces so the largest retail space could be increased to allow a supercenter store.⁹ The Court of Appeal upheld the City of Madera's use of an Addendum to document the finding that there were no new significant environmental effects.¹⁰ In *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, a new use permit was requested for changes to a medical research and laboratory complex, including changes in size, building pattern, water supply requirements and adjacent uses (a wilderness park had been expanded since the original EIR, and by the time the new use permit was sought, the wilderness park surrounded the research and laboratory complex).¹¹ The Court of Appeal upheld the County's finding that none of the changes required major revisions in the original EIR.¹²

Even substantial modifications to a project are not sufficient to authorize an agency to require a subsequent or supplemental EIR where the lead agency previously certified an EIR and then evaluated the project modifications in an addendum.¹³ In *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th at pages 1398-1403, the court held that substantial evidence supported the agency's determination that changes to a project were considered *modifications* to a project and did not constitute a new project. The agency had approved an office/hotel/retail project with 2.7 million square feet in five buildings.¹⁴ The original project was delayed after the 1989 EIR, and the applicant requested a change to residential development in

⁷ See, e.g., *Bowman v City of Petaluma* (1986) 185 Cal.App.3d 1065; *Fund for Env'tl Defense v County of Orange* (1988) 204 Cal.App.3d 1538; *San Diego Navy Broadway Complex Coalition v City of San Diego* (2010) 185 Cal.App.4th 924; *Melom v. City of Madera* (2010) 183 Cal.App.4th 41; *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041; *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91; *River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* (1995) 37 Cal.App.4th 154; *County of Santa Clara v. Redev. Agency* (1993) 18 Cal.App.4th 1008; *Temecula Band of Luiseño Mission Indians v Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425; *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App.4th 793; see also 2 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar. 2012) §§ 19.2, 19.42.

⁸ See 2 Kosta & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar. 2012) § 19.2 and cases cited therein.

⁹ *City of Madera, supra*, 183 Cal.App.4th at p. 44.

¹⁰ *Id.* at pp. 47-51.

¹¹ *Fund for Environmental Defense, supra*, 204 Cal.App.3d at pp. 1542-1543.

¹² *Id.* at pp. 1552-1553.

¹³ See, e.g., *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385.

¹⁴ *Id.* at p. 1389.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 8

2004.¹⁵ The agency prepared an Addendum to the EIR to address the change in use, finding that even though the square footage would increase to over 3.2 million square feet, the impacts would be reduced because the lower traffic generation rates for residential use would cause fewer impacts.¹⁶

The Court emphasized that CEQA focuses solely on "the potential environmental impacts of a project" and, in particular, "where there is a previously certified EIR, changes in the size, ownership, nature, character, etc., of a project are of no consequence in and of themselves. Such factors are meaningful *only* to the extent they affect the environmental impacts of a project."¹⁷

The Court noted that *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, did not compel a different result because:

Save Our Neighborhood, however, involved an addendum to a previously certified negative declaration and not, as here, an addendum to a previously certified EIR. That is significant because an addendum is only appropriate to a previously certified negative declaration where "minor technical changes or additions are necessary" (Guidelines, § 15164, subd. (b)) and, as noted before and contrary to the contention of Mani Brothers, this limitation does not apply where the addendum is to a previously certified EIR. (Guidelines, § 15164, subd. (a).) Because in the present case the 2005 Addendum was to the FEIR previously certified for the project, not a previously certified negative declaration, *Save Our Neighborhood* is distinguishable and inapplicable.¹⁸

The relevant facts regarding the Tesoro Extension are indistinguishable from those of *Mani Brothers Real Estate Group*, *supra*, 153 Cal.App.4th 1385. The F/ETCA certified the FSEIR for the SOCTIIP followed by the Addendum evaluating the modifications to the SOCTIIP. The Addendum to the FSEIR demonstrates that not only will the Tesoro Extension **not** have any new significant impacts, it will reduce the impacts of the Preferred Alternative evaluated in the FSEIR between Oso Parkway and Cow Camp Road. The Tesoro Extension alignment is substantially the same as alignments previously evaluated between Oso Parkway and Ortega Highway. Compared to the Preferred Alternative evaluated in the SOCTIIP FSEIR, the Tesoro Extension changes the prior folded diamond interchange at Cow Camp Road to a simpler T-intersection configuration and includes some shifts to minimize impacts to surface waters and avoid an existing reservoir used for Rancho Mission Viejo (RMV) ranch operations. The Tesoro Extension avoids impacts to Corps of Engineers jurisdictional wetlands and limits permanent impacts to waters of the state to 0.40 acre (four tenths of an acre).

¹⁵ *Id.* at p. 1391.

¹⁶ *Ibid.*

¹⁷ *Id.* at p. 1401.

¹⁸ *Mani Brothers Real Estate Group*, *supra*, 153 Cal.App.4th at p. 1400.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 9

The Addendum determined that the changes to the Tesoro Extension would not result in significant individual or cumulative effects not discussed in the SOCTIIP FSEIR. In addition, impacts associated with the Tesoro Extension would not be more severe, new, or more severe in comparison to the analysis of the Preferred Alternative between Oso Parkway and Cow Camp Road in the SOCTIIP FSEIR.¹⁹

In addition, the Tesoro Extension modifications do not change any of the options studied for further extension of the SR 241 south of Ortega Highway. F/ETCA may in the future implement other extensions, and other agencies may implement other non-corridor transportation improvements as evaluated in the SOCTIIP FSEIR.

These facts demonstrate that the Tesoro Extension is a modification of the SOCTIIP. The majority of refinements made to the SOCTIIP alignment were made to reduce environmental impacts, consistent with the goals of CEQA. The Tesoro Extension disturbance limits are almost entirely within disturbance limits analyzed in the FSEIR as shown in Attachment A. The only areas that vary slightly from the previously evaluated footprint are: (1) the potential alignment shift to the east to avoid the RMV stock pond which is being made at the request of the landowner, and (2) at the southern end of the Tesoro Extension (around G Street), the alignment is proposed to shift slightly to the west, but this shift occurs entirely within the Ranch Plan PA 2, which is approved for development. The Addendum determined no significant impacts would result from either of these revisions.

The magnitude of the Tesoro Extension modifications to the SOCTIIP footprint are much less than the type of modifications cited by the court in *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th 1385, for which "courts have upheld the use of addenda and not required preparation of an SEIR," including projects where "the project's appearance had changed fairly dramatically, . . . number of buildings increased, [or the] raising the elevation of a segment of a berm by a factor of two to three times the original height."²⁰

The fact that it is not presently known whether or where an additional extension of the SR 241 south of Cow Camp Road might be implemented does not convert the Tesoro Extension into a new project under CEQA. The courts have established the focus of modifications to a project on the impacts of that modification, and the Tesoro Extension will not result in any new significant or substantially more severe impacts as a result of terminating at Cow Camp Road.

In their prior submissions to the Water Board the project opponents cited two cases where the courts held that the evidence indicated that the changes to the previously approved project **would** create new significant effects **not analyzed in the prior EIR**. In one case, the project was changed from a shopping center to a super-center including a Walmart.²¹ The evidence indicated that the change from a traditional shopping center to a super-center with a Walmart would cause significant traffic and other impacts not evaluated in the prior EIR.²² In

¹⁹ See Addendum, Section 3.0, 3-1; see also *id.*, pp. 1-8 – 1-9 and 3-23 (specific findings).

²⁰ *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th at p. 1399.

²¹ *American Canyon Community United v. City of American Canyon* (2006) 145 Cal.App.4th 1062.

²² *Id.* at p. 1078.

Mr. Darren Bradford
 California Regional Water Quality Control Board,
 San Diego Region
 March 29, 2013
 Page 10

contrast, the evidence before the Water Board here (the Addendum) documents that the Tesoro Extension Project will not result in a new significant effect or an increase in the severity of any significant effect identified in the FSEIR. Indeed, the Addendum documents that the Tesoro Extension Project will reduce the impacts identified in the FSEIR.

In the other case²³ cited by the project opponents, section 21166 and Guidelines section 15050 did not even apply. The court **was not** considering a change to a project evaluated in a prior EIR. Rather, the court determined that the EIR for the project violated CEQA on several grounds.²⁴

The project opponents' attempted distinction of *Santa Teresa City Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689 also fails. *Santa Teresa*, like the other section 21166 cases cited by the F/ETCA, stands for the proposition that CEQA does not require an agency to prepare additional CEQA documentation even in circumstances where the agency makes substantial changes to the project – unless the **changes** to the project will result in significant new environmental effects. Nothing in *Santa Teresa* suggests that section 21166 does not apply where the agency elects to proceed with only a portion of a project evaluated in the prior EIR.

4. The Water Board is Required to Assume that the FSEIR Complies with CEQA.

The project opponents have claimed that the Water Board may not rely on the FSEIR as the CEQA document for the Tesoro Extension. The opponents' claim is contrary to the express requirement of CEQA section 21167.3 that requires the Water Board to assume that the FSEIR complies with CEQA.

Section 21167.3 of CEQA states:

If an action or proceeding alleging that an [EIR] . . . does not comply with [CEQA] is commenced . . . ***pending final determination of the issue of such compliance, responsible agencies shall assume that the EIR . . . does comply with [CEQA]***²⁵

On March 23, 2006, the project opponents filed a petition for writ of mandate ("Petition") in the Superior Court of San Diego County challenging the certification of the FSEIR and other actions by the F/ETCA with regard to the extension of SR-241. Among other allegations, the Petition alleged that the FSEIR did not comply with CEQA.²⁶ The petitioners in the lawsuit

²³ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.

²⁴ *Id.* at pp. 75-79.

²⁵ Pub. Resources Code, § 21167.3, emphasis added; Guidelines, § 15233 ("If a lawsuit is filed challenging an EIR . . . for noncompliance with CEQA, responsible agencies shall act as if the EIR . . . complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action [in the Permit Streamlining Act]").

²⁶ *California State Parks Foundation et. al. v. Foothill/Eastern Transportation Corridor Agency*, Petition for Writ of Mandate, (San Diego Superior Court Nos. GIN051194 and GIN0513721.)

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 11

subsequently elected to enter into a settlement with the F/ETCA. Pursuant to the settlement, the parties agreed to stay the lawsuit pursuant to the Superior Court Rules and to dismiss the lawsuit without prejudice.

On January 12, 2011 the Superior Court of San Diego County entered the "Stipulated Order Approving Interim Settlement with Tolling Agreement ("Interim Settlement ") and Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce Interim Settlement."²⁷ As provided in the Interim Settlement, the Court's Order effectuated a stay of the lawsuit. The Order provided that the "stay shall terminate and no longer be in effect upon the written request filed in Court by any Petitioner in either of the consolidated proceedings to set aside the dismissal and reinstate the proceedings."

As the Court of Appeal held in *City of Redding v. Shasta County Local Agency Formation Commission*, (1989) 209 Cal.App.3d 1169, the Legislature enacted section 21167.3 in order to avoid the kind of collateral attack on the validity of the FSEIR advanced here by the project opponents:

The evident intent of section 21167.3 is to expedite CEQA review where a lawsuit contesting CEQA documentation is pending by designating **one forum** for resolution of claims of unlawful documentation [*i.e.*, a negative declaration or EIR] and by requiring project review to proceed while the claims are resolved. **That forum is the court.**²⁸

The Court of Appeal recognized the intent of the Legislature to preclude a collateral attack on the validity of CEQA documentation (whether it is a negative declaration or an EIR) in two forums. Having filed the lawsuit challenging the FSEIR, and having agreed to stay the litigation, the project opponents are now foreclosed from attacking the adequacy of the FSEIR before the Water Board.

Just as section 21167.3 barred the City of Redding from adjudicating the validity of the lead agency's negative declaration and from assuming the role of lead agency to prepare a subsequent or supplemental EIR, it also bars the Water Board from re-litigating the validity of the Final SEIR or assuming the lead agency role.²⁹

Thus, in light of the Legislature's clear mandate in CEQA section 21167.3 and controlling case law, the Regional Board must assume the FSEIR complies with CEQA with regard to the Water Board's approval of the WDR.

²⁷ We previously provided to the Water Board a copy of the Interim Settlement and the Stipulated Order regarding the Settlement Agreement.

²⁸ *City of Redding, supra*, 209 Cal.App.3d at p. 1181, first emphasis in the original, second emphasis added.

²⁹ See the discussion of CEQA lead agency requirements in the response to Question No. 3 below.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 12

5. Phased Project Implementation is Common and Accepted CEQA Practice.

There is nothing unprecedented or unusual for a transportation agency to complete a CEQA analysis for a segment of a larger project while the precise location and design of subsequent segments has not yet been determined. The following are just a few of the many examples where agencies have analyzed a larger transportation project, and then decided to proceed with the construction of a phase or portion of the larger project before determining the alignment of future phases of the project.

Consider, for example, the California High-Speed Rail Project. The larger project is described as extending from San Francisco and Sacramento through Los Angeles and into San Diego. This project is being analyzed in a number of different environmental documents covering different segments of the project. Of particular interest here is the Merced to Fresno section. Along the Merced to Fresno section, there will be a triangular junction (also called a "wye") where the set of train guideways traveling east-west from San Francisco will branch off into two sets of train guideways, one set heading north to Modesto and the other heading south to Fresno. While the wye is to be located somewhere along the Merced to Fresno section of the project, the California High-Speed Rail Authority (Authority) certified an EIR/EIS for the Merced to Fresno section without determining its location.³⁰

Even though the original project was proposed in segments, the wye issue was originally planned to be resolved within the Merced to Fresno section. But, once it realized that resolving the wye location would delay the remainder of the segment, the Authority determined it could properly postpone analysis of the wye to another segment's environmental document. The Authority deferred analysis of the wye and its location to a future environmental document related to a future separate project.³¹

Another example is provided by the Mid-City/Exposition Transit Corridor Light Rail Transit project (Expo line) in Los Angeles. The Los Angeles County Metropolitan Transportation Authority (Metro) undertook CEQA analysis for this project in two distinct segments. In its draft EIR/EIS, Metro considered a light rail transit system operating between downtown Los Angeles and Santa Monica.³² Because there was controversy regarding the selection of a project alternative west of Culver City, Metro elected to approve a light rail transit project extending from downtown Los Angeles to Culver City and to defer adoption of an alternative from Culver City to Santa Monica pending completion of additional CEQA studies. The Federal Transit Administration, in its Record of Decision issued in 2006, identified the Los

³⁰ See Cal. High-Speed Rail Auth. *et al.*, Final California High-Speed Train Project Environmental Impact Report/Environmental Impact Statement and Final Section 4(f) Statement and Draft General Conformity Determination Merced to Fresno (April 2012) Section 2-23 ("This Merced to Fresno Section EIR/EIS does not analyze the...Wye.").

³¹ *Id.* at pp. 2-23 – 2-24.

³² Los Angeles County Metropolitan Transportation Auth. *et al.*, Final Environmental Impact Statement/Environmental Impact Report for the Mid-City/Westside Transit Corridor Mid-City/Exposition LRT Project 2.3-4 (Sept. 2005).

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 13

Angeles to Culver City segment as "Phase 1" of the larger project.³³ After the approval of Phase 1, the lead agency, Metro, initiated the preparation of an environmental impact report evaluating alternatives for extending the light rail project from Culver City to Santa Monica.

These examples demonstrate that the process proposed by the F/ETCA is consistent with CEQA and general practices for constructing regional transportation projects.

2. WHAT FURTHER APPROVAL(S) DOES TCA INTEND TO MAKE PRIOR TO COMMENCING CONSTRUCTION OF THE TESORO EXTENSION 5.5 MILE TOLL ROAD? AT WHAT POINT IN THE PROCESS DOES TCA INTEND TO MAKE SUCH APPROVAL(S)? WILL PROJECT APPROVAL BE MADE BY THE TCA BOARD OF DIRECTORS OR CAN IT LEGALLY BE MADE BY THE PROJECT MANAGER OR OTHER EXECUTIVE STAFF?

A. Answer.

The F/ETCA Board will be required to make several additional discretionary approvals of the Tesoro Extension prior to commencing construction. The F/ETCA Board will be taking the following discretionary actions, among others, regarding the Tesoro Extension prior to commencing construction:

- Approval of conceptual design and engineering plans;
- Approval of preliminary design and engineering plans;
- Approval of final design and engineering plans;
- Approval of a financing plan and financing documents;
- Approval of construction contracts
- Issuance of notice to proceed with construction.

All of the above approvals will be made by the F/ETCA Board of Directors.

B. Discussion.

The process leading to the construction of the TCA projects starts with the regional transportation planning processes, including the Southern California Association of Governments Regional Transportation Plan and the Orange County Transportation Authority Master Plan of Arterial Highways. The regional transportation planning process, and the Tesoro Extension role and consistency in that process, is described in more detail in the answer to Water Board Question 4. F/ETCA implements projects that are on these regional transportation plans through a complex approval process that includes multiple steps. The general steps for that process are as follows:

³³ Federal Transit Administration, Record of Decision Los Angeles Mid-City Westside Transit Corridor Mid-City/Exposition Corridor Light Rail Transit Project 23 (Feb. 2006).

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 14

1. Projects are first identified in regional transportation needs analysis studies. In the case of the SR 241, the County of Orange completed studies for regional transportation studies in southeastern Orange County in the 1970s.
2. Regional transportation projects are then evaluated for inclusion in the Orange County Master Plan of Arterial Highways and in the Southern California Regional Transportation Plan approved by the Southern California Association of Governments. In the case of SR 241, the County of Orange added SR 241 to the Master Plan of Arterial Highways in 1981 and the Southern California Association of Governments added SR 241 to the Regional Transportation Plan in 1989.
3. The F/ETCA Board considers on an annual basis what to include as part of its programmed Capital Improvement Plan.
4. The F/ETCA conducts CEQA analyses as the lead agency, and, if appropriate, NEPA environmental analyses with the appropriate federal lead agency. As described above, two EIRs have been previously certified by the F/ETCA Board concerning the extension of SR 241 south of Oso Parkway. The F/ETCA staff also approved the Addendum in pursuant to authority delegated by the F/ETCA Board. These CEQA documents were in addition to the program level EIR certified by the County of Orange in 1981.
5. The F/ETCA Board approves engineering plans in sequential steps (conceptual, preliminary and final) and project costs are estimated.
6. The F/ETCA staff obtains necessary permits and other approvals to construct the project pursuant to authority delegated by the F/ETCA Board.
7. The F/ETCA Board approves financing plans and financing documents.
8. The F/ETCA Board approves construction contracts.
9. The F/ETCA Board acquires necessary right-of-way.
10. The F/ETCA Board authorizes commencement of construction, and construction is completed under the direction and supervision of the F/ETCA Board.
11. The F/ETCA Board transfers ownership of the project to the California Department of Transportation.
12. The project is opened to traffic.

Subsequent to the 2008 decision of the Secretary of Commerce regarding impacts of the SOCTIIP on coastal zone resources at the connection of SOCTIIP with

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 15

Interstate-5, F/ETCA made a decision to pursue the Tesoro Extension as a modification of the SOCTIIP while deferring decisions regarding future extensions of SR 241 south of the Tesoro Extension. In October 2011, the F/ETCA Board authorized staff to develop conceptual engineering plans, complete environmental assessments and develop a financial strategy for the SR 241 extension from Oso Parkway to the vicinity of Ortega Highway. At that time, the Board also authorized F/ETCA staff to complete environmental analysis regarding the Tesoro Extension.³⁴

On August 9, 2012, the F/ETCA Board authorized the TCA staff to obtain environmental clearances and permits from applicable resource agencies for the Tesoro Extension.³⁵ F/ETCA conducted an environmental analysis of the Tesoro Extension and determined that an Addendum to the SOCTIIP FSEIR was the appropriate CEQA document for the Tesoro Extension. This Addendum was prepared and approved by F/ETCA staff pursuant to the F/ETCA Boards authorizations described above.

3. WHAT ARE THE CONSEQUENCES FOR CEQA PURPOSES OF THE ADDENDUM PREPARED BY TCA IN FEBRUARY 2013 SINCE IT WAS PREPARED WITHOUT AN ASSOCIATED LEAD AGENCY PROJECT APPROVAL OR NOTICE OF DETERMINATION BEING FILED?

A. Answer.

The question is premised on incorrect assumptions regarding the applicable facts and the law. As provided in CEQA Guidelines section 15164(e), the F/ETCA prepared the Addendum to determine whether the modifications to the Preferred Project identified in the FSEIR as proposed by the F/ETCA and reflected in the Tesoro Extension would require the preparation of a subsequent or supplemental EIR. The F/ETCA prepared and approved the Addendum to be used by the F/ETCA Board and the Water Board, along with the 2006 SOCTIIP FSEIR, in the F/ETCA's discretionary approvals of the Tesoro Extension. CEQA does not require that a lead agency approve a project at the same time that the agency approves an addendum.

The findings and determinations of the F/ETCA in the Addendum are final and conclusive for the Water Board.³⁶ As discussed above, CEQA prohibits the Water Board from requiring the preparation of a subsequent or supplemental EIR where, as here, the modifications proposed by the Tesoro Extension do not have a significant new environmental effect or a substantially more severe significant effect.³⁷

³⁴ Report No. 15, 2011F-033.

³⁵ Report No. 14, 2012F-022.

³⁶ Guidelines, § 15050, subd. (c).

³⁷ See § 21166; Guidelines, §§ 15062, subd. (c), 15062.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 16

B. Discussion.

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

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

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

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

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

³⁸ Guidelines, § 15164, subd. (d), emphasis added.

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

⁴⁰ Guidelines, § 15367.

⁴¹ 83 Cal.App.4th at p. 906.

⁴² *Id.* at pp. 900-903.

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 17

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

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

F/ETCA is a joint powers authority formed pursuant to the Joint Exercise of Powers Act⁴⁶ and other provisions of state law⁴⁷ to plan, finance and construct a toll road system in Orange County. Thus, the F/ETCA is the agency with the authority and responsibility to carry out the SR 241 toll road in Orange County including the Tesoro Extension. The F/ETCA is the only agency that may act as lead agency for the Tesoro Extension under CEQA. Indeed, since its formation in 1986, the F/ETCA is the only agency to act as lead agency with regard to the SR 241. No other agency has the statutory responsibility to build, finance, manage and operate the toll road system in Orange County, therefore, no other agency may act as lead agency with regard to the SR 241.

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

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

The Water Board is a responsible agency under CEQA because it has discretionary approval authority over the Waste Discharge Requirement Order.⁴⁹ As a responsible agency under CEQA, the Water Board's role is limited. It is "responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve."⁵⁰ Comments by responsible agencies "shall be limited to those project

⁴³ *Id.* at p. 904.

⁴⁴ *Id.* at p. 907.

⁴⁵ *Id.* at pp. 906, 907.

⁴⁶ Gov. Code, § 6500 *et seq.*

⁴⁷ Gov. Code § 66484.3.

⁴⁸ Guidelines, §§ 15052, subd. (a)(3) and 15082.

⁴⁹ Pub. Resources Code, § 21069; Guidelines, § 15381.

⁵⁰ Pub. Resources Code, § 21002.1, subd. (d).

Mr. Darren Bradford
 California Regional Water Quality Control Board,
 San Diego Region
 March 29, 2013
 Page 18

activities which are within the agency's area of expertise or which are required to be . . . approved by the agency"⁵¹

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

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

- (1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,
- (2) Circumstances or conditions changed as provided in Section 15162, or
- (3) A Responsible Agency becomes a Lead Agency under Section 15052.⁵²

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

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

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

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

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

⁵² Guidelines, § 15050, subd. (c).

⁵³ Guidelines, § 15052, subd. (a).

⁵⁴ Guidelines, § 15052, subd. (a)(1).

⁵⁵ Guidelines, § 15052, subd. (a)(2).

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 19

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

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

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

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

A. Answer.

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

B. Discussion.

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

AB 32, the Global Warming Solutions Act of 2006, established the objective of reducing greenhouse gas ("GHG") emissions in California to 1990 levels by 2020.⁵⁹ AB 32 delegated to the California Air Resources Board ("CARB") the responsibility to develop regulations to achieve the GHG emission reduction objective. In the AB 32 Scoping Plan CARB adopted a set of control strategies for different industries and sectors to achieve the required GHG reduction. The AB 32 Scoping Plan identifies a 5 million metric ton reduction in GHG emissions reduction from regional transportation sources throughout the state.⁶⁰ In addition, the AB 32 Scoping Plan identified other substantial GHG emissions reductions required to be achieved from California's motor vehicle emissions standards.

⁵⁶ Pub. Resources Code, § 21166.

⁵⁷ Guidelines, § 15052, subd. (a)(3).

⁵⁸ Guidelines, § 15053, subd. (e).

⁵⁹ Cal. Health & Safety Code, § 38550.

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

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 20

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

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

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

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

SCAG Region GHG Reduction Performance Per SB 375

Year	Target	Reduction Achieved
2020	8%	9%
2035	13%	16%

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

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

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

⁶¹ Gov. Code, § 65080.

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

⁶³ Gov. Code, § 65080, subd. (b)(2)(B).

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 21

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

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

SCAG's 2012-2035 RTP/SCS, adopted in April 2012, includes the Tesoro Extension in its transportation network designed to reduce regional GHG emissions. The Tesoro Extension is included in project listing ORA052 from the 2013 Federal Transportation Improvement Program. SCAG has stated explicitly that the Tesoro Extension is included in ORA052. The Tesoro Extension has been part of ORA052 since 1991 when it was added to the SCAG RTP. ORA052 is also included in the RTP/SCS Project List appendix of modeled project on page 65.⁶⁴

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

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 22

Project Sheet

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

Project ID	DRAUSE	County/Change	Version	Amended	By
Agency	TCA				
System	9	Route	241	CFC Update	1/15/2013 1:21 PM
Region	01	Conform Car	TCM	By	Ben
Eng. PM	15.9	for Hwy	SCAB	SCAG Update	
Phase	Engineering/Plans, Specifications and Estimates (PS&E)				
Program Code	CAN67	NEW HIGHWAY (NO HOV LANES)	NRS	FTIP ID	DRA052
Scheduled Status	Starting	Ending	Completion Date	OTIP ID	20990003057
PA&D			8/15/2000	Project No	
Phase/Title			Conformity Category	Env. Doc. Type	FEIR
ROW			TCM	Env. Doc. Date	2/1/2006
CGN			Current Project Status	Year Added	0
			County Approved (as of 2/5/2013 11:23:40 AM)		
Change Reason	MINOR CHG			Project Total Cost	1,416,992
Project Description	(FTC-S) (I-5 TO OSO PKWY) (1.5MI) 2 MF EA, DIR BY 2013; AND 1 ADDITIONAL MF EA, DIR, PLS CLIMBING & AUX LANES AS REQ BY 2030 PER SCAG/TCA (JOU 405X01, #1968				
Fund Type	Fiscal Year	EMV	HOW	CON	Fund Total
	2013/2014			7,119	7,119
DRAG-BUILD & BLD				7,119	7,119
	2006/2006	5,000			5,000
	2006/2007	20,000	35,000		55,000
	2007/2008	10,000		90,000	90,000
	2008/2009			100,000	100,000
	2009/2010			8,000	8,000
	2010/2011	6,443			6,443
	2011/2012	8,272	1,780		8,052
	2012/2013	6,677	25,513	220,000	282,190
	2013/2014	20,306		249,775	270,081
	2014/2015			249,775	249,775
	2015/2016			249,775	249,775
	2017/2018			38,519	38,519
	2018/2019			38,519	38,519
	2019/2020			38,519	38,519
PRIVATE FUNDS		74,694	62,293	1,272,882	1,409,870
Total		74,694	62,293	1,280,001	1,416,992

Comments: DR A052 includes Trench Extension the portion of SR 241 between Oso Parkway and Cow Camp Road. Cow Camp Road is listed separately as the FTIP as DR A047911
Item: 2011 FTIP - Trench Implementation Status - on change

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 23

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

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

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

By 2035, SCAG's Regional Growth Forecast/OCP-2010 Modified assumes that South Orange County population will grow by 27 percent and employment growth is estimated at 32 percent. A large portion of the growth is approved for the Ranch Plan area, parts of which are adjacent to the north and south ends of the Tesoro Extension. Growth in other parts of South Orange County represents the build-out of the remaining areas in accordance with adopted plans, consistent with the SCAG Sustainable Communities Strategy. The future growth pattern adjacent to the Tesoro Extension is depicted on Page 147 of the RTP/SCS in Exhibit 4.17.⁶⁵

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

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

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 24

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

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

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 25

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

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

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

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

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

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

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

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

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

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

Mr. Darren Bradford
 California Regional Water Quality Control Board,
 San Diego Region
 March 29, 2013
 Page 26

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

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

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

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

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

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

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

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

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

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 27

5. Tesoro Extension in the Orange County SCS.

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

6. Consistency with Orange County SCS Strategies.

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

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

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

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

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

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

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

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

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

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
March 29, 2013
Page 28

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

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

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

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

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

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

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

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

SCAG RTP/SCS Appendix, Orange County SCS, Page 210, Sustainability Strategies.
http://rtpscscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP_SubregionalSustainableCommunitiesStrategies.pdf

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

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

Very truly yours,



Robert D. Thornton
of Nossaman LLP

RDT/lmb

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

ATTACHMENT A



Source: TCA, Eagle Aerial Imagery, 2011



101807.2 JK 170905-18762 MAF

TESORO EXTENSION PROJECT

SOCTIIP and Tesoro Extension Comparison

ATTACHMENT B

San Joaquin Hills
Corridor Agency

Chairman
JOSE LOURENSCHNEIDER
LAGUNA HILLS



TRANSPORTATION CORRIDOR AGENCIES

Foothill/Eastern
Corridor Agency

Chairman
SUZAN WILSON
MISSION Viejo

Date: June 7, 2001

To: Interested Parties

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

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

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

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

Sincerely,

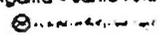
Macie Cleary-Milan

Macie Cleary-Milan
Deputy Director, Environmental and Planning

Walter D. Kravitz, Executive Director

125 PACIFICA, SUITE 100, IRVINE CA 92618-3304 • PO BOX 50770, IRVINE CA 92619-3770 • 949/754-3400 FAX 949/754-3457
www.tcaforidocs.com

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



VERIFICATION (C.C.P. 446 AND 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPHS

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

I am an officer a partner _____ a _____ of _____

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

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

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

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

Executed on (date) _____, at _____, California.

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

Type or Print Name

Signature

PROOF OF SERVICE

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

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of _____

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

On (date) 6/7/01, **I served the foregoing document described as Notice of Preparation

_____ on prop. owners, interested parties, etc. in this action

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

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

BY MAIL

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

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

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

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

Josie Pimentel
Type or Print Name

Josie Pimentel
Signature

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

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

7000 1670 0011 1278 9585
 Richard Baker
 California Dept. of Conservation
 5815 Corporate Ave Ste 200
 Cypress, CA 90630-4747

2. Article Number (Copy from service label)

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

A. Received by (Please Print Clearly)

Senta Watson

B. Date of Delivery

6-15-01

C. Signature

X Senta Watson

Agent

Addressee

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

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

2. Article Number (Copy from service label)

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

X Denise Jones

B. Date of Delivery

6/15

C. Signature

X Denise Jones

Agent

Addressee

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

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

2. Article Number (Copy from service label)

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

X C. Brown

B. Date of Delivery

6/15/01

C. Signature

X C. Brown

Agent

Addressee

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below: No

3. Service Type

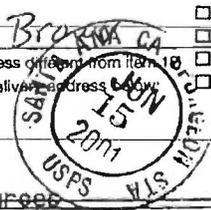
Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



ATTACHMENT C

California Regional Water Quality Control Board San Diego Region

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

June 14, 2001

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

Page 1 of 6

ATTN: Macie Cleary-Milan

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

Dear Ms. Cleary-Milan,

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

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

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

California Environmental Protection Agency

Recycled Paper



Page 2 of 6

Permits

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

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

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

Construction SWPPP

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

Industrial SWPPP

Page 3 of 6

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

Municipal SWPPP

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

Water Quality Certification

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

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

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

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

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

Page 4 of 6

Project/ Site Planning

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

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

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

Page 5 of 6

Construction- Phase Management

Erosion Prevention

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

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

Chemical and Waste Management

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

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



Winston H. Hickox
Secretary for
Environmental
Protection

Page 6 of 6



Gray Davis
Governor

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

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

Sincerely,

Paul Lemons

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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

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

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES: (CON'T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered opposition to the project:

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

-000-

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	Page
Proceedings Opening Remarks	9
Adjournment	306
Certificate of Reporter	307

1 PROCEEDINGS

2 WEDNESDAY, MARCH 13, 2013

9:28 A.M.

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

6
7 AGENDA: ITEM NO. 8

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

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

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

5 THE PUBLIC EN MASSE: (Laughter).

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

9 CHAIRMAN MR. MORALES: Come to order.

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

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

25 The purpose of this hearing is for the board

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

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

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

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

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

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

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

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

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

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

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

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

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

25 CHAIRMAN MR. MORALES: Dr. Abarbanel.

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

4 CHAIRMAN MR. MORALES: Yes.

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

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

13 STATE BOARD STAFF COUNSEL (MS. HAGAN):

14 Mr. Chairman?

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

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

21 BOARD MEMBER (MR. ANDERSON): Yes.

22 BOARD MEMBER (MR. ABARBANEL): Yes.

23 CHAIRMAN MR. MORALES: Thank you.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

CHAIRMAN MR. MORALES: And, again -- not "again."

Thanks for telling me.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to Tesoro High School, located along Chiquita Creek and one
2 of its tributaries. Wet meadow, mule fat scrub and southern
3 willow woodland will be established and enhanced in this
4 area. Mitigation Area B is an 18.86 acre area within the
5 Upper Chiquita Canyon Conservation Area, which is the
6 headwaters of Chiquita Creek. 10,300 and 25 linear feet of
7 ephemeral drainage will be established and restored.

8 Mitigation Area B will also include establishment of Southern
9 Sycamore Riparian, restoration of Live Oak and Elderberry
10 Habitat and over 13 acres of perennial grassland buffer.

11 CHAIRMAN MR. MORALES: Okay.

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

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

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

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

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

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

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

1 restore -- (interrupted)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Next slide.

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

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

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

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

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

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

1 inconsistencies.

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

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

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

19

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

21

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

25

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

1 higher?

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

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

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

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

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

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

16 BOARD MEMBER MS. KALEMKIARIAN: Okay.

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

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

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

6 BOARD MEMBER MS. KALEMKIARIAN: Go 'head.

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

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

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

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

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

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

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

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

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

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

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

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

8 Ms. Kalemkiarian, Robert Thornton --

9

10 (Simultaneous speech; unintelligible.)

11

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

13 Can you speak into the microphone, please.

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

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

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

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

1 environmental groups.

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

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

11 MR. BOB: Thank you, Valerie.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Now, one of the water quality features that

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

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

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

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

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

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

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

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

14 MS. HALL: Thank you, Paul.

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

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

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
March 13, 2013

- ITEM: 8
- SUBJECT: Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*)
- PURPOSE: To consider adopting Tentative Order No. R9-2013-0007, *Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County (Tesoro Extension Project)*
- RECOMMENDATION: Adoption of Tentative Order No. R9-2013-0007 is recommended.
- KEY ISSUES:
1. The Save San Onofre Coalition, a broad-based coalition of Orange County environmental non-governmental organizations (NGOs), claims that F/ETCA failed to submit a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely on in considering the adoption of the Tentative Order. F/ETCA argues, in rebuttal to the Coalition's claims, that the Final Subsequent Environmental Impact Report (FSEIR), certified by F/ETCA complies with CEQA and meets all requirements for the San Diego Water Board to adopt the Tentative Order. F/ETCA also argues that the recent addendum to the FSEIR further documents that the Tesoro Extension Project will not have any new significant impacts beyond those evaluated in the FSEIR.
 2. The Save San Onofre Coalition asserts that F/ETCA's Report of Waste Discharge (ROWD), submitted in the application for the Tentative Order, fails to address the requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). F/ETCA asserts in response that the Tesoro Extension Project will comply with the hydromodification requirements of

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

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

DISCUSSION:

Project Description

F/ETCA proposes to construct the "Tesoro Extension Project," an approximate 5.5 mile long limited access highway extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. This extension will be operated as a toll road, as are the existing portions of SR-241. The purpose of the Tesoro Extension Project is to provide improvements to the south Orange County transportation infrastructure that will help reduce existing and future traffic congestion on the Interstate 5 (I-5) freeway and the arterial network in south Orange County. F/ETCA is the Tesoro Extension Project sponsor overseeing construction and is also the California Environmental Quality (CEQA) lead agency for the proposed Project. Upon opening of the Tesoro Extension roadway, the California Department of Transportation (Caltrans) will assume ownership of the roadway facility and responsibility for roadway maintenance. F/ETCA will be the toll operator for the roadway and maintain tolling equipment.

The Tesoro Extension Project site is tributary to Cañada Gobernadora Creek, Cañada Chiquita Creek, and

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

Overview of the Tentative Order

Tentative Order No. R9-2013-0007 (**Supporting Document No. 2**) will, if adopted, establish waste discharge requirements for the discharge of waste attributable to the Tesoro Extension Project to waters of the State, pursuant to Water Code section 13260 et. seq. The Tentative Order was released for public review and comment on January 17, 2013. In response to a request for an extension of the public comment period by Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, the deadline for submission of comments on the Tentative Order was extended from February 18, 2013 to February 25, 2013 (**Supporting Document No. 3**).

