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.
\(^{40}\) Guidelines, § 15367.
\(^{41}\) 83 Cal.App.4th at p. 906.
\(^{42}\) Id. at pp. 900-903.
serving 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 Act 46 and other provisions of state law 47 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).
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San Diego Region  
March 29, 2013  
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activities which are within the agency’s area of expertise or which are required to be . . . approved by the agency . . . .

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).
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. 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. 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.  

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. 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. In addition, the AB 32 Scoping Plan identified other substantial GHG emissions reductions required to be achieved from California’s motor vehicle emissions standards.

57 Guidelines, § 15052, subd. (a)(3).
58 Guidelines, § 15053, subd. (e).
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. 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. 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. 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:

<table>
<thead>
<tr>
<th>Year</th>
<th>Target</th>
<th>Reduction Achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>8%</td>
<td>9%</td>
</tr>
<tr>
<td>2035</td>
<td>13%</td>
<td>16%</td>
</tr>
</tbody>
</table>

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

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61 Gov. Code, § 65080.
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
### Project Sheet


**County Approved**

**Control Dollars**

<table>
<thead>
<tr>
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<td>1,188</td>
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<td>FY 2018/2019</td>
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<td>1,188</td>
</tr>
<tr>
<td>10</td>
<td>FY 2019/2020</td>
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<td></td>
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<td></td>
<td>14,250</td>
</tr>
</tbody>
</table>

**Remarks:**

- **Date:** 2019/01/11

**Revision:** 2019/01/11

**Page:** 22

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California Regional Water Quality Control Board,  
San Diego Region  
March 29, 2013  
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3. **SCAG’s RTP/SCS Growth Assumptions Reflect Tesoro Extension.**

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

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

By 2035, SCAG’s Regional Growth Forecast/OCP-2010 Modified assumes that South Orange County population will grow by 27 percent and employment growth is estimated at 32 percent. A large portion of the growth is approved for the Ranch Plan area, parts of which are adjacent to the north and south ends of the Tesoro Extension. Growth in other parts of South Orange County represents the build-out of the remaining areas in accordance with adopted plans, consistent with the SCAG Sustainable Communities Strategy. The future growth pattern adjacent to the Tesoro Extension is depicted on Page 147 of the RTP/SCS in Exhibit 4.17.65

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

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### Existing and 2035 Demographic Data Project

#### Contained in SCAG Regional Projections and OCP-2010 Modified

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

Source: OCP-2010 Modified (CDR, January 2012).
4. **SCAG's RTP/SCS Strategies Incorporate the Tesoro Extension.**

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

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

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

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

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

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

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


   "[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
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.


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]."


"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."


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.  

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

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

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

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

"Increase regional accessibility in order to reduce vehicle miles traveled."

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

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

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

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,

[Signature]

Robert D. Thornton  
of Nossaman LLP

RDT/Imb

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
Previously Permitted
AFC-PEC Alternative
Tesoro Extension Project

SOCTIIP and Tesoro Extension Comparison
ATTACHMENT B
Date: June 7, 2001

To: Interested Parties

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

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

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

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

Sincerely,

Macie Cleary-Milan
Deputy Director, Environmental and Planning
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 __________________________

☐ I am 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.

☐ 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 5/1/08

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 __________________________________________, 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 __________________________________________, 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

______________________________
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)
**June 19, 2013**  
**Item No. 9**  
**Supporting Document No. 4**

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<tr>
<th>SENDER: COMPLETE THIS SECTION</th>
<th>COMPLETE THIS SECTION ON DELIVERY</th>
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</table>
| ■ 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. |
| A. Received by (Please Print Clearly)  
B. Date of Delivery  
C. Signature  
D. Is delivery address different from item 1? (Yes/No)  
If YES, enter delivery address below: |

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<th>Status</th>
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| 7000 1570 0011 1278 9585  
Richard Baker  
California Dept. of conservation  
5815 Corporate Ave Ste 200  
Cypress, CA 90630-4747 |  
| |  

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

**4. Restricted Delivery? (Extra Fee):**  
Yes/No

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**Control Board**

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San Diego Regional Water Quality  
9771 Clairemont Mesa Blvd  
San Diego, CA 92124-1324 |  

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**4. Restricted Delivery? (Extra Fee):**  
Yes/No

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**Lee & Resources**

**3. Article Addressed to:**

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</tr>
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| 7000 1570-0011-1280-6992  
Mr. John Sibley  
Director  
County of Orange, Public Facilities  
PO Box 4048  
Santa Ana, CA 92702-4048 |  

<p>| <strong>2. Article Number (Copy from service label):</strong> |</p>
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</table>
ATTACHMENT C
June 14, 2001

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

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?
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

California Environmental Protection Agency

Recycled Paper
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.
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.

California Environmental Protection Agency

Recycled Paper
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.

California Environmental Protection Agency
- 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 lermp@rb9.swrcb.ca.gov.

Sincerely,

Paul Lemons

California Environmental Protection Agency
EXHIBIT 4
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
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.
APPEARANCES: (CON'T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered support for the project:

Jim Adams, Building and Construction Trades
Mary Adams, Local 652, Santa Ana
Jancee Aellia, resident of San Clemente
Milly Alfidi
Sam Allevato, City of San Juan Capistrano
Beth Apodaca, resident of San Clemente
Hamid Bahadori, American Automobile Association
Mike Balsamo, Orange County Building Industry
Association
Lisa Bartlett, City of Dana Point
Pat Bates, 5th District County of Orange
Tony Beall, City of Rancho Santa Margarita
Brent Beasley, Roofers Local #220
Chris Betancourt, Local #89
Jim Bieber, resident of San Clemente
Darren Blume, Flatiron Construction Company
Mark Bodenhamer, San Juan Capistrano Chamber of Commerce
Jeff Bott
Daryl Brandt, Bricklayers Local #4
Scott Brown, Division Chief, OCFA
Wendy Bucknum, Professional Community Management
Mike Burke, RBF/SC Chamber Board Member
Bill Campbell, Former Supervisor, Villa Park
Denise Casad, Women in Transportation Seminar
Duane Cave, SOCE Coalition
Carolyn Cavecche, OC Tax
Don Chadd, TCWD/SAMLARC HOA
Ross Chun, City of Aliso Viejo
Doug Clark, IUOE #12
Mike Conte, resident of Rancho Santa Margarita
Darin Chidsey, Southern California Association of Governments
(First Name Unknown) Danielos, Local #89
Bill Davis, Southern California Contractors Association
Ray Diaz, Operating Engineers
(First Name Unknown) Enriquez, Local #89
Gabino Enriquez, Laborers Union
Adrian Esparza, Local #652
Celso (Last Name Unknown), Local #89
Jim Evert, City of San Clemente
APPEARANCES: (CON'T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered support for the project:

Jack Feller, City of Oceanside
Samantha Fitzgerald
Luis Fonseca, Local #652
Brad Fowler, Director of Public Works, City of Dana Point
Emily France, The Gas Company
Richard Gardner, resident of Capo Beach
Roger Gaubel, SMWD
John Gauthier, RWAN #220
Chuck Gibson, Santa Margarita Water District
Kevin Gilhooley, Southern California Association of Governments
Jesus Gonzalez, Local #89
Fernando Guzman, Local 652
Josh Haskins, Economic Coalition
Jose Hernandez, Local 652
Peter Herzog, City of Lake Forest
Rush Hill, City of Newport Beach
Sherry Hodges, resident of Encinitas
Cindy Holmes, resident of San Clemente
Joaquin Itaro, Local #89
Heather Johnson, Dana Point Chamber of Commerce
April Josephson, resident of Santa Margarita
Lucille Kring, City of Orange
Steve LaMotte, Assemblywoman Diane Harkey's Office,
San Juan Capistrano
Michael Latham
Dave Leckness, City of Mission Viejo
Ernesto Lemus, Local #652
Brian Lochrie
William Lochrie, resident of Orange
Juan Carlos Navarro Lopez, Local #652
Victor Lopez, Local 652
Josef Francisco Lozal, Local #89
David Lowe, Director of Design and Construction,
Transportation Corridor Agencies
Sercio Machado, Local #89
Hector Madrigal, Construction Laborer
Pablo Maldonado, Local #652
Doug Mangione, IBEW
Tom Margo, Former TCA CEO
Wes May, Engineering Contractors Association
Penny Maynard, resident of Dana Point
APPEARANCES: (CON’T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered support for the project:

