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
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. ABARANDEL: 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. ABARANDEL: 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. ABARANDEL: 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. ABARANDEL: So that's a staff recommendation
then.

MS. HAGAN: Yes.

MR. ABARANDEL: 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 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. ABARANDEL: 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 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. ABARANDEL: 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. ABARANDEL: 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. ABARANDEL: 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 in 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 protect, 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. ABARANEL: Ma'am, shaking my head does not mean I'm agreeing with you.

MS. SECACHEQUIN: Well, I mean --

MR. ABARANEL: 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 CoastKeeper.

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. 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, there 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 -- of the mitigation program.

We have a 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 78
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
next slide, my question is this, if you’re recognizing it’s a segment, which I appreciate, of a larger plan, and on your website the whole 241 is still projected as needed and desired and everything by the TCA; is that correct?

MR. THORNTON: That’s correct.

MS. KALEMKIARIAN: Okay. So --

MR. THORNTON: Let me modify, that’s not just the TCA, I mean that’s the regional transportation industry.

MS. KALEMKIARIAN: I understand that. Everybody thinks, except for other folks in the room, but there’s a lot of people that think it needs to be built all the way to the five. So would you be building this as a segment if you knew today that there would be no further extension?

MR. THORNTON: Yes, we would. And that’s the documentation that we made in the addendum to demonstrate this project has independent utility that provides substantial traffic benefits independent of a continuation south of Cow Camp Road. That’s the determination that TCA has made.

MS. KALEMKIARIAN: Okay. So would it be worth the investment you’re prepared to commit on the behalf of TCA, that if the future you were not permitted
to continue, for any reason, whether it was money or
environmental impact or anything else, that the
investment now in this one extension would be worth
doing.

AUDIENCE MEMBER: You're under oath.

MR. THORNTON: Let me answer this way, in
reference to the comment from the crowd that I'm under
oath, my opinion doesn't make much difference, but the
opinion that matters is, frankly, the bond market. The
bond market, which has to purchase the debt issued by
TCA, supported and backed by future toll revenues, that
will be the determining factor as to whether they think
the investment is appropriate. Not me personally.

MS. KALEMKARIAN: I understand.

MR. THORNTON: And I would say over the years
-- the TCA has been in business since 1986. Every
project that TCA has built has been built in segments.
Every project has been successfully financed.

AUDIENCE MEMBER: That's not the question.

MR. THORNTON: And so the bond market, the
capital market, has made the judgment that projects are
worthwhile investing in, and they believe that they're
worthwhile investing in.

MS. KALEMKARIAN: Your answer -- I understand
there's lots of moving parts and the bond market may
have to decide. Maybe it won't get built because you won't raise the money. But I guess the problem I have with the concept is on the one hand -- and I get this problem. On the one hand we have a segment of a larger project which is being described and is being described as a segment to the bond market, I would assume; right? You're telling them that this is the first part of a longer project we hope to eventually build?

MR. THORNTON: We would -- we haven't gone to the bond market for this project yet.

MS. KALEMKIARIAN: But when you do it will be a segment of a larger project.

MR. THORNTON: But they -- but they -- believe me, they will not depend on the revenues from the larger unapproved project to decide whether to purchase the bonds.

MS. KALEMKIARIAN: So it would be the revenues, the utility, the approval of the -- this one segment that will go into the raising of funds to build this one segment?

MR. THORNTON: That plus the revenue from the existing facilities.

MS. KALEMKIARIAN: Obviously. But not from the stuff that's not built.

MR. THORNTON: There will be very few investors
that would expect revenue from future facilities that are not yet permitted.

MS. KALEMKIARIAN: If you come back to this board, which I fully expect will happen, frankly, in another couple of years and say, we're ready now to -- we want to do the next segment. We're going past Cow Camp. Now we're going to go towards the five or towards the position where we start to get into other kinds of environmental impacts and other kind of water quality concerns. You're prepared in the TCA -- I -- I don't mean you personally, of course. The TCA is prepared that we may say, wait a minute, now you're talking about something different. We're not talking about -- we're not talking about just this first portion.

MR. THORNTON: Of course whatever future project we decide to pursue, and to what ex -- whatever extent it has impacts on state water then we will obviously have to come before this board and address those issues with regard to that project. That's clear. This -- the permit that's before you is only with regard to 4/10ths of an acre for a five-mile road.

MS. KALEMKIARIAN: Which you would build if anything else happens.

MR. THORNTON: Correct.

MS. KALEMKIARIAN: Assuming you get the
funding.

MR. MORALES: Folks in the audience, if you have comments when somebody else is speaking, please keep them to yourself. It is disruptive.

AUDIENCE MEMBER: He didn't have respect.

MR. MORALES: Folks, with respect to the designated parties, I'll put it this way, the NGO's if they wanted to raise a procedural point of order and they choose to do so, I will show them the same amount of deference that I would to any other designated party that ask for a point of order.

But I'm just asking, as a matter of common courtesy, if somebody is speaking just please, you know, keep your opinions to yourself. When we get to the public participation portion I'm sure you will have the opportunity, hopefully, to voice your views at that point. Thank you.

MR. THORNTON: Go to baseline. I wanted to address testimony that you have heard with regard to baseline water quality monitoring suggesting that the WDR should not be issued until the baseline data is in place. Well, in fact, you already have baseline data, as your staff has noted in their responses to comments, there's a formal program that the state service water and the monitoring program, known as SWAMP, monitors all
of California surface waters.