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

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

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

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

Save San Onofre Coalition Comments

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

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

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

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

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

F/ETCA Comments and Rebuttal

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

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

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

Additional Comment Letters Regarding the Tentative Order

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

San Diego Water Board Staff Analysis of Comments Received

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

LEGAL CONCERNS:

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

SUPPORTING DOCUMENTS:

1. Location Maps (Hardcopy)
2. Tentative Order No. R9-2013-0007 with attachments (Hardcopy)
3. Notice of Availability (Hardcopy)
4. Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, Request for Public Comment Period Extension, dated 2/6/2013 (Hardcopy)

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

PUBLIC NOTICE:

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

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

State of California
Regional Water Quality Control Board
San Diego Region

SUPPLEMENTAL
EXECUTIVE OFFICER SUMMARY REPORT
March 13, 2013

ITEM: 8

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

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

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

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

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

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

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

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

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

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

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

LEGAL CONCERNS:

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

SUPPORTING DOCUMENTS:

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

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

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

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

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.

1 What happens?

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

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

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

13 MR. ABARANEL: Thank you.

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

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

1 adoption of the tentative order.

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

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

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

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

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

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

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

8 The information shown in the tables provides
9 demographic information regarding TCA customers with and
10 without FasTrak accounts. FasTrak customers represent
11 approximately 95 percent of the users of the toll roads.

12 In 2002 TCA conducted a survey of motorists
13 traveling on the State Route 241 Foothill/Eastern
14 Transportation Corridor. The corridor travel pattern
15 and trip characteristic survey involved patrons who use
16 FasTrak transponders and patrons that pay cash. The
17 survey included both weekday and weekend users of the
18 corridor.

19 The key findings from these surveys are more
20 than 90,000 trips occur on weekdays between 6:00 a.m.
21 and 7:00 p.m.; trips to and from work comprise 49
22 percent of the total weekday traffic between 6:00 a.m.
23 and 7:00 p.m.; on weekends personal and recreational
24 uses dominate the purpose of the trips.

25 The next question is: What is the "roads

1 first" policy?

2 In the mid-1980s, the County of Orange, in
3 order to manage the transportations needs of population
4 growth and development, adopted a roads first strategy.

5 This policy is manifested in the establishment
6 of roadway improvement programs in areas having
7 significant growth and development. The development in
8 an area is tied to roadway construction by a building
9 permit phasing, thereby guaranteeing that roads will be
10 built first.

11 The next question is: TCA noted in its
12 presentation that there is a 27 percent growth of
13 population forecast by 2035. What is the forecasted
14 growth for public transit during the same time period?

15 The forecast for the growth in public transit
16 are defined by Orange County Transportations Authority's
17 long range transportation plan and included, by 2035,
18 add approximately 400,000 hours of bus service, which
19 constitutes a 25 percent increase; double the size of
20 the van pull program; increase Metrolink service; and
21 add 750 miles of bikeways to the existing 1,000-mile
22 network.

23 The next question is: Who will supervise the
24 mitigation sites?

25 The revised tentative order requires TCA to

1 identify the party responsible for implementing the
2 mitigation measures identified in the final mitigation
3 plan no later than July 26th, 2013.

4 Currently TCA proposes to maintain both
5 mitigation sites until performance criteria have been
6 reached, at which time mitigation area A will be
7 maintained and managed in perpetuity by the Ranch
8 Mission Viejo Land Trust. TCA is responsible for the
9 land management of mitigation area B until they
10 designate a third party.

11 And the final board member question is: How
12 will the project be funded in perpetuity?

13 The tentative order requires TCA to provide a
14 form of financial assurance that is acceptable to the
15 water board within six months of the adoption of the
16 order. The financial assurance must provide for the
17 acquisition of land required for compensatory
18 mitigation; and the estimated cost of obtaining the
19 conservation easement; the estimated cost of
20 construction of the compensatory mitigation project; and
21 the estimated cost of achieving compliance with the
22 performance measures set forth in the final mitigation
23 plan.

24 Both water board and the California Department
25 of Fish and Wildlife require financial security to

1 ensure performance of the mitigation requirements. TCA
2 has prepared draft escrow agreements for the mitigation
3 sites. These agreement will be reviewed and approved by
4 the water board once the mitigation plan has been
5 finalized.

6 TCA will provide specific information on how
7 they intend to comply with these conditions in their
8 presentation today.

9 Finally, I would like to clarify an issue that
10 occurred during a presentation at the March board
11 meeting. During the Save San Onofre Coalition
12 consultant's presentation, a representative showed a
13 figure incorrectly showing that the Tesoro Extension
14 Project impacting Wagon Wheel Creek and its headwaters.
15 The consultant confirmed that they erroneously labeled
16 drain A1 as Wagon Wheel Creek in their presentation.

17 This is the original figure shown at the March
18 hearing misidentifying drainage A1 as Wagon Wheel Creek.
19 As you will see in the next slide, Wagon Wheel Creek is
20 north of the area shown in this image.

21 So as you can see, this would be the proposed
22 area for the Tesoro Extension Project. This is drainage
23 A1. And you can see it's labeled as Wagon Wheel Creek.
24 So again, that's drainage A1. Wagon Wheel Creek is
25 actually further north, and you will see it on the next

1 slide.

2 This slide correctly shows the area of the
3 project, the location of Wagon Wheel Creek and drainage
4 A1. So here's the study area for the Tesoro Extension
5 Project. Here's the actual location of Wagon Wheel
6 Creek. And you can see there is a ridge line that goes
7 through here that separates the project from Wagon Wheel
8 Creek.

9 However drainage A1 is down here. And so the
10 potential impact would be to drainage A1 and not Wagon
11 Wheel Creek.

12 Please note the study area is the area of
13 potential impact for the project. Although drainage A1
14 is within the study area, it will not be filled as part
15 of the Tesoro Project.

16 In summary, this project proposes to construct
17 a five and a half mile toll road. To address the storm
18 water effects of the project, the tentative order will
19 require the discharger to meet the BMP standards in the
20 Caltrans storm water permit, the south Orange County
21 draft hydromodification plan and the south Orange County
22 draft model water quality management plan.

23 Project impacts to nonfederal waters of the
24 state have been avoided and minimized to the maximum
25 extent practical. All remaining impacts to water will

1 be mitigated at a very high ratio to establishment and
2 restoration projects consistent with and exceeding water
3 board standards.

4 Therefore, staff recommends adoption of revised
5 tentative order No. R9-2013-0007 with errata.

6 This concludes my presentation. I am available
7 to answer any of your questions.

8 MR. ABARANEL: There is a runoff management
9 plan that is referred to and talks about both -- I'm
10 sorry. I don't have the words precisely in front of
11 me -- both water quality and amount of water.

12 Could you tell us what is the origin of the
13 additional runoff -- I assume it's the hardscape, but I
14 would like to hear that -- and whether or not there are
15 additional pollutants from the vehicle use of the
16 roadway.

17 MR. BRADFORD: So they'll -- I don't know if
18 there's additional runoff. But it's concentrated
19 runoff, and it runs off faster as a result of the
20 impervious surface that's created by the road surface.

21 There are pollutants that will come off the
22 cars as a result of using the road certainly. They
23 have -- they have designed post and construction
24 management practices, such as Austin sand filters,
25 bioswales, biofiltration. And they're using a porous

1 friction course, I believe it's called, that also helps
2 remove car pollutants prior to discharge of water to the
3 state.

4 MR. ABARANEL: Can you tell us what some of
5 those pollutants are and what -- what levels are being
6 permitted under this?

7 MR. BRADFORD: I can't specifically state the
8 levels. There will be metals and petroleum products and
9 brake dust and concerns about sediment and particulate
10 from the project.

11 MR. ABARANEL: Do we have some sense of what we
12 expect?

13 MR. BRADFORD: We do. It's in the runoff
14 management plan. The details of that have been reviewed
15 by our storm water staff, and I defer the specifics of
16 that plan to our storm water staff.

17 MR. ABARANEL: We would like to hear some
18 comments on that.

19 MR. BRADFORD: Would you like to -- we could do
20 that now or later.

21 MR. ABARANEL: It's up the chair.

22 MR. MORALES: Well, I don't know if we may end
23 up hearing some of that from the further presenters. I
24 think if we don't, we can get that on the back end when
25 we ask for -- I guess hear follow-up comments if we

1 haven't heard what we need to.

2 But I've got some questions, and this isn't
3 just for you. This may be more for counsel.

4 I think, after our March 13th meeting, we sent
5 out four questions for written response that we -- we
6 were supposed to receive responses by March 29th, and we
7 did.

8 Question No. 2 and 3, are those now not an
9 issue given that the TCA filed a notice?

10 And specifically just for the public's benefit,
11 the first question was: How the TCA defines the
12 project. That's not my question right now.

13 The second question was: What further
14 approvals does TCA intend to -- to make prior to the
15 commencement of construction?

16 And the third question was: What are the
17 consequences for CEQA purposes of the addendum prepared
18 by TCA in February since it was prepared without an
19 associated lead agency project approval or notice of
20 determination.

21 And my understanding is that the notice of
22 determination has been prepared and filed, correct?

23 MS. HAGAN: Yes, Chairman Morales. The NOD
24 was filed on April 23rd. The board of directors of TCA
25 approved the addendum and a conceptual design for the

1 Tesoro extension on April 18.

2 MR. MORALES: Okay. So then, by them having
3 done that, does that essentially take care of questions
4 2 and 3?

5 MS. HAGAN: It -- it -- the --

6 MR. MORALES: It moots 2, and it answers 3?

7 MS. HAGAN: Essentially, yes. The approval on
8 April 18th clearly stated what the board of directors
9 was approving and also stated that they contemplated
10 further approvals. And so that essentially covers
11 question 2.

12 And as far as question 3, the -- the approval,
13 yeah, it more or less leads to the answer to question 3.

14 MR. MORALES: Okay. Thanks. Thank you.

15 Next up I believe is --

16 MS. DORSEY: Chair? Kelly Dorsey over here.

17 MR. MORALES: Oh, hi, Kelly.

18 MS. DORSEY: Hi. How are you?

19 I just wanted to clarify a couple of questions
20 that Henry had -- a couple of the answers that Darren
21 had given.

22 The -- you asked if this -- if this project was
23 the project that was in the 2006. And it wasn't the
24 entire project. It -- but this -- this project was
25 covered in the 2006 EIR. And if I'm not correct, please

1 correct me.

2 But that's our understanding, that it was
3 included in that 2006 EIR. It wasn't the entire
4 project. It was a segment.

5 MR. ABARANEL: So let's call 2006 project,
6 project A. This is a subset of project A.

7 MS. DORSEY: Exactly.

8 MR. ABARANEL: If at a subsequent date a
9 project B is brought forward that's different from A --

10 MS. DORSEY: Project --

11 MR. ABARANEL: -- project be included in the
12 EIR for project B?

13 MS. DORSEY: Say that again. I just want to
14 make sure I got your -- so --

15 MR. ABARANEL: There was project for which an
16 EIR was prepared and I guess approved in 2006.

17 MS. DORSEY uh-huh.

18 MR. ABARANEL: The present project would appear
19 to be -- although I don't know whether it's true in
20 detail -- a subset of project -- that project. I'm
21 going to call it project A.

22 MS. DORSEY: Yes.

23 MR. ABARANEL: If at some point in the future
24 there is a request for an additional extension of
25 highway 241 that is different from project A, I assume

1 there will have to be an additional EIR.

2 Will that include the present project?

3 MS. DORSEY: I think that would be a question
4 for TCA. I would say that, if there are any projects
5 brought to the board with a report of waste discharge or
6 a 401 certification application, we would have to
7 process it the same way we're processing this one.
8 Anything beyond the --

9 MR. ABARANEL: I understand that the processing
10 would be according to the rules.

11 The question is: Would the present project be
12 included in any future project because it's only a
13 subset of the project that was approved seven years ago.

14 MS. HAGAN: Board Member Abaranel, I think that
15 it would depend on the project description at that point
16 in time. And that project description would then lead
17 to the type of CEQA documentation that would be required
18 for a future project.

19 So some type of environment documentation would
20 be required for a future project. But we're not in a
21 position to evaluate that at this stage because we have
22 the project before us as defined by TCA today.

23 MR. ABARANEL: Maybe I can ask my question in a
24 different way.

25 The EIR was prepared for a project of which

1 this is a subproject.

2 MS. HAGAN: The --

3 MR. ABARANEL: I'm not -- that isn't the
4 question.

5 MS. HAGAN: Yes.

6 MR. ABARANEL: I think that was a statement
7 just to warm up.

8 We are being asked to assume that, were the
9 remainder of the original project removed, this
10 subproject has precisely the impact and no more than was
11 covered under the original project from 2006.

12 MS. HAGAN: That's correct. The project that
13 was covered in the environment impact report from 2006
14 and then the subsequent addendum that TCA prepared just
15 this year in April.

16 MR. ABARANEL: Because the original project was
17 larger -- I have two questions -- is there any
18 implication whatsoever that, by accepting the EIR from
19 2006, that we are accepting the EIR for the full
20 proposed project from 2006?

21 MS. HAGAN: No. No, there's not.

22 MR. ABARANEL: And my other half of my question
23 is: Since this a subproject -- I'm not -- I don't
24 really -- can't speak to the addendum in detail -- but
25 why was there not an EIR prepared for this project

1 alone?

2 MS. HAGAN: Because TCA, as the lead agency,
3 determined that this project did not require a
4 subsequent or supplemental EIR.

5 And as the lead agency, they filed a notice of
6 determination stating that, as the responsible agency,
7 we're required to follow the lead agency's determination
8 unless specific criteria are met.

9 MR. ABARANEL: I'm going to translate that.
10 If they say it's okay, we have to say it's
11 okay?

12 MS. HAGAN: Essentially we --
13 (Microphone feedback noise.)

14 MR. ABARANEL: I think that it's that one.

15 MS. HAGAN: Our authority, as you know, is to
16 protect water quality and water resources. And staff
17 has made the determination that the documentation
18 submitted by TCA and the project description and
19 approval that they have made for this extension with the
20 mitigation measures that we have included in our order
21 address all those impacts to water quality.

22 So we're not making any specific findings with
23 respect to any other impacts to other resources or other
24 future potential segments.

25 MR. ABARANEL: But their determination assessed

1 by you to be adequate is a recommendation to the board?

2 MS. HAGAN: Essentially --

3 (Microphone feedback noise.)

4 MS. HAGAN: I hope my answer makes more sense
5 than that feedback.

6 Essentially under CEQA the lead agency drives
7 the process. And as a responsible agency, we are bound
8 by the lead agency's document even if litigation is
9 filed challenging the lead agency's approval.

10 And that clarifies things in terms of who is
11 responsible for addressing environmental impacts of a
12 project.

13 Our responsibility is to assess the water
14 quality impacts as a responsible agency. And staff has
15 determined that the documentation that we have from TCA
16 for this project description, this 5.5 mile segment,
17 that we have adequate information to make the findings
18 that all impacts to water resources and water quality
19 can be mitigated to a less than significant level.

20 MR. ABARANEL: So if I translate that, the
21 discharger determined that the EIR for the subproject is
22 adequate for CEQA purposes, and that's where we are; we
23 cannot challenge that here.

24 MS. HAGAN: If we felt that their document was
25 not adequate in its treatment of impacts to water

1 quality or water resources, we have the discretion under
2 CEQA, and we have the independent authority to
3 condition, approve, deny the project.

4 However, staff feels that the mitigation that
5 is included in the order is sufficient to mitigate.

6 MR. ABARANEL: So that's a staff recommendation
7 then.

8 MS. HAGAN: Yes.

9 MR. ABARANEL: Thank you.

10 MR. MORALES: Any other questions?

11 MS. KALEMKIARIAN: And I apologize if this was
12 answered in the staff presentation. I might have missed
13 it.

14 But are there any concerns at all by staff
15 about the mitigation measure monitoring?

16 The one thing that stuck out to me after the
17 last hearing -- and I know Mr. Abaranel and I looked at
18 this little report -- is the fact that it's like the fox
19 guarding the henhouse in terms of who does the review of
20 the mitigation.

21 And I have confidence from what was presented
22 that it it's been well thought out how the mitigation
23 occurs.

24 But, you know, maybe you addressed this, but
25 are we satisfied -- it's funded by one of these

1 nonprofits. Is this not going to go away? How do we
2 know that the mitigation goes on, that it doesn't just
3 sort of slide away as other things happen.

4 I do have a concern about that. And I think
5 you addressed it, but just a little bit more about that.

6 MR. BRADFORD: Sure.

7 MR. MORALES: Yeah. And --

8 (Microphone feedback noise.)

9 MR. MORALES: Okay. I'll just be really loud.

10 And before you answer that question, I just
11 sort of had follow-up. Because at the last --

12 (Microphone feedback noise.)

13 MR. MORALES: At the last hearing, yeah, those
14 were questions that we had. And essentially I think
15 staff believes that the mitigation, the scope and what
16 is proposed is appropriate.

17 But our questions went more to the issue of how
18 can we be certain that, once we're long gone and, you
19 know, our grandkids want to go out to that area, that
20 there's still going to be somebody in charge and making
21 sure that it's being maintained appropriately.

22 I think that's sort of the gist of the
23 questions with respect to the long-term monitoring of
24 the mitigation.

25 And just a quick comment on -- on the CEQA. My

1 understanding -- and correct me if I'm wrong -- at the
2 last meeting our concern was with the fact that there
3 was no NOD filed, which potentially would have meant
4 that we would be the, quote, lead agency for CEQA
5 purposes or could be considered that.

6 And generally under CEQA, if a lead agency
7 files a notice of determine, as has now occurred, absent
8 specific situations, we are essentially almost obligated
9 to accept that because it's not our determination to
10 make, it as been made, and we deal with our own segment
11 of the decision making.

12 Is that correct?

13 MS. HAGAN: Essentially that's correct. The
14 lead agency filed a notice of determination stating that
15 there were no new impacts to trigger need for a
16 subsequent or supplemental EIR.

17 And that -- that was their determination and
18 their approval when they approved the design for this
19 5.5 mile extension.

20 MR. MORALES: And if they're wrong, it's on
21 them one.

22 MS. HAGAN: It's -- yes. It's their
23 responsibility.

24 MR. MORALES: Okay.

25 MR. ABARANEL: If I may comment to Sharon.

1 I will later make a suggestion for us to
2 consider that addresses the issue of mitigation and in
3 particular failed mitigation.

4 MR. MORALES: Sharon, did you want a comment
5 from staff? Because there's a pending question, so --

6 MR. BRADFORD: I can't remember the entire
7 question at this point, but --

8 MR. MORALES: Talk to us about mitigation.

9 MR. BRADFORD: So TCA is planning on
10 maintaining the sites until it meets the performance
11 criteria. And that's the most important part.

12 In terms of the fox guarding the henhouse, we
13 think that's okay to a certain extent because we're
14 going to have to ensure that the project meets success
15 criteria and sign off at that point that the project is
16 successful and self-staining at that point.

17 We have requirements in the order for TCA to
18 tell us who the third party managers are going to be by
19 July 26. So they've already identified the third party
20 for mitigation area A. But I don't know who the third
21 party will be for mitigation area B. That has to be
22 identified by July 26th.

23 In terms of the financial assurances, they are
24 required by the order to provide that for us in --
25 within six months of adoption of the order. So they've

1 given us draft documents regarding that that we've
2 turned over to counsel. And within six months we'll
3 have to approve the financial assurances for the
4 project.

5 MS. KALEMKIARIAN: That's helpful.

6 So I guess what I would appreciate is, when
7 whoever from the TCA addresses that, that you give us
8 information about how that financial arrangement goes
9 into perpetuity because that appears to be the problem,
10 is that initially there'll be a dump of money, and then
11 that non-profit or third party starts to struggle, and
12 then it disappears, and there's no longer any
13 monitoring.

14 MR. BRADFORD: Exactly. And HM -- HMMP is a
15 half-time mitigation monitoring plan is very vague on
16 this point. So I don't have a whole lot of information.

17 So we knew you were going to ask this question.
18 And so I requested TCA to really go into depth and
19 specifics on this particular issue.

20 MS. KALEMKIARIAN: Okay.

21 MR. ABARANEL: Can I ask a follow-up question
22 to Darren.

23 So site No. 2 is not designated for basically a
24 guardian for the mediation project until July 26th.

25 What if this board doesn't like who is

1 designated? Does that nullify any action that we take
2 today?

3 MR. BRADFORD: Does it nullify --

4 MR. ABARANEL: Suppose we were to approve this,
5 but on July 27th it's revealed to us who is designated
6 for site 2, and we don't like it?

7 MS. DORSEY: It's Kelly Dorsey again.

8 MR. ABARANEL: Hi.

9 MS. DORSEY: Hi. We keep passing the mic
10 around.

11 MR. ABARANEL: That's fine.

12 MS. DORSEY: The idea is that, when they submit
13 their mitigation plan, we'll be able to comment -- their
14 final mitigation plan, we'll be able to comment to them
15 and plus public comment on that mitigation plan. We're
16 going to allow for 30 days public comment on that
17 mitigation plan that will include that information.

18 So there will be ample opportunity for
19 discussion on who the third party is going to be and
20 whether or not we deem that person to be acceptable.

21 Generally, you know, with the other property
22 it's Rancho Mission Viejo Trust, which is a non-profit,
23 and they generally, you know, use agencies that are
24 nonprofits that -- so that we can separate the
25 responsibility and the money in escrow and financial

1 assurances away from, you know, the parties that are
2 doing the project.

3 And like Darren said, TCA can speak more to the
4 details of exactly how they're going to do this. But,
5 you know, we do plan on having a role, in talking with
6 them about these situations, who is going to be
7 responsible.

8 MR. ABARANEL: What if we come to an impasse
9 and propose party A, and we find party A unacceptable,
10 does that nullify any actions that the board would take
11 today?

12 MS. DORSEY: I think it would be part of the
13 approving the HMMP process. We wouldn't approve it.
14 And that -- that would be -- you know, without an
15 approved mitigation plan, I don't know that they could
16 move forward.

17 MR. MORALES: Right. As I understand this, in
18 today's discussion, even if we did approve it --
19 unfortunately, it's not the last time we're going to
20 have to deal with this because they will have to come
21 back with a mitigation plan. That's going to require
22 public participation. That would require further
23 approval.

24 But before they're actually out there shovels
25 into the ground, this all has to be dealt with?

1 MS. DORSEY: Correct. If the board adopts the
2 item today, then TCA will be required to get us their --
3 their final HMMP, including all of the requirements in
4 the order, by the end of July.

5 As soon as we get that, we'll post it for
6 public -- if we get it -- you know, if they give us the
7 final version tomorrow, we'll put it out as soon as we
8 get it so we can get public comments. And then we'll
9 comment back to TCA on that plan, including the public
10 comments that are appropriate.

11 MR. ABARANEL: I understand, Chairman, the
12 statement all of that will end up back here for approval
13 by the board.

14 MS. DORSEY: I think it states in the order
15 that we will present the information to the executive
16 officer, and he will make the determination of whether
17 or not it comes to the board.

18 MR. ABARANEL: Okay. I have another question.
19 On Page 120 out of 443 --

20 MS. DORSEY: Of which document?

21 MR. ABARANEL: Well, I put them all together so
22 I could search them better. Document No. 6. Supporting
23 document No. 6. There's a table, environmental issue
24 and so forth. It's -- I'm sorry. It was much easier to
25 search when I put them all together.

1 MS. DORSEY: Page 100 -- oh, wait. Are you
2 talking about the addendum to the --

3 MR. ABARANEL: No. It's supporting document
4 No. 6. And I -- maybe it's Page 26 under that.

5 MS. DORSEY: Okay.

6 MR. ABARANEL: There's a table. Table is
7 called "Environmental issues, impacts, analysis." Let
8 me just read the item. All right.

9 It says: While construction activities will
10 result in a slight increase in greenhouse gas emissions
11 during construction, operational emissions during the
12 proposed project conditions would decrease with the
13 no-build conditions by .11 percent during the horizon
14 year.

15 Who made that determination, and what error is
16 that -- is there in .11 percent, which is a small
17 number?

18 MS. DORSEY: If you're talking about
19 supplemental document No. -- supporting document
20 No. 6 --

21 MR. ABARANEL: Yes, I am.

22 MS. DORSEY: -- then I would defer to TCA on
23 that because this is their CEQA addendum.

24 MR. ABARANEL: So we have no position on
25 whether that is correct.

1 MS. DORSEY: I don't see the table that you're
2 referring to --

3 MR. SMITH: 324.

4 MS. DORSEY: -- on the pages that are --
5 The document is only 98 pages, James.

6 MR. SMITH: 3-24.

7 MR. ABARANEL: Well, it's table 5 in supporting
8 document No. 6.

9 This number was called out elsewhere, but I
10 couldn't find it elsewhere in my search. So I
11 apologize.

12 But this was actually one of the questions that
13 we asked about AB32. I admit that's air and not water,
14 but it is a liquid.

15 MS. DORSEY: Okay. I've got table -- I'm with
16 you on table 5 now.

17 MR. SMITH: Air quality starting with
18 construction emissions.

19 MR. ABARANEL: 3-24.

20 MS. DORSEY: Which section? At the bottom?

21 MR. SMITH: 3-24. Last row of the tables.

22 MR. MORALES: It's table No. 5, 326 on the
23 February 2013 environmental analysis, the addendum to
24 the SOCTIIP final SEIR.

25 MR. ABARANEL: Again, this is an EIR. The EIR

1 was certified by the discharger and we agreed was okay.

2 Do we know if this is okay?

3 MAIL SPEAKER: We didn't -- we didn't evaluate
4 findings for air quality impacts because that -- those
5 findings are within the responsibility of the lead
6 agency.

7 And as the responsible agency, with our task of
8 protecting water quality, we don't make findings
9 regarding air quality impacts, unless we were the lead
10 for this project, which we aren't.

11 MR. ABARANEL: Okay. Thank you.

12 MR. MORALES: All right. Let's move on. So
13 when we get to TCA, you may want to cover those points.
14 But we're not at TCA.

15 We're at Coalition now. 30 minutes.

16 MS. FELDMAN: Good afternoon. My name's Sarah
17 Feldman. I am the vice-president for programs of the
18 California State Parks Foundation.

19 Before I begin, I would like to put the board
20 on notice that we would like to reserve some time for
21 rebuttal.

22 This morning I'm here representing the entire
23 San Onofre Coalition, which has worked closely together
24 for nearly a decade to protect San Onofre --

25 MR. STRAWN: I'm sorry. How much time do you

1 want to reserve for.

2 MS. FELDMAN: Approximately 10 minutes, but
3 we'll give you the exact number in our closing
4 statement.

5 MR. STRAWN: So you want me to let you know
6 when you're 20 minutes?

7 MS. FELDMAN: We have number of people
8 testifying. So were going to take about 20 minutes now
9 and about ten later.

10 MR. STRAWN: Okay.

11 MS. FELDMAN: So starting again quickly.

12 I'm here representing the Save San Onofre
13 Coalition, which has worked closely together for nearly
14 a decade to protect San Onofre State Beach.

15 Our coalition is made up of the following
16 groups: California State Parks Foundation, The
17 Endangered Habits League, The Natural Resources Defense
18 Council, Surfrider Foundation, Orange County Coast
19 Keeper, Sierra Club, California Coastal Protection
20 Network, Sea and Sage, Wild Coast, Defenders of
21 Wildlife, Laguna Greenbelt, and Audubon California.

22 Together our groups represent over a million
23 citizens in California. Our members have stood together
24 many times to protect and defend San Onofre State Beach
25 from this destructive toll road.

1 Approximately a thousand people attended the
2 California State Park and Recreation Commission's toll
3 road hearing in San Clemente in 2005. And over 3,000
4 attended the 2008 California Coastal Commission hearing
5 in Del Mar. 3,000 more were at the Department of
6 Commerce hearing later the same year.

7 In the years since the 2008 decision of the
8 U.S. Department of Commerce to uphold the Coastal
9 Commission's denial of permission to proceed with
10 building the toll road, our coalition and its members
11 have carefully monitored the evolution of the TCA's
12 efforts to circumvent the Coastal Commission's ruling.

13 Today those same members have stepped up to the
14 plate once again. Many of them are at this meeting
15 today. Over 100 people are outside. There's 50 more in
16 the overflow room. And in this room now I would like to
17 ask members of the audience who are here in opposition
18 to the toll road to please stand or raise their hands.

19 Our Coalition has submitted a lot of extensive
20 letters, comments, and we're here again to address you
21 today. Our representatives of our organization will
22 address specific concerns related to the toll road and
23 your upcoming decision.

24 First and very importantly, we will discuss the
25 proper segmentation of the toll road and its impact on

1 the larger project and the surrounding area. Next we
2 will talk about protection of beneficial uses. And last
3 we will be addressing the procedural issues.

4 Thank you for the opportunity to address you
5 today and for your close attention to the issues raised
6 in our testimony.

7 MR. ABARANEL: Can I ask you a question?

8 MS. FELDMAN: Yes. Of course.

9 MR. ABARANEL: I would infer -- I'm asking
10 whether you agree -- that it is your opinion and the
11 opinion of the people you represent that the project
12 before us is not the project; is that correct?

13 MS. FELDMAN: I'm afraid in order to answer
14 that correctly I'm going to have to ask you to rephrase
15 it.

16 MR. ABARANEL: This project goes nowhere near
17 San Onofre. So I have to infer that you would say that
18 the project before us is not, in fact, the project.

19 MS. FELDMAN: Actually, no. And we will have
20 testimony coming up right now about the issue of
21 improper segmentation and the relationship of the Tesoro
22 Extension to the entire toll road. I'm going to defer
23 to my colleagues to answer that in more detail.

24 MR. ABARANEL: Okay.

25 MR. WHITE: NOTE: Good afternoon, Chairman

1 Morales and board members.

2 My name is Bill White. I'm an attorney with
3 Shute Mihaly & Weinberger.

4 So I'm not surprised that there's been a lot of
5 confusion so far expressed today amongst the board
6 members and your staff as to what this project is.

7 We have heard on the one hand staff say that
8 this is a separate project that is not project that was
9 studied in the 2006 EIR. We've also heard that, no, it
10 was, but it was a subset or a subproject. Well, you
11 know, which is it? Problem is that TCA has said it's
12 both, depending on which formulation happens to suit
13 them at the time.

14 So when the question was whether to do -- a new
15 EIR had to be done for project, well, no this is a
16 subset of the 2006 toll road project, so we don't need
17 to do a new EIR.

18 But when the question came up whether a
19 supplemental EIR that addresses the very substantial
20 changed circumstances that have occurred in connection
21 with the toll road project, not the least of which is
22 this rejection by the Coastal Commission, whether that
23 requires a supplemental EIR to be prepared, no, then it
24 it's a separate project; it's a standalone project.

25 And every step along the way TCA has re

1 characterized what this project is to suit their needs.
2 So when they're seeking federal funding for -- with that
3 funding that only applies to a 16-mile connection to the
4 I-5, then it's part of the same project. But when
5 they're asking -- when they're doing eco review for that
6 funding, it's a separate project, standalone, we don't
7 have to look at the impacts.

8 This is the problem that unfortunately has
9 fallen onto your lap now. As you probably know, since
10 the last time we spoke to you, a lot has happened. The
11 TCA hastily approved the project, the Tesoro extension,
12 but the last time we were here they hadn't even taken
13 action on it.

14 Subsequent to that, our Coalition members filed
15 a lawsuit challenging that action for some of the
16 reasons I just mentioned: failure to do supplemental
17 EIR. The attorney general also filed a suit for the
18 same reason.

19 And so we understand that this is a mess that
20 you did not create but that has sort of come to you.
21 And so -- but there are several ways that you can
22 resolve this.

23 First, we have heard that your staff feels that
24 you are bound, as the responsible agency, to the
25 determination by TCA, that a supplement EIR is not

1 required.

2 I want to say at the outset that we disagree
3 emphatically with that conclusion. We think CEQA is
4 clear. It is true that responsible agencies typically
5 are bound by the lead agency's determination that an EIR
6 for a project is adequate.

7 But in the realm of whether a supplemental EIR
8 is required after an EIR has been prepared, CEQA is
9 clear that a responsible agency makes that determination
10 independently. And I refer you to section 15050(c)(2)
11 of the CEQA guidelines.

12 So we think that the regional board can and
13 should require a supplemental EIR for the project that
14 takes into account the entire toll road and the changes
15 that have happened since 2006.

16 But this -- I want to emphasize this is not the
17 central point that I want to make today. We have made
18 this point to you before. It still stands. But I want
19 to let the board know that there are several other
20 options that allow this board to sidestep that question
21 altogether, the question of deference to the TCA. And
22 that's what I want to focus on now.

23 The first of those is the board's independent
24 authority under CEQA to make findings prior to approval
25 of a project.

1 Now, CEQA requires that all responsible
2 agencies, before they approve a project, have to make
3 certain findings. They have -- and these findings have
4 to be made with respect to every significant impact that
5 has been identified for the project, whether it's been
6 mitigated or not.

7 And, in fact, with respect to mitigation, you
8 are not at all bound by what the TCA has concluded. You
9 have complete authority and, in fact, an obligation to
10 make an independent judgment as to whether the
11 mitigation for significant impacts is adequate.

12 Now, it is true that, if impacts are beyond
13 your jurisdiction, you can say so. But with respect to
14 all other impacts that are within -- that relate to
15 water quality or water resources, you have to make that
16 independent finding. Okay?

17 So that gets back to the question: What is the
18 project in this case?

19 Well, let's look at the documents. The TCA has
20 given you two documents -- two CEQA documents. The
21 first one is a 2006 EIR. The project described in that
22 EIR and the impacts described in that EIR are the
23 impacts of the Foothill South toll road, the entire
24 project. Okay?

25 And that EIR concludes, for all its flaws,

1 which are being challenged in court as well -- but on
2 its face it concludes that there are numerous
3 significant impacts of the toll road, many of which --
4 very many of which relate to water quality, water
5 resource, things that are within your jurisdiction.

6 So what's happened since then? TCA has
7 approved an addendum to that 2006 EIR. Now, the
8 addendum TCA has said only relates to this sort of first
9 phase separate project. Is it a separate project? Is
10 it a subset? We don't know. They're saying that all
11 you need to look at is this first phase; forget the rest
12 of the project.

13 But this addendum itself doesn't tell you what
14 the significant impacts of the Tesoro extension as a
15 standalone project are. All it does is say that the
16 project doesn't change the analysis that was done in the
17 2006 EIR. And the 2006 EIR, as I mentioned, identifies
18 numerous significant impacts.

19 So the board is going to -- the board doesn't
20 have any other documentation on which to make its CEQA
21 findings other than the significant impacts identified
22 in the 2006 EIR. So you need to make findings with
23 respect to all of those impacts. And you need to be
24 able to find the mitigation proposed for those impacts
25 is adequate.

1 Now, in 2008 you looked at this question, and
2 so did the Coastal Commission. And separately,
3 independently, both of those agencies concluded that the
4 TCA had not provided enough evidence to show that there
5 would not -- that the significant water quality impacts
6 of this project would be mitigated.

7 Nothing has changed since then. So we urge you
8 to use your independent CEQA authority to find that the
9 mitigation measures for the project, which is the only
10 project you have before you, is what's described in the
11 2006 EIR -- that the mitigations for that project are
12 not adequate.

13 Now, I just want to take a minute to mention
14 that there's another set of findings under CEQA that you
15 also have to make if you were to approve the project
16 today, which we would urge you not to do.

17 Those are findings of overriding
18 considerations. And those findings also have to be made
19 for -- with respect to the projects -- all of the
20 project's significant impacts as a whole. So again, all
21 -- the only impacts you have before you are the impacts
22 of the toll road project 2006.

23 What's very interesting is that the TCA, in
24 approving the Tesoro extension recently, did not make
25 new findings of overriding consideration. Findings of

1 overriding consideration basically say, notwithstanding
2 significant impacts of a project, there are other
3 important policy considerations at play which justify
4 approving a project with significant impacts.

5 Well, the TCA did not make new override
6 findings. They relied on their old override findings.
7 Those old override findings all assume that the project
8 will reach all the way to the I-5 and have all the
9 benefits that TCA claims would happen once you have a
10 connection to the I-5.

11 So if there's anything -- if there was any
12 doubt as to what this project is, I say right there the
13 prove is in the pudding. That is, TCA has not
14 separately found that there's benefit of a standalone
15 project that ends at Cow Camp Road that outweigh the
16 significant impacts. They haven't made any findings at
17 all.

18 And we think you should -- we don't think those
19 findings can be made, especially in light of what the
20 Coastal Commission has found about the toll road project
21 as a whole.

22 The second area of authority that would justify
23 you denying this project today is the Porter-Cologne
24 Act. The board's authority under the Porter-Cologne Act
25 is completely separate and independent from CEQA. You

1 owe no deference at all to the TCA's conclusions in the
2 CEQA documents.