Hector Mayorch, Local #89
Ben Medina, Friendly Fix-IT
Abraham Mieda, IBEW Local #441
Robert Ming, City of Laguna Niguel
Carl Morgan, San Diego North EDC
Debbie Newman, Laguna Niguel Chamber of Commerce
Todd Nicholson, Mission Hospital, for CEO McFarlane
David Nydegger, Oceanside Chamber of Commerce
Dennis O’Connor, Orange County Association of Realtors
Ted Owen, Carlsbad Chamber of Commerce
Jerry Pabbruwee, Sukut Construction
Martin Paine, Senator Mimi Walters’ Office, Laguna Hills
Mike Pino, IUOE Local #12
Chuck Puckett, City of Tustin
Oscar Ramirez, Local #89
Lisa Ramsey, CalTrans District 12
Tom Rath, Flatiron Construction Company
Rhonda Reardon, City of Mission Viejo
Antonio Reyes, Local #89
Manuel Rodriguez, Local #89
Robert Ruiz, IUNA Local #652
Jeff Ruvalcava, Cement Masons 500
Phil Salerno, Cement Masons
Alfonso Sanchez, Local #652
Schott Scheffel, City of Dana Point
Phil Schwartz, Former Mayor of San Juan Capistrano
Mark Schwing, City of Yorba Linda
Sam Simms, Jacob Engineering
Dave Simpson, Orange County Transportation Authority
Suzanne Singh, Rancho Santa Margarita Chamber of Commerce
Mary Anne Skorpanich, Manager, Orange County Watersheds
Kristin Slocum, Mobility 21
Jose Salaria, Former Assemblyman, 69th District
Curt Stanley, SOCE Coalition
Bryan Starr, Orange County Business Council
Dave Stefandides, Orange County Association of Realtors
APPEARANCES: (CON'T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered support for the project:

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

The following people registered opposition to the project:

Danny Adami (phonetic), Esq., Senior Attorney
Natural Resources Council and Director of NRDC
South California Resources Project
Mark Babski, resident of South Orange County
Julianne Bradford, resident of Oceanside
Guinevere Breeding
Craig Cadwallader, Surfrider Foundation, South Bay Chapter
Paul Carlton, Sierra Club
Julia Chunn-Heer, Surfrider
Jerry Collamar, resident of San Clemente
Bill Deck, Sierra Club
Penny Elia, Sierra Club
Denise Erkenneff, resident of Dana Point
Rick Surfrider, Director, South Coast Water District
Sarah Falden (phonetic), Vice President Program for the California State Parks Foundation
Michael Fipps (phonetic), Esq., Staff Attorney
Endangered Habitat League
Robert Franklin, Huntington Beach Surfrider Chapter
Paul Gracey, Sierra Club
Graham Hamilton, Chairman, Surfrider Los Angeles Chapter
Chris Hardwick, Aloha Kai Research Foundation
Ray Heinstra (phonetic), Associate Director of Orange County Coast Keeper
Patricia Holloway, resident of San Clemente
Bill Holmes, Sierra Club
APPEARANCES: (CON'T)

PUBLIC FORUM NONGOVERNMENT ORGANIZATIONS

The following people registered opposition to the project:

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

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PROCEEDINGS

WEDNESDAY, MARCH 13, 2013

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

AGENDA: ITEM NO. 8

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

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

Please do not leave and expect that it's going to be a ten-minute break, because it will be five minutes. Thank you.

THE PUBLIC EN MASSE: (Laughter).

(Herefore, five-minute break commenced 9:30 a.m. Proceedings resumed 9:39 a.m.)

CHAIRMAN MR. MORALES: Come to order.

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

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

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

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

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

Because we've got two days of very full
proceedings, already, on another major item. But it will be
at some point after that. Hopefully, soon, after that. But
we will let you all know.

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

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

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

    The other -- what we'd like you to make is, if
there are any of you that have come and are in agreement with
fellow speakers and you want to get together -- because, say
there are ten of you and you all agree wholeheartedly on a
position, you can get together. One person can speak and say, "I'm speaking on behalf of the following ten individuals." And that will extend the amount of time that we give you to present. That will have to be adjusted, of course. But the way things stand, given the total number we've got, you'll have, roughly, a minute and a half to -- and -- to speak publicly, which isn't a whole lot of time. So, the -- to the extent you can coordinate amongst and between yourselves to minimize the number of public speakers, the more we'll actually be able to hear from you all individually. Okay?

Now, we will have staff going outside, once we figure out who all of our public speakers are going to be. And they will advise the next ten speakers, in order, with -- (inaudible). So, if you are outside, you will know in advance of when your time to speak is. So, that will be helpful, in not having folks crowd in and thinking they need to to make sure they don't miss they're opportunity to speak. So, at this point, we're going to begin our presentations. But, before hearing from staff, I want to address any preliminary matters. Are there any board members that will either need to make disclosures concerning -- (inaudible).

BOARD MEMBER (MR. AARBANDEL): (Raise of hand).

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

CHAIRMAN MR. MORALES: Yes.

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

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

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

CHAIRMAN MR. MORALES: Yes, ma'am.

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

BOARD MEMBER (MR. ANDERSON): Yes.

BOARD MEMBER (MR. ABARBANEL): Yes.

CHAIRMAN MR. MORALES: Thank you.

And with that, I'd like to request that the Water Board Staff come up to make its presentation.
(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
branch; and Tony Felix, water resource control engineer.

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

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

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

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

The purpose of the Tesoro Extension Project is to provide improvements to the South Orange County transportation infrastructure designed to reduce existing and future traffic congestion on the I-5 freeway and the arterial
network in South Orange County. The area shown here, in red, are included in the Rancho Mission Viejo Ranch Plan Development, portions of it which are currently under construction.

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

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

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

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

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

The construction of road projects may threaten beneficial uses on-site and down the stream. Road projects increase impervious surfaces and reduce the amount of natural brown surfaces over which percolation of rainfall and other surface water can occur, which increases peak storm water runoff, flow rates and volume. Water quality issues associated with the road project can be detrimental to receiving waters, unless properly designed to incorporate BMPs to control pollutants from storm water and non-storm
water discharges, as well as to mitigate impacts from the
discharge of fill to waters of the State.

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

The existing State Route 241 is a toll road
facility owned and op- (sic) -- maintained by CalTrans, with
the Discharger operating the toll collection facilities.

State Route -- State Route 241 currently extends for
approximately 25 miles within the eastern portion of Orange
County. It was built in five segments and ends at Oso
Parkway.

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

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

Now, I would like to say a few words about the
history of State Route 241. In 2,008, the California Coastal
Commission objected to the Discharger's preferred 16-mile
route, under the Federal Coastal Zone Management Act, on the grounds that the toll road was not consistent with the State's Coastal Zone Management Program. The commission also found that the Discharger had not provided sufficient information to determine whether the project was consistent with policies related to water quality, wetlands, archeological resources and greenhouse gas emissions. The Discharger appealed the Coastal Commission's objection to the Department of Commerce, triggering an administrative review process that involved written briefs and arguments by the parties, input from interested federal agencies, tens of thousands of written comments from the public and a day long public hearing in San Diego County.

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

The majority of the key issues regarding the tentative order are related to whether the board should consider the potential impacts of the entire 16-mile reach of the proposed toll road during its consideration of the tentative order. The Discharger maintains that the five and a half mile Tesoro Extension Project has independent utility and is needed, even without construction of the entire toll road project south of Cow Camp Road. At this time, the San
Diego Water Board has not received any application for further extension of State Route 241.