Orange County has a very aggressive water quality monitoring program. Indeed there are over 50 water quality monitoring sights in San Juan Creek immediately downstream of this project. So there's extensive existing baseline data consistent with the baseline plan. I want to make a point here about the consistency of the MS4 permit. This project, because your staff has required -- your staff has required to us comply with the standards of the MS4 permit. Moreover, they have required us to comply with the standards in the Orange County water quality management plan, which no other state highway has been required to comply with. So it's fair to say that no state highway in the state has been required to comply with the water quality standards imposed by your staff or recommended by your staff in the tentative order that is before you. Now in response to board member Abarbnel's question about pollutants, what's in the pollutants, and what is the effectiveness of the treatment. I think that was the question. The pollutants of concern from highways, included heavy metals, total suspended solids, trash and total hydrocarbons, the TCA proposes to use and your tentative order would require, vegetated swales, Austin sand filters, which I don't think any other highway
project is using, and permeable overlay asphalt, which I
think you saw a graphic of last time, to remove
pollutants of concern, this, the studies indicate
removes 90 percent of those pollutants. And this is
before the water passes through the sand filters, which
are also proven to be about 90 percent effective.

So, again, we're being asked to meet a standard
that no other state, highway, Cal Trans, has not been
asked to meet. No other large transportation project in
the state has been asked to meet the standards that your
staff is recommending and that we're willing to accept.

Next. Go back. In conclusion, as I have just
said, the WDR conditions proposed by your staff are the
most rigorous in any of the states and we respectfully
request that you close the public hearing today and
approve the WDR.

I did want to ask Dr. Bob to respond to one of
the points that was made that the chair allowed us to
respond with regard to the hydro-modification questions.
Dr. Bob.

MR. MORALES: Before you go there -- there may
be some questions.

MR. THORNTON: Where are we on time?

MR. STRAWN: You have about 16 minutes left,
MR. THORNTON: Thank you.

MR. STRAWN: 16.45.

MR. MORALES: I do want the record to reflect that we have gone back and looked at the time we were keeping for the prior group of speakers from the Coalition and we are fairly convinced that you all had your 30 minutes and it wasn't just the 20. We have our timekeeping system and I think we followed the system and we use it the countdown timer so -- but, Mr. Thorn, before -- I guess Dr. Bob -- before Dr. Bob speaks if you could, one of the points that was raised by -- by Mr. White, he said that as, I guess, a public agency, I think what he was referring to was the CEQA section that says public agencies can make findings or have a responsibility to make findings and there may be a lack of distinction between lead agency and responsible agency. What is your take on that?

MR. THORNTON: I would refer Mr. Chairman you use CEQA guideline section 15042, which I think speaks directly to this point. And let me just read it because it can do a better job than I can do at trying to describe it. And it describes the distinction between lead agency and responsible agency. And so it says -- for example, first it says a lead agency has broader authority to disapprove a project than does a
responsible agency. Then it goes on to say, quote, for example, an air quality management district acting as a responsible agency would not have the authority to disapprove a project for water pollution effects that were unrelated to air quality aspects of the project regulated by the district, close quote.

So I think that answers the question directly. CEQA is extremely clear that the responsibility of the responsible agency is limited -- limited to your jurisdiction. And the facts before you today are that we -- you have a project that has very small impacts, very large mitigation, and is required to meet standards that no other highway project in the state has been required to meet. Dr. Bob.

MR. ANDERSON: Before you go, one last question. Wouldn't you agree given the importance of those resources that are downstream where the water goes out and the public use of those that it is good that you're meeting those.

MR. THORNTON: We think it's appropriate and that's why we are more than happy and willing to meet those standards and we're committed to meeting those standards. Thank you.

MR. STRAWN: Next we have Lesa Heebner.

MS. HEEBNER: Good afternoon, I'm Lesa Heebner.
Council Member of the City of Solana Beach. First, I must state that I am stunned that we are here again talking about the Toll Road. I attended the Coastal Commission hearings back in '08. I opposed the Toll Road then and I'm here today to oppose it again in it's repackaged mini-road format.

At that time, the Toll Road was ultimately denied by the Coastal Commission as inconsistent with the Coastal Act, and subsequently rejected by the US Secretary of Commerce. And this board also rejected the TCA's application for the full maxi footprint for the Foothill South Toll Road, but here we are again. And I understand that the reasons is how we got this far is because the lead agents TCA, can approve their own documents and proceed straight to the permit stage which is what bring us here today.

You, the water board, are the first independent review of this proposal. I believe the project segment before you, both violates CEQA and harm the beneficial uses of adjacent watersheds as well as nearby coastal resources.

First, it is common knowledge that CEQA does not allow a project to be piecemealed, but what is before you is a short five-mile segment of a piece of a larger project, obviously as this five-mile stretch does
go nowhere. Were you to approve this, not only would it be to approve a project that violates CEQA, giving a project momentum to be built in its entirety without it being reviewed in its entirety --

MR. STRAWN: Excuse me, could you go a little slower, the recorder is --

MS. HEEBNER: You know what, I will hand you my remarks, how's is that. Okay.

Were you to approve this, not only would it be to approve a project that violates CEQA giving a project momentum to be built in its entirety without being reviewed in its entirety, but built all the way down to San Onofre State Beach, a park located entirely within San Diego County. If the entire road is built, and obviously that is the intent, it will destroy one of Southern California's remaining stretches of coastal wild lands and will impair coastal access to the public. Both are resources that might constituents have made clear they want to see preserved.

Second, it is my understanding the San Juan Creek Watershed is already degraded. Would not approval of this five-mile stretch, which would pave the way to the entire 16-mile Toll Road project, previously rejected, violate your own policies, including HMP and MS4, written to ensure beneficial uses of waterways?
Finally, how will additional erosion within the San Juan Creek Watershed impact the coast where it meets the ocean? Another area of water quality board responsibility.

Given your mission to develop and enforce water quality measures and implement plans that will protect the area's water, I respectfully ask this board to reject adopting the tentative Water Discharge Requirements for the proposed Tesoro Extension. Please reject the WDR.

Additionally, I do have the remarks of Mayor Teresa Barth if you would like me to read them they're very short and I will go slowly. She was the Mayor of Encinitas who had to leave earlier.

MR. STRAWN: We did have a speaker card for her.

MR. ABARBNEL: Yes.

MR. STRAWN: Go ahead with that?

MR. ABARBNEL: Yes.