3 And I'll point out, as part of that authority,
4 is board's own regulations require that a description of
5 the project be provided, including -- and this is a
6 quote -- "the purpose and final goal of the entire
7 activity." "The purpose and final goal of the entire
8 activity."

9 And for all the reasons that we've -- I won't
10 repeat them here, but we have them in our comment
11 letters -- there is just no question that the purpose
12 and final goal of this current project is construction
13 of the Foothill South toll road in its entirety.

14 Now --

15 MR. STRAWN: You're at 20 minutes, just for
16 your information.

17 MR. WHITE: Okay. Thank you.

18 It's the board and not the TCA that makes that
19 determination. And we would urge you to conclude that
20 the Foothill South as a whole does not -- there's not
21 sufficient evidence, as you did in 2008, to approve the
22 project.

23 And finally, very quickly, just -- others will
24 touch on this -- the more narrow issue, the proposed
25 order -- we appreciate that it now requires that the

1 TCA's R&P comply with the hydromodification requirements
2 of Harsh County.

3 But it doesn't require the analysis to be done
4 until October. It doesn't require the analysis to even
5 be done before construction starts. The whole purpose
6 of the hydromodification requirements is to -- to -- the
7 very core aspect of them is to first avoid resources --
8 sensitive resources. Avoid them. That's a design
9 measure. It's not a post-construction measure.

10 The staff's order seems to think that the only
11 measures that would be at play here are
12 post-construction measures.

13 We need to know now, before you make the
14 decision, not after you make the decision, what the
15 outcome of that hydromodification analysis is, whether
16 they can meet the requirement; if so, how; and what
17 would be the impacts of the measures that would be
18 required to meet those impacts.

19 That has to be done now. It's common sense.
20 So we urge you not to enter the morass -- the legal
21 morass of CEQA that TCA has created. There are ample
22 grounds for you to deny the project under your
23 independent authority.

24 Thank you very much.

25 MR. MORALES: Okay. Question.

1 MR. WHITE: Sure.

2 MR. MORALES: In an effort to try and avoid the
3 legal morass that CEQA sometimes creates, I need you to
4 clarify something for me.

5 Is it the case then that -- we're a responsible
6 agency. We're not lead agency.

7 MR. WHITE: That's right.

8 MR. MORALES: Now, is it -- you're saying that
9 we're required under CEQA to make a finding of
10 overriding consideration?

11 MR. WHITE: That's right. All responsible
12 agencies are required to make a finding of overriding
13 considerations when a project they're approving has
14 significant and unavoidable impacts, which is what it
15 does, even according to TCA's own documents.

16 Even -- look at the addendum. All the --
17 again, all the addendum says is that the significant
18 impacts -- if you look at its -- the chart, you see all
19 the impacts identified in 2006, including significant
20 and unavoidable impacts. And the conclusion is there
21 will be no change from that 2006.

22 So yes, there are a number of significant and
23 unavoidable impacts.

24 MR. MORALES: Okay. I'll look to Mr. Thornton
25 to enlighten me.

1 MR. WHITE: Thank you.

2 MR. ABARANEL: Mr. White, before you go, I did
3 have a quick question about the agricultural section of
4 the CEQA analysis on the table.

5 MR. WHITE: Yes.

6 MR. ABARANEL: And maybe this could clarify the
7 confusion -- the morass -- the CEQA morass.

8 The impact it has is impacts to farmlands of --
9 I'm going to read this to refresh your memory -- unique
10 and/or statewide importance would occur. However, these
11 impacts would occur south of Cow Camp Road, outside of
12 the Tesoro extension project study area.

13 So what you're saying now is that we actually
14 have to consider those impacts as part of this approval
15 despite the fact that it's not part of the project
16 that's before us?

17 MR. WHITE: Well, let me say this: We do think
18 that you should and have to consider the entire project
19 for various reasons, which we have said before, which is
20 this project doesn't have any independent utility,
21 et cetera.

22 But separate from that, it's true that there's
23 a couple of places like the place that you mentioned,
24 maybe one or two other impacts, where the TCA in the
25 text says these impacts only occur south of Cow Camp

1 Road, and they're not.

2 But for the most part, if you read -- and I --
3 I request that you look at the addendum and look at the
4 chart and try to figure out for yourself what impacts
5 are significant or not significant of the Tesoro.

6 They don't come out and say. I mean it's
7 telling that they don't have a chart that says here are
8 impacts of Tesoro, significant, significant but
9 mitigated, less than significant. There is no such
10 chart.

11 The only reference they make, except for a
12 couple places in the text, is no different than the 2006
13 EIR. And that's all you have to go on.

14 So, you know, if they had wanted to do a
15 separate analysis and treat this project as a separate
16 project and do override findings for this project as a
17 separate project and make separate impact, you know,
18 determinations for this protect, they could have done
19 it. But they didn't, and so you don't have the benefit
20 of that when you're making your decision.

21 So yes, you do need to make override findings
22 for all the significant impacts of the project.

23 Any other questions? Thank you, board members.

24 MS. SECACHEQUIN: Good afternoon, board
25 members. My name is Stephanie Secachequin. I'm the

1 California policy manager for the headquarters of the
2 Surfrider Foundation.

3 Today I would like to briefly outline how
4 approval of this project would undermine the
5 hydromodification plan and the recently established MS4
6 permit. And I saw a bunch of you cringe maybe by
7 mentioning MS4, but there's a great tie-in here.

8 To do this, I want to underline how -- at least
9 we have humor, right?

10 I would like to basically underline how they
11 curb certain requirements but most importantly how this
12 fundamentally undermines the spirit and the hard work
13 that went into the MS4 permit and the HMP process.

14 I think it's really important to remind the
15 audience that both HMP and the MS4 were created on what
16 you -- this board calls a watershed approach. Keep that
17 in the back of your head.

18 When the MS4 was passed in May, executive
19 officer Gibson said that this was the most profound
20 decision that you would make for the next two decades.

21 The HMP that was concluded in 2011 was equally
22 forward thinking and carefully crafted by you, your
23 staff. What you did during that process is that you
24 required dischargers to prove how they would protect
25 beneficial resources before, during and after the

1 project. That was a huge milestone for both of those
2 things to go forward.

3 Considering the magnitude of hard work and
4 sound science that went into both the MS4 and the HMP,
5 we believe it's absolutely imperative that these two
6 regulatory frameworks are strongly upheld.

7 In fact, the Save San Onofre Coalition believes
8 you have to ask yourself two questions to determine that
9 you're holding these regulatory frameworks in care.

10 The first is, simply put: How can this board
11 approve a permit before you know the exact implications
12 to beneficial uses. As mentioned before, the TCA does
13 not have to produce documentation until October of 2013
14 --

15 MR. THORNTON: Point of order, Mr. Chairman.
16 Point of order.

17 I thought the order of proceedings was the
18 San Onofre Coalition and the TCA was limited to two
19 subjects, CEQA issues --

20 MR. MORALES: Whoa, folks.

21 MR. THORNTON: There were two subjects in the
22 chair's order of proceeding that the San Onofre
23 Coalition would speak to: California Environmental
24 Quality Act --

25 MR. MORALES: If you're going to speak, can you

1 give him the microphone.

2 MR. THORNTON: I want to clarify because this
3 may relate to our presentation, Mr. Chairman.

4 But we had discussions with your staff. You
5 issued a order of proceedings that you close the public
6 hearing at the end of the full-day hearing in Costa
7 Mesa.

8 MR. MORALES: That's correct.

9 MR. THORNTON: And your order of proceedings
10 could not have been more clear that additional testimony
11 by the Coalition and the TCA was limited to two issues:
12 Number one, California Environmental Quality Act.
13 Mr. White spoke to the CEQA issue. That's fine. Number
14 two, revisions to the tentative order.

15 Point of order, Ms. Secachequin is outside the
16 scope of the --

17 MS. SECACHEQUIN: If I could finish my --

18 MR. THORNTON: -- required testimony.

19 I've got a point of order pending here.

20 So our point of order, Mr. Chairman, is that
21 the testimony of the Coalition is outside the scope of
22 your order of proceedings.

23 MS. SECACHEQUIN: And I would just like to say
24 my next sentence, which actually --

25 Because the tentative order has not

1 substantively changed -- because the tentative order has
2 not substantively changed, and because the
3 hydromodification analysis has not substantively
4 changed, and because the TCA doesn't have to produce
5 documentation until October of 2013, our original
6 concerns still remain that hydromodification impacts are
7 going to happen.

8 MR. THORNTON: Mr. Chairman, I restate our
9 point of order.

10 MR. MORALES: So noted.

11 MS. SECACHEQUIN: So if the -- can I ask you a
12 question, sir?

13 If the tentative order analysis of
14 hydromodification has not changed since March, what are
15 we supposed to talk about? It's the same thing. So our
16 same concerns remain.

17 MR. MORALES: And --

18 MS. SECACHEQUIN: It's the same thing.

19 MR. MORALES: And I understand that, ma'am.
20 But with respect to the hydromodification, it is
21 correct, I believe, to some extent that was addressed in
22 March. And, you know, we were fairly clear. And, you
23 know, when I stated --

24 MS. SECACHEQUIN: The tentative order for this
25 time, sir, about the HMP and their hydromodification

1 analysis is exactly the same as it was in March. And so
2 therefore -- another board member is agreeing with me.
3 I sorry. I just want to point that out.

4 And because it's the same --

5 MR. ABARANEL: Ma'am, shaking my head does not
6 mean I'm agreeing with you.

7 MS. SECACHEQUIN: Well, I mean --

8 MR. ABARANEL: I just -- let me -- then I have
9 to explain what I'm shaking my head about.

10 Those issues are going to -- we're going to
11 take into consideration when we make our final
12 determination. We've already heard them. We're
13 considering them. And they are part of how I will make
14 my decision.

15 MS. SECACHEQUIN: Fair enough. But they don't
16 have to produce documentation until October of 2013 --

17 MR. MORALES: Okay.

18 MS. SECACHEQUIN: -- about how they comply with
19 the HMP. That was not the case in March. That's --
20 that's part of the new tentative order.

21 But I'll continue. We don't need to talk about
22 them submitting after-the-fact documentation because I
23 think that's fundamentally important for this board to
24 realize that you can't issue a permit by accepting
25 after-the-fact documentation. It's putting the cart

1 before the horse, is the final point with that.

2 MR. MORALES: Okay. If you want to save some
3 time -- how close are they? You're down to about four
4 minutes remaining. So you're into your rebuttal.

5 The times where questions were asked or points
6 of order were raised did not count against you.

7 MS. SECACHEQUIN: I'll -- in deference to you
8 and everyone here, I'll finish up.

9 I would just like to remind you that you
10 rejected this application based on the same EIR in 2008
11 except they're relying on their same old environmental
12 documents, and none of those permit an adequate detail
13 change. And we believe that you categorically should
14 deny this permit.

15 MR. MORALES: Thank you.

16 MR. FITTS: Good afternoon. My name is Michael
17 Fitts. I'm staff attorney with Endangered Habitats
18 League.

19 Very quickly now, jettisoning my written
20 testimony, the three-part hydromodification analysis
21 that's contained in the HMP explicitly contemplates that
22 design changes would be made based on the result of that
23 analysis.

24 The second prong of that analysis is to avoid
25 significant bed material in the site design. Obviously,

1 if you approve a particular design and then require the
2 analysis, the design is part of the permit. You can't
3 go back and unbreak that egg.

4 So we would respectfully ask that this permit
5 decision be deferred until you receive the required
6 hydromodification analysis. As CEQA impacts -- CEQA
7 implications it's very difficult to make a determination
8 that this project will have no significant hydrological
9 impacts before the analysis that is required to
10 determine those impacts is done.

11 And it has significant impacts under the
12 Porter-Cologne Act as well where you can't make a
13 determination that beneficial uses will not be
14 impaired -- that is a premise for issuing a permit --
15 until that analysis is done.

16 Thank you very much.

17 MR. HEIMSTRA: Good afternoon. Ray Heimstra
18 with Orange County Coast Keeper.

19 To keep it short, we're very concerned about
20 TCA's ability to protect water quality in the immediate
21 project area and the downstream tributaries, which
22 include Doheny Beach at the ocean.

23 To keep -- once again, to keep it really short,
24 the -- you know, they're required to revise a runoff
25 management plan. That revision is required after --

1 after this permit, after the consideration of approval.

2 That's putting the cart before the horse. We
3 need to see the revised runoff management plan and then
4 review it and make a decision afterwards. So you
5 shouldn't approve the permit today just because of that.

6 The next thing is allowing the permit to
7 concede without collecting baseline water quality data.
8 It's very important that we have baseline water quality
9 data to make sure that there isn't degradation that's
10 going on.

11 We can see the problems with that with the 261
12 where they missed a giant selenium problem that cost us
13 millions of dollars to remediate. Same thing with San
14 Juan.

15 In watershed there's also more important
16 consequences. We've got endangered species, including
17 abalone, commercial and recreational species that could
18 be impacted by road runoff. And there is just not
19 enough data.

20 So keeping it really short, I'm sorry, but
21 that's where we're at. Thank you.

22 MR. NAGAMI: Good afternoon, board members.
23 Damon Nagami. I'm a senior attorney with the Natural
24 Resources Defense Council. I'm just here to wrap up
25 quickly.

1 Another important reason to deny the permit is
2 that the public has been denied adequate review of the
3 project. TCA has gone to great lengths to evade public
4 input rather than facilitate it.

5 This egregious behavior violates the letter and
6 spirit CEQA, is completely antithetical to this board's
7 commitment to ensuring public participation in the
8 permitting process.

9 In closing, we all know what's happening here.
10 This is an improper attempt by TCA to bring back the
11 full 16-mile toll road, which both the Coastal
12 Commission and the Bush administration rejected in 2008
13 because of a long list of adverse environmental impacts,
14 including impacts to water quality.

15 For all the reason you have heard, we believe
16 you have the authority and the obligation to deny TCA's
17 application for waste discharge requirements based on
18 its failure to meet water quality standards.

19 This concludes our initial presentation. We'd
20 like to reserve about five minutes for closing based on
21 the number of questions and answers that were sort of
22 taking up the time that we had.

23 MR. MORALES: The questions and answers did not
24 eat into your time. We stopped the timer, and they
25 didn't count against you.

1 MR. AGAMI: When you said that we had gone 20
2 minutes, we had actually gone 15. So I don't know which
3 kind of timer you were using, but I think we were timing
4 exactly. So I'm going to submit that for the record.

5 MR. MORALES: We have been going for close to
6 two hours here. So let's take a three-, four-minute
7 break. Don't go very far, folks. Get your coffee. If
8 you need to make a quick run, do it.

9 MR. GIBSON: Mr. Chairman, if I can, I would
10 like to ask our audience to remember that these are
11 formal proceedings and to be respectful of all the
12 speakers and not to applaud or clap or cheer or
13 otherwise speak over speakers.

14 MR. MORALES: Please take your seats.

15 Okay. We've got our board members here. We're
16 about to start with TCA.

17 But before we do, I went back and looked at --
18 at the revisions to the tentative order. And there is
19 some discussion of updated RMPs and section 5 sub C.

20 So while it's not the testimony I was hoping or
21 looking for today, I think we'll let it in, but I
22 definitely am going to allow TCA the opportunity to
23 respond in any way they feel is necessary, given that
24 testimony.

25 But for the members of the public, as I stated

1 at the beginning, the purpose of this proceeding is not
2 just to open it up as a free-for-all. We did want to
3 hear about very specific issues, and those generally
4 pertain to any changes to our tentative order and decoy
5 issues. And I believe the CEQA issues will primarily be
6 dealt with by staff and the designated parties.

7 So with that, Mr. Thornton.

8 MR. THORNTON: Thank you, Mr. Chairman, members
9 of the board.

10 Robert Thornton on behalf of the Foothill
11 Eastern Transportation --

12 Once again, Robert Thornton on behalf of
13 Foothill Eastern Transportation Corridor agencies.

14 We want to express our appreciation to your
15 staff for their hard work and diligence on this proposed
16 tentative waste discharge order and to the board
17 members. I know you sat through a day-long proceeding
18 already in Costa Mesa. And obviously we appreciate your
19 attention to this matter.

20 But just to remind everyone, we are only
21 talking about the five-mile extension of state route
22 241. Specifically the responsibility of this agency is
23 with regard to impacts to state waters. We're talking
24 about permitted impacts of this project of four-tenths
25 of an acre in impact.

1 We have mitigation proposed for this project of
2 15 to one what your staff referred to in the last
3 hearing as meeting a gold standard for mitigation.

4 Your typical requirement would be in the order
5 of one to one or three to one. Indeed this board
6 recently approved a 401 certification for Cow Camp Road,
7 which is the southern terminus of this project, with
8 one-to-one mitigation. So we're 15 times what has been
9 required of other similarly situated applicants.

10 Now I want to respond specifically to the board
11 members' questions regarding mitigation sites.

12 First of all, I want to say that TCA is
13 extremely proud of their history in mitigation, there
14 commitment to mitigation, how they restored and enhanced
15 over 2,000 acres of mitigation to the course of their
16 project.

17 With regard to financial assurances, the TCA
18 has built -- financed and built 2.5 billion dollars in
19 regional transportation improvements and has never
20 defaulted on a financial obligation, never. Has never
21 defaulted on an environment obligation, never.

22 We will -- we are responsible to fully mitigate
23 any permanent and temporary impacts by creating,
24 restoring, enhancing and revegetating per the HMMP. We
25 have detailed performance standards that have been

1 established with success criteria. We're overseen by
2 both the U.S. Fish and Wildlife Service and the
3 California Department of Fish and Game with regard to
4 the achievement of those performance standards.

5 And now, because of your jurisdiction, we'll be
6 overseen by your agency with regard to accomplishment of
7 the success criterias of the -- of the mitigation
8 program.

9 We have a annual monitoring reporting
10 requirement to the resource agencies. Again, state
11 department of fish and wildlife, U.S. Fish and Wildlife
12 Service. And we're obligated, as been mentioned, to
13 provide the water board with an acceptable financial
14 assurance instrument. Indeed an instrument has already
15 been drafted and provided to the board.

16 Again, we're talking about public agencies that
17 have constructed 2.5 billion dollars in regional
18 transportation improvements. We have demonstrated that
19 we're here for the long term. We've demonstrated a
20 commitment to following through on mitigation
21 obligations. We've never defaulted on an obligation.

22 Next slide.

23 There are two specific mitigation sites that
24 have been identified as the mitigation areas for the
25 WDR. One is the -- referred to as mitigation area A

1 south of Tesoro High School. There's already a funding
2 mechanism in place for this site already approved by the
3 U.S. Fish and Wildlife service pursuant to the Rancho
4 Mission Viejo habitat conservation plan.

5 There's already a long-term funding mechanism,
6 aside from the TCA's commitment to -- to restoring --
7 constructing and restoring wetlands in this area.
8 There's already an existing long-term management plan to
9 be operated by the Rancho Mission Viejo conservancy
10 which has both public representatives and
11 representatives of the Rancho Mission Viejo company.

12 And again, I think it's noteworthy to comment
13 here, with regard to the adequacy of these measures, the
14 very same groups that are sitting here today opposing
15 these projects approved this same mechanism because they
16 have entered into a settlement agreement with the
17 Rancho Mission Viejo company with regard to this
18 development and approved all these documents.

19 Next slide.

20 Mitigation area B, what we refer to as the
21 Upper Chiquita conservation area, this is actually a
22 conservation area that was acquired well in advance of
23 any impact of our projects in the mid '90s. We
24 established a conservation bank in coordination with the
25 fish and wildlife service and the State Department of

1 Fish and Wildlife were proposing mitigation in that
2 area.

3 Again, we demonstrated over the years a
4 commitment. There is already a conservation easement in
5 place that protects this property in perpetuity. And we
6 will certainly follow through and implement the
7 requirements of the tentative WDR to provide an
8 acceptable plan of financial assurances of the TCA's
9 intent, frankly, as -- has been to hold onto this site.

10 But if at some point in the future we decide
11 to -- to transfer management of the conservation
12 easement to a third party, that would be required to be
13 approved by both U.S. Fish and Wildlife Service, the
14 State Department of Fish and Wildlife and your agency.

15 So you have a veto power, if you will, on the
16 transfer of authority -- authority with regard to that
17 site.

18 Now, I want to get into some of the CEQA
19 issues, which is a primary -- supposed to be a primary
20 focus. So a lot of folks here obviously have signs
21 saying "Save Trestles." This project is nowhere near
22 Trestles. It's ten miles away from Trestles. It's
23 seven miles away from -- from Dana Point.

24 Next slide.

25 There's been discussion of Cow Camp Road. And

1 I believe some statements have been made in the press
2 and some comments were made by the opponents about
3 connecting to a dirt road.

4 Well, the upper right-hand picture was taken
5 yesterday, Mr. Chairman. That is a picture of Cow Camp
6 Road. It's not a dirt road. That's phase one. Phase
7 two, the construction bid documents are out to bid.
8 We'll be under construction shortly.

9 The picture on the lower-left was taken
10 yesterday. That's a picture of the current status of
11 the Rancho Mission Viejo ranch plan development in
12 what's called planning area one. Ultimately the ranch
13 plan will include 14,000 homes. It will double the size
14 of the City of San Juan Capistrano. So that's the need
15 for this project.

16 Next slide.

17 As has already been noted --

18 MR. ABARANEL: Can I ask a question?

19 MR. THORNTON: Sure.

20 MR. ABARANEL: We heard earlier that TCA has a
21 policy called "roads first."

22 Can you go back one slide.

23 The lower-left looks like road second.

24 MR. THORNTON: Board Member Abaranel, first of
25 all, just a correction. It's actually the County of

1 Orange policy of roads first.

2 The TCA's project, in fact, are part of that
3 regional policy to have adequate infrastructure in place
4 before the development occurs. Because we all know in
5 this society what happens if you don't develop your
6 infrastructure before the development occurs: the
7 infrastructure never happens.

8 So that's one of the reasons why it's so
9 critical to approve this extension before that
10 development is in place, so that we do have an adequate
11 regional infrastructure system.

12 MS. KALEMKIARIAN: But isn't it in place?

13 MR. THORNTON: Well, first of all, planning
14 area one is to the west of where our project area is.
15 But that's one reason it's so critical that we move
16 forward with this five miles.

17 Because the development is coming, and we're
18 not going to have an adequate regional infrastructure
19 program in place for south Orange County unless we
20 complete the system at least to Cow Camp Road.

21 MS. KALEMKIARIAN: But I'm confused again.
22 Because the development is coming before the road, or
23 it's not?

24 MR. THORNTON: The development is coming. Now,
25 those homes aren't open yet. But the development has

1 been initiated. And that's why it's so critical that we
2 proceed with the segment.

3 Next slide.

4 We can go beyond this. We've already spoken to
5 this issue.

6 Next slide.

7 With regard to the procedural issues that have
8 been raised concerning the TCA's action, it was actually
9 the opponents of the project that came before you in
10 March and said the TCA board has to act first.

11 Well, we did exactly what the opponents asked
12 us to do. We took the matter back to the TCA board.
13 They noticed the hearing in accordance with the Brown
14 Act. They approved the addendum. And they issued a
15 notice of determination.

16 Next slide.

17 There have been multiple opportunities for
18 public involvement. Indeed I dare say there are very
19 projects that have four-tenths of an acre of impacts on
20 state waters that have had the level of public scrutiny
21 that this project has had.

22 This board should be applauded for the
23 extent -- the extent of public involvement. It
24 obviously had a day-long hearing before. You posted on
25 your website the addendum three weeks before the March

1 hearing. Obviously the opponents submitted extensive
2 comments.

3 There has been a very extensive opportunity for
4 public comment. And there will be additional
5 opportunities in the future both before the TCA and
6 through the federal environment process.

7 Next slide.

8 As your staff has indicated, the issue here
9 under CEQA is really quite straightforward and narrow.
10 CEQA could not be more clear, as your staff has
11 indicated, in the addendum response to comments.

12 And this is a quote from your staff report:
13 The water board must presume the EIR prepared by the
14 lead agency to be adequate.

15 That's the California Environment Quality Act.

16 Next slide.

17 There's no grounds to require additional
18 environmental documentation.

19 Again, a quote from your staff's findings in
20 the addendum response to comments at Page 3: The water
21 board finds none of the conditions that would require
22 subsequent or supplemental EIR.

23 So there's no basis under CEQA or under law to
24 require an additional environmental documentation.

25 Next slide.

1 Finally, with regard to the point that was made
2 by Mr. White that litigation has been filed, it is one
3 of the realities in this society that we live in that
4 you can't build anything without a CEQA lawsuit being
5 filed.

6 But CEQA, again, addresses this very clearly,
7 that your staff indicates appropriately under CEQA:
8 Even if litigation is filed, responsible agencies are
9 required to presume documents prepared by the lead
10 agency comply with CEQA.

11 Next slide.

12 And the CEQA review here has not been piecemeal
13 because there have been four EIRs prepared evaluating
14 extensions of State Route 241 going all the way back to
15 a programmatic-level document in 1981; subsequent
16 document from the TCA in '91; and then 2006 subsequent
17 EIR; the 2004 ranch plan EIR, which evaluated both the
18 development and the extension of the state route 241;
19 and of course the 2013 addendum on the Tesoro extension.

20 Next slide.

21 As we indicated before in the prior proceeding,
22 the Tesoro extension does not foreclose the
23 consideration of a broad range of alternatives.

24 The TCA board has made no decision as to
25 whether or how to proceed south of Cow Camp Road. We

1 will continue the dialogue with the community on that.
2 Indeed, we spent two years in detailed direct
3 proceedings with the Save San Onofre Coalition
4 discussing that very issue, and we're committed to
5 continuing that dialogue.

6 Next slide.

7 As I indicated at the prior proceeding, it is
8 extremely common in California for large transportation
9 projects to be phased.

10 Go to the next slide.

11 I want to focus on the high-speed rail project.
12 I mentioned this at the last hearing. But this is the
13 largest project in the state. Indeed, it's the largest
14 project in the nation. And guess what? It's being
15 phased. It's being segmented.

16 It's a project that is designed to run from
17 San Diego to the bay area. But the first phase, the
18 first segment is in the central valley, the segment that
19 shortly will be under construction.

20 It was evaluated separately under CEQA even
21 though there are continuing controversies and decisions
22 have not been made about the alignment of the project
23 either in Southern California or in the bay area.

24 MS. KALEMKIARIAN: If you go back a slide
25 please. No, to the map, yeah, and it relates to the

1 next slide, my question is this, if you're recognizing
2 it's a segment, which I appreciate, of a larger plan,
3 and on your website the whole 241 is still projected as
4 needed and desired and everything by the TCA; is that
5 correct?

6 MR. THORNTON: That's correct.

7 MS. KALEMKIARIAN: Okay. So --

8 MR. THORNTON: Let me modify, that's not just
9 the TCA, I mean that's the regional transportation
10 industry.

11 MS. KALEMKIARIAN: I understand that.
12 Everybody thinks, except for other folks in the room,
13 but there's a lot of people that think it needs to be
14 built all the way to the five. So would you be building
15 this as a segment if you knew today that there would be
16 no further extension?

17 MR. THORNTON: Yes, we would. And that's the
18 documentation that we made in the addendum to
19 demonstrate this project has independent utility that
20 provides substantial traffic benefits independent of a
21 continuation south of Cow Camp Road. That's the
22 determination that TCA has made.

23 MS. KALEMKIARIAN: Okay. So would it be worth
24 the investment you're prepared to commit on the --
25 behalf of TCA, that if the future you were not permitted

1 to continue, for any reason, whether it was money or
2 environmental impact or anything else, that the
3 investment now in this one extension would be worth
4 doing.

5 AUDIENCE MEMBER: You're under oath.

6 MR. THORNTON: Let me answer this way, in
7 reference to the comment from the crowd that I'm under
8 oath, my opinion doesn't make much difference, but the
9 opinion that matters is, frankly, the bond market. The
10 bond market, which has to purchase the debt issued by
11 TCA, supported and backed by future toll revenues, that
12 will be the determining factor as to whether they think
13 the investment is appropriate. Not me personally.

14 MS. KALEMKIARIAN: I understand.

15 MR. THORNTON: And I would say over the years
16 -- the TCA has been in business since 1986. Every
17 project that TCA has built has been built in segments.
18 Every project has been successfully financed.

19 AUDIENCE MEMBER: That's not the question.

20 MR. THORNTON: And so the bond market, the
21 capital market, has made the judgment that projects are
22 worthwhile investing in, and they believe that they're
23 worthwhile investing in.

24 MS. KALEMKIARIAN: Your answer -- I understand
25 there's lots of moving parts and the bond market may

1 have to decide. Maybe it won't get built because you
2 won't raise the money. But I guess the problem I have
3 with the concept is on the one hand -- and I get this
4 problem. On the one hand we have a segment of a larger
5 project which is being described and is being described
6 as a segment to the bond market, I would assume; right?
7 You're telling them that this is the first part of a
8 longer project we hope to eventually build?

9 MR. THORNTON: We would -- we haven't gone to
10 the bond market for this project yet.

11 MS. KALEMKIARIAN: But when you do it will be a
12 segment of a larger project.

13 MR. THORNTON: But they -- but they -- believe
14 me, they will not depend on the revenues from the larger
15 unapproved project to decide whether to purchase the
16 bonds.

17 MS. KALEMKIARIAN: So it would be the revenues,
18 the utility, the approval of the -- this one segment
19 that will go into the raising of funds to build this one
20 segment?

21 MR. THORNTON: That plus the revenue from the
22 existing facilities.

23 MS. KALEMKIARIAN: Obviously. But not from the
24 stuff that's not built.

25 MR. THORNTON: There will be very few investors

1 that would expect revenue from future facilities that
2 are not yet permitted.

3 MS. KALEMKIARIAN: If you come back to this
4 board, which I fully expect will happen, frankly, in
5 another couple of years and say, we're ready now to --
6 we want to do the next segment. We're going past Cow
7 Camp. Now we're going to go towards the five or towards
8 the position where we start to get into other kinds of
9 environmental impacts and other kind of water quality
10 concerns. You're prepared in the TCA -- I -- I don't
11 mean you personally, of course. The TCA is prepared
12 that we may say, wait a minute, now you're talking about
13 something different. We're not talking about -- we're
14 not talking about just this first portion.

15 MR. THORNTON: Of course whatever future
16 project we decide to pursue, and to what ex -- whatever
17 extent it has impacts on state water then we will
18 obviously have to come before this board and address
19 those issues with regard to that project. That's clear.
20 This -- the permit that's before you is only with regard
21 to 4/10ths of an acre for a five-mile road.

22 MS. KALEMKIARIAN: Which you would build if
23 anything else happens.

24 MR. THORNTON: Correct.

25 MS. KALEMKIARIAN: Assuming you get the

1 funding.

2 MR. MORALES: Folks in the audience, if you
3 have comments when somebody else is speaking, please
4 keep them to yourself. It is disruptive.

5 AUDIENCE MEMBER: He didn't have respect.

6 MR. MORALES: Folks, with respect to the
7 designated parties, I'll put it this way, the NGO's if
8 they wanted to raise a procedural point of order and
9 they choose to do so, I will show them the same amount
10 of deference that I would to any other designated party
11 that ask for a point of order.

12 But I'm just asking, as a matter of common
13 courtesy, if somebody is speaking just please, you know,
14 keep your opinions to yourself. When we get to the
15 public participation portion I'm sure you will have the
16 opportunity, hopefully, to voice your views at that
17 point. Thank you.

18 MR. THORNTON: Go to baseline. I wanted to
19 address testimony that you have heard with regard to
20 baseline water quality monitoring suggesting that the
21 WDR should not be issued until the baseline data is in
22 place. Well, in fact, you already have baseline data,
23 as your staff has noted in their responses to comments,
24 there's a formal program that the state service water
25 and the monitoring program, known as SWAMP, monitors all

1 of California surface waters.

2 Orange County has a very aggressive water
3 quality monitoring program. Indeed there are over 50
4 water quality monitoring sights in San Juan Creek
5 immediately downstream of this project. So there's
6 extensive existing baseline data consistent with the
7 baseline plan. I want to make a point here about the
8 consistency of the MS4 permit. This project, because
9 your staff has required -- your staff has required to us
10 comply with the standards of the MS4 permit. Moreover,
11 they have required us to comply with the standards in
12 the Orange County water quality management plan, which
13 no other state highway has been required to comply with.
14 So it's fair to say that no state highway in the state
15 has been required to comply with the water quality
16 standards imposed by your staff or recommended by your
17 staff in the tentative order that is before you. Now in
18 response to board member Abarbnel's question about
19 pollutants, what's in the pollutants, and what is the
20 effectiveness of the treatment. I think that was the
21 question. The pollutants of concern from highways,
22 included heavy metals, total suspended solids, trash and
23 total hydrocarbons, the TCA proposes to use and your
24 tentative order would require, vegetated swales, Austin
25 sand filters, which I don't think any other highway

1 project is using, and permeable overlay asphalt, which I
2 think you saw a graphic of last time, to remove
3 pollutants of concern, this, the studies indicate
4 removes 90 percent of those pollutants. And this is
5 before the water passes through the sand filters, which
6 are also proven to be about 90 percent effective.

7 So, again, we're being asked to meet a standard
8 that no other state, highway, Cal Trans, has not been
9 asked to meet. No other large transportation project in
10 the state has been asked to meet the standards that your
11 staff is recommending and that we're willing to accept.

12 Next. Go back. In conclusion, as I have just
13 said, the WDR conditions proposed by your staff are the
14 most rigorous in any of the states and we respectfully
15 request that you close the public hearing today and
16 approve the WDR.

17 I did want to ask Dr. Bob to respond to one of
18 the points that was made that the chair allowed us to
19 respond with regard to the hydro-modification questions.
20 Dr. Bob.

21 MR. MORALES: Before you go there -- there may
22 be some questions.

23 MR. THORNTON: Where are we on time?

24 MR. STRAWN: You have about 16 minutes left,
25 close to 17.

1 MR. THORNTON: Thank you.

2 MR. STRAWN: 16.45.

3 MR. MORALES: I do want the record to reflect
4 that we have gone back and looked at the time we were
5 keeping for the prior group of speakers from the
6 Coalition and we are fairly convinced that you all had
7 your 30 minutes and it wasn't just the 20. We have our
8 timekeeping system and I think we followed the system
9 and we use it the countdown timer so -- but, Mr. Thorn,
10 before -- I guess Dr. Bob -- before Dr. Bob speaks if
11 you could, one of the points that was raised by -- by
12 Mr. White, he said that as, I guess, a public agency, I
13 think what he was referring to was the CEQA section that
14 says public agencies can make findings or have a
15 responsibility to make findings and there may be a lack
16 of distinction between lead agency and responsible
17 agency. What is your take on that?

18 MR. THORNTON: I would refer Mr. Chairman you
19 use CEQA guideline section 15042, which I think speaks
20 directly to this point. And let me just read it because
21 it can do a better job than I can do at trying to
22 describe it. And it describes the distinction between
23 lead agency and responsible agency. And so it says --
24 for example, first it says a lead agency has broader
25 authority to disapprove a project than does a

1 responsible agency. Then it goes on to say, quote, for
2 example, an air quality management district acting as a
3 responsible agency would not have the authority to
4 disapprove a project for water pollution effects that
5 were unrelated to air quality aspects of the project
6 regulated by the district, close quote.

7 So I think that answers the question directly.
8 CEQA is extremely clear that the responsibility of the
9 responsible agency is limited -- limited to your
10 jurisdiction. And the facts before you today are that
11 we -- you have a project that has very small impacts,
12 very large mitigation, and is required to meet standards
13 that no other highway project in the state has been
14 required to meet. Dr. Bob.

15 MR. ANDERSON: Before you go, one last
16 question. Wouldn't you agree given the importance of
17 those resources that are downstream where the water goes
18 out and the public use of those that it is good that
19 you're meeting those.

20 MR. THORNTON: We think it's appropriate and
21 that's why we are more than happy and willing to meet
22 those standards and we're committed to meeting those
23 standards. Thank you.

24 MR. STRAWN: Next we have Lesa Heebner.

25 MS. HEEBNER: Good afternoon, I'm Lesa Heebner,

1 Council Member of the City of Solana Beach. First, I
2 must state that I am stunned that we are here again
3 talking about the Toll Road. I attended the Coastal
4 Commission hearings back in '08. I opposed the Toll
5 Road then and I'm here to today to oppose it again in
6 it's repackaged mini-road format.

7 At that time, the Toll Road was ultimately
8 denied by the Coastal Commission as inconsistent with
9 the Coastal Act, and subsequently rejected by the US
10 Secretary of Commerce. And this is board also rejected
11 the TCA's application for the full maxi footprint for
12 the Foothill South Toll Road, but here we are again.
13 And I understand that the reasons is how we got this far
14 is because the lead agents TCA, can approve their own
15 documents and proceed straight to the permit stage which
16 is what bring us here today.

17 You, the water board, are the first independent
18 review of this proposal. I believe the project segment
19 before you, both violates CEQA and harm the beneficial
20 uses of adjacent watersheds as well as nearby coastal
21 resources.