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

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

I would like to point out that all of these impacts are to non-federal state -- waters of the State. The United States Army Corps of Engineers determined that the project activities, as proposed, are not within waters of the United States and, therefore, the project is not subject to Army Corps jurisdiction under Section 404 of the Clean Water Act. Therefore, a Clean Water Act Section 401 Certification for the project is not required from the San Diego Water Board. The project is, however, subject to regulation under Water Code Section 13260, which requires that persons
proposing to discharge waste to waters of the State must apply for and obtain Waste Discharge Requirements from the Water Board in order to lawfully discharge. The tentative order serves as individual waste discharge requirements for the project, related discharges of fill to waters of the State.

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

This table summarizes the mitigation for permanent impacts to waters of the State. To compensate for permanent impacts to waters of the State, the tentative order requires 20.31 acres of establishment, restoration and enhancement of aquatic resources. This includes approximately 10,000 linear feet of mitigation. In addition, the tentative order requires 13.55 acres of upland buffer restoration. This amount of mitigation acreage is
substantially higher than what's typically required for similar projects.

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

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

Mitigation Area A is a 15-acre area, adjacent
to Tesoro High School, located along Chiquita Creek and one of its tributaries. Wet meadow, mule fat scrub and southern willow woodland will be established and enhanced in this area. Mitigation Area B is an 18.86 acre area within the Upper Chiquita Canyon Conservation Area, which is the headwaters of Chiquita Creek. 10,300 and 25 linear feet of ephemeral drainage will be established and restored. Mitigation Area B will also include establishment of Southern Sycamore Riparian, restoration of Live Oak and Elderberry Habitat and over 13 acres of perennial grassland buffer.

CHAIRMAN MR. MORALES: Okay.

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Sure.

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

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

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Uh-h-h --

the conservation area?

BOARD MEMBER (MR. ANDERSON): No. The -- uh -- this -- the wetland where -- that you said establish and
NORTHERN WATERSHED UNIT (MR. BRADFORD): There's a conservation easement. And it's part of the conservation area. But the establishment is actually creating waters. So, right now, it's a -- it's a meadow that's being grazed by cows and stuff. And they'll go in and create -- create water habitat -- (interrupted)

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

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

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

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


Next, I would like to discuss three key requirements of the tentative order: construction storm water BMPs, post-construction BMPs and mitigation monitoring and
reporting. First, are "construction storm water BMPs."

Construction activities associated with the proposed
discharges of fill may threaten beneficial uses on-site and
downstream. The Discharger must apply for and obtain
coverage under the Statewide Construction Storm Water
Permit. Permit requires the Discharger to develop and
implement a storm water pollution prevention plan to control
storm water and norm- (sic) -- non-storm water discharges and
prevent spills.

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

Finally, the tentative order requires a final
Habitat Mitigation and Monitoring Plan be submitted by June
14, 2,013. The final mitigation plan will be released for public review and comment before the mitigation plan is approved by the San Diego Water Board. Based on comments received, the Executive Officer will determine if there is a need for a board hearing to consider approval of the Mitigation Plan. Mitigation site monitoring and reporting will be required, annually, for a minimum of five years or until all long-term performance measures -- measures identified in the mitigation plan have been met. Long-term maintenance is required beyond the minimum five-year mitigation and monitoring program. The Discharger will be responsible for managing the mitigation sites, in perpetuity, to ensure the long-term sustainability of the resources.

The tentative order was released for public review and comments on January 17th of this year. In response to a request for an extension of the comment period, the deadline for submission of comments was extended from February 18th to February 25th. Additionally, after consultation with the Board Chair, late written comments were received by March 1st, 2013, were added to the administrative record. You can see, on this table, the breakdown of letters in support and against the project. The majority of the comment letters submitted are from letters and -- and did not include specific or substantive comments regarding the tentative order.
Over 700 timely submitted comments regarding
the tentative order were received from the Discharger,
various stakeholders, elected officials, organizations and
several hundred private citizens. General and technical
comments received by February 25th, 2,002- - (sic) --13,
are addressed in the Response to Comments Report included in
the supplemental agenda package.

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

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

The key issues raised in comment letters
reviewed to date are: Compliance with CEQA, Post-Construction
Best Management Practices and Compensatory Litigation. And I
will discuss each key issue, individually.
The Save San Onofre Coalition, a broad based coalition of environmental nongovernmental organizations claims that the Discharger failed to submit a valid final CEQA document that the San Diego Board can rely on in considering the adoption of the tentative order. The Discharger argues, in rebuttal to the coalition's claims, that the final subsequent Environmental Impact Report certified by the Discharger complies with CEQA and meets all requirements for the San Diego Water Board to adopt the tentative order. The Discharger also argues that the recent addendum to the final SEIR further documents that the Tesoro Extension Project will not have any significant impacts beyond those evaluated in the final SEIR. At this time, staff and counsel need additional time to evaluate CEQA comments and compliance; prepare responses to the CEQA issues; and draft revised or additional findings as appropriate for inclusion in the tentative order.

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

The Environmental Habitats League expressed concerns that the project will limit the transports of coarse
grain sediment to receiving waters. Water Board staff have reviewed these issues and determined that Post-Construction BMPs must be designed to comply with both Statewide CalTrans Storm Water Permit and the South Orange County Hydromodification Plan and Model Water Quality Management Plan. Compliance with these standards will include consideration of the project's effect on coarse grain sediment transport and design standards that will meet applicable coarse grain sediment transport requirements.

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

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

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

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

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

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

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

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

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

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

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): No.

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

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

BOARD MEMBER MS. KALEMKIARIAN: Okay.

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Well, if I
remember correctly, there was two mitigation types, A and B.
One is going to be part of a larger conservation --
(unintelligible) -- associated with Rancho Mission Viejo
Ranch Plan and that has conversation easement. And there's a
ranch preserve third party that will manage that third
area -- (inaudible).

BOARD MEMBER MS. KALEMKIARIAN: Go 'head.

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

BOARD MEMBER MS. KALEMKIARIAN: Go 'head. Just

speak closer.

NORTHERN WATERSHED UNIT (MR. BRADFORD): Oh, and --

and -- uh -- the other area, Mitigation B, the Discharger

will be in charge of managing that. I think CalTrans will

eventually take over.

THE PUBLIC (UNIDENTIFIED): And some nonprofit

speak of the increase. It will transfer to the --

(inaudible)?

BOARD MEMBER MS. KALEMKIARIAN: And, so, who -- who

is to provide oversight, to those, to -- since they're

eventually nonprofits. Sounds like they would be.

Who -- who -- who checks the --

(unintelligible) -- if it's being done properly?

NORTHERN WATERSHED UNIT (MR. BRADFORD): Well,

they're -- they were required to consign with the permit

and -- and by the report, up until -- I believe it was the

performance standards. But in perpetuity, after that, there
will be no more reporting. There will only be -- if we
discover an issue or someone reports an issue.

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

NORTHERN WATERSHED UNIT (MR. BRADFORD): Yes.

EXECUTIVE OFFICER MR. GIBSON: May I address --

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

Ms. Kalemkiarian, Robert Thornton --

(Simultaneous speech; unintelligible.)

STATE BOARD STAFF COUNSEL (MS. HAGAN): Excuse me.
Can you speak into the microphone, please.

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

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

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

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

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

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

MR. BOB: Thank you, Valerie.

Thank you, Board Chair and Members of the Board.

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

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

The TCA have completed an extensive analysis for hydromodification and water quality control under Tesoro Extension Project. This analysis included the completion of a baseline and proposed condition hydrology study, a geomorphic evaluation of the receiving channels, a channel stability adjustment, a continuous flow simulation and the development of a mitigation program to match pre- and post-
construction flows during curves for a range of
geomorphically significant flows. The state of the science
hydromodification and water quality program has been
developed, based on these analysis, and will be implemented
as part of this program.