MR. STRAWN: By the way you're already a minute over so that only gives you a minute left for her.

MS. HEEBNER: She says that as an elected official who cares about natural resources, water quality and recreational opportunities in the greater San Diego region, I'm concerned that the construction of
this first section of road is simply an attempt to
circumvent the prior rejection by the Coastal
Commission, US Secretary of Commerce and CEQA, which
prohibits piecemealing of projects to avoid
environmental review.

If the entire road is eventually constructed it
would destroy a unique and special place. Many of my
constituents have told me that they have enjoyed
San Onofre State Beach, located entirely within
San Diego County, with family and friends for
generations.

As the population of California continues to
grow, the loss of one of the last remaining stretches of
coastal wild lands and valuable recreational resource
unacceptable.

I urge you to reject the WDR. Thank you for
your continued service to protecting California's
waterways.

MR. STRAWN: Donna, you're next. Donna Frye.

And then Sam Allevato from -- the mayor from San Juan
Capistrano will be next.

MS. FRYE: Thank you. I want to thank this
board for sitting so long. I feel your pain. I'm
feeling it right now. This difference is I can leave.
You can't.
I don't want to repeat the other speakers, but
I do want to bring to your attention some of the things
that I'm -- I'm wondering because I -- I ask a lot of
questions and I wonder things. And you have to base
your decision based today on who do you believe is
giving you the most reliable and the most adequate
information. And so you have a number of issues to
weigh in that regard.

One of the things that I'm wondering is how can
an agency such as the TCA stand before you and say that
they are proud of their public noticing for their
hearing on the environmental document when they called a
special meeting so they could not have to comply with
the 72-hour noticing provisions. They seem to be proud
of the fact that they called a special meeting and made
it very difficult if not impossible for members of the
public to attend which is why this hearing is so
important for us.

The other question is, is they're saying it's a
project, but I was looking at some of their information
related to this project and they say that the board only
approved the conceptual design, the conceptual design.
So they're coming before you saying they want you to
make final decisions on a conceptual design and they say
it's not the final decision of the project; they're
going to take a whole lot of other actions. In other words, they are saying in their own documentation they don't even know if it's a project.

I, as a former elected official, would certainly not want to take a final decision on waste discharge requirements and orders based on a concept. I would certainly want to make sure that it was a complete project and it had been identified, but if there is any question about which side seems to be most forthright, I was interested when I heard the TCA's comments related to their bond documents because Fitch recently rated some of the Foothill/Eastern transportation corridor revenue bonds. This was on June 14th, 2013.

They're not very good as far as their ratings. They are BBB minus and BB minus. Those are not -- they're stable. Let's put it this way. I have other names for them, but the reason I bring this to your attention, it's also interesting what agency tells one group of people and how they represent the project to another group of people. And so as I was looking at some of the reasons why their bond ratings are not particularly good, their Fitch talks about the ratings sensitivity.

And specifically the one that sort of drew my attention was this particular statement. It said, "A
decision to increase leverage to support the Foothill South protect without commensurate financial mitigants."
I take that to mean that TCA absolutely plans to go forward with this project, that they will go through this project in its entirety and that they are representing to other entities in order to get money, they are telling them that they will be building these projects.

I would suggest that at a minimum, somebody pull the preliminary official statements and at least take a look at them and see what they are representing to the bond markets in order to receive their bonds. And since everybody is quoting people, I thought I would quote a really great jazz musician, Ben Sidran to sum this all up. "It's brand-new music but it's the same old song."

If you don't have any questions, thank you for sitting for so long, but I'm not going to be joining you.

MR. ALLEVATO: Good afternoon. Good afternoon, Chairman Morales and board members. I'm Sam Allevato. I'm the Mayor Pro Tem for the City of San Juan Capistrano. I'm also director of the San Juan Capistrano Water District, which is a member agency of the San Juan -- San Juan basin authority. As well as
the director on the board of the Foothill/Eastern TCA. My city is the one that has been disparaged, as nowhere by the California attorney general when she says the Tesoro Extension is the road to nowhere.

San Juan Capistrano has more than 35,000 residents and 14,000 dwelling units are planned directly to the east of us across the street from our city limits creating a future city the side of San Juan Capistrano. We have attractions from a premier equestrian center to the famous Mission of San Juan Capistrano, the birthplace of Orange County. So we're pretty far from nowhere.

The reason I'm telling you about my great city is that the Tesoro Extensions proposed terminus will be just north of Ortega near San Juan Capistrano. This route will serve as an independent utility to provide traffic relief and regional mobility for my constituents and the 30,000 plus new residents moving into the Rancho Mission Viejo.

Our groundwater recovery plant produces five million gallons a day of drinking water to our residents. Our City Council which is responsible for this water source has been -- has voted to support this project because they're confident that TCA's run-off management plan and the best management practices will
protect this resource.

This provides 100 percent of our drinking water in the winter, nearly 50 percent of our drinking water during the summer. Quite simply, as a stand-alone project, the Tesoro Extension complies with CEQA and all State laws and regulations. I encourage you to accept your staff's recommendation and approve the waste discharge permit for this five and a half mile route that is near my historic city, not the beach.

Thank you very much for giving me the opportunity to speak to you this evening -- this afternoon.

MR. STRAWN: Charles Puckett, Mayor Pro Tem of Tustin. He'll be followed by Diane -- Steve Lamont is next.

MR. PUCKETT: Good afternoon. Chairman Morales and members of the water board, I'm Chuck Puckett, Mayor Pro Tem of the City of Tustin.

My constituents use the 241 toll road frequently and as a result, it was very important to them that I made the trip to San Diego to emphasize the importance of this extension project. Today if one wishes to go to San Diego from Tustin, the only one route is the I-5 freeway. You're fortunate in San Diego that you have several east/west alternatives and
north/south alternatives. In north -- north San Diego County, you've got the 76, the 78 which goes east and west, you've got the 52, you've got the 8, you've got the 94 and the 54. You've also got I-15 north and the I-5. Those are very important in case of emergencies.