22 First, it is common knowledge that CEQA does
23 not allow a project to be piecemealed, but what is
24 before you is a short five-mile segment of a piece of a
25 larger project, obviously as this five-mile stretch does

1 go nowhere. Were you to approve this, not only would it
2 be to approve a project that violates CEQA, giving a
3 project momentum to be built in its entirety without it
4 being reviewed in its entirety --

5 MR. STRAWN: Excuse me, could you go a little
6 slower, the recorder is --

7 MS. HEEBNER: You know what, I will hand you my
8 remarks, how's is that. Okay.

9 Were you to approve this, not only would it be
10 to approve a project that violates CEQA giving a project
11 momentum to be built in its entirety without being
12 reviewed in its entirety, but built all the way down to
13 San Onofre State Beach, a park located entirely within
14 San Diego County. If the entire road is built, and
15 obviously that is the intent, it will destroy one of
16 Southern California's remaining stretches of coastal
17 wild lands and will impair coastal access to the public.
18 Both are resources that might constituents have made
19 clear they want to see preserved.

20 Second, it is my understanding the San Juan
21 Creek Watershed is already degraded. Would not approval
22 of this five-mile stretch, which would pave the way to
23 the entire 16-mile Toll Road project, previously
24 rejected, violate your own policies, including HMP and
25 MS4, written to ensure beneficial uses of waterways?

1 Finally, how will additional erosion within the
2 San Juan Creek Watershed impact the coast where it meets
3 the ocean? Another area of water quality board
4 responsibility.

5 Given your mission to develop and enforce water
6 quality measures and implement plans that will protect
7 the area's water, I respectfully ask this board to
8 reject adopting the tentative Water Discharge
9 Requirements for the proposed Tesoro Extension. Please
10 reject the WDR.

11 Additionally, I do have the remarks of Mayor
12 Teresa Barth if you would like me to read them they're
13 very short and I will go slowly. She was the Mayor of
14 Encinitas who had to leave earlier.

15 MR. STRAWN: We did have a speaker card for
16 her.

17 MR. ABARBNEL: Yes.

18 MR. STRAWN: Go ahead with that?

19 MR. ABARBNEL: Yes.

20 MR. STRAWN: By the way you're already a minute
21 over so that only gives you a minute left for her.

22 MS. HEEBNER: She says that as an elected
23 official who cares about natural resources, water
24 quality and recreational opportunities in the greater
25 San Diego region, I'm concerned that the construction of

1 this first section of road is simply an attempt to
2 circumvent the prior rejection by the Coastal
3 Commission, US Secretary of Commerce and CEQA, which
4 prohibits piecemealing of projects to avoid
5 environmental review.

6 If the entire road is eventually constructed it
7 would destroy a unique and special place. Many of my
8 constituents have told me that they have enjoyed
9 San Onofre State Beach, located entirely within
10 San Diego County, with family and friends for
11 generations.

12 As the population of California continues to
13 grow, the loss of one of the last remaining stretches of
14 coastal wild lands and valuable recreational resource
15 unacceptable.

16 I urge you to reject the WDR. Thank you for
17 your continued service to protecting California's
18 waterways.

19 MR. STRAWN: Donna, you're next. Donna Frye.
20 And then Sam Allevato from -- the mayor from San Juan
21 Capistrano will be next.

22 MS. FRYE: Thank you. I want to thank this
23 board for sitting so long. I feel your pain. I'm
24 feeling it right now. This difference is I can leave.
25 You can't.

1 I don't want to repeat the other speakers, but
2 I do want to bring to your attention some of the things
3 that I'm -- I'm wondering because I -- I ask a lot of
4 questions and I wonder things. And you have to base
5 your decision based today on who do you believe is
6 giving you the most reliable and the most adequate
7 information. And so you have a number of issues to
8 weigh in that regard.

9 One of the things that I'm wondering is how can
10 an agency such as the TCA stand before you and say that
11 they are proud of their public noticing for their
12 hearing on the environmental document when they called a
13 special meeting so they could not have to comply with
14 the 72-hour noticing provisions. They seem to be proud
15 of the fact that they called a special meeting and made
16 it very difficult if not impossible for members of the
17 public to attend which is why this hearing is so
18 important for us.

19 The other question is, is they're saying it's a
20 project, but I was looking at some of their information
21 related to this project and they say that the board only
22 approved the conceptual design, the conceptual design.
23 So they're coming before you saying they want you to
24 make final decisions on a conceptual design and they say
25 it's not the final decision of the project; they're

1 going to take a whole lot of other actions. In other
2 words, they are saying in their own documentation they
3 don't even know if it's a project.

4 I, as a former elected official, would
5 certainly not want to take a final decision on waste
6 discharge requirements and orders based on a concept. I
7 would certainly want to make sure that it was a complete
8 project and it had been identified, but if there is any
9 question about which side seems to be most forthright, I
10 was interested when I heard the TCA's comments related
11 to their bond documents because Fitch recently rated
12 some of the Foothill/Eastern transportation corridor
13 revenue bonds. This was on June 14th, 2013.

14 They're not very good as far as their ratings.
15 They are BBB minus and BB minus. Those are not --
16 they're stable. Let's put it this way. I have other
17 names for them, but the reason I bring this to your
18 attention, it's also interesting what agency tells one
19 group of people and how they represent the project to
20 another group of people. And so as I was looking at
21 some of the reasons why their bond ratings are not
22 particularly good, their Fitch talks about the ratings
23 sensitivity.

24 And specifically the one that sort of drew my
25 attention was this particular statement. It said, "A

1 decision to increase leverage to support the Foothill
2 South protect without commensurate financial mitigants."
3 I take that to mean that TCA absolutely plans to go
4 forward with this project, that they will go through
5 this project in its entirety and that they are
6 representing to other entities in order to get money,
7 they are telling them that they will be building these
8 projects.

9 I would suggest that at a minimum, somebody
10 pull the preliminary official statements and at least
11 take a look at them and see what they are representing
12 to the bond markets in order to receive their bonds.
13 And since everybody is quoting people, I thought I would
14 quote a really great jazz musician, Ben Sidran to sum
15 this all up. "It's brand-new music but it's the same
16 old song."

17 If you don't have any questions, thank you for
18 sitting for so long, but I'm not going to be joining
19 you.

20 MR. ALLEVATO: Good afternoon. Good afternoon,
21 Chairman Morales and board members. I'm Sam Allevato.
22 I'm the Mayor Pro Tem for the City of San Juan
23 Capistrano. I'm also director of the San Juan
24 Capistrano Water District, which is a member agency of
25 the San Juan -- San Juan basin authority. As well as

1 the director on the board of the Foothill/Eastern TCA.
2 My city is the one that has been disparaged, as nowhere
3 by the California attorney general when she says the
4 Tesoro Extension is the road to nowhere.

5 San Juan Capistrano has more than 35,000
6 residents and 14,000 dwelling units are planned directly
7 to the east of us across the street from our city limits
8 creating a future city the side of San Juan Capistrano.
9 We have attractions from a premier equestrian center to
10 the famous Mission of San Juan Capistrano, the
11 birthplace of Orange County. So we're pretty far from
12 nowhere.

13 The reason I'm telling you about my great city
14 is that the Tesoro Extensions proposed terminus will be
15 just north of Ortega near San Juan Capistrano. This
16 route will serve as an independent utility to provide
17 traffic relief and regional mobility for my constituents
18 and the 30,000 plus new residents moving into the Rancho
19 Mission Viejo.

20 Our groundwater recovery plant produces five
21 million gallons a day of drinking water to our
22 residents. Our City Council which is responsible for
23 this water source has been -- has voted to support this
24 project because they're confident that TCA's run-off
25 management plan and the best management practices will

1 protect this resource.

2 This provides 100 percent of our drinking water
3 in the winter, nearly 50 percent of our drinking water
4 during the summer. Quite simply, as a stand-alone
5 project, the Tesoro Extension complies with CEQA and all
6 State laws and regulations. I encourage you to accept
7 your staff's recommendation and approve the waste
8 discharge permit for this five and a half mile route
9 that is near my historic city, not the beach.

10 Thank you very much for giving me the
11 opportunity to speak to you this evening -- this
12 afternoon.

13 MR. STRAWN: Charles Puckett, Mayor Pro Tem of
14 Tustin. He'll be followed by Diane -- Steve Lamont is
15 next.

16 MR. PUCKETT: Good afternoon. Chairman Morales
17 and members of the water board, I'm Chuck Puckett, Mayor
18 Pro Tem of the City of Tustin.

19 My constituents use the 241 toll road
20 frequently and as a result, it was very important to
21 them that I made the trip to San Diego to emphasize the
22 importance of this extension project. Today if one
23 wishes to go to San Diego from Tustin, the only one
24 route is the I-5 freeway. You're fortunate in San Diego
25 that you have several east/west alternatives and

1 north/south alternatives. In north -- north San Diego
2 County, you've got the 76, the 78 which goes east and
3 west, you've got the 52, you've got the 8, you've got
4 the 94 and the 54. You've also got I-15 north and the
5 I-5. Those are very important in case of emergencies.

6 As we found out last week when a propane tanker
7 overturned on the I-5 freeway in San Clemente, very
8 critical that there's no escape route. The freeway was
9 shut down for four hours, people were standing around on
10 the freeway, nothing to do, no way to get out, and
11 fortunately there were no medical emergencies but there
12 certainly could have been. The only alternative they
13 had was to sit and park and wait until the freeway was
14 cleared.

15 Once the Tesoro extension is completed and
16 built and Avenue La Pade is connected, folks will have
17 another way to get in and out of the area, but we need
18 your approval for the water quality permit. Please
19 approve this permit so we can build this project and
20 provide an alternative route to commuters through this
21 region. Thank you.

22 MR. STRAWN: You have an elected official that
23 kept to his time.

24 Next will be Lisa Bartlett and then Francine
25 Hubbard.

1 MS. BARTLETT: Good afternoon, Chairman Morales
2 and board members. My name is Lisa Bartlett, and I'm
3 the Mayor Pro Tem of Dana Point and I also serve as
4 chairwoman of the Foothill/Eastern Board of Directors
5 and Transportation Corridor Agency.

6 Because I spoke in support of the TCA permit at
7 your meeting in March, I understand that the comments
8 today are limited to CEQA. A few important items that
9 you should consider when it comes the CEQA, since we
10 last spoke in March, our Foothill/Eastern TCA Board of
11 Directors voted unanimously to approve the addendum to
12 the CEQA document. The 5.5 mile Tesoro extension is an
13 independent utility. It serves local and regional
14 mobility needs as an important and critical stand-alone
15 project.

16 In 1981 -- or since 1981, TCA, Cal Trans and
17 County of Orange have prepared a certified three
18 environment impact reports. After 32 years of study and
19 analysis, it's time to move this project forward. Your
20 staff has thoroughly reviewed the water quality aspects
21 of this project that the water quality mitigation as
22 well as the CEQA compliance is adequate and recommend
23 approval. Please accept the recommendation of your
24 staff and approve this project.

25 With regards to mitigation, TCA is proposing a

1 mitigation ratio of 20 to one, whereas the average
2 project of this scope is about three to one. So we're
3 going over and before what is necessary.

4 And with regard to the comment earlier with
5 regard to the rating agencies, the three rating agencies
6 of Fitch, Moody and Standard and Poor's have provided
7 the Foothill Transportation Corridor Agency with an
8 investment grade rating. And I just wanted to note
9 that.

10 Thank you very much for your time and
11 consideration today.

12 MR. LAMONT: Good afternoon, Chairman Morales
13 and board members. My name is Steve Lamont and I'm a
14 representative with Assemblywoman Diane Harkey. We
15 represent the South Orange County cities Aliso Viejo,
16 Coto de Caza, Dana Point, Ladera Ranch, Mission Viejo,
17 Laguna Hills, Laguna Niguel, Rancho Santa Margarita, San
18 Clemente and San Juan Capistrano.

19 As word of TCA's plan to build the Tesoro
20 extension, I traveled around the community. Ms. Harkey
21 had received a significant response from residents and
22 businesses throughout our district. Residents and
23 business owners alike are passionately in favor of this
24 Tesoro extension. Our constituents have cited a variety
25 of reasons why they support this road including safety,

1 traffic relief and mobility.

2 They have also praised TCA for their continued
3 focus on the environmental -- on the environment and
4 ensuring that the road will actually enhance water
5 quality in the region. Our constituents conveyed
6 unwavering confidence in the process that TCA has used
7 to allow sufficient opportunity for public review and
8 comment. They cited hundreds of public meetings and
9 hearings that have been conducted over offer the last
10 three decades.

11 Furthermore, constituents expressed concern and
12 disappointment that this important infrastructure
13 project could be delayed by a perceived need for a new
14 EIR. The message from our districts have been clear,
15 TCA has fully mitigated any water quality impact and the
16 project fully complies with CEQA. On behalf of
17 Assemblywoman Diane Harkey, I strongly encourage you to
18 approve TCA WDR application. Thank you.

19 MS. HERBARG: Good morning, Chairman Morales
20 and board members. My name is Francine Herbarg and I
21 represent Kristina Shea, Irvine councilwoman. She could
22 not be here today and asked me to read her comments into
23 the record.

24 The 241 toll road was placed on the master plan
25 of arterial highways in 1981. In the 32 years that have

1 passed, TCA Cal Trans and the County of Orange have
2 prepared, analyzed and certified no less than three
3 environment impact reports. The most recent certified
4 EIR was certified in 2006. It studied 38 alternatives
5 to extend 241 south of its current determinant at Oso
6 Parkway, including several alignments that stopped short
7 of connecting directly to the I-5 freeway. The fact
8 that in 2006 the Coastal Commission rejected one of
9 those 38 alternatives does not invalidate the other 37
10 alternatives that were also certified in the EIR.

11 The proposed Tesoro extension is the 5.5 mile
12 road that serves as an independent utility and will
13 relieve traffic and provide an alternative -- alternate
14 route from hundreds of thousands of commuters with
15 40,000 homes and five million square feet of commercial
16 space on construction in Mission Viejo. This is an
17 important and essential piece of the infrastructure
18 puzzle in south Orange County.

19 The addendum to the EIR that was unanimously
20 approved by the TCA board shows that water quality
21 impacts have been fully studied and fully mitigated.
22 I'm sure your staff will agree that the mitigation
23 measures from Austin sand filters, vegetative swales to
24 the flow filters and porous asphalt represents the gold
25 standard of water quality mitigation for roadway

1 construction.

2 The TCA board's approval of the CEQA document
3 was appropriate and legal because this project clearly
4 operates as an independent utility. You should not only
5 approve this project because it is CEQA compliant and
6 because it fully mitigates water quality impact, but
7 because Orange County needs traffic relief alternative
8 like the Tesoro extension will help provide.

9 Thank you very much.

10 MR. MORALES: Lucille Kring, a councilwoman
11 from Anaheim.

12 MS. KRING: Chairman Morales and board members.
13 My name is Lucille Kring and I'm a councilwoman from the
14 City of Anaheim, the largest city in Orange County with
15 a population close to 350,000 homeowners. We are the
16 home to Disneyland, the Angels and the Ducks and over 20
17 million visitors each year that come from around the
18 world to visit our great events. We would not be able
19 to be such a hub of business and tourism if we had just
20 one way in and one way out of the city.

21 The Tesoro extension is crucial for not only
22 traffic relief, but as an emergency route and also for
23 good movement throughout the region. This project has
24 undergone three EIRs over the past 30 years, all three
25 of which were certified. Our board approved an addendum

1 to the most recent CEQA document and we look forward to
2 your approval of the water discharge permit so we can
3 continue down the regulatory process toward the eventual
4 construction of the five and a half mile extension that
5 has been decades in the making.

6 And all the mayor and four council members
7 absolutely support this project. The 241 begins in
8 Anaheim at the north end of the 241, and when our
9 residents go to the 241 and they can't complete the
10 process down to Cow Camp, it's very difficult for them
11 to move over to the 5. We can only widen the 5 so much.
12 It costs billions of dollars to put one more lane and
13 then all of the homes and businesses that would have to
14 be taken. So the Tesoro extension is a means to an end
15 and we appreciate your support. Thank you.

16 MR. ABARANEL: May I ask you a question?

17 MS. KRING: Sure. I went too fast?

18 MR. ABARANEL: No. Everybody from Orange
19 County thinks this is a great idea. Can you give us
20 some reasons why you think this is a really bad idea?

21 MS. KRING: Oh, my goodness. Well, personally,
22 I don't think -- I'll give you -- all honesty, I live in
23 the flats of Anaheim. Anaheim is a very long city.
24 It's 20 -- it's 50 square miles. It's 23 miles long.
25 And we're a narrow city, so my side of the city, we go

1 down the 5. The east side of the city, they have the
2 241. And all honesty, I do not use the toll roads
3 because I hardly ever leave Anaheim since I'm a
4 councilwoman there and try to do all my shopping and
5 business there.

6 And other people keep telling me that without
7 the 241, it's very difficult to -- 241 has been a major
8 relief for traffic. They love it. They get there.
9 They have cell towers now. They get great cell service.
10 So I really can't think of any reason why you should not
11 support this. Its mobility, just heard about the tanker
12 truck, the propane tanker truck that had a problem the
13 other day and closed the freeway down for four hours.

14 On the news reports they kept saying well, you
15 can go over the 52 -- I mean, the I-15. Well, it's a
16 two lane, very old road to get there and you can't force
17 that many cars and trucks in the 5 when they're stuck in
18 traffic and force them to get to the 15. It just isn't
19 time sensitive. So the only reason I can think of is --
20 the best way -- I can't think of any reason why you
21 should not approve this.

22 Basically, they have done all the mitigation,
23 the standard of water quality is gold standard, they
24 have gone to much, much more level than anybody has
25 requested. That's the way TCA does things. They do it

1 to the best that they can and always above what they're
2 requested to do.

3 MR. ABARANEL: Thank you.

4 MR. STRAWN: Gary Felien, Oceanside City
5 Council. And he'll be followed with Rhonda Riordan.

6 MR. FELIEN: Thank you very much for hearing my
7 remarks. I just want to come down and say that I as a
8 councilman, the majority of Oceanside City Council
9 supports this project. It is on record for doing so
10 because in the City of Oceanside, we have thousands of
11 commuters who go up to jobs in Orange County every day
12 and anything that helps relieve traffic on I-5 will be a
13 huge help.

14 The commuters in our city, certainly I have
15 family and relatives where I commute up to Ocean --
16 Orange County on a regular basis, and there's always a
17 bottleneck going through San Clemente. So anything that
18 helps relieve traffic there would be a help. And
19 certainly I would like to ask this board to make sure
20 that any decision you make is based on science and based
21 on the law and not based on hysteria.

22 And I'm not an engineer. I'm not a lawyer.
23 But it seems to me this project has met every hurdle
24 that has been asked of it in terms of water quality and
25 what it needs to do to protect the environment. Whether

1 or not the five-mile extension makes sense as a business
2 decision of the corridor and basically that's their
3 call. And bond holders will decide whether they made a
4 good investment or not, but it does seem it's a
5 stand-alone project.

6 To me, I'm surprised that no one's discussed
7 the huge commuter flow that comes over Ortega Highway
8 into Orange County every day and having an alternative
9 to go north which this project will provide, will
10 provide more relief of I-5. So I urge you to support
11 your staff's recommendation which recognizes that this
12 project has met every environmental quality and CEQA
13 requirement that is required and that you vote yes.
14 Thank you very much.

15 MR. ABARANEL: Can I ask you a question?

16 MR. FELIEN: Yes.

17 MR. ABARANEL: If this were the project
18 proposed in 2006, would you support that?

19 MR. FELIEN: Well, is that a way of asking
20 would I support the whole project?

21 MR. ABARANEL: Yes, it is.

22 MR. FELIEN: Well, I certainly support the
23 whole project and always have, but the issue of whether
24 or not it's incremental and should be or shouldn't be.
25 That's a lawyer's decision and I'm certainly not

1 qualified to answer that question. But whether or not
2 it's a stand-alone, you know, business decision and it
3 meets the legal requirements seems to me that the rest
4 the bait is for another day.

5 I certainly hope that project goes through and
6 I would look forward to seeing that because I think
7 certainly one thing that improves the environment is
8 having roads that flow smoothly and aren't clogged with
9 traffic. But I think an electric car that protects the
10 environment needs an open freeway and anything that will
11 help provide smoother flowing traffic protects the
12 environment. And traffic congestion does not.

13 I certainly would be happy to compare air
14 quality where freeways are flowing smoothly, air quality
15 where there's congestion, and I think we all know what
16 the answer to that would be. Thank you very much.

17 MS. RIORDAN: My name again, I'm Martha
18 Riordan, Chairman Morales. And you know, it's a little
19 cooler up here than it is back there. It's also a lot
20 cooler in the library. You may want to think about
21 going over there for little while. But thank you very
22 much. I just want to thank you for letting us come and
23 speak to you. This is the second time I was at the
24 meeting in Costa Mesa in March.

25 And I just want to tell you that as Mayor of

1 Mission Viejo, I have to look at things from a very
2 realistic perspective. I cannot -- I cannot think about
3 what my personal preferences are. I have to look at
4 things -- everything from a broader perspective. I got
5 95,000 residents and so that's why I'm here today. All
6 right.

7 Our residents are strongly supportive of the
8 241 extension, the Tesoro extension. 71 percent. I
9 just checked with our latest survey. 71 percent of the
10 residents in Mission Viejo support the Tesoro extension
11 and that's all we're going down to is Cow Camp Road.
12 There is no other alignment, so we can't go any further
13 than that at this point and I understand what the
14 concerns are.

15 Not only will this project offer our residents
16 -- my residents an alternative route north and south,
17 but it will also bring additional customers to our
18 businesses in Mission Viejo in case some people haven't
19 -- don't remember we are economic recession. So you're
20 purview here is clear today. Does this project fully
21 mitigate any water quality impacts? And I think the
22 answer is yes.

23 This project sets a new gold standard for water
24 quality protection. It will have Austin sand filters.
25 I have seen pictures of those. I don't know -- I

1 haven't seen them in -- in -- I can't touch them, and
2 vegetative swales -- I know what a swale is -- to hold
3 and treat the water close litter to control the rate of
4 runoff flow and porous pavement. Now, that's an
5 interesting concept and it's actually reality. That is
6 designed to filter the rain water prior to runoff.
7 These are all water quality issues. I wish all roads
8 could be this environmentally sensitive.

9 Your second question is does this project
10 comply with CEQA. I had that asked of me the other day
11 at our council meeting by one of council members.

12 MR. STRAWN: Your time is up.

13 MS. RIORDAN: I got two more sentences. The
14 answer is yes. I serve on the TCA board and we approve
15 the addendum to the CEQA document since the March
16 regional board hearing in Costa Mesa. I encourage you,
17 please, to listen to your staff which is recommending
18 approval of this permit so we can continue to move
19 forward in the planning process and thank you so much.
20 Very much.

21 MR. STRAWN: Mark Swain, council member from
22 Yorba Linda. And you will be followed by Steven Lamont.

23 MR. SWAIN: Good afternoon, Mr. Chairman,
24 members of the board. My name is Mark Swain. I'm on my
25 17th year as a member of the Yorba Linda council. I've

1 served four of those years as mayor. I'm also a --
2 Yorba Linda's representative to the transportation
3 corridor agency, Foothill/Eastern crew.

4 I strongly urge your approval of our permit to
5 build the extension five and a half miles further to Cow
6 Camp Road. It will serve to alleviate traffic in the
7 new development. Rancho Mission Viejo, it will give
8 people coming over Ortega Highway inland empire an
9 alternative route to central/north Orange County. We
10 will provide an alternate to I-5 north of that section
11 where traffic jams on I-5 and it has been mentioned
12 several times today, the propane truck accident of just
13 a week or so ago.

14 There are many, many people that flow both
15 north and south. It's imperative that we have a second
16 alternative route, at least as far as Cow Camp Road.
17 Thank you very much. Hope I was as brief as possible.

18 MR. STRAWN: Under a minute. Thank you. Steve
19 La Mont. He already spoke. How about Jeff Turner?

20 MR. TURNER: Good afternoon, Chairman Morales
21 and board members. My name is Jeff Turner and I
22 represent the associated general contractors as their
23 2013 president. I'm also a third generation Southern
24 California resident and out of San Diego. I'm here
25 today to -- to advocate for Tesoro Extension Project on

1 a number of bases.

2 Number one, the project is in compliance with
3 CEQA regulations and it's in compliance with outreach
4 requirements and the general requirements of moving
5 forward on a project of this magnitude. The AGC would
6 like to commend the TCA for its leadership in creating a
7 model for environmental and water quality standards for
8 a necessary and economically feasible California highway
9 system, which is the Tesoro extension. On behalf AGC,
10 we advocate for you to move forward with the approval of
11 the project.

12 MR. MORALES: How many jobs are we talking
13 about, ballpark?

14 MR. TURNER: Construction jobs or total impact
15 jobs as a result of the economy?

16 MR. MORALES: Construction because you
17 represent them.

18 MR. TURNER: Impact jobs is the directly
19 outcome of the economy, thousands. Directly to the
20 project and the correlation factor of how that spans out
21 in the community and the adjacent businesses, they're
22 affected by construction, not to mention the fall on
23 economic benefits of smooth mobility in the thousands.

24 MR. ANDERSON: And I think the analysis that
25 has 16,000 jobs, too many.

1 MR. MORALES: That would be the construction of
2 the development and all of that --

3 MR. TURNER: Right.

4 MR. ANDERSON: Am I wrong on that?

5 MR. THORNTON: I don't have that figure. And
6 go ahead.

7 FEMALE SPEAKER: Just briefly I'd like to
8 answer your question. The Tesoro extension of 5.5 miles
9 creates 2,400 jobs just for that extension, \$17.7
10 million the State and local taxes, and \$380 million the,
11 economic output.

12 MR. MORALES: Is that yearly? Sorry. Is the
13 State and local taxes, is that per year, the 17.4? Just
14 curiosity. The jobs, when you said for the extension
15 itself, that's just the folks that are actually building
16 the extension; is that right?

17 FEMALE SPEAKER: Well, it encompasses all jobs.
18 Construction jobs and non-construction jobs, which is
19 great for California. You know, we still have a high
20 unemployment rate as you know.

21 MR. STRAWN: Heather Baez? Heather Baez, going
22 once, going twice. Next up will be a Martin Pane.

23 MS. BAEZ: Good afternoon, Chairman Morales and
24 board members. My name is Heather Baez and I represent
25 Senator Mark Wyland who represents the 38th district.

1 Our district includes South Orange County, Coto de Caza,
2 Dana Point, and Ladera Ranch, Mission Viejo, Rancho.
3 And North San Diego County including Carlsbad and
4 Encinitas, Escondido, San Marcos, Palm Beach and Vista.

5 My pleasure to be here today to speak in
6 support of the Tesoro extension. I'm aware that there
7 are several lawsuits that have been filed against TCA
8 for everything from piecemealing the evaluation of the
9 project to failing to prepare a new EIR.

10 TCA did not piecemeal the analysis of potential
11 environmental impacts of future extensions of State
12 Route 241. During the CEQA process, the certification
13 of the 2006 final subsequent EIR, the TCA evaluated 38
14 alternatives for extending -- they brought 241 south of
15 the Oso Parkway.

16 As for the claim that TCA failed to prepare a
17 new EIR, the Tesoro extension is a modification of the
18 project described in the 2006 final subsequent EIR.
19 CEQA prohibits agencies from preparing a subsequent or
20 supplemental to a previously certified EIR unless
21 changes to the project or changed circumstances were
22 will result in new significant environmental effects or
23 an increase in the severity of the significant effect
24 identified in the prior EIR.

25 On behalf of Senator Wyland and those of who

1 live and work in the 38th district, I urge you to
2 approve the TCAs waste discharge requirement application
3 and to enhance mobility through our region. Thank you.

4 MR. STRAWN: After Mr. Paine will be me Vermica
5 Requez.

6 MR. PAINE: Good afternoon, Chairman Morales,
7 board members. My name is Martin Paine. I'm the
8 district director for California State Senator Mimi
9 Walters. She represents the 37th district, coastal
10 region, the South Orange County. I would like to stand
11 here in support on behalf of Senator Walters of the
12 Tesoro extension.

13 The senator and I, as we all are now, are very
14 aware of the lawsuits that are coming about.
15 Unfortunately, these lawsuits are another delay for a
16 critically needed route for south Orange County. I am
17 one of the -- I think I'm the only representative from
18 the state side that previously represented the mountain
19 range communities during the big fire and am well aware
20 of the need of an expedient access route of fire prone
21 area.

22 These 14,000 homes that are on the list to be
23 built in the eastern region of Orange County. There are
24 families that are living in an urban interface area that
25 need to -- that may need to get out in an event of a

1 fire. And unfortunately, those routes are very limited
2 right now and it is critically important that this
3 extension get through there on a public safety basis
4 alone.

5 The Tesoro -- Tesoro extension is a
6 modification of the project -- in the 2006 final
7 subsequent EIR, CEQA prohibits as has already been
8 mentioned, the agencies from preparing subsequent or
9 supplement to a previously certified EIR unless there
10 are changes in the project or changed circumstances that
11 result in significantly new environmental effects or an
12 increase in severity of significant effects identified
13 by the prior EIR.

14 On behalf of Senator Walters and the 940,000
15 rep -- citizens she represents in her district, we urge
16 you to support the extension of the TCA WDR application
17 and we very much appreciate your time this afternoon.
18 Thanks very much.

19 MS. YRIQUEZ: Chairman Morales and board
20 members, good afternoon. It is just a pleasure to be
21 here today in front of your board. My name is Veronica
22 Yriguez and I'm here on behalf of Orange County
23 Supervisor Pat Bates who represents the fifth district
24 which encompasses all of South Orange County.

25 The supervisor is extremely proud of the

1 extensive transportation infrastructure improvements
2 that have been built and planned in South Orange County
3 under her watch, not only for the traffic congestion
4 relief that they provide, but for the way they have
5 addressed environmental mitigation as part of the
6 planning and construction process.

7 The Tesoro extension is a critical component to
8 traffic relief for South Orange County and she served on
9 the board that approved the original CEQA document as
10 well as the board that approved the addendum for the
11 Tesoro extension because.

12 Because the Tesoro extension is an independent
13 utility as you have heard today, it can be approved
14 without identifying the location of any potential
15 subsequent sediment. Whether the roadway is eventually
16 extended and where that extension would take place is
17 another argument for another day. Because the Tesoro
18 extension provides the regional traffic relief as a
19 stand-alone option and because the TCA board has
20 approved the addendum to the CEQA document, it is now
21 incumbent upon you to vote on the waste discharge permit
22 to the merits of water quality mitigation of this
23 project only.

24 On behalf of Orange County Supervisor Pat
25 Bates, please approve this permit so the roadway

1 infrastructure project can be built. And, again, thank
2 you for your time.

3 MR. STRAWN: I understand I had missed Esther
4 Sanchez, mayor of Oceanside, and I -- was it red card or
5 a green card because I can't find it.

6 MS. SANCHEZ: I'm not sure. Somebody else --

7 MR. MORALES: It's right here.

8 MS. SANCHEZ: Okay. Thank you.

9 San Diego Regional Water Quality Control Board,
10 my name is Esther Sanchez, and I'm a council member for
11 the city of Oceanside. I rise to speak in opposition to
12 this project. Our city was so concerned about the
13 unacceptable environmental impacts and critical loss of
14 recreational and coastal resources, that we took a
15 position against this project when originally presented,
16 an official position that exists today.

17 I incorporate that position by reference and
18 happen to submit a copy of that action by e-mail within
19 a few minutes if I can be provided with your e-mail
20 address. Nothing has changed with respect to this
21 project except that is now coming to you in an attempt
22 to get approval on an illegal piecemeal basis. With no
23 CEQA analysis of the plan intuitive impact that the
24 final project will have.

25 This continues to be a self-certifying

1 development inducing project with significant
2 unmitigable impact. There is no way that the developer
3 can recreate the same or similar unique and precious
4 water-based resource, including five significant native
5 American culture and archeological sacred sites.

6 There are reasonable and superior alternatives
7 to this. This project is simply meant to increase
8 development opportunities and would therefore stimulate
9 and create more and unacceptable traffic and
10 transportation impacts and congestion than sought to
11 address, which is inconsistent with State and regional
12 smart growth policies.

13 Simply put, this is a regurgitation of the same
14 project, but in an unlawful piecemeal manner. The
15 developer admits that this is one segment of the
16 original project and that it is the original project
17 that they are pursuing. And it pretty boldly states
18 that a lot of projects are built in segments. They may
19 be built in segments but they are studied, reviewed and
20 approved as an entire project, not piecemeal.

21 It is certainly alarming that most if not all
22 toll roads have filed for bankruptcy protection, pushing
23 the cost to our taxpayers. The first segment on its own
24 has no independent use, yet it will have unequivocal
25 environmental impact to the San Juan Creek watershed.

1 In 2005, the Army Corps of Engineers concluded that
2 additional degradation such as this is project will
3 cause failure of existing water and sewer lines and
4 disappear of the watershed altogether.

5 As an elected official, the City of San Diego
6 -- of the city -- of the city in San Diego County
7 closest to the project who cares about our region's
8 national resources and water quality, I am tremendously
9 concerned that what is before you is a devious attempt
10 to obtain an approval for a project that has already
11 been turned down, a project that will destroy one of our
12 region's few remaining coastal wild lands and public
13 coastal recreational resources.

14 We in Oceanside are always thankful for Camp
15 Pendleton, which serves as buffer and definite change
16 from the horrible urban sprawl and bad planning of
17 Orange County. Your mission and authority are to
18 develop, implement and enforce water quality goals that
19 protect our region's water resources which is the most
20 precious resource we have in Southern California.

21 This entire project has already been rejected
22 once by the California Coastal Commission and the Bush
23 administration. I respectfully urge you to exercise
24 your independent review and reject this plan for water
25 discharge requirements to propose the Tesoro extension

1 241 project. Thank you.

2 MS. WITTE: Mr. Chairman, can we take a short
3 break so I can empty my recorder, please.

4 MR. MORALES: All right. Let's take a
5 five-minute break. And what I am going to ask -- we'll
6 -- we'll give you the lineup for when we come back, but
7 during that break as I mentioned earlier, if there are
8 any groups of you that want to sort of pool your
9 position, please let us know because it's getting late.
10 It's almost 5 o'clock.

11 MR. STRAWN: When we come back, it will be
12 Brett Robertson, Penny Maynard.

13 (Recess.)

14 MR. MORALES: Would you please take your seats.
15 First up will be Penny Maynard, followed by Brett
16 Robertson.

17 MS. MAYNARD: Good afternoon, Chairman Morales,
18 also board members. My name is Penny Maynard and I
19 represent the San Clemente Chamber of Commerce. There
20 seems to be misinformation circulating about CEQA
21 compliance, so that's what I'll focus my comments. The
22 Tesoro extension is an independent stand-alone project
23 and this segment alone will reduce traffic congestion.

24 TCA has gone above and beyond to follow
25 alternatives in possible environment impacts and to

1 encourage public participation in every level. EIRs for
2 the entire project were completed and evaluated 38
3 alternatives to extend 241 toll road south of Oso
4 Parkway, including alignment that stopped short of I-5.

5 It is very common and an accepted practice for
6 transportation projects to be evaluated and constructed
7 in an independent utility segment. Over the last three
8 decades, TCA has conducted hundreds of public meetings
9 on the SR-241 extension. TCA has participated in
10 multiple meetings with the environmental groups. Other
11 State and local agencies have also conducted public
12 hearings.

13 Clearly there has been sufficient opportunity
14 for public review and comment. TCA approved the
15 addendum regarding the Tesoro extension in a meeting
16 noticed in accordance with California open meeting laws.
17 The addendum was made available to the public well
18 before the regional board hearing and before the TCA --
19 TCA board's approval of the addendum. I urge you to
20 approve TCA's waste discharge requirement application
21 and I thank you very much.

22 MR. ANDERSON: While speakers are coming up.
23 Just real quickly, the employment number that I had came
24 from a chart that described the employment that was
25 going to be generated by the 14,000 homes, not the toll

1 road extension. Sorry about that.

2 MR. ROBERTSON: Good afternoon. My name is
3 Brett Robertson and thank you for listening. Chairman
4 Morales and fellow board members, I'm here representing
5 Mayor Anthony Beall from the City of Rancho Santa
6 Margarita. I have been asked to record a letter into
7 the record, so I have a copy for the clerk as well.

8 "Dear Chairman Morales, I have the pleasure of
9 serving as both the mayor of Rancho Santa Margarita and
10 director on the Foothill/Eastern TCA board. As mayor,
11 my key priorities include ensuring a high quality of
12 life, continued economic growth and the overall vitality
13 of the community. The Tesoro extension is crucial to
14 the mobility of our 50,000 residents and the economic
15 growth of our local business community.

16 "The Rancho Santa Margarita City Council has
17 repeatedly and unanimously supported the extension of
18 the 241. In my role as director, I approve the addendum
19 that clearly demonstrates the Tesoro extension will not
20 have any new significant impacts and will in fact reduce
21 the impact of the preferred alternative evaluated and
22 the final subsequent EIR between Oso Parkway and Cow
23 Camp Road.