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

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

As can be seen on this exhibit, which is the
topographic map of the area, Wagon Wheel Canyon is a large
drainage and, most likely, a good source for bed load material. It is fair to conclude that placing a road in this canyon could result in a reduction of coarse sediment supply to receiving waters. The Tesoro Extension Project, however, does not do this. It does not impact the head waters of Wagon Wheel Canyon, as ESA PWA claims. And the reason for this is very simple and straightforward.

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

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

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

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

Now, ESA and PWA was also instrumental in studying and determining how best to assure that The Ranch Plan Development and support infrastructure, such as the road, avoided, minimize and fully mitigated hydromodification impacts.
In fact, the ESA PWA prepared The Baseline Geomorphic and Hydrologic Conditions Report for the Rancho Mission Viejo Development Special Area Management Plan. This report set out tenants that were followed in planning the ranch to assure that potential hydromodification impact of all plan development would be avoided and minimized to the maximum extent practical and fully mitigated. The baseline report specifically states that the soil and geologic characterization in the drain's analysis will be used to support citing and design recommendation for specific project, such as the location of structures, basins and roads.

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

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

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

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

Now ESA PWA, while working for the developer, was part of the technical team that determined the R and B plan, including the planned regional arterial road located in the same place as the Tesoro Extension and would have similar BMPs that would avoid, minimize and fully mitigate hydromodification impact in such a sufficient manner that would deflect (sic) -- declare the LEPA (phonetic). This same plan did not result in significant, adverse or
unmitigated impacts on receiving waters. PWA's current
report does not reference that tetnal (sic) -- that technical
team's finding, even though they were part of that team.
They did -- also did not reference that team's conclusion of
"no significant impact."

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

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

The technical team for the SAMP, including PSA
-- uhm-m-m -- that -- that PSA was a part of drew conclusions
that simply cannot be reconciled with ESA PWA's current
report. And this called the report into serious question,
particularly, since it's -- it is clear that ESA PWA did not
understand all the facts of the Tesoro Project. Such as, which watershed did project actually -- (unintelligible) -- in, versus those watersheds like black -- Wagon Wheel Creek, that would not even be touched by the project.

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

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

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

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

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

Now, a study was performed by the University of Texas. And what's shown here is, when a porous overlay was installed on a highway between the rainy seasons of 2,004 and 2,005 -- so, that's where the red arrow is pointing (indicating). Before the '05 season, you can see there was a large amount of total extended solids coming off of the road. Once the overlay was put in place, the TSS reduced significantly -- not only for that one year, but for a long
period of time afterwards. And then the total -- looking at
the total suspended solids is an excellent indicator for
measuring pollution from highways. And because it -- because
it measures both metal and other solids and to see the porous
pavement have this much production is very significant. And
that's why we're employing it within our roadways.

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

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

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

MS. HALL: Thank you, Paul.

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

Since receiving our board's approval of 2,011
EXHIBIT 5
ITEM: 8


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. CAS0000003) 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, WILDCOAST-COSTASALVAJE, and Orange County Coastkeeper. Shute, Mihaly & Weinberger submitted additional comments on behalf of the Save San Onofre Coalition by letters dated February 22, 2013 (Supporting Document No. 5) and February 25, 2013 (Supporting Document No. 6) expressing various concerns with F/ETCA's CEQA documentation submitted in the application for the Tentative Order.

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

By letter dated February 15, 2013, the Endangered Habitats League (EHL), an NGO member of the Save San Onofre Coalition, submitted comments (prepared by ESA PWA for EHL) regarding the hydromodification impacts of the Tesoro Extension Project. EHL claims that, while the ROWD application for the proposed Project appears to address the flow control portion of the HMP, it does not address the bedload preservation portion of the HMP. EHL asserts that receiving waters will experience a reduction in bedload that would negatively affect beneficial uses and that the project’s proposed mitigation does not properly address these anticipated impacts (Supporting Document No. 7). Additionally, by letter dated February 25, 2013, Hamilton Biological submitted comments regarding the Tesoro Extension Project Habitat Mitigation and Monitoring Plan at the request of EHL. The Hamilton Biological comments relate to absence of survey results for the San Diego Cactus Wren and the lack of analysis.
regarding the Arroyo Toad population in San Juan Creek (Supporting Document No. 8).

**F/ETCA Comments and Rebuttal**

By letters dated February 20, 2013 (Supporting Document No. 9), and February 25, 2013 (Supporting Document No. 10) F/ETCA maintains that the 2006 SOCTIIP FSEIR it certified as the lead CEQA agency and provided in the ROWD is valid and that the San Diego Water Board should rely on it in considering the adoption of the Tentative Order. F/ETCA asserts that the Tesoro Extension Project is proposed to be built within the footprint previously analyzed in the FSEIR between Oso Parkway and Ortega Highway (as shown in Attachment A to F/ETCA’s February 20, 2013 letter). F/ETCA reports that the operational characteristics and width of the Tesoro Extension Project are the same as analyzed in the FSEIR. F/ETCA also maintains that the February 15, 2013 addendum to the 2006 FSEIR it approved further documents that the Tesoro Extension Project will not have any new significant impacts beyond those evaluated in the FSEIR. F/ETCA also asserts that because the Tesoro Extension Project is located entirely within Orange County, today’s hearing in Costa Mesa is the appropriate forum and location for the hearing. Accordingly the San Diego Water Board should reject Save San Onofre Coalition’s request for a hearing location in San Diego County. Additionally, by letter dated February 25, 2013, F/ECTA rebutted the February 15, 2013 letter from EHL stating that the Tesoro Extension Project will comply with the hydromodification requirements of the recently adopted Caltrans statewide storm water permit (Order No. 2012-0011-DWQ, NPDES No. CAS0000003) 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)

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)


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


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)
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)
11. Transportation Corridor Agencies, F/ETCA

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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)


15. Comment Letters Regarding Tentative Order (Electronic Copy)

16. Additional Comment Letters Regarding Tentative Order (Electronic Copy)

17. Revised Tentative Order No. R9-2013-0007 with attachments (Hardcopy)

18. San Diego Water Board Response to Comments (Hardcopy)
EXHIBIT 6
STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

WEDNESDAY, JUNE 19, 2013

WATER QUALITY CONTROL BOARD
BOARD MEETING ROOM
9174 SKY PARK COURT
SAN DIEGO, CALIFORNIA
MR. MORALES: I will like to call the meeting back to order. It's after 1:00 p.m. so we can take up item number nine on the agenda and this is the time and place for the continuance of public hearing on tentative order number R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency, Tesoro Extension, commonly know as the 241 project.

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

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

As specified in the May 30 hearing notice and order of proceedings designated parties may address any
changes to the order since March 13th, and issues related to CEQA. Now members of the public that were not able to participate in the March 13th hearing in Orange County may generally, but very briefly, comment on the order. Now we do have a list of all of those that you were able to attend, did attend, and those of you that spoke at the Orange County hearing. That hearing was also quite full, but we were able to do a number of things, including log those of you in support and opposed to -- to the tentative order. Now as you can see we have a really large crowd today. After we hear from staff, the TCA and the Coalition, we will begin hearing from members of the public, following the Coalition.

Now for those elected officials in the audience, to the extent we were able to identify you from the cards submitted, we'll try and have you speak at that point and then we will also hear from members of the public representing different affiliations and positions, as many as we can hear from today. However, as you can see, we have a lot of folks here and a lot of you have filled out cards and want to speak. Here's what I propose and suggest. We have allocated two hours for the public participation part forum. Generally we give you all three minutes each to speak, but we can't
do it given the number of you that want to speak. So we have to rachet that down to about two minutes. I know that a lot of you share your position with friends, other groups, members of groups that you belong to, and to the extent they filled out cards and they want to give some of their time to you, we'll give you an extra minute for every person that does that. So you can elect somebody to speak on your behalf, and, please, understand that we do log all of the information so we know, and the record reflects, whether you are in support of or not tentative order. And as many of you have seen there is a sign-up sheet out in the lobby where you can log your positions. We got staff assisting in that respect. We also have staff that have led folks back to our library, which is our overflow room, that accommodates 50-ish folks, and it's already full and it's overflowing. To the extent anybody leaves there, staff will be available to get new people to fill those spots. Back there, however, it's only an audio feed and the projections that we see from the PowerPoints. There is no realtime video type feed for the library, just so you know that. Okay. As I mentioned this is a continuation of the hearing that began on March 13 and we heard from a lot of individuals at that hearing. I want to emphasize that all of the
comments received at that hearing are part of the record for this proceeding. So I encourage any of you that may have participated there to please not simply repeat what you may have there, because we do have this issue of time and our constraint.