As we found out last week when a propane tanker overturned on the I-5 freeway in San Clemente, very critical that there's no escape route. The freeway was shut down for four hours, people were standing around on the freeway, nothing to do, no way to get out, and fortunately there were no medical emergencies but there certainly could have been. The only alternative they had was to sit and park and wait until the freeway was cleared.

Once the Tesoro extension is completed and built and Avenue La Pade is connected, folks will have another way to get in and out of the area, but we need your approval for the water quality permit. Please approve this permit so we can build this project and provide an alternative route to commuters through this region. Thank you.

MR. STRAWN: You have an elected official that kept to his time.

Next will be Lisa Bartlett and then Francine Hubbard.
MS. BARTLETT: Good afternoon, Chairman Morales and board members. My name is Lisa Bartlett, and I'm the Mayor Pro Tem of Dana Point and I also serve as chairwoman of the Foothill/Eastern Board of Directors and Transportation Corridor Agency.

Because I spoke in support of the TCA permit at your meeting in March, I understand that the comments today are limited to CEQA. A few important items that you should consider when it comes the CEQA, since we last spoke in March, our Foothill/Eastern TCA Board of Directors voted unanimously to approve the addendum to the CEQA document. The 5.5 mile Tesoro extension is an independent utility. It serves local and regional mobility needs as an important and critical stand-alone project.

In 1981 -- or since 1981, TCA, Cal Trans and County of Orange have prepared a certified three environment impact reports. After 32 years of study and analysis, it's time to move this project forward. Your staff has thoroughly reviewed the water quality aspects of this project that the water quality mitigation as well as the CEQA compliance is adequate and recommend approval. Please accept the recommendation of your staff and approve this project.

With regards to mitigation, TCA is proposing a
mitigation ratio of 20 to one, whereas the average project of this scope is about three to one. So we're going over and before what is necessary.

And with regard to the comment earlier with regard to the rating agencies, the three rating agencies of Fitch, Moody and Standard and Poor's have provided the Foothill Transportation Corridor Agency with an investment grade rating. And I just wanted to note that.

Thank you very much for your time and consideration today.

MR. LAMONT: Good afternoon, Chairman Morales and board members. My name is Steve Lamont and I'm a representative with Assemblywoman Diane Harkey. We represent the South Orange County cities Aliso Viejo, Coto de Caza, Dana Point, Ladera Ranch, Mission Viejo, Laguna Hills, Laguna Niguel, Rancho Santa Margarita, San Clemente and San Juan Capistrano.

As word of TCA's plan to build the Tesoro extension, I traveled around the community. Ms. Harkey had received a significant response from residents and businesses throughout our district. Residents and business owners alike are passionately in favor of this Tesoro extension. Our constituents have cited a variety of reasons why they support this road including safety,
traffic relief and mobility.

They have also praised TCA for their continued focus on the environmental -- on the environment and ensuring that the road will actually enhance water quality in the region. Our constituents conveyed unwavering confidence in the process that TCA has used to allow sufficient opportunity for public review and comment. They cited hundreds of public meetings and hearings that have been conducted over offer the last three decades.

Furthermore, constituents expressed concern and disappointment that this important infrastructure project could be delayed by a perceived need for a new EIR. The message from our districts have been clear. TCA has fully mitigated any water quality impact and the project fully complies with CEQA. On behalf of Assemblywoman Diane Harkey, I strongly encourage you to approve TCA WDR application. Thank you.

MS. HERBARG: Good morning, Chairman Morales and board members. My name is Francine Herbarg and I represent Kristina Shea, Irvine councilwoman. She could not be here today and asked me to read her comments into the record.

The 241 toll road was placed on the master plan of arterial highways in 1981. In the 32 years that have
passed, TCA Cal Trans and the County of Orange have prepared, analyzed and certified no less than three environment impact reports. The most recent certified EIR was certified in 2006. It studied 38 alternatives to extend 241 south of its current determinant at Oso Parkway, including several alignments that stopped short of connecting directly to the I-5 freeway. The fact that in 2006 the Coastal Commission rejected one of those 38 alternatives does not invalidate the other 37 alternatives that were also certified in the EIR.

The proposed Tesoro extension is the 5.5 mile road that serves as an independent utility and will relieve traffic and provide an alternative -- alternate route from hundreds of thousands of commuters with 40,000 homes and five million square feet of commercial space on construction in Mission Viejo. This is an important and essential piece of the infrastructure puzzle in south Orange County.

The addendum to the EIR that was unanimously approved by the TCA board shows that water quality impacts have been fully studied and fully mitigated. I'm sure your staff will agree that the mitigation measures from Austin sand filters, vegetative swales to the flow filters and porous asphalt represents the gold standard of water quality mitigation for roadway
construction.

The TCA board's approval of the CEQA document was appropriate and legal because this project clearly operates as an independent utility. You should not only approve this project because it is CEQA compliant and because it fully mitigates water quality impact, but because Orange County needs traffic relief alternative like the Tesoro extension will help provide.

Thank you very much.

MR. MORALES: Lucille Kring, a councilwoman from Anaheim.

MS. KRING: Chairman Morales and board members. My name is Lucille Kring and I'm a councilwoman from the City of Anaheim, the largest city in Orange County with a population close to 350,000 homeowners. We are the home to Disneyland, the Angels and the Ducks and over 20 million visitors each year that come from around the world to visit our great events. We would not be able to be such a hub of business and tourism if we had just one way in and one way out of the city.

The Tesoro extension is crucial for not only traffic relief, but as an emergency route and also for good movement throughout the region. This project has undergone three EIRs over the past 30 years, all three of which were certified. Our board approved an addendum.
to the most recent CEQA document and we look forward to
your approval of the water discharge permit so we can
continue down the regulatory process toward the eventual
construction of the five and a half mile extension that
has been decades in the making.