24 "The Tesoro extension changes the prior diamond
25 interchange at Cow Camp Road to a simpler T-intersection

1 configuration and includes shift to minimize impact to
2 surface waters and to avoid an existing reservoir used
3 for Rancho Mission Viejo ranch operations. The Tesoro
4 extension avoids impacts to the Corporation of
5 Engineers' jurisdictional wetlands and limits permanent
6 impacts to waters of the state to four-tenths of an
7 acre.

8 "I also want to clarify any misunderstanding
9 related to the claim of piecemeal evaluation of the
10 extension of the 241. The TCA did not piecemeal the
11 analysis of the potential environment impact of the
12 future extensions of the 241. During the CEQA process
13 leading the certification of the 2006 final subsequent
14 EIR, the TCA evaluated 38 alternatives for extending the
15 241 south of Oso Parkway.

16 "The alternatives included multiple
17 alternatives for extending the 241 one to the I-5
18 alignments that stopped short of the I-5, such as the
19 Tesoro extension and alternatives such as improvement to
20 the I-5 and surface streets.

21 "Thus, the environmental impacts of both short
22 and full-length extension of the 241 have been evaluated
23 and disclosed to the public as required by CEQA. The
24 Foothill/Eastern TCA is going above and beyond to ensure
25 that this roadway is built to the highest environmental

1 standards while providing the needed regional mobility
2 and traffic relief that is required for residents and
3 businesses throughout Southern California.

4 "On behalf of the 50,000 residents of Rancho
5 Santa Margarita, I urge you to support the TCA's waste
6 discharge requirement application and to allow the
7 Tesoro extension to move forward. The Tesoro extension
8 is crucial to the economic growth and improve mobility
9 throughout the south Orange County.

10 "Sincerely, Anthony Beall."

11 MR. STRAWN: Mark Bodenhamer. Next will be a
12 Sean Acuna.

13 MR. BODENHAMER: Good afternoon, Mr. Chairman
14 and board members. We've been asked to speak for the
15 majority of the people who are here today speaking on
16 behalf of the toll road. In the interest of everyone's
17 time, we realize a lot of people are repeating the same
18 things and so we would like to consolidate it and then
19 ask people to stand up and join us in supporting it and
20 others who want to speak, obviously that's up to you.

21 MR. MORALES: Much appreciated.

22 MR. BODENHAMER: Absolutely. My name is Mark
23 Bodenhamer. I'm here representing the San Juan
24 Capistrano Chamber of Commerce where I served as CEO. I
25 want to point out that earlier a speaker asked you to

1 decide which side is being more forthright today. I
2 would ask you to do opposite, actually. I don't think
3 that that's something that you guys can fairly
4 determine.

5 And I think the most appropriate course of
6 action is to just take the facts to consider this
7 project as the independent project that it is, the
8 Tesoro extension. That's all we're here to talk about
9 today and I would hope that you guys will give it a fair
10 and thoughtful consideration that it deserves because
11 it's an important project. It's critical to our local
12 economy and it's a good project. It's compliant with
13 CEQA. TCA has gone above and beyond in their mitigation
14 efforts.

15 This project won't just benefit our community.
16 Orange County is the fifth largest county in the
17 country. With a population of over three million, we
18 are larger than 20 US states. The existing traffic
19 infrastructure was built to serve far fewer people than
20 are there now. I-5 and regional highways that don't
21 quite connect to each other simply cannot and do not
22 adequately serve the needs of residents and businesses.

23 Some proponents have great concerns about
24 whether TCA followed CEQA guidelines and allowed
25 sufficient opportunity for public review. I can tell

1 you in my role, I've been involved in many public
2 meetings and hearings that were conducted to inform and
3 engage the surrounding communities. There have been
4 plenty of opportunities for the public to learn about
5 this project, ask questions and raise those concerns.
6 Now is the time for action.

7 On behalf of the Chamber of Commerce of San
8 Juan Capistrano and the 300 local businesses we
9 represent, I respectfully urge you to support the TCA's
10 waste discharge requirement application and get the
11 Tesoro extension on the road to completion. Thank you.

12 MS. BUCKNUM: Hi. I'm Wendy Bucknum, and I
13 have spoke before, so I will focus on different talking
14 points than I have before out of consideration and your
15 request.

16 I am a resident of Mission Viejo, so I actually
17 am protected by the lack of the finishing of this little
18 section, and the finishing of this portion will actually
19 impact Mission Viejo as our mayor Julie stated.

20 So I am also speaking on behalf of the South
21 Orange County Economic Coalition this afternoon. And
22 the Coalition was formed to study and support when
23 appropriate infrastructure projects that will enhance
24 economic growth and the quality of life in the region.
25 So we look at both things. Our board of directors which

1 is made up of many of the top business leaders in
2 Southern California encourages your support for the TCA
3 waste discharge requirement permit application.

4 While the benefits of the Tesoro extension are
5 extensive, I would like to focus my comments
6 specifically on the CEQA compliance portion of it. The
7 opposition claims that since the 5.5 mile extension is
8 shorter than the extension approved by the TCA in 2006,
9 that the TCA required to prepare a supplement to the
10 2006 final subsequent EIR. We heard that quite a bit
11 today. This is completely false. Since the Tesoro
12 extension is a modification of the project described in
13 the 2006 final subsequent EIR, CEQA prohibits the
14 agencies from preparing a subsequent or a supplemental
15 to a previously-certified EIR unless changes to the
16 project or changed circumstances will result in
17 significant new environmental effects.

18 A quote is also saying that TCA can approve --
19 approve an extension of SR 241 without first approving a
20 route for connecting SR 241 with the I-5. The truth is
21 that it's not all that unusual for a transportation
22 agency to complete a CEQA analysis for a segment of a
23 larger project while continuing to study of the location
24 of subsequent segments.

25 Two of the many recent examples include the

1 California High Speed Rail Project and the Exposition
2 Quarter Light Rail Project in Los Angeles. On behalf of
3 the South Orange County Economic Coalition as well as
4 people that I would ask at this point to please rise and
5 -- that are in support of this, the staff's
6 recommendation.

7 We encourage you to approve the TCA waste
8 discharge requirement application and I thank you so
9 much for your time. Thank you.

10 MR. MORALES: I do appreciate that, but I would
11 ask, if any of you that just stood up didn't like sign
12 the sheet outside that stated you were in favor or
13 didn't fill out a form, please find some way for us to
14 have the record reflect your position. Thank you.

15 MR. ACUNA: Good afternoon, board members. My
16 name is Sean Acuna and I am representing the United
17 Coalition to protect Panhe. As one of the founding
18 members of the organization, the United Coalition of --
19 to Protect Panhe, the grassroots alliance of the
20 Acjachemen people dedicated to the protection of our
21 sacred rite Panhe.

22 We are here to voice our strong opposition to
23 the project before you today. Please refer to our
24 written comments submitted Friday, July -- June 7th,
25 2013 for more detailed information on our position. In

1 summary, you see UCPP urges the board to deny this
2 project on the following grounds:

3 The proposed five-mile extension will impact
4 five cultural archaeological sites and potentially
5 impact sites listed on the sacred lands inventory
6 maintained by the California Native American Heritage
7 Commission. This proposal forward -- put forward by the
8 TCA is just an attempt to bypass State and federal
9 agency's decision and public opinion.

10 The five-mile extension is literally -- I'm
11 going to scratch that.

12 The Regional Water Quality Control Board must
13 examine the cumulative environmental and cultural impact
14 of the whole road and not merely the five-mile segment
15 proposed here. The TCA has not provided sufficient
16 notice of the project proposal to tribes with ancestral
17 territories within the project boundaries, traditional
18 cultural practitioners and representatives from local
19 tribal communities and organizations. State and federal
20 law requires lead agencies to consult in good faith with
21 any active Americans in this instance. Good faith
22 consultation includes adequate notice.

23 State and federal policies and procedures
24 regarding Native American sacred places and cultural
25 resources have substantially changed since the 2006

1 Environmental Impact Report that the TCA relies on for
2 this project. The addendum does not address these
3 changes. TCA as a lead agency must comply with the
4 these changes in policy and procedure before moving
5 forward.

6 Panhe, which is located in State parks, is
7 9,000-year-old Acjachemen Village, sacred place and
8 burial grounds. It is one of the few remaining
9 Acjachemen sacred sites where our community can gather
10 and for ceremonial and culture practices. The proposed
11 toll road would destroy our sacred site. The project
12 must be denied. Every one of the cities supporting this
13 project have talked about the end result, the end result
14 being that it links up to the 5 south of this project.
15 That's what they're talking about. We're talking about
16 our indigent impact in this area. We ask you to deny
17 it. Thank you.

18 MR. MORALES: There have been references been
19 made a couple of times today to the Native American
20 sites.

21 MR. ACUNA: There are archaeological sites.
22 There are along -- in that area where it was referenced,
23 and I'm going to refer to you, board member Henry, where
24 we're talking about in A-1, where they were talking
25 about the wheel -- the creek along that area and they're

1 located along that creek. And all those areas where
2 there was creek, or there was a river that ran through
3 the ocean, there were sites of Acjachemen. Acjachemen
4 would go from -- from Camp Pendleton, continue north to
5 Newport Beach, inland to Santiago Canyon. These were
6 all cultural resource areas for us.

7 MR. MORALES: Are the sites listed on --

8 MR. ACUNA: They are listed. They are listed.

9 MR. MORALES: -- in the registry?

10 And I guess the last question, how often are
11 cultural -- I guess ceremonies held at Acjachemen?

12 MR. ACUNA: Panhe.

13 MR. MORALES: Panhe. Sorry.

14 MR. ACUNA: Since 2000 and -- since 2001, not
15 as much because much of the site is off limits to us at
16 this point. We're working with -- with the Department
17 of Navy on getting access to our ceremonial site, but it
18 is registered with them, this is an area of practice.
19 We do still gather there as a ceremonial site off site
20 and we register that with the State and Federal
21 governments.

22 MR. MORALES: Thank you. Acjachemen, how do
23 you spell that?

24 MR. ACUNA: You ready? A-C-J-A-C-H-E-M-E-N.

25 MR. MORALES: Thank you.

1 MR. ACUNA: I'd also like to add that I'm also
2 an honorary member of the Hawaiian Surf Club of San
3 Onofre who directly opposes this,

4 MR. STRAWN: I had a couple more cards from the
5 Chamber of Commerce folks. Were you included in that
6 last group or do you want me to call you up separately,
7 Mr. Cave and Leah Hemsey.

8 MR. MORALES: Let's do it this way. For those
9 of you that filled out green cards that weren't part of
10 the group that stood up or that still want to speak, can
11 you just let us know how many there might be, just so we
12 know with a show of hands.

13 Green card, so one, two, three, four. Okay.

14 MS. HEMSEY: And I'm Leah Hemsey from the
15 San Diego Chamber of Commerce and I won't repeat the
16 points made by others here today, but I just want to
17 state for the record that on behalf of our 3,000 member
18 businesses, we urge you to adopt the staff
19 recommendation of the revised tentative order so
20 construction can move forward on this vital addition on
21 the regional transportation system. Thank you.

22 MR. ABARANEL: Can I ask you a question? You
23 support the extension in 241 all the way to I-5?

24 MS. HEMSEY: We do.

25 MR. STRAWN: Thank you for being brief. Drew

1 Murphy. He was designated some additional time from a
2 Howard Pippin, who I guess has left now.

3 MR. MURPHY: I'll be brief, try to be brief.
4 My name is Drew Murphy and I have taken the oath. And
5 thank you, Chairman Morales, regional board, for this
6 opportunity to speak.

7 I represent Trout Unlimited, the oldest,
8 largest trout and salmon conservation organization in
9 America with 10,000 members in the state, 700 in Orange
10 County, and I serve as the chairman the state council as
11 well as a board member in Orange County.

12 As a citizen, I'm a small business owner in
13 Mission Viejo. Apparently I'm a minority of about 30
14 percent that doesn't agree with the mayor, but I have
15 lived there 29 years so I got a pretty good handle. I
16 fished, swam, hiked and camped in South Orange County.
17 I came here in South Orange County to get a job as a
18 citizen, raised my family there, so I got a real big
19 vested interest.

20 To use testimony is always a little different
21 than the Coalition. We support the Coalition as we have
22 since 2009. We speak, as you know, for the fish. And
23 one of the rarest forms of life and the only trout
24 native to Southern California streams, and through our
25 projects and the chapter we spent over \$2 million of

1 public money. This is on Trabuco Creek primarily, to
2 reconnect the lower sections to the upper sections.

3 People can't believe it. They say well,
4 there's no fish. Well, yes. There are. There's a
5 slightly -- just like the migratory forms like the
6 swallows that come back every single year. We see them
7 every single year, and that's why I'm here today.

8 A few points that maybe weren't addressed is
9 that, you know, we're here about the fish but we're also
10 here about the watershed. And our staff, our program
11 works, we try to protect, reconnect, restore and
12 sustain. That means in the upper areas, especially
13 public lands, you want to protect that from distraction
14 industries, from development, from hydro and just make
15 sure that everything is in place before it's built.

16 And that's where we're looking at the watershed
17 from San Juan, top to bottom. Not just a segment. You
18 have to look at it from top to bottom. All the way from
19 head waters in the mountains. It's 20 miles long to the
20 ocean out at Doheny. You can say the same thing for San
21 Mateo because if it goes to San Mateo, we talked about
22 San Mateo in 2005 and we're talking about San Juan in
23 2009. All these little trips up high, they're
24 important.

25 They're important for water quality, they're

1 important for the sediment because we all live
2 downstream; right? Everything flows downstream. So
3 when it hits down in this project area, whatever happens
4 in that project area is also going to be flowing
5 downstream. So water quality, number one, is -- I mean,
6 CEQA has been talked about to death, but the water
7 quality, there's very little baseline data actually on
8 San Juan.

9 They set all these different sites, we got this
10 and this and that. And we did the first water quality
11 assessment in 2006, and that was the first baseline data
12 that Fish and Game ever had on that creek. So there's
13 not a whole lot of data. I've shared some tips -- some
14 information with Ray Armstrong, the Orange County Coast
15 Keeper. He said we're really starving for data on that.
16 So I'm not sure how much data they really have and --
17 in support of that. But this whole area is just natural
18 capital. We don't want to squander it.

19 We got some of the beautiful beaches -- some of
20 most beautiful beaches in the world, oldest, ancestral,
21 everything and we just, you know, from top to bottom, we
22 just have very, very precious open space. We urge you
23 not to pass this permit at this time. Thanks for your
24 time. Questions? Thanks. Next.

25 MR. STRAWN: Next up would be Jim Moriarty from

1 Surfrider. There's 24 cards from Surfrider, so if you
2 guys can figure out a way to maybe --

3 MR. MORIARTY: I'm smart enough that I don't
4 speak for every one of them. I would like to thank you
5 for your time and patience today. I would also like to
6 offer a special heartfelt thanks to all of the people
7 that are not paid today to come out.

8 I'm Jim Moriarty, the CEO of Surfrider
9 Foundation. As you can see from the hundreds of people
10 in this room and the overflow areas, this is a personal
11 issue. It's a personal issue to many of us. I go by
12 this issue twice -- this area twice a day and as much as
13 I can, I stop and I surf this area. This is an odd
14 meeting. I think we're living in parallel universes.

15 I go back to something that someone much
16 smarter than me said. When we were talking about
17 Trestles, they said what country in the world has the
18 highest, most stringent environment standards. One
19 could argue it's the United States. What state within
20 that country has the most stringent environmental
21 standards. One could argue California. What
22 designation within that state, within that country has
23 the highest environmental standards. One would think
24 it's a state park.

25 And so that's what is so strange about this.

1 We're here again and again talking about state parks.
2 That seems strange. It should make us all pause. Why
3 are we here talking about letting a private sea-based
4 road through a state park? Wouldn't we allow the same
5 thing in Yosemite? Would we put a toll bridge from one
6 rim to the other in the Grand Canyon? Of course we
7 wouldn't.

8 The road is a horrible idea. It's insulting to
9 the very foundation of democracy. National parks and
10 state parks are one of America's ideas and we are
11 sitting here and we are about to throw that out.
12 Splitting this road into pieces is a lie. And when we
13 were kids, when we told a lie, it was a lie. If I told
14 a lie to my mom in pieces, it was still a lie. This is
15 a lie.

16 And the jobs angle is insulting as well. In
17 the United States, it's a herring. The number one
18 tourist -- the number one draw in California is its
19 beaches. Second, tourism is one of the fastest-growing
20 industry in the economy. And third, 41 percent of the
21 United States -- United States gross domestic product is
22 generated from coastal community. All of those stats, I
23 got two weeks ago from Senator Stan Farr of California.
24 This is the golden goose. So I understand --

25 MR. STRAWN: Your time is up. If you have

1 somebody to donate, thank you. We will need a name on
2 those.

3 MR. MORIARTY: Roderick Michener, Craig
4 Cadwallader --

5 MR. SKELTON: Don Skelton, he can have my time,
6 too.

7 MR. MORIARTY: That's all the time I need. I
8 have three sentences left.

9 I understand the pressures you're under.
10 Still, still we are talking about our collective legacy.
11 What will you be remembered for? What will I be
12 remembered for? What will our kids look up to us and be
13 proud about? So I urge you to deny this discharge
14 permit. I urge you to keep what's special about
15 California special. Don't pave it. Leave it as it is.
16 It's already a gem. We already have paradise. Why
17 change that?

18 MR. STRAWN: Next up would be Alan Walti and
19 Joe McCarthy. Jim Moriarty just spoke, and Joey
20 McCarthy gave him some time.

21 MALE SPEAKER: No, I gave him time.

22 MR. MORALES: Joe, you're up then.

23 MR. WALTI: Alan Walti, and I've been a surfer
24 for 55 years. First surfed San Onofre in 1958, probably
25 before most of you guys were born. Anyhow, regardless

1 of that, you have all seen a lot of things happen over
2 time, a lot of things like Killer Dana. We now have
3 Dana Point Harbor. We got Limine, a prime surf spot
4 there. We got Limine, a family diner up by Ventura
5 about putting a freeway over that.

6 And this whole idea of the 241 extension in
7 pieces, sooner or later, maybe not today, maybe not five
8 years, ten years from now somebody is going to be in
9 here talking to you guys about going down to the beach
10 and eliminating San Juan and San Mateo Creek with
11 supplies, the sand to the beaches which makes these
12 breaks pristine.

13 Lower Trestles was rated one of the top ten
14 surf spots in the world. If this continues on like
15 you're talking now, you're going to eliminate one of the
16 ten top spots in the world. Because you're going to
17 eliminate the sands that fills in the rocks that makes
18 it a perfect break. So I think it's a real travesty,
19 and I hope you vote no on the extension. Thank you.

20 MR. STRAWN: Did we get Joe, or did we -- Joe
21 McCarthy? Kristen Brenner and next one will be Graham
22 Hamilton.

23 MS. BRENNER: My name is Kristen Brenner and I
24 live in Solana Beach. I'm here to voice my opposition
25 to the Tesoro Extension Project. Extension -- the PCS

1 plan to construct a toll road through the Trestles that
2 we're speaking of. The plan is to construct the same
3 toll road that was rejected in 2008.

4 THE REPORTER: Hold on. Start over.

5 MS. BRENNER: A plan to construct the same toll
6 road was rejected in 2008 by both the Coastal Commission
7 and the Bush Administration and there's no reason that a
8 road should be built at this point. In the interest of
9 time, I will skip through that. I urge the regional
10 board to deny the WDC Tesoro Extension Project. Please
11 respect the 2008 decision and the will of the people by
12 not allowing the first section of this road to be
13 completed. Thank you.

14 MR. STRAWN: Graham will be followed by a
15 Lindsay Churrea.

16 MR. HAMILTON: Thank you very much for your
17 time and your patience today. My name is Graham
18 Hamilton. I'm the chairman of the West Los Angeles
19 Malibu chapter of the Surfrider Foundation, and I'm sure
20 you know how we all feel about this.

21 For centuries, people have been moving to
22 California for the treasure of our lands and coastal
23 resources, and I see a lot of people out here today with
24 T-shirts that say "Good roads equal good jobs, equal
25 good economies." But what I'm wondering -- I'm

1 wondering is how many quote, unquote good roads and good
2 jobs is it going to take before we pave over all of the
3 resources that have been the lifeblood of myriad
4 California economies from tourism to agriculture.

5 As it's been stated before, the traffic
6 problems in Southern Orange County are complex, and they
7 require sophisticated 21st Century solutions. I was
8 speaking with someone earlier who was in favor of this
9 extension and she said she is tired of hearing everybody
10 say no, but not offering any alternatives.

11 You guys are the Transportation Corridor
12 Agency. Transportation and alternative, build rail.
13 Please deny this permit.

14 MR. STRAWN: After Lindsay will be Sybil and
15 I'm going to skip that last name.

16 MS. CHURREA: Hello. My name is Lindsay
17 Churrea. Thank you for taking the time to hear us. I'm
18 an educator and a lover of clean water, and I'm here
19 from Los Angeles today because this is an important
20 issue. I thought I was here to talk to you about water
21 quality, but most people seem to be talking to you about
22 how you should manage traffic and I'm just going to
23 stick to my original plan.

24 If we are interested in approving projects that
25 mitigate damage and protect our areas' water and water

1 quality, I think we should be looking ahead to projects
2 that not only mitigate impact, but that also consider
3 how we're going to eliminate and reduce carbon emissions
4 which we know will ultimately impact our water quality.

5 If the TCA is coming to you today with their
6 report, it's like my students coming to me with a report
7 that's incomplete and was an outline prepared for a
8 completely different subject altogether. And if they
9 brought that report to me, I would come back to them and
10 say go back and do the actual work and come back to me
11 when -- when I know that you deserve a grade on this
12 project.

13 And so if your interest, which your mission
14 statement says, is to protect your local water areas and
15 water quality for this generation and for the
16 generations that follow, I believe -- I strongly urge
17 you to not approve this permit. I believe it's a step
18 in the opposite direction of protecting our water
19 quality. Thank you.

20 MR. STRAWN: Cybil -- Cybil Oechsle, something
21 like that. Any Cybil? Patti Meade and then you will be
22 followed by Scott Fish.

23 MADDY: My name is actually Maddy. Patti had
24 to get on a bus but she left a statement for you. I'd
25 like to read it on her behalf and then leave it with

1 your court reporter if that's okay.

2 MR. MORALES: You can read the statement but we
3 are --

4 MADDY: Oh, okay. So this is -- this is from
5 Patti Meade. "To the residents of San Clemente. My
6 name is Patti Meade. All this talk of propane tanker,
7 it would not have helped because it was where the 5 and
8 241 would have already been combined. The reason Orange
9 County is for the toll road, which most residents
10 according to Patti are not for this toll road; it's
11 mainly the TCA -- is because the council people that
12 come before you are also on the board of the TCA and
13 have a conflict of interest.

14 "I live by one of the most polluted beaches in
15 the state." She lives in Posh, I believe? Thank you.
16 "I don't surf there or Doheny because of the polluted
17 water from the San Juan Creek which kept coming up
18 earlier today. I have been made very sick by poor water
19 quality, strep throat to bronchitis to pneumonia, which
20 they didn't discover until something" -- I'm sorry. I
21 can't read her handwriting and something related to
22 sinuses and related to her surfing activity.

23 "Trestles is not just a surfing place. It's an
24 escape from urban congestion. There are not" -- sorry
25 -- "there are wild oaks and deer and marshes and

1 wildlife. It is world famous and when I travel to
2 Australia, when asked where I'm from, I say Trestles,
3 and they all knew where that was. It's one of the few
4 surf spots with clean water left. I raised my kids to
5 respect nature and they have jobs as an environmental
6 scientist and a geologist.

7 "Their jobs are cleaning up the environment.
8 This toll road is one big mistake." And she asked that
9 you not permit TCA's request.

10 MR. STRAWN: Scott Fish, and you will be
11 followed by Andrew Fish. I don't suspect you two could
12 get together?

13 MR. A. FISH: I'm going to speak on behalf of
14 the Fish brothers. My name is Andrew Fish. I would
15 like to thank you all for taking the time to listen to
16 us all. My name is Andrew. I drove down here with a
17 group of well-educated working professionals. We woke
18 up at 5:00 in the morning. We met at my house. We all
19 took vacation days to be here, and we surfed, we woke up
20 at 5:00, left L.A., surfed Trestles and continued here
21 salty and hungry.

22 And I also work in the solar industry, and so
23 when I look around and see good jobs and good economy,
24 solar is one of the fastest-growing industries in the
25 nation. And it's one of the fastest-growing industries

1 here in California. This is the leading nation for
2 solar technology, so if we want good jobs, let's create
3 good opportunities for these jobs in training them
4 collectively.

5 With that, I would just like to applaud the
6 extra hoops that the TCA is being put through with
7 regard to this project. I would hope that all future
8 projects, big or small, be analyzed in the same way that
9 they are today. And that's the way we will have a much
10 safer in terms of traffic and safety, if there's
11 accidents and water quality for myself and for my future
12 children, which I hope to have one day. So Thank you.

13 MR. ANDERSON: Was the surf good?

14 MR. A. FISH: The surf was actually fantastic.
15 We got kicked by the grounds because they're having a
16 contest of theirs, so we had to get out and go up to
17 Upper instead.

18 MR. STRAWN: I have got to follow the Fish
19 brothers with Mark West. Followed by a Jake Wyrick and
20 a Mark Renschler.

21 FEMALE SPEAKER: Mark had to leave.

22 MR. WEST: I'm right here. I'm Mark West. I
23 know you guys are busy today, that this is a long time
24 coming so I'll make this quick.

25 Ladies and gentlemen, gentlemen of the public,

1 my name is Mark West. I am a retired naval officer,
2 Surfrider activist, and resident of Imperial Beach. I
3 appreciate the opportunity to speak before you on behalf
4 of the San Diego Surfrider chapter. When I say
5 "volunteers," we have volunteers. We have people who
6 come out here and just like you, took time off of work,
7 took time away from our families to come and talk about
8 something that's very true to us.

9 We encourage people to get involved in these
10 projects like these because we believe in the promise of
11 Democratic process. The project which you are
12 discussing today is one that received taxpayer money
13 possibly, and public input needs to be respected in that
14 process. We have endured working relationships with
15 many people throughout the staff of the cities and
16 counties.

17 We want to make sure that our coastline with
18 the multitude of the issues associated with the iconic
19 resources that is Trestles. Sorry. I ran up here, so
20 I'm a little bit out of wind.

21 Make no doubt that surfing is an important
22 component of this resource as anything else. Recently I
23 returned from the global wave conference being held in
24 Rosarita Beach, California North Bay. This conference
25 attracted people from all over the world to discuss

1 items of threat, waves around the world.

2 One very interesting topic was what we called
3 surfenomics. A new topic, you probably never even heard
4 of it, but it's really a growing area of study relating
5 to the economic impact that surfing has on our community
6 and waves. The studies being conducted worldwide found
7 that surfing is the biggest economic impact on the local
8 economies. This -- this project that's one that's
9 proposed has potential to destroy one of our classic
10 Southern California waves. It's probably the best wave.

11 Our recent Surfrider surfenomics study found
12 that Trestles direct economic impact on the City of San
13 Clemente is anywhere from 8 to \$13 million a year.
14 That's direct economic impact from surfing. The
15 economic value of surfing at Trestles is estimated at
16 \$26 million a year. These are huge numbers that surfing
17 brings to San Clemente.

18 Jobs. Those are jobs. They're happening right
19 now. If you like more information, I feel -- please,
20 visit the Surfrider surfenomics web page. I'll wrap
21 this by saying, you know, people, this has been an
22 iconic place. The Beach Boys and Richard Nixon got
23 together about this place. That's what they think about
24 it.

25 The spot's been listed by surfing A list. Guys

1 like Robert August, Dewey Webber, Phil Edwards, Mike
2 Doyle and Mickey Doral have all talked about it. This
3 place is special. Please, please don't go down the
4 slippery slope that this project is. Deny the permit.
5 Keep Trestles safe. Thank you.

6 MR. WYRICK: Good afternoon, ladies and
7 gentlemen. This is awesome. My name is Jake Wyrick,
8 and I'm a law student at Duke University working
9 Surfrider Foundation's legal department in the summer.
10 I would like to offer you some brief comments about the
11 purposes of CEQA and the revised tentative order
12 currently under consideration.

13 Forty-three years ago, with crude oil still in
14 the center of our channels and our thoughts, California
15 demanded a dramatic new approach, the way we interact
16 with our environment dedicated to the proposition that
17 our government should not make decisions that impair our
18 environmental treasures based only on optimism is
19 unfounded assurances.

20 So our legislature enacted CEQA, which requires
21 public agencies to collect and consider all relevant
22 information giving prime consideration to preventing
23 environmental damage before undertaking a project that
24 may significantly affect our environment. An agency
25 subverts the purposes of CEQA if it omits for

1 consideration material necessary to inform
2 decision-making and inform public participation.

3 Now, you are being asked to approve an order
4 informed only by a seven-year-old FS EIR that omits
5 necessary material and an addendum that blocked public
6 participation. Let there be no mistake. Improving this
7 order would subvert the purpose of CEQA. The FS EIR
8 cannot possibly allow the informed decision-making
9 required by CEQA because it omits crucial information
10 about the environmental consequences of this project.

11 According to the California Coastal Commission,
12 TCA did not follow standard protocols in preparing this
13 FS EIR. For example, TCA omitted from this FS EIR
14 analyses alternative from its 2004 draft EIR that the
15 federal highway associations concluded would provide the
16 same benefits as this toll road. TCA did not prepare
17 this FS EIR or addendum in the spirit of CEQA to inform
18 their decision.

19 This decision was made long before a word was
20 written. This revised tentative order relies entirely
21 on exactly the kind of post hoc rationalization that
22 CEQA prohibits, so I ask you as key members of this
23 board, does this FS EIR and the addendum really provide
24 you with all the material you need to make this
25 important decision.

1 I will leave you with this question which lies
2 at the heart of CEQA and advice my parents gave me: You
3 will never regret giving big decisions a bit more
4 thought, but you will always regret not thinking them
5 through enough. This is a big decision.

6 MR. STRAWN: Mark Renchler.

7 FEMALE SPEAKER: He left.

8 MR. STRAWN: He left? Okay. Julia Chen-Herr
9 and then followed by Travis Newhouse and then Michael
10 Lindsay.

11 MS. CHEN-HERR: Good afternoon, members of the
12 board. Julia Chen-Herr. I'm a campaign coordinator for
13 Surfrider San Diego. Appreciate your time today.

14 Question before you this afternoon is whether
15 to issue a discharge permit for the very first segment
16 of this road. The very language that they're using
17 implies that it's part of a bigger project. Unless
18 they're willing to sign off on some legally binding
19 document suggesting that they will no longer extend the
20 road or go further than this initial project, I don't
21 think you even have a choice in front of you today
22 because a full project, there was an alignment in 2008
23 that was rejected. They have had other previous
24 alignments that they've thought of in the time since
25 then.

1 Now they have a first segment. Obviously, the
2 intention is to make a new alignment. And without
3 analyzing the cumulative impact from the entire project,
4 it's impossible to move forward from this point. The
5 example they used with the rail project throughout
6 California, yes, that project is analyzed and will be
7 built in segments, but not without acknowledging all of
8 the impacts to the entire project which is what we
9 believe is legally necessary for this project today.

10 You have been made well aware of our concerns
11 about the piecemealing, and the TCA doesn't exactly have
12 the best track record with complying with the BMPs for
13 managing water quality and storm water. We saw that
14 with the 73. They really struggled to get these working
15 properly.

16 This first segment of road is leading into one
17 of the last undeveloped watersheds in California.
18 You've heard me speak to you about the hydromodification
19 and the MS4 permit. I would encourage you to stick with
20 that watershed approach. That watershed includes a
21 State park, also a campground at San Mateo that I grew
22 up camping at and enjoying the open doors with my family
23 and I hope future generations will be able to enjoy that
24 as well. Thank you for your time.

25 MR. STRAWN: Do we have Travis?

1 MR. NEWHOUSE: Hi. I'm Travis Newhouse. Thank
2 you for hearing my comments. I live in Encinitas and I
3 grow up in Irvine. As a teenager, my friend's dad
4 taught me how to surf at San Onofre State Beach. Every
5 Saturday I would look forward to surfing with my friend
6 and his dad and enjoying the natural beauty of the area.
7 I have kids of my own now, and I hope when they're
8 older, I will be able to take them and their friends to
9 enjoy the unspoiled of San Onofre State Beach.

10 Today I urge you to deny the Tesoro permit.
11 This extension will impact the San Juan Creek watershed
12 that contributes to making San Onofre a special place.
13 The proposed mitigation for two sites does not mitigate
14 the impacts to an entire downstream watershed. Not only
15 will this project itself have negative impact, but it
16 will it continue to promote sprawling development that
17 creates the traffic problem that it itself tries to
18 solve and will adversely impact water quality in San
19 Juan Creek watershed and the sediment flow. Thank you.

20 MR. STRAWN: Michael Lindsay and then Ginger
21 Osborne and Tom Osborne and then Jack Eidt.

22 MR. LINDSAY: My name is Michael Lindsay. I
23 live in Laguna Beach and the issues that I wanted to
24 raise have been talked about a number of times here, so
25 I will keep this brief.

1 I am deeply concerned about the CEQA compliance
2 aspects of this. It would appear to me based on the
3 testimony that I've heard today, the conversations that
4 what we're looking at really is a 16-mile project, the
5 entire project. And that it should be addressed in that
6 way to take this as a segment and look at the water
7 quality of just one piece of it. When we know that the
8 rest of it is coming, that seems to me to be not in
9 compliance with CEQA, and that I ask that you deny
10 this -- this application until these issues are
11 addressed. Thank you.

12 MR. STRAWN: Ginger.

13 THE AUDIENCE: Tom and Ginger both left.

14 MR. STRAWN: Okay. Jack Eidt.

15 MR. EIDT: Yes.

16 MR. STRAWN: And Craig Cadwallader, I know you
17 donated your time, but we didn't really use it. If you
18 want to speak, you can.

19 MR. EIDT: I had time donated by Carrie
20 Stromboughtnie and Amy Jackson. So Jack Eidt and I I'm
21 representing the Orange County Friends of Harbor,
22 Beaches and Parks. I also am an urban planner with Wild
23 Heritage Planners and do work out of San Juan
24 Capistrano.

25 Real quick, I just -- because it's been said

1 before, I -- but I thought that Stephanie from
2 Surfrider, her comments were not respected and finished
3 properly. The point is, how can you approve a waste
4 discharge permit without the baseline studies in place?
5 It's -- it's -- as with just trust us, the BMPs will be
6 in place, well, as was said Laguna Canyon is an example
7 where trust was given and I don't think it came
8 through. So I think that's a real important issue.

9 Another thing on the bigger picture of
10 alternatives. I've done a number of alternatives with
11 people in my group for -- for this very project and for
12 Rancho Mission Viejo. When they approved what was a
13 problematic EIR for Rancho Mission Viejo that covered
14 the whole thing that they are now building in segments,
15 they said that they did not need the toll road to build
16 it. So now today, they're saying they absolutely need
17 this toll road. It's imperative to build, particularly
18 this five-mile stretch.

19 I would say this segment could be achieved by
20 building a simple arterial heading south from the
21 existing toll road if that's all they want to build.
22 And -- and so the question remains, is this really an
23 alternative for the I-5? The circuitous route heading
24 north and then south to come back to the employment
25 centers in Orange County are in Irvine, Santa Ana, these

1 areas, not Yorba Linda.

2 So what -- what we Wild Heritage Planners has
3 said is they need to directly connect this development
4 with the -- with the existing facilities they're heading
5 north towards the 73, you know, we called it a beltway.
6 These alternatives, there's a lot of talk about people
7 getting together and meeting with TCA. We met with TCA
8 numerous times and they ignored us. They said thank you
9 very much, but we're going to build this. So if they're
10 not looking at alternatives that solve the traffic
11 problems and will become a real alternative to I-5 which
12 also needs to be widened without a doubt and it can be
13 done within the right of way. These are very important
14 and necessary transportation improvements to be done
15 first before building through the back country.

16 You know, piecemealing this EIR and this
17 development short-changes the alternatives analysis
18 which I'm referring to. And the needs of the community,
19 we have comprehensive impacts to land, air and water.
20 So Friends of Harbors, Beaches and Parks has been very
21 connected to the movement towards the sustainable
22 communities Climate Protection Act. That's SB-375.

23 We need sustainable alternatives, and we only
24 have so much pollution to put out there. Carbon
25 pollution, we got a major climate problem. The Global

1 Warming Solutions Act as well. We need to be smarter
2 about everything that we do, so I -- and I know that you
3 guys aren't -- aren't the -- the -- you're here standing
4 in line for -- for this issue which isn't water, but
5 unfortunately, you have been placed in this position.

6 So I hope that you will reject this project and
7 send them back to do a supplemental EIR and we will look
8 into these alternatives, because I say there's a smarter
9 way to build this stuff. So thank you very much.