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

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

So, finally, I would say that we do have, as you can see, standing room only. Some of you have signs that you may wish to hold up to make your point, that's fine, but to the extent you do that I request that you do it around the perimeters and try to avoid blocking
access or the ability of anybody who might be behind you to actually see what's going on. And this is a reminder to myself and any speakers that come after me that the folks in our overflow room will appreciate it if we speak directly into the microphones, because it's hard for them to hear otherwise. And I'm the only one at fault so far. And one of our board members --

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

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

MR. MORALES: And that's right and I would the same thing and it's -- it's not to be elitist folks, it's simply a function of the proceedings. The NGO's and TCA representatives are designated parties and along
with staff they will be making presentations. So that's why we reserve the seats for them so that they don't have to, you know, make their way through the large crowds. So please don't take offense, but to the extent you may happen to be in one of those reserved seats, if you can make it available for the folks we reserved it for, that would be appreciated.

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

MS. KALEMKIARIAN: I also, Mr. Chairman, received a call, a voicemail, on my office line, from the representative of the Orange County Business Council. I believe it was Mr. Star -- I'm not sure --
expressing his support for the project. And it would
have no impact on -- on my vote either way.

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

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

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

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

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

MR. MORALES: Okay. Are there any other
disclosures by the board?

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

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

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

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

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

MR. ANDERSON: I will base my decision on the information received and the record.
MR. STRAWN: Nobody called me. So I will make my decision based on the information we will receive here.

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

MR. STRAWN: Thank you.

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

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

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

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

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

I know that's a very brief time, folks. So
think about what you want to convey to us before coming up to the mic.

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

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

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

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

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

I'll simply ask you guys to say "I do" when I
Do you swear the testimony you are about to give is the truth? And if so, please answer "I do."

THE WITNESSES: I do.

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

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

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

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

Excuse me one second.

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

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

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

So here's the existing sections of 241. Here's the proposed Tesoro Extension Project. And here is the
The purpose of the Tesoro Extension Project is to provide improvements to the south Orange County transportation infrastructure.

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

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

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

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

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

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

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

I will discuss each key issue individually.

The concerns regarding TCA's CEQA compliance
include regional board reliance on potentially inadequate CEQA documentation and issues related to TCA's public participation process.

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

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

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

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

MR. BRADFORD: Sure.

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

MR. BRADFORD: It was the Foothill/Eastern Corridor Project. It was a 16-mile road that went from
Oso Parkway all the way down to the 5.

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

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

MR. ABARANEL: Thank you.

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

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

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

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

Based on these and other considerations, San Diego Water Board council has concluded that the
CEQA documentation provided by TCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering adoption of the revised tentative order.

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

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

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

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

Excuse me one second.

Next I would like to discuss concerns regarding
TCA's ability to meet the coarse sediment supply requirements of the Southern Orange County Hydromodification Management Plan, also known as the HMP.

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

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

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

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

The commenters state that, in order to comply with the Orange County HMP, the site design may need to be significantly altered. Possible changes to the
The revised tentative order requires that the updated runoff management plan comply with the Orange County HMP and model water quality management plan. These requirements must be met regardless of when the runoff management plan is updated and submitted to the water board.

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

Commenters also had concerns that the mitigation plan has been deferred for future public comment. The commenters believed the board should not consider approving this project before the mitigation plan is finalized because doing so may violate the California Water Code and CEQA.
The mitigation measures are not deferred as the comments suggest. Rather, the tentative order requires the mitigation plan to be updated to meet the standards in the order.

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

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

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

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

MR. ABARANIEL: Suppose mitigation plans are designated and met by TCA, and then I guess Cal Trans takes it over once it's completed, but they don't work.
What happens?

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

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

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

MR. ABARANEL: Thank you.

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

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

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

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

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

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

TCA is not a road agency. TCA is a transportation corridor agency. TCA has the legislative authority to construct any transportation improvements within its corridors that are consistent with the Southern California Association of Governments regional transportation plan and the regional transportation improvement program. These -- this includes such transit improvements as HOV lanes, bus lanes and light rail.
The next question is: Who uses State Route 241, and where are they going?

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

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

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

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

The next question is: What is the "roads
first" policy?

In the mid-1980s, the County of Orange, in order to manage the transportations needs of population growth and development, adopted a roads first strategy. This policy is manifested in the establishment of roadway improvement programs in areas having significant growth and development. The development in an area is tied to roadway construction by a building permit phasing, thereby guaranteeing that roads will be built first.

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

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

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

The revised tentative order requires TCA to
identify the party responsible for implementing the
mitigation measures identified in the final mitigation
plan no later than July 26th, 2013.

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

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

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

Both water board and the California Department
of Fish and Wildlife require financial security to
ensure performance of the mitigation requirements. TCA
has prepared draft escrow agreements for the mitigation
sites. These agreement will be reviewed and approved by
the water board once the mitigation plan has been
finalized.

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

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

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

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

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

However drainage Al is down here. And so the potential impact would be to drainage Al and not Wagon Wheel Creek.

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

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

Project impacts to nonfederal waters of the state have been avoided and minimized to the maximum extent practical. All remaining impacts to water will
be mitigated at a very high ratio to establishment and restoration projects consistent with and exceeding water board standards.

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

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

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

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

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

There are pollutants that will come off the cars as a result of using the road certainly. They have -- they have designed post and construction management practices, such as Austin sand filters, bioswales, biofiltration. And they're using a porous
friction course, I believe it's called, that also helps remove car pollutants prior to discharge of water to the state.

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

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

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

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

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

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

MR. ABARANEL: It's up the chair.

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

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

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

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

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

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

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

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

MS. HAGAN: Yes, Chairman Morales. The NOD was filed on April 23rd. The board of directors of TCA approved the addendum and a conceptual design for the
Tesoro extension on April 18.

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

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

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

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

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

MR. MORALES: Okay. Thanks. Thank you.

Next up I believe is --

MS. DORSEY: Chair? Kelly Dorsey over here.

MR. MORALES: Oh, hi, Kelly.

MS. DORSEY: Hi. How are you?

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

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

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

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

MS. DORSEY: Exactly.

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

MS. DORSEY: Project --

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

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

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

MS. DORSEY uh-huh.

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

MS. DORSEY: Yes.

MR. ABARANEL: If at some point in the future there is a request for an additional extension of highway 241 that is different from project A, I assume
there will have to be an additional EIR.

Will that include the present project?

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

Anything beyond the --

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

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

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

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

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

The EIR was prepared for a project of which
this is a subproject.

MS. HAGAN: The --

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

MS. HAGAN: Yes.

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

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

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

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

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

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

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

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

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

MS. HAGAN: Essentially we --

(Microphone feedback noise.)

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

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

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

MR. ABARANEL: But their determination assessed
by you to be adequate is a recommendation to the board?

MS. HAGAN: Essentially --

(Microphone feedback noise.)

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

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.

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

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

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

MS. HAGAN: If we felt that their document was not adequate in its treatment of impacts to water
quality or water resources, we have the discretion under
CEQA, and we have the independent authority to
condition, approve, deny the project.

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

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

MS. HAGAN: Yes.

MR. ABARANEL: Thank you.

MR. MORALES: Any other questions?

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

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

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

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

But, you know, maybe you addressed this, but
are we satisfied -- it's funded by one of these
nonprofits. Is this not going to go away? How do we know that the mitigation goes on, that it doesn't just sort of slide away as other things happen.

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

MR. BRADFORD: Sure.