And all the mayor and four council members
absolutely support this project. The 241 begins in
Anaheim at the north end of the 241, and when our
residents go to the 241 and they can't complete the
process down to Cow Camp, it's very difficult for them
to move over to the 5. We can only widen the 5 so much.
It costs billions of dollars to put one more lane and
then all of the homes and businesses that would have to
be taken. So the Tesoro extension is a means to an end
and we appreciate your support. Thank you.

MR. ABARANSEL: May I ask you a question?

MS. KRING: Sure. I went too fast?

MR. ABARANSEL: No. Everybody from Orange County thinks this is a great idea. Can you give us
some reasons why you think this is a really bad idea?

MS. KRING: Oh, my goodness. Well, personally,
I don't think -- I'll give you -- all honesty, I live in
the flats of Anaheim. Anaheim is a very long city.
It's 20 -- it's 50 square miles. It's 23 miles long.
And we're a narrow city, so my side of the city, we go
down the 5. The east side of the city, they have the 241. And all honesty, I do not use the toll roads because I hardly ever leave Anaheim since I'm a councilwoman there and try to do all my shopping and business there.

And other people keep telling me that without the 241, it's very difficult to -- 241 has been a major relief for traffic. They love it. They get there. They have cell towers now. They get great cell service. So I really can't think of any reason why you should not support this. Its mobility, just heard about the tanker truck, the propane tanker truck that had a problem the other day and closed the freeway down for four hours.

On the news reports they kept saying well, you can go over the 52 -- I mean, the I-15. Well, it's a two lane, very old road to get there and you can't force that many cars and trucks in the 5 when they're stuck in traffic and force them to get to the 15. It just isn't time sensitive. So the only reason I can think of is -- the best way -- I can't think of any reason why you should not approve this.

Basically, they have done all the mitigation, the standard of water quality is gold standard, they have gone to much, much more level than anybody has requested. That's the way TCA does things. They do it
to the best that they can and always above what they're requested to do.

MR. ABARANEL: Thank you.

MR. STRAWN: Gary Felien, Oceanside City Council. And he'll be followed with Rhonda Riordan.

MR. FELIEN: Thank you very much for hearing my remarks. I just want to come down and say that I as a councilman, the majority of Oceanside City Council supports this project. It is on record for doing so because in the City of Oceanside, we have thousands of commuters who go up to jobs in Orange County every day and anything that helps relieve traffic on I-5 will be a huge help.

The commuters in our city, certainly I have family and relatives where I commute up to Ocean -- Orange County on a regular basis, and there's always a bottleneck going through San Clemente. So anything that helps relieve traffic there would be a help. And certainly I would like to ask this board to make sure that any decision you make is based on science and based on the law and not based on hysteria.

And I'm not an engineer. I'm not a lawyer. But it seems to me this project has met every hurdle that has been asked of it in terms of water quality and what it needs to do to protect the environment. Whether
or not the five-mile extension makes sense as a business decision of the corridor and basically that's their call. And bond holders will decide whether they made a good investment or not, but it does seem it's a stand-alone project.

To me, I'm surprised that no one's discussed the huge commuter flow that comes over Ortega Highway into Orange County every day and having an alternative to go north which this project will provide, will provide more relief of I-5. So I urge you to support your staff's recommendation which recognizes that this project has met every environmental quality and CEQA requirement that is required and that you vote yes.

Thank you very much.

MR. ABARANEL: Can I ask you a question?

MR. FELIEN: Yes.

MR. ABARANEL: If this were the project proposed in 2006, would you support that?

MR. FELIEN: Well, is that a way of asking would I support the whole project?

MR. ABARANEL: Yes, it is.

MR. FELIEN: Well, I certainly support the whole project and always have, but the issue of whether or not it's incremental and should be or shouldn't be. That's a lawyer's decision and I'm certainly not
qualified to answer that question. But whether or not it's a stand-alone, you know, business decision and it meets the legal requirements seems to me that the rest the bait is for another day.

I certainly hope that project goes through and I would look forward to seeing that because I think certainly one thing that improves the environment is having roads that flow smoothly and aren't clogged with traffic. But I think an electric car that protects the environment needs an open freeway and anything that will help provide smoother flowing traffic protects the environment. And traffic congestion does not.

I certainly would be happy to compare air quality where freeways are flowing smoothly, air quality where there's congestion, and I think we all know what the answer to that would be. Thank you very much.

MS. RIORDAN: My name again, I'm Martha Riordan, Chairman Morales. And you know, it's a little cooler up here than it is back there. It's also a lot cooler in the library. You may want to think about going over there for little while. But thank you very much. I just want to thank you for letting us come and speak to you. This is the second time I was at the meeting in Costa Mesa in March.

And I just want to tell you that as Mayor of
Mission Viejo, I have to look at things from a very realistic perspective. I cannot -- I cannot think about what my personal preferences are. I have to look at things -- everything from a broader perspective. I got 95,000 residents and so that's why I'm here today. All right.

Our residents are strongly supportive of the 241 extension, the Tesoro extension. 71 percent. I just checked with our latest survey. 71 percent of the residents in Mission Viejo support the Tesoro extension and that's all we're going down to is Cow Camp Road. There is no other alignment, so we can't go any further than that at this point and I understand what the concerns are.

Not only will this project offer our residents -- my residents an alternative route north and south, but it will also bring additional customers to our businesses in Mission Viejo in case some people haven't -- don't remember we are economic recession. So you're purview here is clear today. Does this project fully mitigate any water quality impacts? And I think the answer is yes.

This project sets a new gold standard for water quality protection. It will have Austin sand filters. I have seen pictures of those. I don't know -- I
I haven't seen them in -- in -- I can't touch them, and vegetative swales -- I know what a swale is -- to hold and treat the water close litter to control the rate of runoff flow and porous pavement. Now, that's an interesting concept and it's actually reality. That is designed to filter the rain water prior to runoff. These are all water quality issues. I wish all roads could be this environmentally sensitive.