10 MR. STRAWN: Excuse me. Could you tell me the
11 names of the -- that donated their time to you.

12 MR. STRAWN: Amy Jackson and Carrie
13 Stromboughtnie.

14 MR. MORALES: I want to reiterate. If any of
15 you can lump your time together and choose one speaker,
16 please do so because we still got approximately 35
17 speaker cards and folks, I think your positions for the
18 most part have been registered. We want you to talk to
19 the extent possible about modifications to the order of
20 CEQA. Because at some point, there may be diminishing
21 returns here because we still are going to have to do a
22 fair amount of deliberation. Staff is going to have
23 more time. I know counsel for the NGO's wanted to get
24 in, you know, two, maybe three minutes prior to
25 6 o'clock because they have to catch a flight. That's

1 not happening, given the number of pink cards we have
2 got before us. So seriously, talk among yourselves,
3 please sir.

4 MR. CADWALLADER: Good evening. My name is
5 Craig Cadwallader. I'm the chair of the Surfrider
6 Foundation South Bay chapter, and I'll try to edit my
7 comments to get as short as possible. I understand
8 everybody is pressed for time. I too am pressed for
9 time. I spent a good deal of Monday, all day Tuesday in
10 the L.A. City Council meetings to try to ensure we get a
11 single use.

12 I followed that by meeting in Hermosa Beach on
13 the stop Hermosa Beach Oil, followed that by a meeting
14 in Manhattan Beach at the City Council meeting and then
15 came here. I'm here all day today. We got events
16 happening tomorrow. I'm an independent businessman and
17 I lose money by being here, but this is very important
18 to me. I love the ocean waves and beaches and it's one
19 of the reasons I'm as active as I am with the Surfrider
20 Foundation because that's Surfrider's mission.

21 These projects have a very serious potential to
22 impact our oceans, waves and beaches and I don't know
23 how you can do a permit without all the information. I
24 heard several comments today about information coming
25 later on. How can you do a permit unless you have a

1 final plan with all the documentation. The
2 hydromodification plan is the same as March, but you
3 don't have the documentation.

4 I urge you to not approve this permit and to
5 get full documentation to do the right thing. Thank
6 you.

7 MR. STRAWN: Okay. Patricia Marks.

8 MS. KALEMKIARIAN: I just want to make a
9 comment for the public. I don't know if you realize, we
10 don't want get paid either. I'm an independent
11 businesswoman. Mr. Morales is. There are folks here
12 who we all volunteer our time for the sake of water
13 quality. So when we say please consolidate your
14 comments, it's also because we're here an entire day as
15 really volunteers in the public service, and I don't
16 know that everybody realizes that.

17 MR. STRAWN: Patricia and then you'll be
18 followed by Catherine Stiefel and a Roger Kube.

19 DR. MARKS: Sara Real is donating this time to
20 me, and I'm not going to use all of it. I want to thank
21 Chairman Morales and the board for the opportunity to
22 speak. I'm hoping that I can clarify a few things about
23 the archaeological sites. I'm Dr. Patricia Marks. I'm
24 a Professor Emeritus at California State University Los
25 Angeles where I teach anthropology and archaeology, and

1 I'm president of the California Cultural Resources
2 Preservation Alliance.

3 And you have heard that there are five sites,
4 archaeological sites within the area of potential effect
5 of this five-mile segment of the project and that these
6 sites are important to the Native American community.
7 Some of the sites -- all of the sites are recorded at
8 the information center at Cal State Fullerton.
9 Locations of the sites are confidential and so you won't
10 see a lot of maps showing where the sites are located.

11 On a need-to-know basis for development, they
12 can be -- the location can be noted. The reason you're
13 not hearing a lot about these sites is because probably
14 the TCA is going to say that they don't meet State or
15 federal requirements for significance. And if they do,
16 we can mitigate them by scientific excavation to
17 retrieve a sample, an archaeological sample of data.
18 Usually it's like one percent of the entire site and
19 then it's blown away.

20 This does not meet any mitigation for any
21 Native American religious and culture sites. This is a
22 traditional cultural property area with traditional
23 landscape, and it's very important to this community.
24 And even more important is the sacred sites that's
25 located in San Mateo campground near San Onofre State

1 Beach, and this site has -- it's 9,000 years old, has
2 burials. And the plan was for the toll road to go over
3 this site, put pillars in and put it over.

4 And I ask you, would you like to put a toll
5 road over one of your cemeteries? This -- you know,
6 this is just a really hurtful thing for these people.
7 So obviously, this thinking of the mitigation for
8 scientific -- and I'm a scientist and I appreciate the
9 data and the information that can be learned from these
10 sites, but I also appreciate that here are people that
11 have lost everything, their culture, their lands and the
12 dissemination of these people. To them, these sites
13 have real important meaning to them. That's all that's
14 left of their roots.

15 And these -- all these mitigations for these
16 sites is avoidance and preservation. So I ask you not
17 to approve this permit because it will result in the
18 destruction of five more sites. And they have lost
19 hundreds due to modern development and these toll roads.
20 Thank you.

21 MR. STRAWN: I guess we don't have a Catherine
22 Stifel. Roger Kube? Jason Feters.

23 MR. KUBE: I'm going to keep this real brief.
24 My name is Roger Kube. I'm chair of the Surfrider
25 Foundation, San Diego County chapter. On behalf of

1 approximately 2500 San Diego County members and about
2 13,000 documented San Diego County supporters of our
3 organization, I just want to let you guys know we're
4 opposed to this project.

5 Surfrider's mission is the protection and
6 enjoyment of our oceans, waves and beaches through a
7 powerful activous network. And in alignment with our
8 mission, the significant concerns about the impact this
9 project will have on water quality and the San Juan
10 Creek and the surrounding watershed.

11 Along with my fellow Surfrider activists, I
12 stood before you a few months ago and gave comment at
13 the MS-4 hearing. I want to applaud you with your
14 unanimous decision to approve that permit. That
15 demonstrates your commitment to clean water and our
16 watersheds. I respectfully implore you to do the right
17 thing again here today and deny the TCA waste discharge
18 permit. Thank you.

19 MR. STRAWN: Joseph Feters. Shannon Quirk,
20 and then a Scott Thomas.

21 MS. QUIRK: Hi. My name is Shannon Quirk.
22 Thank you for taking the time to listen to everyone
23 speak. On behalf of the Surf Channel's Television
24 Network and all of our viewers, since I'm the editor in
25 chief, I've had to read many letters and comments and

1 see the traffic that has been just outstanding because
2 of this Tesoro extension.

3 I have never seen the entire industry unite on
4 anything so powerfully, and I also hope that you can
5 think about every person that has ever surfed at
6 Trestles. And please protect it. Thank you.

7 MR. STRAWN: Gary Scott Thomas and Alex
8 Mintzer. And a Sharon Koch, Michael Takayama. Any of
9 those folks here? How about if we change notes -- there
10 were a couple of green cards that we held out. How
11 about you take a turn here? Give me your name and I'll
12 find you in the pile.

13 MR. SANDZIMIER: My name is Rick Sandzimier,
14 and I had some prepared statements, but having listened
15 to all the testimony today, I'm going to change gears
16 just a little bit and try and focus on some things that
17 I think we're losing sight of.

18 Good afternoon, Chairman Morales and honorable
19 board members. My name is Rick Sandzimier. I'm a
20 resident of the City of Mission Viejo for the past 20
21 years, a resident of Orange County for the past 32
22 years. Incidentally, the 32 years is the same year I
23 moved to Orange County from San Diego County is when
24 this road was put on the plans. So it's been in the
25 works for a long time.

1 I'm a professional planner with more than 28
2 years of experience in the community development
3 transportation planning -- strategic planning and I've
4 served as the planning transportation commissioner and I
5 know what it's like to hear testimony like you're
6 hearing today. I currently serve as a board member
7 involved in workforce investment, creation of jobs,
8 economic development and public safety non-profit.

9 I come here tonight before you because we're
10 already at night now, with all due respect, to ask you
11 to approve the project that is before you. And this is
12 where I'm changing gears. I had some prepared
13 testimony, but I just want to put in context some of the
14 things that I know as you as an urban planner for 28
15 years. And I want to focus on the independent utility
16 of the facility and the request before you today is the
17 5.5 mile segment.

18 It has standing as a former resident of
19 San Diego County and a resident of Orange County, I've
20 got family that lives in Temecula. I travel out to
21 Riverside County and San Diego County for business. I
22 know that this road has independent utility because it
23 proves access to the 74. I have been involved in major
24 investment studies in Orange County. Looking at the
25 board between Riverside County, San Diego County and

1 L.A. County and I can tell you that there's a challenge
2 on all fronts. It's no different than what you
3 experienced down in San Diego where the 78 and the 15
4 intersect, and the improvements that were so recently
5 done on the 15.

6 I travel those all the time. I've got family
7 that comes out and takes alternative routes on the
8 Ortega Highway, the 76 or the 78 to come visit me and
9 vice versa. This project provides a benefit to them.
10 There is a real development going on in San Juan
11 Capistrano. 40,000 homes approved the 5.5 mile segment
12 that independent utility provides benefit to that
13 development.

14 It removes the traffic off the 5 Freeway,
15 improves traffic flow and congestion relief for the
16 people that are traveling on the 5. It also provides
17 better access to those people who want to get to
18 Riverside County, whether they want to go down the 74 or
19 they want to travel down the 241 out to the 91 or the 15
20 or wherever else they want to go in the Inland Empire.

21 In 1993, I worked for a community that had the
22 experience the Laguna Beach fires. I'll try to wrap up
23 real quick. This is an important one. But for public
24 safety standpoint, the independent utility of this
25 facility in Laguna Beach and Irvine, when they were on

1 fire, there was limited access to the Canyon Road and
2 some small roads, and it was a nightmare to try to
3 evacuate people.

4 This road provides better opportunity to get
5 people in and out of this new community -- existing
6 community. I'll stop at that if you want to ask me some
7 questions. I can go into a whole lot of -- but with all
8 due respect, I'm asking for you to approve this project.

9 Orange County is investing its sustainability
10 development. Billions of dollars are going to transit
11 improvement. I have the pleasure to work on those. I
12 can talk to you about that. We are looking at a
13 multi-mode improvement strategy. This is just one piece
14 if that puzzle. Thank you very much.

15 MR. STRAWN: Don Skelton, Paul Hernandez and a
16 Patricia Colburn in that order.

17 MR. SKELTON: My name is Don Skelton. I live
18 in Oceanside, California. I'm a surfer, and I'm here
19 because I'm concerned about the fact that I think this
20 is -- this is really going to be a 16-mile project. And
21 I think it was kind of deceptive the way they segmented
22 this application.

23 We have had so many bad situations with traffic
24 polluting our oceans, people getting sick, I myself have
25 had a fungus from being out in the ocean and I think a

1 lot has to do with the runoff. And the other thing that
2 I think needs to be done on this particular issue is
3 that because it has been changed to a five-mile portion
4 of the road, that I really think the original CEQA
5 document needs to be supplemented and resubmitted and
6 therefore I would ask that you deny this application.
7 Thank you.

8 MR. STRAWN: Paul Hernandez. Patricia Colburn.
9 Ivan Ascary. And should be followed by Dan Jacobson, it
10 looks like, and then a Chad Nelson.

11 MS. COLBURN: Good afternoon. I would like to
12 thank all those who have opposed this freeway expansion
13 through the decades of however long it's been proposed
14 and whatever forms it's been proposed for their
15 tenacity, for their perseverance to protect a national
16 treasure.

17 I'm a big fan of surfers. When I was younger,
18 they played a big part in my world view and their
19 influence continues in how I live my life today, and I'm
20 also a big fan of Marines. When it comes to rough men
21 and women who stand ready to use violence on our behalf,
22 I sleep like a baby.

23 My hope today is this board demonstrates
24 leadership similar to that which denied the quail brush
25 plant for being an unnecessary taxpayer burden. Will

1 you protect the comments? Will you preserve a natural
2 wonder, or will you take a page from the Duke Cunningham
3 School of Civic Duty.

4 This is about credibility and a councilwoman
5 earlier today touched on this and coincidentally, we
6 were probably reading the same materials because it did
7 sound familiar. But I want to tie it back because she
8 is gone and her rebuttal is gone, and I kind of want to
9 tie it together before we leave today. This is about
10 credibility. And this should be the easiest no vote of
11 your tenure today or on the board.

12 Last week the L.A. Times reported that rating
13 agencies give TCA the lowest investment grade rating
14 while \$206 million of TCA notes are rated speculative or
15 junk. Maybe in 2008 the mainstream public didn't know
16 what a speculative bond is, but I can assure you we all
17 know what a speculative bond is in 2013. We have been
18 paying a heavy price in careers and loss of homes.

19 My understanding from Patti earlier today,
20 though, I spoke about TCA is already renigged on a -- on
21 a highway in Laguna. So they have a history of market
22 failure. Furthermore, according to the L.A. Times
23 article, ridership on California toll roads and highway
24 expansion have never reached predictions, so we build
25 them and no one comes. Thank you.

1 MR. JACOBSON: Good evening, Mr. Chairman and
2 honorable members of the board. My name is Dan
3 Jacobson. I'm from Tustin in central Orange County.
4 I'm a retired member of the Board of Directors of the
5 Richard and Donald O'Neil Land Conservancy and I was a
6 close friend of Richard O'Neil, the patriarch of Rancho
7 Mission Viejo.

8 I rise here today to speak against the
9 requested permit. Any analogy to the high-speed rail, I
10 think has to be rejected for a couple of reasons. One,
11 that's going through multiple districts. This
12 subproject is going through just your district. And
13 two, that was planned to be built in segments. This was
14 planned to be built all as one, a little over 16-mile
15 route. And then it was rejected and now it's being
16 built in segments.

17 So I think that the analogies simply do not
18 work. And I think you don't have before you today the
19 project. You have a subproject before you. And CEQA
20 requires that you pass on the project, so I would
21 encourage you to reject the permit until you have the
22 project before you.

23 And I leave with a quote from Richard O'Neil in
24 a letter he wrote to the Coastal Commission on January
25 31st, 2008. He said, "I built self-sustaining

1 communities that have greatly enhanced the future.
2 Building for the future is the right thing to do.
3 Building to destroy the future is the wrong thing to
4 do." Building the 241 extension is the wrong thing to
5 do. Thank you.

6 MR. STRAWN: Again, I may have butchered this
7 name, but Mahgum Asgarian.

8 FEMALE SPEAKER: He went.

9 MR. STRAWN: Chad Nelson.

10 FEMALE SPEAKER: He had to leave.

11 MR. STRAWN: Eva Lydick and then Andy Quinano.
12 Izzy Anderson. Going through them fast now. There's a
13 Kira Monahan. Devon Howard. Okay. So after Devon,
14 there's a Fred Mertz, if he is here. I didn't make that
15 up. And a Gisla Cosner.

16 MR. HOWARD: There's not much more I can say.
17 I feel that I'm opposed to it. I help run a \$38 million
18 dollar business here, 20 years. I just have a quick
19 question and I guess if I can, when I think of toll
20 roads and think about what was done with Laguna was this
21 selling this idea of helping traffic and really what it
22 did was it opened up a tremendous amount of development
23 which impacts water quality.

24 So I'm wondering if this thing goes through all
25 a way, do we look a little bit forward and think about

1 the development that comes as a result of because a lot
2 of the permitting for that development, it can't happen
3 if the infrastructure's not there. Yes, There are some
4 in the works, but they stop there. Once this things
5 goes all the way through and we all know that this is a
6 pig with lipstick. It is going to go through eventually
7 if passed.

8 Do we think that far ahead about the water
9 quality issues that are caused by the future development
10 that will be based off of this and keep in mind there's
11 water quality issues and we are in a water crisis. Lack
12 of water. So those are the things that concern me and
13 that's why I'm opposed, and I was just wondering, maybe
14 a yes or no, are you allowed to look that far forward on
15 future water quality issues based off the tremendous
16 development, based around that road? Is that a yes or
17 no?

18 MR. MORALES: I think we said we'll all base
19 our decisions on the record before us.

20 MR. HOWARD: I thought I would try. Thank you.
21 Appreciate it.

22 MR. STRAWN: One more time. Fred Mertz. Gisla
23 Cosner. Steve Williams. He'll be followed by Marty
24 Beson. And then Bond, just Bond.

25 MR. WILLIAMS: Thank you. Thank everybody for

1 the recitations. I know it's a long, long session here.
2 I'm Steve Williams. I'm a conservation biologist and
3 also an executive committee member of Surfrider West
4 L.A. Malibu. Came down with a bunch of folks.

5 As I came down in 2008, when I got this cool
6 shirt and I'm wearing here again and I'll wear it again
7 and again until this thing is put to rest. So anyway, I
8 believe the currently proposed upper watershed segment
9 of the project is piecemealing of the entire 16-mile
10 project, which is to be considered as such and is a
11 violation of CEQA.

12 I also think that the baseline water quality
13 studies one to two years minimum needs to be precluded
14 from any portion of the project rather than be conducted
15 concurrently with the project. These studies should
16 target predicted impacts such as brake dust, petroleum
17 products, et cetera, associated with highway runoff as
18 well as sedimentation rates from increased
19 impermeability -- impermeable surfaces of highways.

20 In my 15 years of monitoring water quality and
21 sensitive species in coastal Southern California
22 streams, my experience is this: Where you have roads
23 along the creek corridor, you have trash, water quality
24 degradation can introduce invasive species. For
25 example, where I work in the Santa Monica Mountains,

1 Louisiana crayfish have been introduced along Malibu and
2 Topanga Creek Highways in the creek there and are
3 devastating the populations of native amphibians as
4 their eggs are a delicacy for crayfish. That's one
5 example of many.

6 Also, while doing biannual creek cleanups with
7 volunteers along these creek corridors and along these
8 roads, we removed thousands of pounds of auto-ejected
9 trash and roadside dumping sites. I often wonder what
10 the creek would be like --

11 MR. STRAWN: Your time.

12 MR. WILLIAMS: I'm sorry. Well, just like to
13 wrap up to say -- okay. Please deny the TCA permit.
14 Thank you very much.

15 MR. BENSON: My name is Marty Benson. Thanks
16 for your patience in letting me speak. I want to start
17 with the elephant in the room or at least it appears to
18 me and speak to the independent utility issue.

19 Roads create traffic. Anyone with a cursory
20 understanding of the history of automotive
21 transportation can see that when you build a road, it
22 gets congested. So this road segment only has utility
23 for the TCA, not the overall mobility of the community.
24 It's going to create congestion.

25 And second of all, I actually attend all of the

1 TCA meetings and most of their financial committee
2 meetings, and their failed experiment. They were
3 supposed to monetize roads by incurring debt and then
4 pay off the debt with the tolls from the road by 2040.
5 No scenario that they can currently articulate allows
6 them to do that.

7 They have the impunity and monopolistic
8 advantage of a public entity and that avarice greed and
9 salesmanship of a private corporation. To allow them to
10 spend another dollar of revenue on PR, attorneys and
11 lobbying is a fraud on the people of California. I
12 really hope that you will deny this permit. Thank you.

13 MR. STRAWN: No, that's all they wrote down.
14 Ryan Wiggins. Then a Mark Babski and an Israel Adina.

15 MR. WIGGINS: Good evening. I'm Ryan Wiggins.
16 I'm the climate change director for an organization
17 called Transforming California. I'd just like to say
18 that this project is really a 20th Century band-aid for
19 a problem that really requires a 21st Century solution.

20 A lot has changed since 2008. We now have a
21 state climate change law, AB 32 which is in effect, and
22 we also have complimentary piece of legislation which is
23 called SB 375. SB 375 is our state's recognition that
24 we must reduce urban sprawl and we also must provide
25 alternatives to traditional automobile traffic in order

1 to combat climate change.

2 This project here is really a 20th Century
3 planning relic. We need to go do -- move forward is to
4 actually invest in public transportation, biking and
5 walking corridors, such as trains. These are the type
6 of solutions we really need to look forward to. We have
7 a saying in the transportation planning community which
8 says that fighting congestion by adding a highway
9 capacity is like fighting obesity by losing your thumb.

10 What that really means is if you build or
11 expand a freeway, yes, yes you will release some
12 congestion. But give it a couple of years, give it four
13 or five years. Empirical studies actually show that you
14 will get induced traffic from induced development and
15 you'll be back to square one.

16 And in terms of water quality, what will this
17 get us? This will get us more parking lots, this will
18 get us more roads, this will get us a lot more sprawl,
19 which is going to get us more urban runoff. And that
20 will directly impact this region, and then they will
21 come back to you and they will say, we need this next
22 section to move forward. And they will -- they will
23 show the study about the traffic that was induced from
24 this, and they will make the same case again.

25 And we can go ahead and decide whether to go

1 ahead and build a new segment or we can say at this
2 point, no. We need to look at real alternatives, we'll
3 create real solutions to this problem. Thank you.

4 MR. STRAWN: Mark Abski or Israel Adina. Scott
5 Harrison. Dan Sulberg.

6 MR. HARRISON: Thank you for staying late
7 tonight. I'm a volunteer as well and through that
8 process, I've become involuntary --

9 MR. STRAWN: Your name, sir?

10 MR. HARRISON: Scott Harrison.

11 MR. STRAWN: You took the oath?

12 MR. HARRISON: I will give my opinion whether
13 it's good or not. I signed the sheet, but I didn't
14 have -- do we have to tell the truth here? Well, I
15 appreciate your staying late and hopefully, make this
16 briefer than it already has been usurped on from that
17 part right there.

18 But three points that I would like to cover.
19 They have been covered today already. One of the major
20 arguments for the road is the jobs. The jobs will be
21 temporary. The roads will be permanent and the damage
22 to the environment will be permanent, so when the jobs
23 are long gone, the road will still be here and causing
24 the problems that we're here to try to figure out if the
25 road will actually cause these problems.

1 Number two, what brings us sort of unsavory
2 pall over the proceedings today are the fact -- and you
3 have seen it here in San Diego -- is toll roads. That
4 the toll roads eventually, they're bankrupt. Esther
5 talked about this a little bit. All the monies being
6 made up front; therefore, I can see the enthusiasm by a
7 group like TCA, well, let's build a toll road; big money
8 grab.

9 They -- the local toll roads have actually gone
10 down because the use has gone down. The toll roads in
11 the other parts of the state went bankrupt and had to be
12 taken over by municipalities to recover those costs to
13 the taxpayer, so we all pay for those types of things.

14 Marty talked about an elephant. I'm more the
15 800-pound gorilla that's here to talk about the clean
16 water. You have all heard the saying, all stuff flows
17 downhill and mitigation, filtration, CEQA, NEPA, swales,
18 whales, all that stuff, when you come to a significant
19 reign event, the stuff is going to continue to flow
20 downhill anyway. And just about everything that we
21 value here today, we're talking about is downhill from
22 this road.

23 Please deny the permit and thanks for staying
24 late again tonight.

25 MR. STRAWN: There are about five more here.

1 This one, I just can't make -- actually, I'll go down
2 the person that signed the oath is Eleanor Robbins.
3 There might be a Norris Robbins or something. No? And
4 just calling everybody once. If I called your name and
5 -- Valerie Johnson, followed by a something Richmond.

6 MS. JOHNSON: Hi. I'm Valerie Johnson. I'll
7 keep it short because I know everybody wants to get
8 home. Thanks for your patience.

9 I listened to many of the comments in the other
10 room from the elected officials. I couldn't help but
11 feel that the claim that is only about a short segment
12 that Tesoro extension is at best disingenuous, and I
13 couldn't help but be struck by how many who were
14 representing City Council were also part of the TCA
15 board. It doesn't seem to me that these folks could
16 possibly be unbiased about this.

17 It sounded really good on paper. The thing
18 about safety and more access and weighs out in case of
19 an emergency. Who wouldn't be in favor of that? The
20 problem is that every place toll roads have been built,
21 development has followed. And as many as the forms the
22 speakers have said is more detail, the sprawl, the
23 development follows and then so does the traffic. It's
24 at best a Band-aid.

25 I also want to say that it makes me feel a bit

1 strange to be here speaking on the opposite side from so
2 many representatives of unions that I see here, since
3 I'm a proud union member myself. But I think that this
4 jobs versus conservation dichotomy that has been set up
5 is a very false one. We need to have the jobs, but they
6 should be jobs that are sustainable and contribute to a
7 better environment. Taxpayer money should not be spent
8 on something that is going to degrade our environment.
9 Instead it should be spent on increasing solar energy
10 and perhaps some of the people, you know, the taxpayer
11 money could be much better spent helping to much more
12 quickly truck out the toxic awful that was left behind
13 by San Onofre nuclear generating station. Thank you.

14 MR. STRAWN: Charles Richmond and then John
15 Holder and a Larry Smith, and then we have T.M. Johnson.
16 And was there any other green cards that didn't --
17 actually, why don't you come up next.

18 DR. LOCKREED: My name's Dr. Bill Lockreed.
19 I'm currently retired, but I spent 45 years in the
20 aerospace industry as an engineer and 25 of those as a
21 program manager, relatively large programs. And I'm
22 just amazed. I got prepared notes, but as I heard for
23 this last hour some of the bizarre comments. Number
24 one, taxpayer dollars being used for this.

25 There's no taxpayer dollars being used. Number

1 two, just going through a state park. It's not going
2 through a state park. Number three, it's going to be 16
3 and a half miles long. It's not. It's 5.5 miles long.
4 What you got in front of you, the CEQA which your staff
5 reviewed, which you -- you're supposed to vote on only
6 the CEQA.

7 What we've got here, you got a gold standard on
8 how a highway will be built. It's got this porous
9 pavement which is very high tech. It's got a very
10 sophisticated filtration system. They have done -- the
11 rest of California will look at this as the best highway
12 in the State of California. So forget all this other
13 stuff you're hearing, because most of it is just
14 hyperbole.

15 The important thing is 5.5 miles, the CEQA
16 study was approved after extensive study by your own
17 staff. Go ahead and approve this thing and let's move
18 on and get on with this thing and approve what your
19 staff is recommending. Thank you.

20 MR. STRAWN: T.M. Johnson.

21 MR. JOHNSON: Sir, once again, I want to thank
22 you for your time and your committed efforts to see one
23 way or the other the truth of the matter and for your
24 diligence in giving a good report on it.

25 I've sat in the back from the beginning since

1 this morning and I've listened to both sides and I'm for
2 it. I've seen growth. And I'm from San Diego and I
3 know what it did when 805 went over the 8. When nobody
4 had to drive 163 to go north. And so with that is going
5 to come production. There's going to come jobs.
6 There's going to be more schools. We have a state that
7 everybody wants to live in. We have kids who want to
8 own their own homes one day. We have to put them
9 somewhere.

10 So we have to do something to make that
11 available for them. I want to know how many people in
12 this room do not drive a car. If we're going to get
13 down to the brass tacks of it all, it's about traveling.
14 The best direct approach to a situation is forge
15 straight through. This is a hurdle we can get over it
16 or we can let it stop us. But we've got to do one thing
17 or the other. Stop production or make room for others.

18 I've seen road rage. I know what it's looks
19 like. I've been in L.A. where the traffic was stopped
20 for longer than a half hour to go five miles. So if
21 this helps a community grow and it gives them the time
22 they need to get to where they're going without leaving
23 a half hour earlier, we need to help them.

24 If it's about the environment, we waste more
25 gas sitting still than we do traveling. That's going to

1 help everyone in the long run. I's tell you what. I
2 wouldn't want to go five miles to the grocery store over
3 a dirt road to get there and get back on bicycle. Just
4 telling you, man.

5 MR. MORALES: Okay. Those are all the public
6 comment cards that we got.

7 MR. SMITH: You called me and you didn't let --
8 give me the opportunity to speak. I was walking up,
9 so...

10 MR. STRAWN: Your name?

11 MR. SMITH: My name's Larry Smith. I presently
12 reside at Provonda, which most folks know as Long Beach
13 in Signal Hill area, and I'm obviously here to ask you
14 to deny the permit. I've been indigenous for over ten
15 years, and I probably spend about 99 percent of my time
16 reporting on the genocide or forms of genocide
17 perpetuated against indigenous peoples and their
18 respective first nations.

19 And one document that this board may or may not
20 be familiar with that does apply, is the United Nations
21 declaration under the rights of indigenous people and
22 was passed by the nation's general assembly on September
23 13th, 2007. And I want to refer to two articles.
24 Article 8, Section 1 specifically states that
25 "Indigenous people, individuals have the right not to be

1 subject subjected to forced assimilation or the
2 destruction of their culture."

3 Article 11, Section 1 specifically states,
4 "Indigenous people have the right to practice in and
5 realize their culture, traditions and customs. This
6 includes the right to maintain, protect and develop the
7 past, present and future manifestations of their
8 cultures such as archaeological and historical sites,
9 artifacts, designs, ceremonies, technologies and visual
10 and performing arts and literature."

11 Now, there are 20 more articles that equally
12 apply in this situation, and I wanted to ask that all of
13 you in this room, staff, the board here, members of the
14 TCA community members, not be complicit in committing an
15 act of genocide by allowing this part of the toll road
16 to destroy a portion of what's remaining of the nation.
17 If you destroy the nation, you destroy the culture,
18 that's called genocide. So I'm asking you to deny the
19 permit. Thank you.

20 MR. MORALES: Okay. That's it for the public
21 comments. I think we have been going for a while and
22 our court reporter probably needs to rest her fingers.
23 Yeah, I know that NGO's might.

24 Okay. I'm going to give you guys two or three
25 minutes max. I'm going to add it to your time if you

1 wish to add that because we do believe that you used
2 your 30 minutes.

3 MR. WHITE: I have no objection to that. Thank
4 you. And I appreciate your patience. I will try to
5 make it brief. I want to bring it back. We heard a lot
6 of testimony today -- bring it back to the issues that
7 you're faced with today, the issues that pertain to your
8 jurisdiction and what your options are today.

9 But first I want to respond to a couple of
10 misconceptions that have been floated out there, a
11 couple of important ones anyway. The first is with
12 respect to the SAM. We heard that because the TCA has
13 looked at the SAM and tried to comply with the SAM, that
14 we shouldn't be complaining about the HMP and having to
15 do additional HMP conflicts with the timing of that.

16 The SAM is a planning level document. It's not
17 a project level document. It's not intended to be a
18 project level document. I think you heard from one of
19 authors of the SAM, PWA last time that this was not
20 intended to govern project level decisions. It's
21 exactly what the county HMP requirements are designed to
22 do. That's why your staff is recommending that those be
23 complied with. What we're saying is until that analysis
24 is done, you should not be hearing this application.

25 So this one, we think is a no-brainer. You

1 should just -- you should deny this application, require
2 they do the analysis before taking any further action.
3 To get back to the larger issue, the issue of what is
4 the project and whether the project has independent
5 utility.

6 I think the biggest misconception that we have
7 so far tonight is that this 5.5 segment of toll road is
8 needed to serve the Rancho Mission Viejo development.
9 The Rancho Mission Viejo development was approved by
10 Orange County. It has its own transportation plan. The
11 county itself determined that the toll road was not
12 necessary, was not a necessary part of the
13 transportation plan for that project. The
14 transportation will be adequately served for those
15 14,000 units if and when they're ever built by that
16 transportation plan as part of the project.

17 It includes an arterial called F Street which
18 as TCA itself has noted, is -- would serve generally the
19 same purpose as the toll road. It's a multi-mobile full
20 access road that people can drive on, they can walk on,
21 they can ride their bike on, they can access it from
22 side streets unlike the toll road.

23 It is a complete fallacy that the toll road is
24 needed at all to serve Rancho Mission Viejo. That is a
25 critical point that you have to understand. So back to

1 what are your options or what are your obligations at
2 this point. I think I've already mentioned that you're
3 required by CEQA to make findings before you approve the
4 project with respect to the significant impact. This is
5 something that you're not -- there is no definite of the
6 TCA on these findings. They have to be independent
7 findings.

8 I should -- CEQA provides -- TCA is wanting to
9 use the 2006 EIR for this project. There is a process
10 under the CEQA regulations for using an EIR from another
11 project for a separate different project. Those
12 regulations say if you want to do that, you take the
13 EIR, you circulate it the way you circulate all the
14 EIRs, you recirculate it for 30 days. You have to
15 respond to comments just like you would under a normal
16 CEQA process.

17 If TCA wanted this to be a separate project,
18 they could've taken advantage -- if they wanted to use
19 the 2006 EIR, they could have taken advantage of that
20 process and done that. They chose not to. Instead they
21 chose to call this a segment or a -- a phase or whatever
22 you want, of the original project. They relied on the
23 2006 EIR, and that's all you have before you to make
24 your findings. That EIR has over a dozen water quality
25 related significant impacts.

1 You found in 2008 that the mitigation provided
2 for those impacts was not enough to mitigate those
3 significant impacts. You should do the same thing
4 today. It's not a difficult decision. They want to
5 make this a separate project, let them go through that
6 process. They haven't done it yet. They've only given
7 you one option and that is to make mitigation findings
8 for the project as a whole. We urge that you do what
9 you did in 2008 and reject the project. Thank you very
10 much.

11 MR. MORALES: Break, folks. And as soon as we
12 come back, we're going to start with TCA and then we
13 will go to staff.

14 (Recess)

15 MR. MORALES: Please take your seats. Okay.
16 Folks, the lights will come on. It's not from -- it's
17 not from the -- it's just an energy-saving timer. It
18 should indicate how long we have been going. So I think
19 that Mr. Thornton, you're your okay starting in
20 semi-darkness.

21 MR. THORNTON: No problem, Mr. Chairman and
22 members of the board. We appreciate your patience very
23 much. I want to bring this hearing back to where it
24 began, Mr. Chairman. Your introductory comments indeed
25 with having witnesses take the oath was, I think it's

1 important to focus.

2 Why is it that witnesses before a water board
3 hearing on the WDR are required to take the oath because
4 you're sitting as quasi-adjudicatory body. You're not
5 sitting as a transportation policy entity, you're not
6 sitting for the transportation commission, you're not
7 sitting for the water quality entity, you're not sitting
8 as a greenhouse gas entity, you're not sitting as a
9 legislative body. You're the regional water quality
10 control board and your obligation is to apply the rules
11 and regulations of the State of California applicable to
12 waste discharge. That's your role and responsibility.

13 That's why as the chairman appropriately noted
14 this morning, there are restrictions on ex-parte
15 communications because you're sitting as a
16 quasi-adjudicatory body. So your obligation is to
17 decide this matter on the basis of not emotion, not
18 policies about growth in California, not whether some of
19 us would prefer to have a population of less than 38
20 million people, but rather to fairly apply the laws of
21 the State of California as they apply to water quality
22 and the regulations of the State of California as they
23 apply to water quality and has been articulated in your
24 basic plan and the water committee quality facts of this
25 matter.

1 And the facts of this matter are as your staff
2 has articulated that you have a project before you that
3 involves the impact to four-tenths of an acre in stated
4 waters that has 15 to one mitigation ratio, an unheard
5 of mitigation ratio, but your staff has drafted a
6 tentative weight discharge order that requires this
7 agency, this public agency by the way, public agency
8 that represents two million people live in Orange
9 County.

10 To me, the highest water quality standards of
11 any highway in the State of California. That's what
12 your staff is requiring. So your obligation is to apply
13 the law to the facts -- to the facts presented, and
14 there have been no facts presented here today to
15 contradict the findings of your staff. And I refer to
16 paragraph Roman 2, dash, K on Page 8 of the tentative
17 order where your staff findings are through compliance
18 -- quote, through compliance with the waste discharge
19 requirements of this order, the project will not result
20 in State water quality standards being violated.

21 And in Roman two, dash L, on Page 9 of your
22 tentative order, your staff says, quote, the order
23 contains waste discharge requirements to ensure
24 beneficial uses are maintained or enhanced through
25 mitigation and monitoring requirements for impacts to

1 waters of the State.

2 With regard to the CEQA issue, your council has
3 advised you that you are obligated as a matter of law to
4 presume that the CEQA documentation prepared by the TCA
5 complies with CEQA. Now lawsuits have been filed.
6 There is another entity, the judicial branch of our
7 water system whose authority and jurisdiction is to
8 review the TCA CEQA determinations. And they will do
9 that in due course.

10 And a judge -- Superior Court judge and perhaps
11 a court of appeals will decide that issue, but that's an
12 issue to be decided in that venue, not in this venue.
13 Your council has advised you that there are no -- there
14 is no basis to require additional environmental
15 documentation.

16 Now, we have heard testimony on a variety of
17 matters. Again, we have been here a long time today.
18 This project comes nowhere close to Trestles, has
19 nothing to do with Trestles. It's not going to impact
20 Trestles. It's nowhere to Panhe. It's ten miles away
21 from Panhe. There are no sacred sites. There are no
22 burial sites. There are no facts to suggest that this
23 project will have those impacts but again, refocusing on
24 the water quality issues, there's been no facts
25 presented to you today that contradict your staff's

1 recommendations to approve this WDR.

2 Finally, I just want to respond briefly to
3 suggestions that determination by the opponents that the
4 denial without prejudice in 2008 somehow constituted
5 some kind of binding determination. Again, let's focus
6 on the law. The State water board's regulations Section
7 3831H provides denial without prejudice, means inability
8 to grant certification for procedural rather than
9 substantive reasons.

10 This form of denial carries with it no
11 judgment, so the suggestion again that the denial
12 without prejudice of the certification in 2008 has any
13 applicability to this proceeding is simply wrong as a
14 matter of law. I submit to you, Mr. Chairman and
15 members of the board, that you have before you a project
16 that meets all of the applicable water quality standards
17 protects the beneficial uses.