MR. MORALES: Yeah. And --

(Microphone feedback noise.)

MR. MORALES: Okay. I'll just be really loud.

And before you answer that question, I just sort of had follow-up. Because at the last --

(Microphone feedback noise.)

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

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

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

And just a quick comment on -- on the CEQA. My
understanding -- and correct me if I'm wrong -- at the last meeting our concern was with the fact that there was no NOD filed, which potentially would have meant that we would be the, quote, lead agency for CEQA purposes or could be considered that.

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

Is that correct?

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

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

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

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

MR. MORALES: Okay.

MR. ABARANEL: If I may comment to Sharon.
I will later make a suggestion for us to consider that addresses the issue of mitigation and in particular failed mitigation.

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

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

MR. MORALES: Talk to us about mitigation.

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

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

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

In terms of the financial assurances, they are required by the order to provide that for us in -- within six months of adoption of the order. So they've
given us draft documents regarding that that we've turned over to counsel. And within six months we'll have to approve the financial assurances for the project.

MS. KALEMKIARIAN: That's helpful.

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

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

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

MS. KALEMKIARIAN: Okay.

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

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

What if this board doesn't like who is
designated? Does that nullify any action that we take today?

MR. BRADFORD: Does it nullify --

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

MS. DORSEY: It's Kelly Dorsey again.

MR. ABARANEL: Hi.

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

MR. ABARANEL: That's fine.

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

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

Generally, you know, with the other property it's Rancho Mission Viejo Trust, which is a non-profit, and they generally, you know, use agencies that are nonprofits that -- so that we can separate the responsibility and the money in escrow and financial
assurances away from, you know, the parties that are
doing the project.

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

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

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

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

But before they're actually out there shovels
into the ground, this all has to be dealt with?
MS. DORSEY: Correct. If the board adopts the item today, then TCA will be required to get us their -- their final HMMP, including all of the requirements in the order, by the end of July.

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

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

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

MR. ABARANEL: Okay. I have another question.

On Page 120 out of 443 --

MS. DORSEY: Of which document?

MR. ABARANEL: Well, I put them all together so I could search them better. Document No. 6. Supporting document No. 6. There's a table, environmental issue and so forth. It's -- I'm sorry. It was much easier to search when I put them all together.
MS. DORSEY: Page 100 -- oh, wait. Are you talking about the addendum to the --

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

MS. DORSEY: Okay.

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

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

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

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

MR. ABARANEL: Yes, I am.

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

MR. ABARANEL: So we have no position on whether that is correct.
MS. DORSEY: I don't see the table that you're referring to --

MR. SMITH: 324.

MS. DORSEY: -- on the pages that are --

The document is only 98 pages, James.

MR. SMITH: 3-24.

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

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

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

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

MR. SMITH: Air quality starting with construction emissions.

MR. ABARANEL: 3-24.

MS. DORSEY: Which section? At the bottom?

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

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

MR. ABARANEL: Again, this is an EIR. The EIR
was certified by the discharger and we agreed was okay.

Do we know if this is okay?

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

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

MR. ABARANEL: Okay. Thank you.

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

We're at Coalition now. 30 minutes.

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

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

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

MR. STRAWN: I'm sorry. How much time do you
want to reserve for.

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

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

MS. FELDMAN: We have number of people
testifying. So we're going to take about 20 minutes now
and about ten later.

MR. STRAWN: Okay.

MS. FELDMAN: So starting again quickly.

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

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

Together our groups represent over a million
citizens in California. Our members have stood together
many times to protect and defend San Onofre State Beach
from this destructive toll road.
Approximately a thousand people attended the California State Park and Recreation Commission's toll road hearing in San Clemente in 2005. And over 3,000 attended the 2008 California Coastal Commission hearing in Del Mar. 3,000 more were at the Department of Commerce hearing later the same year.

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

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

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

First and very importantly, we will discuss the proper segmentation of the toll road and its impact on
the larger project and the surrounding area. Next we will talk about protection of beneficial uses. And last we will be addressing the procedural issues.

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

MR. ABARANEL: Can I ask you a question?

MS. FELDMAN: Yes. Of course.

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

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

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

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

MR. ABARANEL: Okay.

MR. WHITE: NOTE: Good afternoon, Chairman
Morales and board members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The first of those is the board's independent authority under CEQA to make findings prior to approval of a project.
Now, CEQA requires that all responsible agencies, before they approve a project, have to make certain findings. They have -- and these findings have to be made with respect to every significant impact that has been identified for the project, whether it's been mitigated or not.

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

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

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

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

And that EIR concludes, for all its flaws,
which are being challenged in court as well -- but on
its face it concludes that there are numerous
significant impacts of the toll road, many of which --
very many of which relate to water quality, water
resource, things that are within your jurisdiction.

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

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

So the board is going to -- the board doesn't
have any other documentation on which to make its CEQA
findings other than the significant impacts identified
in the 2006 EIR. So you need to make findings with
respect to all of those impacts. And you need to be
able to find the mitigation proposed for those impacts
is adequate.
Now, in 2008 you looked at this question, and so did the Coastal Commission. And separately, independently, both of those agencies concluded that the TCA had not provided enough evidence to show that there would not -- that the significant water quality impacts of this project would be mitigated.

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

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

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

What's very interesting is that the TCA, in approving the Tesoro extension recently, did not make new findings of overriding consideration. Findings of
overriding consideration basically say, notwithstanding significant impacts of a project, there are other important policy considerations at play which justify approving a project with significant impacts.

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

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

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

The second area of authority that would justify you denying this project today is the Porter-Cologne Act. The board's authority under the Porter-Cologne Act is completely separate and independent from CEQA. You
owe no deference at all to the TCA's conclusions in the CEQA documents.

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

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

Now --

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

MR. WHITE: Okay. Thank you.

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

And finally, very quickly, just -- others will touch on this -- the more narrow issue, the proposed order -- we appreciate that it now requires that the
TCA's R&P comply with the hydromodification requirements of Harsh County.

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

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

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

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

Thank you very much.

MR. MORALES: Okay. Question.
MR. WHITE: Sure.

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

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

MR. WHITE: That's right.

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

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

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

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

MR. MORALES: Okay. I'll look to Mr. Thornton to enlighten me.
MR. WHITE: Thank you.

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

MR. WHITE: Yes.

MR. ABARANDEL: And maybe this could clarify the confusion -- the morass -- the CEQA morass.

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

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

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

But separate from that, it's true that there's a couple of places like the place that you mentioned, maybe one or two other impacts, where the TCA in the text says these impacts only occur south of Cow Camp.
Road, and they're not.

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

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

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

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

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

Any other questions? Thank you, board members.

MS. SECACHEQUIN: Good afternoon, board members. My name is Stephanie Secachequin. I'm the
California policy manager for the headquarters of the
Surfrider Foundation.

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

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

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

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

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

The HMP that was concluded in 2011 was equally
forward thinking and carefully crafted by you, your
staff. What you did during that process is that you
required dischargers to prove how they would protect
beneficial resources before, during and after the
project. That was a huge milestone for both of those things to go forward.

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

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

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

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

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

MR. MORALES: Whoa, folks.

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

MR. MORALES: If you're going to speak, can you
give him the microphone.

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

But we had discussions with your staff. You issued a order of proceedings that you close the public hearing at the end of the full-day hearing in Costa Mesa.

MR. MORALES: That's correct.

MR. THORNTON: And your order of proceedings could not have been more clear that additional testimony by the Coalition and the TCA was limited to two issues: Number one, California Environmental Quality Act. Mr. White spoke to the CEQA issue. That's fine. Number two, revisions to the tentative order.

Point of order, Ms. Secachequin is outside the scope of the --

MS. SECACHEQUIN: If I could finish my --

MR. THORNTON: -- required testimony.

I've got a point of order pending here.

So our point of order, Mr. Chairman, is that the testimony of the Coalition is outside the scope of your order of proceedings.