Your second question is does this project comply with CEQA. I had that asked of me the other day at our council meeting by one of council members.

MR. STRAWN: Your time is up.

MS. RIORDAN: I got two more sentences. The answer is yes. I serve on the TCA board and we approve the addendum to the CEQA document since the March regional board hearing in Costa Mesa. I encourage you, please, to listen to your staff which is recommending approval of this permit so we can continue to move forward in the planning process and thank you so much. Very much.

MR. STRAWN: Mark Swain, council member from Yorba Linda. And you will be followed by Steven Lamont.

MR. SWAIN: Good afternoon, Mr. Chairman, members of the board. My name is Mark Swain. I'm on my 17th year as a member of the Yorba Linda council. I've
served four of those years as mayor. I'm also a --
Yorba Linda's representative to the transportation
corridor agency, Foothill/Eastern crew.

I strongly urge your approval of our permit to
build the extension five and a half miles further to Cow
Camp Road. It will serve to alleviate traffic in the
new development. Rancho Mission Viejo, it will give
people coming over Ortega Highway inland empire an
alternative route to central/north Orange County. We
will provide an alternate to I-5 north of that section
where traffic jams on I-5 and it has been mentioned
several times today, the propane truck accident of just
a week or so ago.

There are many, many people that flow both
north and south. It's imperative that we have a second
alternative route, at least as far as Cow Camp Road.
Thank you very much. Hope I was as brief as possible.

MR. STRAWN: Under a minute. Thank you. Steve
La Mont. He already spoke. How about Jeff Turner?

MR. TURNER: Good afternoon, Chairman Morales
and board members. My name is Jeff Turner and I
represent the associated general contractors as their
2013 president. I'm also a third generation Southern
California resident and out of San Diego. I'm here
today to -- to advocate for Tesoro Extension Project on
a number of bases.

Number one, the project is in compliance with CEQA regulations and it's in compliance with outreach requirements and the general requirements of moving forward on a project of this magnitude. The AGC would like to commend the TCA for its leadership in creating a model for environmental and water quality standards for a necessary and economically feasible California highway system, which is the Tesoro extension. On behalf AGC, we advocate for you to move forward with the approval of the project.

MR. MORALES: How many jobs are we talking about, ballpark?

MR. TURNER: Construction jobs or total impact jobs as a result of the economy?

MR. MORALES: Construction because you represent them.

MR. TURNER: Impact jobs is the directly outcome of the economy, thousands. Directly to the project and the correlation factor of how that spans out in the community and the adjacent businesses, they're affected by construction, not to mention the fall on economic benefits of smooth mobility in the thousands.

MR. ANDERSON: And I think the analysis that has 16,000 jobs, too many.
MR. MORALES: That would be the construction of the development and all of that --

MR. TURNER: Right.

MR. ANDERSON: Am I wrong on that?

MR. THORNTON: I don't have that figure. And go ahead.

FEMALE SPEAKER: Just briefly I'd like to answer your question. The Tesoro extension of 5.5 miles creates 2,400 jobs just for that extension, $17.7 million the State and local taxes, and $380 million the, economic output.

MR. MORALES: Is that yearly? Sorry. Is the State and local taxes, is that per year, the 17.4? Just curiosity. The jobs, when you said for the extension itself, that's just the folks that are actually building the extension; is that right?

FEMALE SPEAKER: Well, it encompasses all jobs. Construction jobs and non-construction jobs, which is great for California. You know, we still have a high unemployment rate as you know.

MR. STRAUN: Heather Baez? Heather Baez, going once, going twice. Next up will be a Martin Pane.

MS. BAEZ: Good afternoon, Chairman Morales and board members. My name is Heather Baez and I represent Senator Mark Wyland who represents the 38th district.
Our district includes South Orange County, Coto de Caza, Dana Point, and Ladera Ranch, Mission Viejo, Rancho. And North San Diego County including Carlsbad and Encinitas, Escondido, San Marcos, Palm Beach and Vista.

My pleasure to be here today to speak in support of the Tesoro extension. I'm aware that there are several lawsuits that have been filed against TCA for everything from piecemealing the evaluation of the project to failing to prepare a new EIR.

TCA did not piecemeal the analysis of potential environmental impacts of future extensions of State Route 241. During the CEQA process, the certification of the 2006 final subsequent EIR, the TCA evaluated 38 alternatives for extending -- they brought 241 south of the Oso Parkway.

As for the claim that TCA failed to prepare a new EIR, the Tesoro extension is a modification of the project described in the 2006 final subsequent EIR. CEQA prohibits agencies from preparing a subsequent or supplemental to a previously certified EIR unless changes to the project or changed circumstances were will result in new significant environmental effects or an increase in the severity of the significant effect identified in the prior EIR.

On behalf of Senator Wyland and those of who
live and work in the 38th district, I urge you to
approve the TCAs waste discharge requirement application
and to enhance mobility through our region. Thank you.

MR. STRAWN: After Mr. Paine will be me Vermica
Requez.

MR. PAINE: Good afternoon, Chairman Morales,
board members. My name is Martin Paine. I'm the
district director for California State Senator Mimi
Walters. She represents the 37th district, coastal
region, the South Orange County. I would like to stand
here in support on behalf of Senator Walters of the
Tesoro extension.

The senator and I, as we all are now, are very
aware of the lawsuits that are coming about.
Unfortunately, these lawsuits are another delay for a
critically needed route for south Orange County. I am
one of the -- I think I'm the only representative from
the state side that previously represented the mountain
range communities during the big fire and am well aware
of the need of an expedient access route of fire prone
area.

These 14,000 homes that are on the list to be
built in the eastern region of Orange County. There are
families that are living in an urban interface area that
need to -- that may need to get out in an event of a
fire. And unfortunately, those routes are very limited right now and it is critically important that this extension get through there on a public safety basis alone.