18 That's the role of the water board and we urge
19 your approval of this WDR. Thank you for your time and
20 patience. Thank you very much.

21 MR. MORALES: Are there any further comments by
22 staff at this point?

23 MR. BRADFORD: Thank you. In closing, I would
24 like to clarify a few pieces of information brought up
25 today. Approving projects based on a refined conceptual

1 design plan at the time the WDR are issued is common
2 practice by the water board. Therefore, approving the
3 WDR for this project during this stage is appropriate.

4 Project impacts to water have been avoided and
5 minimized to the maximum extent practical. The order
6 contains requirements that are specific and enforceable.
7 Staff finds that the mitigation requirement of the order
8 adequately replaced aquatic resources that would be
9 impacted by discharges of fill associated with the
10 project.

11 The compensatory mitigation sites must be
12 maintained and protected in perpetuity in a manner that
13 maintains or improves the functions and values of the
14 sites for the variety of beneficial uses of water that
15 it supports. The order requires that TCA provide annual
16 reports for compensatory mitigation sites until the
17 sites be all long-term success criteria identified in
18 the approved mitigation and monitoring plan that it met
19 to satisfaction the San Diego Water Board.

20 Moreover, TCA must provide financial assurances
21 for the mitigation sites acceptable to the San Diego
22 Water Board. The financial assurances instrument
23 shall -- shall allow the San Diego Water Board to
24 immediately draw on the financial assurance if the
25 San Diego Water Board determines in its sole discretion

1 that TCA has failed to meet the mitigation obligations.

2 There were some comments made about cultural
3 and archaeological impact. Please keep in mind impacts
4 to archaeological resources are impacts that pertain to
5 the adequacy of the environmental documents prepared by
6 TCA and to resources outside the board's purview.

7 There were also comments regarding the runoff
8 management plan. Revised tentative order requires that
9 the updated runoff management plan comply with the
10 Orange County HMP and water quality management plan.
11 These requirements must be met regardless of when the
12 runoff management plan is updated and submitted to the
13 water board.

14 A suite of BMPs -- a suite of appropriate BMPs
15 will be installed to reduce the discharge of fluids in
16 the project runoff. Incorporation of the BMPs into the
17 on-site drainage system will result in acceptable runoff
18 water quality before entering the receiving water.

19 Staff has considered the testimony given today
20 and maintains its recommendation to adopt the revised
21 tentative order. Thank you.

22 MR. MORALES: I think that concludes all of the
23 testimony that we are going to be receiving on this
24 matter, so at this point we go into our deliberations;
25 correct.

1 MS. HAGAN: So Chair Morales, so formally
2 closing the public hearing?

3 MR. MORALES: Yes. At this point, we are
4 formally closing the public hearing. Thank you all.

5 So we have heard staff's recommendation and
6 think -- oh, boy, the board -- where are we, folks?

7 MS. KALEMKIARIAN: I'll start. I'll start
8 because I know we all want to get home. And I first
9 want to thank both sides of the issue because this was
10 very helpful to me today, and I feel that while we got
11 sidetracked sometimes on transportation policy and good
12 serving spots, we did get a very good exposition of the
13 issues.

14 I guess what's most persuasive to me, being --
15 not having been here in '08 when this was last reviewed,
16 was reading through the attorney general's complaint or
17 writ, actually, because I do not believe that the
18 project is Tesoro, and I think that the project has been
19 presented is the entire highway. And the reason I think
20 that is that there have been no alternatives at all
21 brought forth by the TCA to tell us well, this is the
22 first segment that's needed because we've got these
23 homes here. It's not going to have an environmental
24 impact. The water quality standards will be met, but
25 the rest of it, what's happening there?

1 There's been no explanation. And from what I
2 can gather from all the evidence that was presented to
3 us, that was a very big issue in 2008, and it's still an
4 issue. And there's not alternatives being presented. I
5 think the staff has done a wonderful job. I don't -- I
6 don't question the staff's conclusion that this segment
7 meets water quality standards. That's not why I'm going
8 to vote against the staff's recommendation. It's
9 because I think that is not the project. In honesty, it
10 is not the project.

11 If this had come forward as the entire highway,
12 or an alternative to the entire highway and the
13 environmental impact and the water quality -- not the --
14 the water quality issues, the discharge permit had been
15 everything that we evaluated, I'm not going to do
16 transportation policy. I'm not elected official in
17 Orange County. You are correct, sir, our job is as an
18 adjudicating body and as regulators, and I do not think
19 we were provided with the project, and I think the staff
20 evaluated what it was presented with and did a great
21 job, but we have a different function.

22 So I can't approve the staff's recommendation.
23 Now, I'm persuadable otherwise, but I just don't believe
24 that we have been given the project. So as the attorney
25 general says in her first cause of action, it's not been

1 explained, the environmental impacts or the evaluated
2 for the entire project and the water quality standards
3 by definition as well.

4 MR. MORALES: Anybody else or should we vote?

5 MS. KALEMKIARIAN: Am I standing alone perhaps?

6 MR. STRAWN: I wish I could totally agree with
7 you. Because I don't like this project. I don't like
8 the toll road through the hill. I don't like what it
9 does to endangered species. I don't like the fact that
10 it's disturbing some tribal sites. But as the water
11 quality control board of San Diego region, those cannot
12 be the deciding factors. If we were to decide using
13 those factors, our ruling would be appealed and I think
14 we would lose it.

15 So just maybe it's blinders on, but looking at
16 the project that we were presented, and I -- likewise, I
17 don't think we can expand it to some potential larger
18 project, even though we might believe that could happen.
19 Looking at the evidence that's in front of us and
20 looking at the revised tentative order and what it is
21 we're approving, I reluctantly think I need to vote in
22 favor.

23 MR. ANDERSON: Well, I'm not afraid of slippery
24 slopes. This is a 5.5 mile section serving a fairly
25 large planned community, and I will support the --

1 second your -- is that a motion?

2 MR. MORALES: Net yet.

3 MR. ANDERSON: I would support you on support
4 the -- I think it's a whole other discussion for when we
5 do move through the sacred sites and when we do go down
6 towards the I-5 connection, and I'm -- I agree that will
7 be a project and it's part of the project. In this
8 case, I feel we're -- 5.5 well mitigated, and so I will
9 support the staff's position on this.

10 MR. ABARANEL: I think the project that's in
11 front of us is actually pretty clear. It's the project
12 that was presented here in 2008 and rejected by the
13 people of California in the United States of America. I
14 have heard from Orange County elected officials more or
15 less heard from the counsel, Mr. Thornton, that the
16 project is the entire extension from where 241 ends now
17 to somewhere intersecting Interstate 5 and the
18 environmental impact report that is before us -- that's
19 not actually before us -- it was before us. Clearly
20 evaluates the whole project -- that project was rejected
21 and I don't see any reason to accept part of it.

22 I feel as though somebody came before this
23 board and the Coastal Commission and the Department of
24 Commerce basically the people of California and the
25 United States some years ago and said we want to build a

1 bridge and that was rejected. And somebody is coming
2 back now and saying let's build a quarter of the bridge.
3 It's not going to impact traffic. Right. Not going to
4 cost as much. It's not going impact this or that now,
5 but the whole project is clearly identified as impacting
6 water quality and many other things.

7 I think our obligation here is not to be
8 blinded by a representation of part of the project, but
9 to recognize that the entire project impacts water
10 quality in a way that this board should not support.
11 Some people might say I made up what the project is, but
12 I went to the website of the Transportation Corridor
13 Authority and it shows the project going all the way
14 through Interstate 5, somewhere kind of in San Diego
15 County. I don't know if that's where they're going to
16 do it.

17 But that's the goal of their project and
18 they're asking us to support that, and I cannot.

19 MR. MORALES: Wow. I'm really torn on this one
20 because while I got to say it's a -- a story. Having
21 traveled on the 241 often, but the -- the time I recall
22 actually traveling on the 241 was during one of the big
23 fires that we had when my wife and I were at a
24 conference in the desert and our two young children were
25 with a good family friend at our home here in San Diego

1 and fires raged all over the county. And the only way
2 that we were able to get home to our kids with all the
3 roads shut down was by taking a portion of 241.

4 So I understand personally the utility of a
5 number of roads for safety reasons. And I personally
6 benefitted, you know, by it. I'm grateful for that.
7 But that really can't be a part of my decision and the
8 decision will be based on the information I have before
9 us. I think my decision actually might be different if
10 it were the entire segment, frankly. But as a five and
11 a half mile, I guess, portion of the overall project, I
12 really am sort of the same mind as two of my fellow
13 board members.

14 And -- and I -- I think -- and I've said many
15 times that we have the best staff in the state and they
16 do excellent work and, you know, I take them at their
17 word, and I know that their work and analysis is
18 thorough and is as good as we're able to get, but we
19 have to make some sometimes difficult decisions and I
20 don't know anyone who's ever surfed at Trestles. I've
21 never been there. I don't go to Trestles and, you know,
22 okay, folks. It's going to impact Trestles.

23 I don't know. As I see it, the project as
24 envisioned may end up there; may not. I don't know. I
25 do think it's more than five and a half miles, though.

1 I was torn with a lot of the questions about CEQA and
2 TCA, you know. They went -- they provided us with an
3 NOD, which -- which I think is very, very helpful.

4 But I think there are some ambiguity in what we
5 are required to do and not do in terms of our analysis,
6 and I know there are arguments that go both ways. And
7 we are a semi-adjudicative body and while the threat of
8 litigation is always a possibility for us, quite
9 frankly, it's going to happen no matter what we decide.
10 So you know, it is with frankly a lot of reluctance that
11 I can't support the staff.

12 MS. KALEMKIARIAN: I want to take a stab, if I
13 might. But are you finished, Chair?

14 MR. MORALES: I am.

15 MS. KALEMKIARIAN: Because really, it's only
16 when I put this in my mind in context because I was
17 wavering back and forth because when I looked at the way
18 the AG analyzes it, it hit on -- the nail on the head
19 for what was bothering me. And that is the description
20 as the project in quotes as consisting only as the
21 Tesoro extension. I'm reading from the complaint -- the
22 grid -- as the first 5.5 mile segment is contrary to
23 decades of representation by the TCA as well as its most
24 recent characterization of the Tesoro extension as the
25 first step towards completion of the entire Foothill

1 South extension.

2 This is not an adequate project description and
3 that's what bothers me. To say that this has an
4 independent beneficial review, I have to refer to
5 counsel for the NGO, said look, there's already been a
6 transportation plan approved. And it's not my business
7 whether there's been an independent beneficial use.
8 That's a transportation question.

9 My business is have I been given a project
10 description that's accurate to make a water quality
11 decision in it, and I don't think that was the staff's
12 task, frankly. They had their application. They
13 reviewed the application. From a public policy
14 perspective, I do not believe that the project
15 description is genuine. And if that project description
16 is the entire highway, show me the entire highway and
17 then we make a decision if water quality standards are
18 going to be compromised. We were not presented with
19 that, which Mr. Abaranel said.

20 And it's not that I like it. I'm not a big fan
21 of big highways. I'm not sure that I wouldn't prefer to
22 see there be less growth, but, you know, the gentleman
23 from the union who spoke last was very eloquent. We
24 can't just stop growth in the state, and that's what I'm
25 not about. But I do think you have to be genuine and

1 accurate and I do not believe the project description is
2 accurate the way it's being presented and that's my
3 problem. So...

4 MR. MORALES: I know. Okay. So what do we do
5 here, folks? I get a motion either way. Anybody?

6 MR. ABARANEL: I move we do not approve
7 tentative order R92013 triple 07.

8 MS. KALEMKIARIAN: Second.

9 MR. MORALES: We have a motion that we not
10 approve the tentative order before us. All of those --

11 MS. HAGAN: Mr. Chair, may I make a suggestion
12 just for you to consider. If that motion were -- the
13 board is inclined to go -- one -- one option is for the
14 board to allow staff to draft a resolution stating the
15 board's reasons for not approving the project, that
16 would be brought back at the next meeting, but it's not
17 required but it would give an opportunity to more
18 clearly refine the reasons for that action.

19 MR. ABARBNEL: May I respond. That's always
20 possible, but I think the reasons with one exception
21 that I have, I tried to articulate. I hope they're on
22 the record. If it's the opinion of counsel and the
23 senior staff, that would be very important to do, I
24 would be happy to go along with it. But if it's not so
25 important, I just as soon proceed now.

1 I do have another item that's important to me
2 and maybe that would be -- which I haven't articulated
3 yet. It's not important as the one that I did
4 articulate, so I would like to know just how big a deal
5 this is.

6 MS. KALEMKIARIAN: I -- we were both just
7 discussing it, and I do think you, the board members,
8 have fairly clearly stated their views in their
9 deliberations, so I don't think a resolution is critical
10 at this point.

11 MR. MORALES: I'm all for not punting. I --
12 like I said, that's why we make the big bucks.

13 So there is a motion and a second that the
14 tentative order not be approved, and I guess I'll call
15 for a vote. So all those in favor of the motion as
16 stated nonapproval of the tentative order, signify by
17 saying aye.

18 IN UNISON: Aye.

19 MR. MORALES: Those opposed?

20 MR. ANDERSON and MR. STRAWN: No.

21 MR. MORALES: Three, two, motion carries. I
22 think that's it for tonight.

23 (Whereupon the hearing was concluded at
24 7:15 p.m.)

25 * * *

1 I, Johnell M. Gallivan, Certified Shorthand Reporter for
2 the State of California, do hereby certify:

3
4 That the hearing was taken by me in machine shorthand
5 and later transcribed into typewriting, under my
6 direction, and that the foregoing contains a true record
7 of the hearing proceedings.

8
9
10
11 Dated: This ____ day of _____, 2013,
12 at San Diego, California

13
14 _____
15 Johnell M. Gallivan
16 CSR No. 10505

17
18
19
20
21
22
23
24
25

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
June 19, 2013

ITEM: 9

SUBJECT: Public Hearing (Continued): Waste Discharge Requirements: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Order No. R9-2013-0007) (*Darren Bradford*).

PURPOSE: To consider adoption of revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County.

RECOMMENDATION: Adoption of the revised Tentative Order No. R9-2013-0007 is recommended.

DISCUSSION: This Executive Officer Summary Report (EOSR) supplements the EOSR and Supplemental EOSR provided for Item 8 of the March 13, 2013 San Diego Water Board meeting (**Supporting Document No. 1**). At that meeting, the San Diego Water Board opened a public hearing to consider adoption of the Tentative Order for the Tesoro Extension (SR 241) (Tesoro Extension or Project), which was attended by over 200 people. The San Diego Water Board heard extensive testimony on the Tentative Order from a large diverse group of stakeholders including San Diego Water Board staff, F/ETCA, Save San Onofre Coalition (SSOC), elected officials, and other interested persons. The testimony included concerns that F/ETCA's Final Subsequent Environmental Impact Report (FSEIR) is not a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely upon in considering adoption of the Tentative Order.

At the conclusion of the hearing proceedings on March 13, 2013, the San Diego Water Board continued the public hearing to today's meeting to allow staff and counsel adequate time to 1) evaluate the comments submitted on CEQA compliance, 2) prepare responses to the remaining issues, and 3) draft revised conditions and/or additional

findings as appropriate for inclusion in the Tentative Order.

As directed by Board Chair Morales at the March 13, 2013 Board meeting, San Diego Water Board member questions (**Supporting Document No. 2**) were sent to F/ETCA and SSOC and responses were required by March 29, 2013. Timely written responses were received from F/ETCA and SSOC on March 29, 2013 (**Supporting Document Nos. 3 and 4**). Additional questions posed by Board members during the March 13 Board meeting will be addressed during the Board staff and F/ECTA presentations at today's meeting.

On April 18, 2013, the F/ETCA Board of Directors adopted Resolution 2013F-005 entitled, "*A Resolution of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency Approving Addendum to Final Subsequent Environmental Impact Report and Approving Conceptual Design of the Tesoro Extension Project*" (**Supporting Document No. 5**). In adopting the Resolution, the Board of Directors approved a conceptual design plan for the Tesoro Extension Project and adopted an Addendum to the Final Subsequent Environmental Impact Report (FSEIR) which can be used to fulfill the environmental review requirements of CEQA for the Tesoro Extension (**Supporting Document No. 6**). F/ETCA filed a Notice of Determination regarding the approval and adoption of the Resolution with the State Clearinghouse on April 19, 2013 for state agency review as required under CEQA Guidelines Sections 15205 and 15206 (**Supporting Document No. 7**). San Diego Water Board counsel has reviewed the information submitted in responses to the Board's CEQA questions and considered the findings and conclusions of the F/ETCA Board of Directors in their adoption of Resolution 2013F-005. Based on these and other considerations, San Diego Water Board counsel has concluded that the CEQA documentation provided by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering adoption of the revised Tentative Order.

The testimony of participants at the March 13, 2013 Board meeting also included concerns with the Tesoro Extension Project meeting the coarse (bed material) sediment supply preservation requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). The testimony focused on how the construction of the Tesoro Extension would affect the supply of bed material sediment

to Chiquita Creek, Gobernadora Creek, and San Juan Creek. F/ETCA testified that the findings and conclusions of the *Baseline Geomorphic and Hydrologic Conditions Report* for Rancho Mission Viejo (PCR, PWA, and BHI, 2002), demonstrated that constructing the Tesoro Extension through the headwater channels in Chiquita Creek and Gobernadora Creek would not adversely impact the supply of bed material sediment to those streams. The SSOC maintains that neither the overall purpose nor the detailed findings of the *Baseline Geomorphic and Hydrologic Conditions Report* support F/ETCA's assertion.

Tentative Order No R9-2013-0007 has been revised to address concerns regarding Project impacts to the coarse bed material sediment supply to downstream receiving waters. The Tentative Order now requires F/ETCA to submit and implement an updated Runoff Management Plan by October 31, 2013, prepared and certified by a properly qualified engineer, that clearly indicates the means for compliance with all of the requirements in the HMP, including those regarding coarse bed material sediment supply. The HMP contains provisions for avoiding coarse sediment yield areas and implementation of measures that allow coarse sediment to be discharged to receiving waters to prevent sediment deficit. A detailed discussion of this issue can be found in response to Comment No. 1 in the San Diego Water Board Revised Response to Comments document (**Supporting Document No. 8**). This document replaces and updates the previous version that was prepared for the March 13, 2013 Board meeting. The Revised Response to Comments document addresses all timely submitted comment letters that were received by March 1, 2013.

Final Revisions to the Tentative Order

San Diego Water Board staff is proposing final revisions to the Tentative Order for the San Diego Water Board's consideration. These revisions are shown in redline/strikeout text in the Revised Tentative Order (**Supporting Document No. 9**) and include:

1. A requirement to update, certify, and implement the Runoff Management plan (RMP) (See section V.B of the Revised Tentative Order);
2. A requirement to develop and implement a monitoring

program to protect water quality and assess compliance with the receiving water limitations of the Tentative Order (see Finding G and section VIII.A of the Revised Tentative Order);

3. Changes to the CEQA findings to acknowledge that the CEQA documentation produced by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering the adoption of the Tentative Order (see Finding N of the Revised Tentative Order); and
4. Corrections of typographical errors and incorporation of suggested text by stakeholders.

By letter dated May 30, 2013 the Revised Tentative Order was released for public review and comment. Consistent with the direction provided by Board Chair Morales at the March 13, 2013 Board meeting, further written comments are limited to: 1) revisions to the Tentative Order since March 13, 2013; and 2) comments pertaining to the Revised Tentative Order and CEQA. Comments on the Revised Tentative Order must arrive no later than 5:00 p.m. on June 7, 2013. San Diego Water Board staff responses to comments received on the Revised Tentative Order and any errata for the Revised Tentative Order will be addressed during staff's presentation at today's meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. EOSR and Supplemental EOSR for Item 8 of the March 13, 2013 San Diego Water Board meeting.
2. San Diego Water Board Member Questions for Written Response Due March 29, 2013 by 5:00 p.m.
3. Shute, Mihaly & Weinberger LLP, Save San Onofre Coalition's Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
4. Nossaman LLP, Foothill/Eastern Transportation Corridor Agencies, Response to San Diego Water Board Questions for Written Response, dated March 29, 2013.
5. A Resolution of the F/ETCA Board of Directors Approving the Addendum to the Final Subsequent Environmental Impact Report and the Conceptual Design of the Tesoro Extension Project. (Resolution

- No. 2013F-005), dated April 18, 2013.
6. Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report, dated February 2013.
 7. F/ETCA Notice of Determination, dated April 23, 2013.
 8. San Diego Water Board Revised Response to Comments document.
 9. Revised Tentative Order No. R9-2013-0007 with attachments.

1 NOSSAMAN, LLP
 2 ROBERT D. THORNTON (SBN 72934)
 3 JOHN J. FLYNN III (SBN 76419)
 4 SCOTT N. YAMAGUCHI (SBN 157472)
 5 18101 Von Karman, Suite 1800
 Irvine, California 92612-0177
 Telephone: (949) 833-7800
 Facsimile: (949) 833-7878

F I L E D
 Clerk of the Superior Court

JAN 12 2011

BY: A. LUM

6 Attorneys for Defendants,
 7 Foothill/Eastern Transportation Corridor Agency;
 The Board of Directors of the Foothill/Eastern Transportation Corridor
 Agency

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

11 CALIFORNIA STATE PARKS FOUNDATION,
 12 et al.,

13 Petitioners,

14 vs.

15 Foothill/EASTERN TRANSPORTATION
 16 CORRIDOR AGENCY, a Joint Powers Agency;
 BOARD OF DIRECTORS OF THE
 17 Foothill/EASTERN TRANSPORTATION
 CORRIDOR AGENCY; and DOES 1 through 40,
 18 inclusive,

19 Respondents.

) Case No: GIN051194 and GIN051371
 (Consolidated)

) ASSIGNED FOR ALL PURPOSES TO:
 THOMAS P. NUGENT, DEPT. 30

) ~~PROPOSED~~ 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

) Date: January 14, 2011
 Time: 10:00 a.m. [status conference]
 Dept: 30 [Hon. Thomas P. Nugent]

) Date Action Filed: March 23, 2006
 Trial Date: Not Set

22 THE PEOPLE OF THE STATE OF
 23 CALIFORNIA, et al.,

24 Petitioners,

25 vs.

26 Foothill/EASTERN TRANSPORTATION
 27 CORRIDOR AGENCY, a joint powers authority,
 et al.,

28 Respondents.

[PROPOSED] STIPULATED ORDER APPROVING INTERIM SETTLEMENT, ETC.

1 expressly reserving the Court's jurisdiction to set aside the dismissal and reinstate the proceeding nunc
2 pro tunc when the stay is no longer in effect;

3 H. WHEREAS Code of Civil Procedure section 664.6 independently authorizes, and the
4 parties hereby request, this Court to approve the Parties' Interim Settlement, and to retain jurisdiction to
5 enforce its terms and conditions in order to ensure full performance;

6 I. WHEREAS the Interim Settlement provides for, and is contingent upon, among other
7 things, (a) the Court's approval of the Interim Settlement as set forth herein and its retention of
8 jurisdiction to enforce the Interim Settlement pursuant to Code of Civil Procedure section 664.6, (b) the
9 Court's dismissal of these proceedings without prejudice and reservation of jurisdiction to set aside the
10 dismissal pursuant to Local Rule 2.1.13, and (c) the entry of the stipulated order below;

11 J. WHEREAS, each person signing below represents and warrants that by executing this
12 stipulation, the person is authorized to bind the Party on whose behalf the person is signing; the Party
13 has relied on legal advice from the Party's attorney in entering into this stipulation; the terms and
14 conditions have been completely read and explained to the Party; and the Party fully understands the
15 terms and conditions;

16 K. WHEREAS the Interim Settlement, as memorialized in this stipulation, is in lieu of, and
17 extinguishes and supersedes, any other communication by or between the Parties relating thereto; each
18 of the Parties acknowledge that no other Party, or agent or attorney for any other Party, has made any
19 promise, representation, or warranty whatsoever, express or implied, not contained herein, to induce the
20 other Party to execute this stipulation, and each Party acknowledges that it has not executed this
21 stipulation in reliance upon any promise, representation or warranty not expressly contained herein; this
22 stipulation comprises the entire understanding of the Parties with respect thereto; and this stipulation
23 may only be modified or amended by a mutual agreement of the Parties in writing and signed by the
24 Parties;

25 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between all Parties in these
26 consolidated proceedings, through their respective counsel of record, that the Court should approve the
27 Interim Settlement as memorialized in this stipulation, and enter an order incorporating the following
28 terms and conditions of the Interim Settlement:

1 1. Pursuant to Code of Civil Procedure section 664.6, the Court approves the Interim
2 Settlement of all Parties as memorialized in this stipulated order, including the following settlement
3 terms expressly incorporated into this stipulated order.

4 2. To effectuate a stay of these consolidated proceedings (case numbers GIN 051194 and
5 GIN 051371), the proceedings are hereby dismissed without prejudice pursuant to Local Rule 2.1.13,
6 and the Court expressly reserves its jurisdiction to set aside the dismissal and reinstate these proceedings
7 nunc pro tunc when the stay is no longer in effect. The stay shall terminate and no longer be in effect
8 upon the written request filed in Court by any Petitioner in either of the consolidated proceedings to set
9 aside the dismissal and reinstate the proceedings, following notice to all Parties hereto through their
10 counsel of record. Upon such request, the dismissal shall be set aside, and the proceedings shall be
11 reinstated without the necessity to refile the pleadings or other papers filed in the proceedings prior to
12 the dismissal, all of which shall be deemed filed as of their original filing dates. Until such request is
13 made by Petitioners, the stay shall remain in effect, except as expressly provided herein. The request by
14 any Petitioner to set aside the dismissal and reinstate the proceedings shall not be filed in Court prior to
15 30 calendar days following personal service of written notice from such Petitioner(s) to undersigned
16 counsel of record for each of the Respondents herein of the intention of Petitioner(s) to file such a
17 request ("Request Notice"), but if Respondents have already served Petitioners with a Construction
18 Notice (defined in paragraph 4 herein), Petitioners shall not be required to serve a Request Notice.
19 Unless Petitioners and Respondents otherwise agree in writing, Petitioners and Respondents shall meet
20 and confer within 15 days of personal service of the Request Notice to discuss the proposed request and
21 whether and under what conditions the Parties could avoid the need to reinstate these proceedings while
22 avoiding prejudice to Petitioners' right to challenge the Project and the EIR for the Project.

23 3. Any period applicable to Petitioners within which Petitioners may be required to
24 prosecute or complete legal proceedings for their claims in these consolidated actions shall be deemed
25 tolled in favor of Petitioners during all periods in which a stay of proceedings was or has been in effect,
26 including but not limited to the period between dismissal and reinstatement of the proceedings.

27 4. Respondents shall, prior to start of construction of the Project in reliance on the approvals
28 challenged in these proceedings (i.e., certification of the Final Subsequent EIR ("EIR") for the Project

1 and approval of the Project), give written notice of 60 calendar days by personal service to undersigned
2 counsel of record for each of the Petitioners herein of Respondents' start of construction of the Project
3 ("Construction Notice"). Respondents may give the Construction Notice at any time in their discretion
4 that is in excess of 60 days prior to the start of construction of the Project, including any time when
5 Respondents may not yet have any scheduled date for the start of construction. For the purposes of this
6 paragraph, the term "construction" does not include design activities or the evaluation of any of the
7 following: the impacts of the Project, mitigation measures or alternatives to the Project. For the
8 purposes of this paragraph, the term "Project" includes the Project as previously approved by TCA and
9 any variation thereof or alternative thereto, and the term "construction" means (1) the issuance of a
10 "notice to proceed" with construction, or equivalent direction, by Respondents to any construction
11 contractor for the Project or to any public entity undertaking such activities, including but not limited to
12 TCA, or (2) grading of the Project alignment, including any vegetation clearance in preparation for
13 grading of the Project. Unless Petitioners and Respondents otherwise agree in writing, Petitioners and
14 Respondents shall meet and confer within 15 days of personal service of the Construction Notice to
15 discuss the proposed action and whether and under what conditions the action could be undertaken
16 without the need to reinstate these proceedings while avoiding prejudice to Petitioners' right to
17 challenge the Project and the EIR for the Project, but this meet and confer requirement shall only apply
18 to the extent that it would not duplicate any meet and confer conference that was previously held
19 pursuant to paragraph 2, in order to avoid duplication of requirements. If, following the required meet
20 and confer conference, the Petitioners and Respondents have not otherwise stipulated in writing,
21 Petitioners shall reinstate these proceedings within 90 days of personal service of the Construction
22 Notice, or else Petitioners shall be deemed to have forfeited their right under Paragraph 2 of this
23 stipulated order to reinstate the proceedings. In addition to the Construction Notice, Respondents shall
24 provide by mail service to Petitioners' counsel (a) a copy of any notice of preparation of a supplemental
25 environmental impact report or subsequent environmental impact report regarding the Project, and (b) a
26 copy of any addendum to the EIR.

27 5. Respondents and Proposed Intervenors waive, and shall not assert, any defense to
28 Petitioners' claims based on (1) the non-prosecution of these proceedings during the period between

1 dismissal and reinstatement of the proceedings or any other period in which a stay was in effect, (2) a
2 challenge to the Court's authority to set aside the dismissal and reinstate the proceedings in accordance
3 with this stipulated order, or (3) any other claim, argument, defense, or challenge that would undermine
4 the intent of the Parties to permit Petitioners, in accordance with the terms and conditions of this
5 stipulated order, to reinstate these proceedings without prejudice as if the dismissal had not occurred.
6 This waiver includes, but is not limited to, any defenses against Petitioners of statutes of limitations,
7 laches, or the five-year dismissal statute (Code Civ. Proc., § 583.10).

8 6. Except as expressly provided, nothing in this Interim Settlement or order shall prevent
9 any of the Petitioners from reinstating these proceedings or otherwise pursuing their claims herein, at
10 any time for any reason, including but not limited to, any action by the TCA to implement any aspect of
11 the Project. Respondents and Proposed Intervenors further agree that Petitioners' right to reinstate these
12 proceedings shall not be limited by Petitioners' failure to bring an administrative or judicial challenge to
13 a future action taken by Respondents in reliance on the EIR or in furtherance of the Project, including
14 but not limited to the approval by TCA of a subsequent or supplemental EIR for the Project, an
15 addendum to the EIR, or any amendment or modification of the Project, and Respondents and Proposed
16 Intervenors hereby waive any defense to the claims in any reinstated proceedings based on Petitioners'
17 failure to challenge such future actions.

18 7. Attorneys Fees.

19 a. Because the dismissal of these proceedings is for the purpose of continuing the
20 stay of litigation, this stipulated order does not reflect in any way on the merits of Petitioners' claims or
21 Respondents' defenses. Except as expressly provided in section 7(b) below, this stipulated order does
22 not support or prejudice any Party's claim for attorneys fees or costs, whether incurred before or after
23 the entry of this stipulated order ("Entry Date"), and nothing in this stipulated order shall be construed as
24 an admission or denial by any Party as to the validity of any claims for such attorneys fees or costs, or as
25 prejudicing any Party's ability to assert any and all of its rights and positions in support of, or in
26 opposition to, any future claim for such attorneys fees or costs.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY;
THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY

By: J.E. Margro
Tom Margro

Chief Executive Officer,
Foothill/Eastern Transportation Corridor Agency;
authorized representative on behalf of
The Board of Directors of the Foothill/Eastern
Transportation Corridor Agency

Dated: December __, 2010

SHUTE, MIHALY & WEINBERGER, LLP
WILLIAM J. WHITE

By: _____
William J. White

Attorneys for Petitioners,
California State Parks Foundation;
Endangered Habitats League;
Laguna Greenbelt, Inc.;
Natural Resources Defense Council, Inc.;
Sea and Sage Audubon Society;
Sierra Club; and
Surfrider Foundation

Dated: December __, 2010

CALIFORNIA STATE PARKS FOUNDATION

By: _____
Elizabeth Goldstein
President

Dated: December __, 2010

ENDANGERED HABITATS LEAGUE

By: _____
Dan Silver
Executive Director

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010

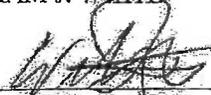
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY;
THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY

By: _____

Tom Margro
Chief Executive Officer,
Foothill/Eastern Transportation Corridor Agency;
authorized representative on behalf of
The Board of Directors of the Foothill/Eastern
Transportation Corridor Agency

Dated: December ~~24~~ 2010

SHUTE, MIHALY & WEINBERGER, LLP
WILLIAM J. WHITE

By:  _____

William J. White
Attorneys for Petitioners,
California State Parks Foundation;
Endangered Habitats League;
Laguna Greenbelt, Inc.;
Natural Resources Defense Council, Inc.;
Sea and Sage Audubon Society;
Sierra Club; and
Surfrider Foundation

Dated: December __, 2010

CALIFORNIA STATE PARKS FOUNDATION

By: _____

Elizabeth Goldstein
President

Dated: December __, 2010

ENDANGERED HABITATS LEAGUE

By: _____

Dan Silver
Executive Director

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY;
THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY

By: _____

Tom Margro
Chief Executive Officer,
Foothill/Eastern Transportation Corridor Agency;
authorized representative on behalf of
The Board of Directors of the Foothill/Eastern
Transportation Corridor Agency

Dated: December __, 2010

SHUTE, MIHALY & WEINBERGER, LLP
WILLIAM J. WHITE

By: _____

William J. White
Attorneys for Petitioners,
California State Parks Foundation;
Endangered Habitats League;
Laguna Greenbelt, Inc.;
Natural Resources Defense Council, Inc.;
Sea and Sage Audubon Society;
Sierra Club; and
Surfrider Foundation

Dated: December 20, 2010

CALIFORNIA STATE PARKS FOUNDATION

By:  _____

Elizabeth Goldstein
President

Dated: December __, 2010

ENDANGERED HABITATS LEAGUE

By: _____

Dan Silver
Executive Director

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December 2010

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY;
THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY

By: _____

Tom Margro
Chief Executive Officer,
Foothill/Eastern Transportation Corridor Agency,
authorized representative on behalf of
The Board of Directors of the Foothill/Eastern
Transportation Corridor Agency

Dated: December 2010

SHUTE, MIHALY & WEINBERGER, LLP
WILLIAM J. WHITE

By: _____

William J. White
Attorneys for Petitioners,
California State Parks Foundation,
Endangered Habitats League,
Laguna Greenbelt, Inc.,
Natural Resources Defense Council, Inc.,
Sea Grant Audubon Society,
Sierra Club and
Surfrider Foundation

Dated: December 2010

CALIFORNIA STATE PARKS FOUNDATION

By: _____

Elizabeth Goldstein
President

Dated: December 2010

ENDANGERED HABITATS LEAGUE

By:  _____

Dan Silver
Executive Director

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December 17, 2010

LAGUNA GREENBELT, INC.

By: Elizabeth H. Brown
Elizabeth Brown
President

Dated: December 17, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: _____
Joel Reynolds
Senior Attorney

Dated: December 17, 2010

SEA AND SAGE AUDUBON SOCIETY

By: _____
Scott Thomas
Vice President

Dated: December 17, 2010

SIERRA CLUB

By: _____
Hersh Kelley
Executive Committee Chair
Angeles Chapter

Dated: December 17, 2010

SURFRIDER FOUNDATION

By: _____
Jim Moriarty
Chief Executive Officer

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

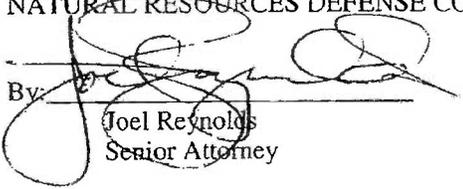
Dated: December __, 2010

LAGUNA GREENBELT, INC.

By: _____
Elisabeth Brown
President

Dated: December 20, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: 
Joel Reynolds
Senior Attorney

Dated: December __, 2010

SEA AND SAGE AUDUBON SOCIETY

By: _____
Scott Thomas
Vice President

Dated: December __, 2010

SIERRA CLUB

By: _____
Hersh Kelley
Executive Committee Chair,
Angeles Chapter

Dated: December __, 2010

SURFRIDER FOUNDATION

By: _____
Jim Moriarty
Chief Executive Officer

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010.

LAGUNA GREENBELT, INC.

By: _____
Elisabeth Brown
President

Dated: December __, 2010.

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: _____
Joel Reynolds
Senior Attorney

Dated: December 19, 2010.

SEA AND SAGE AUDUBON SOCIETY

By: Scott Thomas
Scott Thomas
Vice President

Dated: December __, 2010.

SIERRA CLUB

By: _____
Hersh Kelley
Executive Committee Chair,
Angeles Chapter

Dated: December __, 2010.