MS. SECACHEQUIN: And I would just like to say my next sentence, which actually --

Because the tentative order has not
substantively changed -- because the tentative order has
not substantively changed, and because the
hydromodification analysis has not substantively
changed, and because the TCA doesn't have to produce
documentation until October of 2013, our original
concerns still remain that hydromodification impacts are
going to happen.

MR. THORNTON: Mr. Chairman, I restate our
point of order.

MR. MORALES: So noted.

MS. SECACHEQUIN: So if the -- can I ask you a
question, sir?

If the tentative order analysis of
hydromodification has not changed since March, what are
we supposed to talk about? It's the same thing. So our
same concerns remain.

MR. MORALES: And --

MS. SECACHEQUIN: It's the same thing.

MR. MORALES: And I understand that, ma'am.

But with respect to the hydromodification, it is
correct, I believe, to some extent that was addressed in
March. And, you know, we were fairly clear. And, you
know, when I stated --

MS. SECACHEQUIN: The tentative order for this
time, sir, about the HMP and their hydromodification
analysis is exactly the same as it was in March. And so
therefore -- another board member is agreeing with me.
I sorry. I just want to point that out.
And because it's the same --
MR. ABARANDEL: Ma'am, shaking my head does not
mean I'm agreeing with you.
MS. SECACHEQUIN: Well, I mean --
MR. ABARANDEL: I just -- let me -- then I have
to explain what I'm shaking my head about.
Those issues are going to -- we're going to
take into consideration when we make our final
determination. We've already heard them. We're
considering them. And they are part of how I will make
my decision.
MS. SECACHEQUIN: Fair enough. But they don't
have to produce documentation until October of 2013 --
MR. MORALES: Okay.
MS. SECACHEQUIN: -- about how they comply with
the HMP. That was not the case in March. That's --
that's part of the new tentative order.
But I'll continue. We don't need to talk about
them submitting after-the-fact documentation because I
think that's fundamentally important for this board to
realize that you can't issue a permit by accepting
after-the-fact documentation. It's putting the cart
before the horse, is the final point with that.

MR. MORALES: Okay. If you want to save some time -- how close are they? You're down to about four minutes remaining. So you're into your rebuttal.

The times where questions were asked or points of order were raised did not count against you.

MS. SECACHEQUIN: I'll -- in deference to you and everyone here, I'll finish up.

I would just like to remind you that you rejected this application based on the same EIR in 2008 except they're relying on their same old environmental documents, and none of those permit an adequate detail change. And we believe that you categorically should deny this permit.

MR. MORALES: Thank you.

MR. FITTS: Good afternoon. My name is Michael Fitts. I'm staff attorney with Endangered Habitats League.

Very quickly now, jettisoning my written testimony, the three-part hydromodification analysis that's contained in the HMP explicitly contemplates that design changes would be made based on the result of that analysis.

The second prong of that analysis is to avoid significant bed material in the site design. Obviously,
if you approve a particular design and then require the analysis, the design is part of the permit. You can't go back and unbreak that egg.

So we would respectfully ask that this permit decision be deferred until you receive the required hydromodification analysis. As CEQA impacts -- CEQA implications it's very difficult to make a determination that this project will have no significant hydrological impacts before the analysis that is required to determine those impacts is done.

And it has significant impacts under the Porter-Cologne Act as well where you can't make a determination that beneficial uses will not be impaired -- that is a premise for issuing a permit -- until that analysis is done.

Thank you very much.

MR. HEIMSTRA: Good afternoon. Ray Heimstra with Orange County Coast Keeper.

To keep it short, we're very concerned about TCA's ability to protect water quality in the immediate project area and the downstream tributaries, which include Doheny Beach at the ocean.

To keep -- once again, to keep it really short, the -- you know, they're required to revise a runoff management plan. That revision is required after --
after this permit, after the consideration of approval. That's putting the cart before the horse. We need to see the revised runoff management plan and then review it and make a decision afterwards. So you shouldn't approve the permit today just because of that.

The next thing is allowing the permit to concede without collecting baseline water quality data. It's very important that we have baseline water quality data to make sure that there isn't degradation that's going on.

We can see the problems with that with the 261 where they missed a giant selenium problem that cost us millions of dollars to remediate. Same thing with San Juan.

In watershed there's also more important consequences. We've got endangered species, including abalone, commercial and recreational species that could be impacted by road runoff. And there is just not enough data.

So keeping it really short, I'm sorry, but that's where we're at. Thank you.

MR. NAGAMI: Good afternoon, board members. Damon Nagami. I'm a senior attorney with the Natural Resources Defense Council. I'm just here to wrap up quickly.
Another important reason to deny the permit is that the public has been denied adequate review of the project. TCA has gone to great lengths to evade public input rather than facilitate it.

This egregious behavior violates the letter and spirit CEQA, is completely antithetical to this board's commitment to ensuring public participation in the permitting process.

In closing, we all know what's happening here. This is an improper attempt by TCA to bring back the full 16-mile toll road, which both the Coastal Commission and the Bush administration rejected in 2008 because of a long list of adverse environmental impacts, including impacts to water quality.

For all the reason you have heard, we believe you have the authority and the obligation to deny TCA's application for waste discharge requirements based on its failure to meet water quality standards.

This concludes our initial presentation. We'd like to reserve about five minutes for closing based on the number of questions and answers that were sort of taking up the time that we had.

MR. MORALES: The questions and answers did not eat into your time. We stopped the timer, and they didn't count against you.
MR. AGAMI: When you said that we had gone 20 minutes, we had actually gone 15. So I don't know which kind of timer you were using, but I think we were timing exactly. So I'm going to submit that for the record.

MR. MORALES: We have been going for close to two hours here. So let's take a three-, four-minute break. Don't go very far, folks. Get your coffee. If you need to make a quick run, do it.

MR. GIBSON: Mr. Chairman, if I can, I would like to ask our audience to remember that these are formal proceedings and to be respectful of all the speakers and not to applaud or clap or cheer or otherwise speak over speakers.

MR. MORALES: Please take your seats.

Okay. We've got our board members here. We're about to start with TCA.

But before we do, I went back and looked at -- at the revisions to the tentative order. And there is some discussion of updated RMPs and section 5 sub C.

So while it's not the testimony I was hoping or looking for today, I think we'll let it in, but I definitely am going to allow TCA the opportunity to respond in any way they feel is necessary, given that testimony.

But for the members of the public, as I stated
at the beginning, the purpose of this proceeding is not just to open it up as a free-for-all. We did want to hear about very specific issues, and those generally pertain to any changes to our tentative order and decoy issues. And I believe the CEQA issues will primarily be dealt with by staff and the designated parties. So with that, Mr. Thornton.

MR. THORNTON: Thank you, Mr. Chairman, members of the board.

Robert Thornton on behalf of the Foothill Eastern Transportation --

Once again, Robert Thornton on behalf of Foothill Eastern Transportation Corridor agencies.

We want to express our appreciation to your staff for their hard work and diligence on this proposed tentative waste discharge order and to the board members. I know you sat through a day-long proceeding already in Costa Mesa. And obviously we appreciate your attention to this matter.

But just to remind everyone, we are only talking about the five-mile extension of state route 241. Specifically the responsibility of this agency is with regard to impacts to state waters. We're talking about permitted impacts of this project of four-tenths of an acre in impact.
We have mitigation proposed for this project of 15 to one what your staff referred to in the last hearing as meeting a gold standard for mitigation.

Your typical requirement would be in the order of one to one or three to one. Indeed this board recently approved a 401 certification for Cow Camp Road, which is the southern terminus of this project, with one-to-one mitigation. So we're 15 times what has been required of other similarly situated applicants.

Now I want to respond specifically to the board members' questions regarding mitigation sites.

First of all, I want to say that TCA is extremely proud of their history in mitigation, their commitment to mitigation, how they restored and enhanced over 2,000 acres of mitigation to the course of their project.

With regard to financial assurances, the TCA has built -- financed and built 2.5 billion dollars in regional transportation improvements and has never defaulted on a financial obligation, never. Has never defaulted on an environment obligation, never.