The Tesoro -- Tesoro extension is a modification of the project -- in the 2006 final subsequent EIR, CEQA prohibits as has already been mentioned, the agencies from preparing subsequent or supplement to a previously certified EIR unless there are changes in the project or changed circumstances that result in significantly new environmental effects or an increase in severity of significant effects identified by the prior EIR.

On behalf of Senator Walters and the 940,000 rep -- citizens she represents in her district, we urge you to support the extension of the TCA WDR application and we very much appreciate your time this afternoon. Thanks very much.

MS. YRIQUEZ: Chairman Morales and board members, good afternoon. It is just a pleasure to be here today in front of your board. My name is Veronica Yriguez and I'm here on behalf of Orange County Supervisor Pat Bates who represents the fifth district which encompasses all of South Orange County.

The supervisor is extremely proud of the
extensive transportation infrastructure improvements that have been built and planned in South Orange County under her watch, not only for the traffic congestion relief that they provide, but for the way they have addressed environmental mitigation as part of the planning and construction process.

The Tesoro extension is a critical component to traffic relief for South Orange County and she served on the board that approved the original CEQA document as well as the board that approved the addendum for the Tesoro extension because.

Because the Tesoro extension is an independent utility as you have heard today, it can be approved without identifying the location of any potential subsequent sediment. Whether the roadway is eventually extended and where that extension would take place is another argument for another day. Because the Tesoro extension provides the regional traffic relief as a stand-alone option and because the TCA board has approved the addendum to the CEQA document, it is now incumbent upon you to vote on the waste discharge permit to the merits of water quality mitigation of this project only.

On behalf of Orange County Supervisor Pat Bates, please approve this permit so the roadway
infrastructure project can be built. And, again, thank you for your time.

MR. STRAWN: I understand I had missed Esther Sanchez, mayor of Oceanside, and I -- was it red card or a green card because I can't find it.

MS. SANCHEZ: I'm not sure. Somebody else --

MR. MORALES: It's right here.

MS. SANCHEZ: Okay. Thank you.

San Diego Regional Water Quality Control Board, my name is Esther Sanchez, and I'm a council member for the city of Oceanside. I rise to speak in opposition to this project. Our city was so concerned about the unacceptable environmental impacts and critical loss of recreational and coastal resources, that we took a position against this project when originally presented, an official position that exists today.

I incorporate that position by reference and happen to submit a copy of that action by e-mail within a few minutes if I can be provided with your e-mail address. Nothing has changed with respect to this project except that is now coming to you in an attempt to get approval on an illegal piecemeal basis. With no CEQA analysis of the plan intuitive impact that the final project will have.

This continues to be a self-certifying
development inducing project with significant unmitigable impact. There is no way that the developer can recreate the same or similar unique and precious water-based resource, including five significant native American culture and archeological sacred sites.

There are reasonable and superior alternatives to this. This project is simply meant to increase development opportunities and would therefore stimulate and create more and unacceptable traffic and transportation impacts and congestion than sought to address, which is inconsistent with State and regional smart growth policies.

Simply put, this is a regurgitation of the same project, but in an unlawful piecemeal manner. The developer admits that this is one segment of the original project and that it is the original project that they are pursuing. And it pretty boldly states that a lot of projects are built in segments. They may be built in segments but they are studied, reviewed and approved as an entire project, not piecemeal.

It is certainly alarming that most if not all toll roads have filed for bankruptcy protection, pushing the cost to our taxpayers. The first segment on its own has no independent use, yet it will have unequivocal environmental impact to the San Juan Creek watershed.
In 2005, the Army Corps of Engineers concluded that additional degradation such as this is project will cause failure of existing water and sewer lines and disappear of the watershed altogether.

As an elected official, the City of San Diego -- of the city -- of the city in San Diego County closest to the project who cares about our region's national resources and water quality, I am tremendously concerned that what is before you is a devious attempt to obtain an approval for a project that has already been turned down, a project that will destroy one of our region's few remaining coastal wild lands and public coastal recreational resources.

We in Oceanside are always thankful for Camp Pendleton, which serves as buffer and definite change from the horrible urban sprawl and bad planning of Orange County. Your mission and authority are to develop, implement and enforce water quality goals that protect our region's water resources which is the most precious resource we have in Southern California.

This entire project has already been rejected once by the California Coastal Commission and the Bush administration. I respectfully urge you to exercise your independent review and reject this plan for water discharge requirements to propose the Tesoro extension.
241 project. Thank you.

MS. WITTE: Mr. Chairman, can we take a short break so I can empty my recorder, please.

MR. MORALES: All right. Let's take a five-minute break. And what I am going to ask -- we'll -- we'll give you the lineup for when we come back, but during that break as I mentioned earlier, if there are any groups of you that want to sort of pool your position, please let us know because it's getting late. It's almost 5 o'clock.

MR. STRAWN: When we come back, it will be Brett Robertson, Penny Maynard. (Recess.)

MR. MORALES: Would you please take your seats. First up will be Penny Maynard, followed by Brett Robertson.

MS. MAYNARD: Good afternoon, Chairman Morales, also board members. My name is Penny Maynard and I represent the San Clemente Chamber of Commerce. There seems to be misinformation circulating about CEQA compliance, so that's what I'll focus my comments. The Tesoro extension is an independent stand-alone project and this segment alone will reduce traffic congestion. TCA has gone above and beyond to follow alternatives in possible environment impacts and to
encourage public participation in every level. EIRs for
the entire project were completed and evaluated 38
alternatives to extend 241 toll road south of Oso
Parkway, including alignment that stopped short of I-5.

It is very common and an accepted practice for
transportation projects to be evaluated and constructed
in an independent utility segment. Over the last three
decades, TCA has conducted hundreds of public meetings
on the SR-241 extension. TCA has participated in
multiple meetings with the environmental groups. Other,
State and local agencies have also conducted public
hearings.

Clearly there has been sufficient opportunity
for public review and comment. TCA approved the
addendum regarding the Tesoro extension in a meeting
noticed in accordance with California open meeting laws.
The addendum was made available to the public well
before the regional board hearing and before the TCA --
TCA board's approval of the addendum. I urge you to
approve TCA's waste discharge requirement application
and I thank you very much.