SURFRIDER FOUNDATION

By: _____
Jim Moriarty
Chief Executive Officer

[signatures continued on the following page]

1		
2	Dated: December __, 2010	LAGUNA GREENBELT, INC.
3		
4		By: _____
5		Elisabeth Browe
6		President
7		
8	Dated: December __, 2010	NATURAL RESOURCES DEFENSE COUNCIL, INC.
9		
10		By: _____
11		Joel Reynolds
12		Senior Attorney
13		
14	Dated: December __, 2010	SEA AND SAGE AUDUBON SOCIETY
15		
16		By: _____
17		Scott Thomas
18		Vice President
19	Dated: December <u>20</u> , 2010	SIERRA CLUB
20		
21		By: <u>Hersh Kelley</u>
22		Hersh Kelley
23		Executive Committee Chair,
24		Angeles Chapter
25	Dated: December __, 2010	SURFRIDER FOUNDATION
26		
27		By: _____
28		Jim Moriarty
		Chief Executive Officer
		(signatures continued on the following page)
		9
		[PROPOSED] STIPULATED ORDER APPROVING INTERIM SETTLEMENT, ETC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010

LAGUNA GREENBELT, INC.

By: _____
Elisabeth Brown
President

Dated: December __, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: _____
Joel Reynolds
Senior Attorney

Dated: December __, 2010

SEA AND SAGE AUDUBON SOCIETY

By: _____
Scott Thomas
Vice President

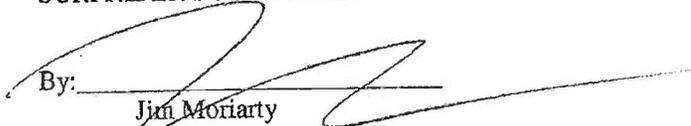
Dated: December __, 2010

SIERRA CLUB

By: _____
Hersh Kelley
Executive Committee Chair,
Angeles Chapter

Dated: December 20, 2010

SURFRIDER FOUNDATION

By: _____

Jim Moriarty
Chief Executive Officer

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December 27, 2010

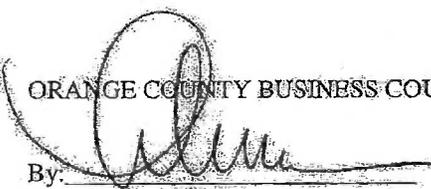
ALVARADO SMITH
THIERRY R. MONTOYA

By: 
Thierry R. Montoya

Attorneys for Proposed Intervenors
Orange County Business Council; Orange
County Hispanic Chamber of Commerce; South
Orange County Chamber of Commerce; Black
Chamber of Commerce of Orange County; Los
Angeles and Orange County Building and
Construction Trades Council; Orange County
Taxpayers Association

Dated: December __, 2010

ORANGE COUNTY BUSINESS COUNCIL

By: 
Lucy Dunn

Dated: December __, 2010

ORANGE COUNTY HISPANIC CHAMBER OF
COMMERCE

By: _____
Joel Ayala

Dated: December __, 2010

SOUTH ORANGE COUNTY CHAMBER OF COMMERCE

By: _____
Duane Cave

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010

ALVARADO SMITH
THIERRY R. MONTOYA

By: Thierry R. Montoya

Attorneys for Proposed Intervenors
Orange County Business Council; Orange
County Hispanic Chamber of Commerce; South
Orange County Chamber of Commerce; Black
Chamber of Commerce of Orange County; Los
Angeles and Orange County Building and
Construction Trades Council; Orange County
Taxpayers Association

Dated: December __, 2010

ORANGE COUNTY BUSINESS COUNCIL

By: Lucy Dunn

Dated: December __, 2010

ORANGE COUNTY HISPANIC CHAMBER OF
COMMERCE

By: 
Javier Mier

Dated: December __, 2010

SOUTH ORANGE COUNTY CHAMBER OF COMMERCE

By: Duane Cave

[signatures continued on the following page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2010

ALVARADO SMITH
THIERRY R. MONTOYA

By: _____
Thierry R. Montoya

Attorneys for Proposed Intervenor
Orange County Business Council; Orange
County Hispanic Chamber of Commerce; South
Orange County Chamber of Commerce; Black
Chamber of Commerce of Orange County; Los
Angeles and Orange County Building and
Construction Trades Council; Orange County
Taxpayers Association

Dated: December __, 2010

ORANGE COUNTY BUSINESS COUNCIL

By: _____
Lucy Dunn

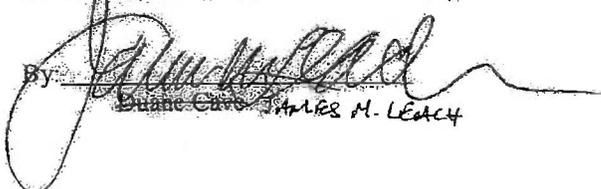
Dated: December __, 2010

ORANGE COUNTY HISPANIC CHAMBER OF
COMMERCE

By: _____
Joel Ayala

Dated: December 29, 2010

SOUTH ORANGE COUNTY CHAMBER OF COMMERCE

By: 
James M. Leach

[signatures continued on the following page]

1 Dated: December __, 2010

BLACK CHAMBER OF COMMERCE OF ORANGE
COUNTY

2
3 By: _____
4 Bobby McDonald

5
6 Dated: December __, 2010

LOS ANGELES AND ORANGE COUNTY BUILDING
AND CONSTRUCTION TRADES COUNCIL

7
8 By: Richard Slauson
9 Richard Slauson

10
11 **STIPULATED ORDER**

12 The "[Proposed] Stipulated Order Approving Interim Settlement with Tolling Agreement and
13 Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce
14 Interim Settlement," having been fully considered by the Court, and with good cause being shown to the
15 satisfaction of the Court,

16 **IT IS HEREBY ORDERED AS FOLLOWS:**

17 1. The stipulated terms and conditions set forth in full in paragraphs 1 through 9, inclusive,
18 of the foregoing Interim Settlement are hereby adopted as an order of the Court and are expressly
19 incorporated herein.

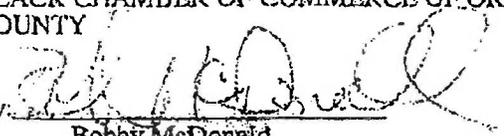
20 2. Counsel for Respondents shall give notice of entry of this stipulated order.

21 Dated: December __, 2010

22
23 _____
24 Hon. Thomas P. Nugent
25 JUDGE OF THE SUPERIOR COURT

1 Dated: December __, 2010

BLACK CHAMBER OF COMMERCE OF ORANGE COUNTY

2
3 By: 
4 Bobby McDonald

5
6 Dated: December __, 2010

LOS ANGELES AND ORANGE COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

7
8 By: _____
9 Richard Stanson

10
11
12 **STIPULATED ORDER**

13 The "[Proposed] Stipulated Order Approving Interim Settlement with Tolling Agreement and
14 Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce
15 Interim Settlement," having been fully considered by the Court, and with good cause being shown to the
16 satisfaction of the Court,

17 **IT IS HEREBY ORDERED AS FOLLOWS:**

18 1. The stipulated terms and conditions set forth in full in paragraphs 1 through 9, inclusive,
19 of the foregoing Interim Settlement are hereby adopted as an order of the Court and are expressly
20 incorporated herein.

21 2. Counsel for Respondents shall give notice of entry of this stipulated order.

22 Dated: ~~December~~ 2010
23 JAN 12 2011

THOMAS P. NUGENT

24 Hon. Thomas P. Nugent
25 JUDGE OF THE SUPERIOR COURT
26
27
28

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is Nossaman, LLP, 445 S. Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

On January 10, 2011, at my employer's above-stated place of business, I served the foregoing document(s) described as **[PROPOSED] 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** on interested parties in this action by placing () the original (X) a true copy thereof enclosed in a separate sealed envelope to each addressee as follows:

[SEE ATTACHED SERVICE LIST]

(X) **(By U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid in a collection box from where it would be placed in the United States Mail at Los Angeles, California that same day in my employer's ordinary course of business.

() **(By Personal Service)** I caused to be delivered by hand true and correct copies thereof on the interested parties in this action by having the _____ messenger service personally deliver same in a sealed envelope to the office of the addressee(s) as above indicated.

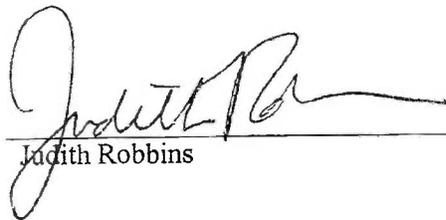
() **(By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P 1013(e), to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.

() **(By Federal Express)** I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. A true and correct copy of the Federal Express or other overnight delivery service airbill is attached hereto.

(X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

() **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 10, 2011 at Los Angeles, California.


Judith Robbins

SERVICE LIST

California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency, et al.
 San Diego County Superior Court Case No.: GIN051194 (Consolidated)

William J. White, Esq. SHUTE, MIHALY & WEINBERGER, LLP 396 Hayes Street San Francisco, California 94102 Telephone: (415) 552-7272 Facsimile: (415) 552-5816	Attorneys for Petitioners CALIFORNIA STATE PARKS FOUNDATION, ENDANGERED HABITATS LEAGUE, LAGUNA GREENBELT, INC., NATURAL RESOURCES DEFENSE COUNCIL, SEA AND SAGE AUDUBON SOCIETY, SIERRA CLUB, and SURFRIDER FOUNDATION
Joel R. Reynolds, Esq. NATURAL RESOURCES DEFENSE COUNCIL 1314 Second Street Santa Monica, California 90401 Telephone: (310) 434-2300 Facsimile: (310) 434-2399	Attorneys for Petitioner NATURAL RESOURCES DEFENSE COUNCIL
Michael D. Fitts, Esq. 1718 Esplanade, Apt. 523 Redondo Beach, California 90277-5339 Telephone: (310) 947-1908 Facsimile: (323) 908-3543	Attorneys for Petitioner ENDANGERED HABITATS LEAGUE
EDMUND G. BROWN JR., Attorney General MATT RODRIQUEZ, Chief Assistant Attorney General KEN ALEX, Senior Assistant Attorney General BRIAN HEMBACHER OLIVIA W. KARLIN Deputy Attorneys General 300 South Spring Street, Suite 1702 Los Angeles, California 90013 Telephone: (213) 897-2638 Facsimile: (213) 897-2802	Attorneys for Petitioners THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. ATTORNEY GENERAL EDMUND G. BROWN JR. and STATE PARK AND RECREATION COMMISSION
Ruben A. Smith Keith E. McCullough Thierry R. Montoya Reginald Roberts, Jr. ADORNO YOSS ALVARADO & SMITH 1 MacArthur Place, Suite 200 Santa Ana, California 92707 Telephone: (714) 852-6800 Facsimile: (714) 852-6899	Attorneys for Intervenors, ORANGE COUNTY BUSINESS COUNCIL, et al.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

**REVISED[#] MEETING NOTICE AND
AGENDA¹**

**Wednesday, June 19, 2013
#11:00 a.m.**

**Water Quality Control Board
Board Meeting Room
9174 Sky Park Court
San Diego, California**

The purpose of this meeting is for the San Diego Water Board to obtain testimony and information from concerned and affected persons and to make decisions based on the information received. Persons who want to submit written comments or evidence on any agenda item must comply with the procedures described in the agenda and agenda notes. Persons wishing to speak at the meeting should complete an attendance card (see Note F, attached to this Notice). The San Diego Water Board requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the San Diego Water Board members and staff have the opportunity to review and consider written material, comments should be received in the San Diego Water Board's office no later than noon on Tuesday, June 4, 2013* and should indicate the agenda item to which it is applicable. If the submitted written material is more than 5 pages or contains foldouts, color graphics, maps, etc., 15 copies must be submitted for distribution to the Board members and staff. Written material submitted after 5:00 P.M. on Tuesday, June 11, 2013, will not be provided to the Board members and may not be considered by the San Diego Water Board (See Note D, attached to this Notice).

***PLEASE NOTE THAT SOME ITEMS ON THE AGENDA MAY HAVE BEEN PREVIOUSLY NOTICED WITH EARLIER DEADLINES FOR SUBMITTING WRITTEN COMMENTS OR MAY HAVE A SEPARATE HEARING PROCEDURES DOCUMENT THAT ESTABLISHES DIFFERENT DEADLINES OR PROCEDURES FOR SUBMITTING WRITTEN MATERIALS. IN THOSE CASES THE DIFFERENT DEADLINES OR PROCEDURES APPLY.**

Comments on agenda items will be accepted by E-mail subject to the same conditions set forth for other written submissions as long as the total submittal (including

¹ Versión en español disponible también en:
http://www.waterboards.ca.gov/sandiego/board_info/agendas/index.shtml

attachments) does not exceed five printed pages in length. E-mail must be submitted to: rb9agenda@waterboards.ca.gov. Type the word "Agenda" in the subject line.

Pursuant to Title 23, California Code of Regulations, section 648.4, the San Diego Water Board may refuse to admit written testimony or evidence into the record if it is not submitted to the San Diego Water Board in a timely manner and shall refuse to do so if admitting it would prejudice any party or the board, unless the proponent demonstrates that compliance with the deadline would create an unreasonable hardship.

NOTE D, attached to this Notice, refers to the procedures that will be followed by the San Diego Water Board in contested adjudicatory matters if a separate Hearing Procedures Document has not been issued for a particular agenda item. Parties requesting an alternate hearing process must do so in accord with the directions in NOTE D. Any such request, together with supporting material, must be received in the San Diego Water Board's office no later than noon on Tuesday, June 4, 2013.

Copies of the agenda items to be considered by the San Diego Water Board are posted on the San Diego Water Board's website at http://www.waterboards.ca.gov/sandiego/board_info/agendas

Except for items designated as time certain, there are no set times for agenda items. Items may be taken out of order at the discretion of the Chairman.

1. Roll Call and Introductions.
2. PUBLIC FORUM: Any person may address the Board regarding a matter within the Board's jurisdiction that is not related to an item on this Meeting agenda and is not scheduled for a future Meeting. **Comments will generally be limited to three minutes, unless otherwise directed by the Board Chairperson.** Any person wishing to make a longer presentation should contact the Executive Officer at least ten days prior to the meeting.
3. Minutes of Board Meeting: April 10-11, 2013, and May 8, 2013.
4. Chairman's, Board Members', State Board liaison's and Executive Officer's Reports: These items are for Board discussion only. No public testimony will be allowed, and the Board will take no formal action.

Consent Calendar: Items 5 through 7 are considered non-controversial issues. (NOTE: If there is public interest, concern, or discussion regarding any consent calendar item or a request for a public hearing, then the item(s) will be removed from the consent calendar and considered after all other agenda items have been completed.)

5. Waste Discharge Requirements Addendum: Modification of Order No. 99-74, Waste Discharge Requirements for the Sycamore Landfill Inc., A Subsidiary of Republic Services Inc., Sycamore Landfill, San Diego County. (*Amy Grove*)

6. Rescission of Waste Discharge Requirements: Order No. 94-07, Hanson Aggregates Pacific Southwest Region, Otay Plant, San Diego County; and Order No. 93-82, Buena Sanitation District, Shadowridge Water Reclamation Plant, San Diego County (Tentative Order No. R9-2013-0056 rescinding Orders No. 94-07 and 93-82). (*Tyler Kirkendall*)
7. Revision of Waste Discharge Requirements for Order No. R9-2009-0007, The Garcia Residence, Onsite Wastewater Treatment System, San Diego County (Tentative Addendum No. 1 to Order No. R9-2009-0007). (*Tyler Kirkendall*)

Remainder of the Agenda (Non-Consent Items):

8. Public Hearing: A Resolution Amending the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) to incorporate Total Maximum Daily Loads (TMDLs) for Toxic Pollutants in Sediment at the Mouths of Paleta, Chollas, and Switzer Creeks in San Diego Bay and Miscellaneous Changes to Chapter 5 to Update the Regional Board Resolutions List (Tentative Resolution No. R9-2013-0003). (*Lisa Honma*) **THIS ITEM HAS BEEN POSTPONED**
9. Waste Discharge Requirements: Foothill/Eastern Transportation, Corridor Agency Tesoro (SR 241) Extension, Orange County (Tentative Order No. R9-2013-0007). (*Darren Bradford*) **PLEASE NOTE: The Board will not consider this item prior to 1:00 p.m.**

10. ***CLOSED SESSION***

The Board may meet in closed session to consider personnel matters [Authority: Government Code section 11126(a)]; to deliberate on a decision to be reached based upon evidence introduced in a hearing [Authority: Government Code section 11126(c)(3)]; or to discuss matters in litigation, including discussion of initiated litigation, significant exposure to litigation, or decisions to initiate litigation [Authority: Government Code section 11126(e)]. Litigation items that may be discussed are listed below by the type of item:

Civil Actions (Judicial and Administrative, other than Petitions for Review filed with the State Water Board)

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Edward Drusina, an individual in his capacity as Commissioner of the International Boundary and Water Commission, United States Section, et al.*, Complaint for Violations of the Clean Water Act and Related State Law Claims. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS) (filed February 2001). (*David Gibson*)
- b. *In re: Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-001, (NPDES No. CAS0108758) Waste*

- Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority adopted on January 24, 2007. Test Claim filed by San Diego County, et al., with Commission on State Mandates, No. 07-TC-09 (filed June 2008). (Catherine George Hagan)*
- c. *State of California Department of Finance, State Water Resources Control Board, And California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates. Petition for Writ of Administrative Mandamus. Sacramento County Superior Court, Case No. 34-2010-80000604 (filed July 2010). (Catherine George Hagan)*
- d. *In re: Citizens Development Corporation, Debtor and Debtor in Possession, Case No. 10-15142-LT11. United States Bankruptcy Court, Southern District of California. (San Diego Water Board Claim in Bankruptcy) (filed June 2011). (Catherine George Hagan)*
- e. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, (NPDES No. CAS0108740) Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of the County of Orange, and the Orange County Flood Control District adopted on December 16, 2009. Test Claim filed by County of Orange, et al., with Commission on State Mandates, No. 10-TC-11 (filed June 2011). (Catherine George Hagan)*
- f. *Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016 (NPDES No. CAS0108766) adopted November 10, 2010, County of Riverside, Riverside County Flood Control and Water Conservation District, and the Cities of Murrieta, Temecula and Wildomar, Co-Claimants, filed with Commission on State Mandates, No. 11-TC-03 (filed November 2011). (Catherine George Hagan)*
- g. *City of San Diego v. California Regional Water Quality Control Board, San Diego Division, SFPP., L.P., A Delaware Limited Partnership, and Kinder Morgan Energy Partners, L.P., a Delaware Limited Partnership, Real Parties-in-Interest. Petition for Writ of Administrative Mandamus. San Diego County Superior Court, Case No. 37-2013-00047614-CU-WM-CTL (filed May 2013). (Ben Neill)*

Petitions for Review Pending Before State Water Resources Control Board²

- h.* Petitions of the National Fireworks Association and Fireworks & Stage FX America Inc., Coastal Environmental Rights Foundation, and San Diego Coastkeeper (General National Pollutant Discharge Elimination System (NPDES) Permit Order No. R9-2011-0022 (NPDES No. CAG999002) for Residual Firework Pollutant Waste Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks), SWRCB/OCC Files A-2164(a)-(c), filed June and July 2011. (*Michelle Mata*)
- i.* Petition of Citizens Development Corporation (Water Code Section 13267 Investigative Order No. R9-2011-0033 dated September 14, 2011, Requiring Submission of Technical Reports Pertaining to Investigation of Lake San Marcos Nutrient Impairment, San Diego County), SWRCB/OCC File A-2185, filed October 2011. (*Laurie Walsh*)
- j.* Petition of City of San Diego (Time Schedule Order No. R9-2011-0052 dated September 14, 2011, for the Kinder Morgan Energy Partners, Mission Valley Terminal Remediation Dewatering Discharge to Murphy Canyon Creek, San Diego County), SWRCB/OCC File A-2186, filed October 2011. (*Ben Neill*)
- k.* Petition of Jack Eitzen (Administrative Assessment of Civil Liability Order Nos. R9-2011-0048 and R9-2011-0049 against Jack Eitzen for 38175 and 38155 Via Vista Grande, Murrieta, Riverside County), issued October 12, 2011), SWRCB/OCC File A-2193, filed November 2011. (*Rebecca Stewart*)
- l.* Petitions for Review of San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024 for National Steel and Shipbuilding Company (NASSCO), BAE Systems, San Diego Ship Repair (BAE Systems), Campbell Industries, City of San Diego, San Diego Gas & Electric (SDG&E) and San Diego Unified Port District (Port District) issued March 14, 2012. Petitions for Review and Requests for Stay filed by NASSCO, BAE Systems and City of San Diego. Petitions for Review w/o requests for stay filed by SDG&E, Star & Crescent Boat Company and Port District. SWRCB/OCC File A-2205(a) – (e), filed April 2012. (*Frank Melbourne*)
- m.* Petition of NASSCO for Review of Resolution No. R9-2012-0025 (Certifying Final Environmental Impact Report for San Diego Bay Shipyard Sediment Cleanup and Abatement Order No. R9-2012-0024), adopted March 14, 2012, SWRCB/OCC File A-XXXX, filed April 2012. (*Frank Melbourne*)
- n.* Petition of South Laguna Civic Association for Review of Order No. R9-2012-0013, NPDES No. CA0107611, NPDES Permit Reissuance: South

² Petitions for review of San Diego Water Board actions or inactions filed with the State Water Board being held in abeyance by the State Water Board are not listed in the agenda. The titles of these matters are available at the San Diego Water Board. Please contact Catherine George Hagan at chagan@waterboards.ca.gov or 858-467-2958 for more information.

Orange County Waste Authority, Discharges to the Pacific Ocean via Aliso Creek Ocean Outfall, adopted April 11, 2012, SWRCB/OCC File A-2211, filed May 2012. (*Joann Lim*)

- o. Petition of City of San Diego for Review of Resolution No. R9-2012-0045, re NPDES Permit Notice of Enrollment Amendment for Kinder Morgan Energy Partners, June 13, 2012, SWRCB/OCC File A-XXXX, filed July 2012. (*Ben Neill*)

11. Arrangements for Next Meeting and Adjournment:

Wednesday, July 10, 2013 – 9:00 a.m.

Water Quality Control Board

Regional Board Meeting Room

9174 Sky Park Court

San Diego, California

NOTIFICATIONS

- A. **Completed Cleanup Action – 30-day Notice.** The San Diego Water Board intends to issue a no further action letter for completion of cleanup of pollutants from a leaking underground storage tank (UST) system at 728 North Escondido Boulevard, Escondido, California. This notification is made pursuant to California Code of Regulations, Title 23, section 2728. The information relied upon by the San Diego Water Board indicates that the pollutants associated with the UST system at this facility have been remediated. Groundwater pollution from the adjacent gas station, however, has migrated beneath portions of this property. A deed restriction has been placed on the property to restrict land use until such time as the remediation of the adjacent gas station has been completed and any potential risk to human health and environment has been mitigated. Additional details about this case are available on the GeoTracker website at: http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T060730229. Provided no significant issues arise during the public notification period, the San Diego Water Board will issue a no further action letter in July 2013. (*John Anderson*)
- B. **Completed Cleanup Action – 30 Day Public Notice.** The San Diego Water Board intends to issue a no further action letter for completing a Human Health Risk Assessment (HHRA) at the former Lane Field site located at 970 Broadway Avenue in San Diego, California. This public notice fulfills the San Diego Water Board's obligation to inform the public of the proposed actions pursuant to the State and Regional Water Quality Control Boards' Public Participation guidance document. Redevelopment plans at the site currently include the construction of two hotel towers and a nearly two-acre public park and open air plaza. The HHRA concluded that the residual concentrations in soil, soil vapor, and groundwater do not pose a risk to human health and the environment pursuant to the redevelopment plans. The residual concentrations in soil vapor in the southwest corner of the site, however, may pose a risk to

human health if a building is placed directly over the impacted area. According to the redevelopment plans the proposed park will occupy this area. The no further action letter will include a provision that no buildings will be built on top of the impacted area unless the elevated soil vapor concentrations are further mitigated to be protective of any future land use (e.g., residential dwellings, day care facilities, and commercial/industrial buildings). Additional details about this case are available from the GeoTracker website at:

https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000002492. Please note that the final version of the HHRA will be uploaded into GeoTracker by May 31, 2013. Provided no significant issues arise during the public notification period, the San Diego Water Board will issue a no further action letter in July. (*Tom Alo*)

- C. **Follow the Board Meeting on Twitter:** Updates on the progress of the San Diego Water Board meeting will be posted on Twitter at www.twitter.com/SDWaterBoard. The San Diego Water Board's use of Twitter is a courtesy and is for informational purposes only. It is not always reliable, and is not a substitute for personal attendance at a Board meeting.

DIRECTIONS TO MEETING

- From Downtown: I-15 north – take the Aero Drive exit – turn left (west). Proceed to the 3rd stoplight, which is Ruffin Road – turn right. Turn left on Sky Park Court (stoplight). Our building is located at the end of the court – veer to the right into the parking lot.
- From the North: I-15 south – take the Balboa Ave. exit – turn right (west). Proceed to the 2nd stoplight, which is Ruffin Road – turn left. Turn right onto Sky Park Court (stoplight). Our building is located at the end of the court – veer to the right into the parking lot.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
Summary of Board Actions and Proceedings
At the May 8, 2013, Board Meeting

MINUTES

Minutes of the April 10-11, 2013, Board Meeting

REGIONAL BOARD ACTIONS

Approval of the minutes was postponed until the June Board meeting.

NON-CONSENT ITEMS

General NPDES Permit Issuance: General Waste Discharge Requirements for Discharges from Boatyards and Boat Maintenance and Repair Facilities Adjacent to Surface Waters within the San Diego Region (Tentative Order No. R9-2013-0026, NPDES No. CAG719001). (*Kristin Schwall and Michelle Malkin*)

Approved Order No. R9-2013-0026, NPDES No. CAG719001.

Administrative Civil Liability: Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, City of San Diego, Sanitary Sewer Overflow to Los Peñasquitos Creek, Peñasquitos Lagoon, and the Pacific Ocean. Settlement to resolve violations of Order Nos. 2006-0003-DWQ and R9-2007-0005 as set forth in Tentative Order No. R9-2013-0032. The Settlement would impose monetary liability of \$1,245,414 against the City of San Diego, of which \$622,707 in liability would be paid to the State Water Resources Control Board's Cleanup and Abatement Account and \$622,707 in liability would be suspended upon successful completion of an Enhanced Compliance Action as described in Tentative Order No. R9-2013-0032. (*Barry Pulver*)

Approved Order No. R9-2013-0032.

Public Hearing: Issuance of a NPDES Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Tentative Order No. R9-2013-0001). Continued from April 11, 2013. (*Wayne Chiu, Laurie Walsh, Christina Arias*)

Approved Order No. R9-2013-0001

NOTES:

A. GENERAL STATEMENT

The primary duty of the San Diego Water Board is to protect the quality of the waters within the region for all beneficial uses. This duty is implemented by formulation and adoption of water quality plans for specific ground or surface water basins and by prescribing and enforcing requirements on all domestic and industrial waste discharges. Responsibilities and procedures of the Regional Water Quality Control Board come from the State's Porter-Cologne Water Quality Act and the Nation's Clean Water Act.

The purpose of the meeting is for the Board to obtain testimony and information from concerned and affected parties and make decisions after considering the recommendations made by the Executive Officer.

All interested persons may speak at the San Diego Water Board meeting and are expected to orally summarize their written submittals. Testimony should be presented in writing prior to the meeting and only a summary of pertinent points presented orally. Oral testimony (i.e., direct testimony or comment) will be limited in time by the Board Chair (typically 3 minutes for interested persons and no more than 10 minutes for designated parties). A timer may be used and speakers are expected to honor the time limits.

B. PROCEDURE FOR CONSENT (UNCONTESTED) CALENDAR (see also 23 C.C.R. § 647.2)

Consent or uncontested agenda items are items for which there appears to be no controversy and which can be acted upon by the San Diego Water Board with no discussion. Such items have been properly noticed and all interested parties consent to the staff recommendation. The San Diego Water Board Chair will recognize late revisions submitted by staff and will then call for a motion and vote on all of the consent calendar items by the San Diego Water Board.

If any San Diego Water Board member or member of the public raises a question or issue regarding an item that requires San Diego Water Board discussion, the item may be removed from the consent calendar and considered separately in an order determined by the Chair. Anyone wishing to contest a consent item on the agenda is expected to appear in person at the San Diego Water Board meeting and explain to the San Diego Water Board the reason that it is contested.

C. PROCEDURE FOR INFORMATION ITEMS (see also 23 C.C.R. 649, et. seq.)

Information items are items presented to the San Diego Water Board for discussion only and for which no San Diego Water Board action or vote is normally taken. The San Diego Water Board usually will hear a presentation by staff, but may hear presentations by others. Comments by interested persons shall also be allowed. Members of the public wishing to address the San Diego Water Board on the topic under discussion should submit an attendance card

beforehand indicating their request to speak to the San Diego Water Board. Comment from the public should be for clarification or to add to the San Diego Water Board's understanding of the item; such comment must not be testimonial in nature or argumentative, as speakers are not under oath and the proceeding is not adversarial. Time limits may be imposed on interested persons.

D. PROCEDURES FOR NON-CONSENT (CONTESTED) AGENDA ITEMS

Non-consent or contested agenda items are items to which the parties involved have not consented and the staff recommendation is in dispute. The procedure that applies to such items depends on the nature of the matter. Matters before the San Diego Water Board may be quasi-legislative or quasi-judicial (adjudicative proceedings). Such items may require a public hearing and all interested persons will be provided an opportunity to make comments.

Contested Adjudicative Matters

Contested agenda items that are adjudicative, not quasi-legislative, are governed by the rules for adjudicative proceedings. State Water Resources Control Board (State Water Board) regulations setting forth the procedures for adjudicative proceedings before the State and Regional Water Boards are codified in Title 23, California Code of Regulations, Division 3. Adjudicative proceedings before the State and Regional Water Boards are governed by State Water Board regulations as authorized by Chapter 4.5 of the Administrative Procedures Act (commencing with section 11400 of the Government Code). State Water Board regulations further provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with sections 800-805 of the Evidence Code and section 11513 of Chapter 5 of the Government Code. (Other provisions of Chapter 5 of the Government Code do not apply to adjudicative proceedings before the State and Regional Water Boards). A copy of those regulations and Chapter 4.5 of the Administrative Procedures Act, section 11513 of the Government Code and sections 801-805 of the Evidence Code can be found at http://www.waterboards.ca.gov/laws_regulations/.

An adjudicative proceeding is a hearing to receive evidence for determination of facts pursuant to which the State or Regional Water Board formulates and issues a decision. A decision determines a legal right, duty, privilege, immunity or other legal interest of a particular person or persons. Examples of adjudicative proceedings include hearings to receive evidence concerning the issuance of waste discharge requirements or National Pollutant Discharge Elimination System (NPDES) permits, concerning cease and desist orders, and concerning orders imposing administrative civil liability. Adjudicative proceedings are not conducted according to the technical rules of evidence, and the San Diego Water Board will accept testimony and comments that are reasonably relevant to the issues before the Board. Testimony or comments that are not reasonably relevant, or that are repetitious, will be excluded.

In some adjudicative matters, most frequently administrative civil liability matters, a separate Hearing Procedures Document has been issued. In those

cases, the procedures set forth in that Document will apply, subject to discretionary modification by the Chairman. For other adjudicatory matters, the Chair may establish specific procedures for each item, and consistent with section 648, subdivision (d) of title 23 of the California Code of Regulations may waive nonstatutory provisions of the regulations. Generally, all witnesses testifying before the San Diego Water Board must affirm the truth of their testimony and are subject to questioning by the Board Members.

Absent a separate Hearing Procedures Document, the Board normally conducts adjudicative proceedings in an informal manner. That is, the Board does not, generally, require the designation of parties, the prior identification of witnesses, prior submission of written testimony, or the cross examination of witnesses. Any requests for an alternate hearing process should be directed to the Executive Officer and must be received by the San Diego Water Board by the deadline set forth on pages 1-2 of the Agenda.

When the San Diego Water Board determines that a hearing will be formal (as opposed to informal, as described above), participants in a contested agenda item are either "designated parties" or "interested persons." Only designated parties will have the right to cross-examination, and may be subject to cross-examination. Interested persons (i.e., nondesignated parties) do not have a right to cross-examination, but may ask the San Diego Water Board to clarify testimony. Interested persons may also be asked to clarify their statements at the discretion of the San Diego Water Board.

Designated parties include:

- Discharger or Responsible Party
- Persons directly affected by the discharge
- Staff of the San Diego Water Board (if specified in the applicable hearing procedures)

All other persons wishing to testify or provide comments for a formal hearing are "interested persons" and not "designated parties." Such interested persons may request status as a designated party for purposes of the formal hearing by submitting such request in writing to the San Diego Water Board no later than the date specified at the beginning of the Agenda Notice or in the applicable Notice of Public Hearing or Hearing Procedures Document. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the discharge.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for formal hearings generally will be as follows, unless modified by the San Diego Water Board Chair:

- Testimony and cross-examination of San Diego Water Board staff
- Testimony and cross-examination of discharger

- Testimony and cross-examination of other designated parties
- Testimony by interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close hearing
- Deliberation and voting by San Diego Water Board

Closing statements shall be for the purpose of summarization and rebuttal and are not to be used to introduce new evidence or testimony. After considering evidence, testimony, and comments, the San Diego Water Board may choose to adopt an order regarding a proposed agenda item.

Quasi-legislative Matters

Quasi-legislative matters include rulemaking and some informational proceedings. These matters may include hearings for the adoption or amendment of regulations, water quality control plans, and hearings to gather information to assist the State and Regional Water Boards in formulating policy for future action. They are not adjudicative proceedings and are subject to different procedures. (See PROCEDURE FOR INFORMATION ITEMS, above, and Cal. Code Regs. Tit. 23, § 649, et seq.)

E. CONTRIBUTIONS TO SAN DIEGO WATER BOARD MEMBERS

Persons applying for or actively supporting or opposing waste discharge requirements or other San Diego Water Board orders must comply with legal requirements if they or their agents have contributed or proposed to contribute \$250 or more to the campaign of a San Diego Water Board member for elected office. Contact the San Diego Water Board for details if you fall into this category.

F. PROCEDURAL INFORMATION

The San Diego Water Board may meet in closed session to discuss matters in litigation, including discussion of initiated litigation, significant exposure to litigation, or decisions to initiate litigation [Authority: Government Code § 11126(e)]; deliberate on a decision to be reached based upon evidence introduced in an adjudicatory hearing [Authority: Government Code § 11126(d)]; or to consider the appointment, employment or dismissal of a public employee to hear complaints or charges brought against a public employee [Authority: Government Code §11126(a)].

The San Diego Water Board may break for lunch at approximately noon at the discretion of the Chairman. During the lunch break San Diego Water Board members may have lunch together. Other than properly noticed closed session items, San Diego Water Board business will not be discussed.

Agenda items are subject to postponement. A listing of postponed items will be

posted in the meeting room. You may contact the designated staff contact person in advance of the meeting day for information on the status of any agenda item.

Speaker Cards. All persons desiring to address the San Diego Water Board are required to fill out a speaker card. Cards are normally provided near the entrance to the meeting room. San Diego Water Board staff can assist you in locating the cards.

Please fill out a separate card for each item you plan to speak on. All relevant sections, including the oath, must be completed. Please use the appropriate color card, as indicated below:

Blue: Public Comments (for items requiring no San Diego Water Board action - Public Forum, status reports, etc.).

Green: Public Testimony, in support of the tentative action.

Pink: Public Testimony, opposed to the tentative action.

G. AVAILABILITY OF EXECUTIVE OFFICER'S REPORT AND AGENDA MATERIAL

Visit our website at www.waterboards.ca.gov/sandiego to view the Executive Officer's Report over the internet two days prior to the San Diego Water Board meeting. A copy can also be obtained by contacting the staff office. A limited number of copies are available at the meeting.

Copies of most agenda items to be considered by the San Diego Water Board are posted on the San Diego Water Board's website at http://www.waterboards.ca.gov/sandiego/board_info/agendas.

Details concerning other agenda items are available for public reference during normal working hours at the San Diego Water Board's office. The appropriate staff contact person, indicated with the specific agenda item, can answer questions and provide additional information. For additional information about the Board, please see the attached sheet.

H. PETITION OF SAN DIEGO WATER BOARD ACTION

In accordance with California Water Code section 13320, any person affected adversely by most decisions of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may petition the State Water Resources Control Board (State Board) to review the decision. The petition must be received by the State Board within 30 days of the San Diego Water Board's meeting at which the adverse action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I. HEARING RECORD

Material presented to the Board as part of testimony (e.g. photographs, slides, charts, diagrams etc.) that is to be made part of the record must be left with the Board. Photographs or slides of large exhibits are acceptable.

All Board files, exhibits, and agenda material pertaining to items on this agenda are hereby made a part of the record.

J. ACCESSIBILITY

The facility is accessible to people with disabilities. Individuals who have special accommodation or language needs, please contact Ms. Chris Witte at (858) 467-2974 or cwitte@waterboards.ca.gov at least 5 working days prior to the meeting. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

K. PRESENTATION EQUIPMENT

Providing and operating projectors and other presentation aids are the responsibilities of the speakers. Some equipment may be available at the Board Meeting; however, the type of equipment available will vary dependent on the meeting location. Because of compatibility issues, provision and operation of laptop computers and projectors for Power Point presentations will generally be the responsibility of the individual speakers. To ascertain the availability of presentation equipment please contact Ms. Chris Witte at (858) 467-2974 or cwitte@waterboards.ca.gov at least 5 working days prior to the meeting.