We will -- we are responsible to fully mitigate any permanent and temporary impacts by creating, restoring, enhancing and revegetating per the HMMP. We have detailed performance standards that have been
established with success criteria. We're overseen by both the U.S. Fish and Wildlife Service and the California Department of Fish and Game with regard to the achievement of those performance standards.

And now, because of your jurisdiction, we'll be overseen by your agency with regard to accomplishment of the success criteria of the mitigation program.

We have an annual monitoring reporting requirement to the resource agencies. Again, state department of fish and wildlife, U.S. Fish and Wildlife Service. And we're obligated, as been mentioned, to provide the water board with an acceptable financial assurance instrument. Indeed an instrument has already been drafted and provided to the board.

Again, we're talking about public agencies that have constructed 2.5 billion dollars in regional transportation improvements. We have demonstrated that we're here for the long term. We've demonstrated a commitment to following through on mitigation obligations. We've never defaulted on an obligation.

Next slide.

There are two specific mitigation sites that have been identified as the mitigation areas for the WDR. One is the -- referred to as mitigation area A
south of Tesoro High School. There's already a funding mechanism in place for this site already approved by the U.S. Fish and Wildlife service pursuant to the Rancho Mission Viejo habitat conservation plan.

There's already a long-term funding mechanism, aside from the TCA's commitment to -- to restoring -- constructing and restoring wetlands in this area. There's already an existing long-term management plan to be operated by the Rancho Mission Viejo conservancy which has both public representatives and representatives of the Rancho Mission Viejo company.

And again, I think it's noteworthy to comment here, with regard to the adequacy of these measures, the very same groups that are sitting here today opposing these projects approved this same mechanism because they have entered into a settlement agreement with the Rancho Mission Viejo company with regard to this development and approved all these documents.

Next slide.

Mitigation area B, what we refer to as the Upper Chiquita conservation area, this is actually a conservation area that was acquired well in advance of any impact of our projects in the mid '90s. We established a conservation bank in coordination with the fish and wildlife service and the State Department of
Fish and Wildlife were proposing mitigation in that area.

Again, we demonstrated over the years a commitment. There is already a conservation easement in place that protects this property in perpetuity. And we will certainly follow through and implement the requirements of the tentative WDR to provide an acceptable plan of financial assurances of the TCA's intent, frankly, as -- has been to hold onto this site.

But if at some point in the future we decide to -- to transfer management of the conservation easement to a third party, that would be required to be approved by both U.S. Fish and Wildlife Service, the State Department of Fish and Wildlife and your agency.

So you have a veto power, if you will, on the transfer of authority -- authority with regard to that site.

Now, I want to get into some of the CEQA issues, which is a primary -- supposed to be a primary focus. So a lot of folks here obviously have signs saying "Save Trestles." This project is nowhere near Trestles. It's ten miles away from Trestles. It's seven miles away from -- from Dana Point.

Next slide.

There's been discussion of Cow Camp Road. And
I believe some statements have been made in the press and some comments were made by the opponents about connecting to a dirt road.

Well, the upper right-hand picture was taken yesterday, Mr. Chairman. That is a picture of Cow Camp Road. It's not a dirt road. That's phase one. Phase two, the construction bid documents are out to bid. We'll be under construction shortly.

The picture on the lower-left was taken yesterday. That's a picture of the current status of the Rancho Mission Viejo ranch plan development in what's called planning area one. Ultimately the ranch plan will include 14,000 homes. It will double the size of the City of San Juan Capistrano. So that's the need for this project.

Next slide.

As has already been noted --

MR. ABARANEL: Can I ask a question?

MR. THORNTON: Sure.

MR. ABARANEL: We heard earlier that TCA has a policy called "roads first."

Can you go back one slide.

The lower-left looks like road second.

MR. THORNTON: Board Member Abaranel, first of all, just a correction. It's actually the County of
Orange policy of roads first.

The TCA's project, in fact, are part of that regional policy to have adequate infrastructure in place before the development occurs. Because we all know in this society what happens if you don't develop your infrastructure before the development occurs: the infrastructure never happens.

So that's one of the reasons why it's so critical to approve this extension before that development is in place, so that we do have an adequate regional infrastructure system.

MS. KALEMKIARIAN: But isn't it in place?

MR. THORNTON: Well, first of all, planning area one is to the west of where our project area is. But that's one reason it's so critical that we move forward with this five miles.

Because the development is coming, and we're not going to have an adequate regional infrastructure program in place for south Orange County unless we complete the system at least to Cow Camp Road.

MS. KALEMKIARIAN: But I'm confused again. Because the development is coming before the road, or it's not?

MR. THORNTON: The development is coming. Now, those homes aren't open yet. But the development has
been initiated. And that's why it's so critical that we proceed with the segment.

Next slide.

We can go beyond this. We've already spoken to this issue.

Next slide.

With regard to the procedural issues that have been raised concerning the TCA's action, it was actually the opponents of the project that came before you in March and said the TCA board has to act first.

Well, we did exactly what the opponents asked us to do. We took the matter back to the TCA board. They noticed the hearing in accordance with the Brown Act. They approved the addendum. And they issued a notice of determination.

Next slide.

There have been multiple opportunities for public involvement. Indeed I dare say there are very projects that have four-tenths of an acre of impacts on state waters that have had the level of public scrutiny that this project has had.

This board should be applauded for the extent -- the extent of public involvement. It obviously had a day-long hearing before. You posted on your website the addendum three weeks before the March
hearing. Obviously the opponents submitted extensive comments.

There has been a very extensive opportunity for public comment. And there will be additional opportunities in the future both before the TCA and through the federal environment process.

Next slide.

As your staff has indicated, the issue here under CEQA is really quite straightforward and narrow. CEQA could not be more clear, as your staff has indicated, in the addendum response to comments.

And this is a quote from your staff report:

The water board must presume the EIR prepared by the lead agency to be adequate.

That's the California Environment Quality Act.

Next slide.

There's no grounds to require additional environmental documentation.

Again, a quote from your staff's findings in the addendum response to comments at Page 3: The water board finds none of the conditions that would require subsequent or supplemental EIR.

So there's no basis under CEQA or under law to require an additional environmental documentation.

Next slide.
Finally, with regard to the point that was made by Mr. White that litigation has been filed, it is one of the realities in this society that we live in that you can't build anything without a CEQA lawsuit being filed.

But CEQA, again, addresses this very clearly, that your staff indicates appropriately under CEQA: Even if litigation is filed, responsible agencies are required to presume documents prepared by the lead agency comply with CEQA.

Next slide.

And the CEQA review here has not been piecemeal because there have been four EIRs prepared evaluating extensions of State Route 241 going all the way back to a programatic-level document in 1981; subsequent document from the TCA in '91; and then 2006 subsequent EIR; the 2004 ranch plan EIR, which evaluated both the development and the extension of the state route 241; and of course the 2013 addendum on the Tesoro extension.

Next slide.

As we indicated before in the prior proceeding, the Tesoro extension does not foreclose the consideration of a broad range of alternatives.

The TCA board has made no decision as to whether or how to proceed south of Cow Camp Road. We
will continue the dialogue with the community on that.
Indeed, we spent two years in detailed direct
proceedings with the Save San Onofre Coalition
discussing that very issue, and we're committed to
continuing that dialogue.

Next slide.

As I indicated at the prior proceeding, it is
extremely common in California for large transportation
projects to be phased.

Go to the next slide.

I want to focus on the high-speed rail project.
I mentioned this at the last hearing. But this is the
largest project in the state. Indeed, it's the largest
project in the nation. And guess what? It's being
phased. It's being segmented.

It's a project that is designed to run from
San Diego to the bay area. But the first phase, the
first segment is in the central valley, the segment that
shortly will be under construction.

It was evaluated separately under CEQA even
though there are continuing controversies and decisions
have not been made about the alignment of the project
either in Southern California or in the bay area.

MS. KALEMKIARIAN: If you go back a slide
please. No, to the map, yeah, and it relates to the