MR. ANDERSON: While speakers are coming up.
Just real quickly, the employment number that I had came
from a chart that described the employment that was
going to be generated by the 14,000 homes, not the toll
road extension. Sorry about that.

MR. ROBERTSON: Good afternoon. My name is Brett Robertson and thank you for listening. Chairman Morales and fellow board members, I'm here representing Mayor Anthony Beall from the City of Rancho Santa Margarita. I have been asked to record a letter into the record, so I have a copy for the clerk as well.

"Dear Chairman Morales, I have the pleasure of serving as both the mayor of Rancho Santa Margarita and director on the Foothill/Eastern TCA board. As mayor, my key priorities include ensuring a high quality of life, continued economic growth and the overall vitality of the community. The Tesoro extension is crucial to the mobility of our 50,000 residents and the economic growth of our local business community.

"The Rancho Santa Margarita City Council has repeatedly and unanimously supported the extension of the 241. In my role as director, I approve the addendum that clearly demonstrates the Tesoro extension will not have any new significant impacts and will in fact reduce the impact of the preferred alternative evaluated and the final subsequent EIR between Oso Parkway and Cow Camp Road.

"The Tesoro extension changes the prior diamond interchange at Cow Camp Road to a simpler T-intersection..."
configuration and includes shift to minimize impact to surface waters and to avoid an existing reservoir used for Rancho Mission Viejo ranch operations. The Tesoro extension avoids impacts to the Corporation of Engineers' jurisdictional wetlands and limits permanent impacts to waters of the state to four-tenths of an acre.

"I also want to clarify any misunderstanding related to the claim of piecemeal evaluation of the extension of the 241. The TCA did not piecemeal the analysis of the potential environment impact of the future extensions of the 241. During the CEQA process leading the certification of the 2006 final subsequent EIR, the TCA evaluated 38 alternatives for extending the 241 south of Oso Parkway.

"The alternatives included multiple alternatives for extending the 241 one to the I-5 alignments that stopped short of the I-5, such as the Tesoro extension and alternatives such as improvement to the I-5 and surface streets.

"Thus, the environmental impacts of both short and full-length extension of the 241 have been evaluated and disclosed to the public as required by CEQA. The Foothill/Eastern TCA is going above and beyond to ensure that this roadway is built to the highest environmental
standards while providing the needed regional mobility and traffic relief that is required for residents and businesses throughout Southern California.

"On behalf of the 50,000 residents of Rancho Santa Margarita, I urge you to support the TCA's waste discharge requirement application and to allow the Tesoro extension to move forward. The Tesoro extension is crucial to the economic growth and improve mobility throughout the south Orange County.

"Sincerely, Anthony Beall."

MR. STRAWN: Mark Bodenhamer. Next will be a Sean Acuna.

MR. BODENHAMER: Good afternoon, Mr. Chairman and board members. We've been asked to speak for the majority of the people who are here today speaking on behalf of the toll road. In the interest of everyone's time, we realize a lot of people are repeating the same things and so we would like to consolidate it and then ask people to stand up and join us in supporting it and others who want to speak, obviously that's up to you.

MR. MORALES: Much appreciated.

MR. BODENHAMER: Absolutely. My name is Mark Bodenhamer. I'm here representing the San Juan Capistrano Chamber of Commerce where I served as CEO. I want to point out that earlier a speaker asked you to
decide which side is being more forthright today. I
would ask you to do opposite, actually. I don't think
that that's something that you guys can fairly
determine.

And I think the most appropriate course of
action is to just take the facts to consider this
project as the independent project that it is, the
Tesoro extension. That's all we're here to talk about
today and I would hope that you guys will give it a fair
and thoughtful consideration that it deserves because
it's an important project. It's critical to our local
economy and it's a good project. It's compliant with
CEQA. TCA has gone above and beyond in their mitigation
efforts.

This project won't just benefit our community.
Orange County is the fifth largest county in the
country. With a population of over three million, we
are larger than 20 US states. The existing traffic
infrastructure was built to serve far fewer people than
are there now. I-5 and regional highways that don't
quite connect to each other simply cannot and do not
adequately serve the needs of residents and businesses.

Some proponents have great concerns about
whether TCA followed CEQA guidelines and allowed
sufficient opportunity for public review. I can tell
you in my role, I've been involved in many public
meetings and hearings that were conducted to inform and
engage the surrounding communities. There have been
plenty of opportunities for the public to learn about
this project, ask questions and raise those concerns.
Now is the time for action.

On behalf of the Chamber of Commerce of San
Juan Capistrano and the 300 local businesses we
represent, I respectfully urge you to support the TCA's
waste discharge requirement application and get the
Tesoro extension on the road to completion. Thank you.

MS. BUCKNUM: Hi. I'm Wendy Bucknum, and I
have spoke before, so I will focus on different talking
points than I have before out of consideration and your
request.

I am a resident of Mission Viejo, so I actually
am protected by the lack of the finishing of this little
section, and the finishing of this portion will actually
impact Mission Viejo as our mayor Julie stated.

So I am also speaking on behalf of the South
Orange County Economic Coalition this afternoon. And
the Coalition was formed to study and support when
appropriate infrastructure projects that will enhance
economic growth and the quality of life in the region.

So we look at both things. Our board of directors which
is made up of many of the top business leaders in
Southern California encourages your support for the TCA
waste discharge requirement permit application.

While the benefits of the Tesoro extension are
extensive, I would like to focus my comments
specifically on the CEQA compliance portion of it. The
opposition claims that since the 5.5 mile extension is
shorter than the extension approved by the TCA in 2006,
that the TCA required to prepare a supplement to the
2006 final subsequent EIR. We heard that quite a bit
today. This is completely false. Since the Tesoro
extension is a modification of the project described in
the 2006 final subsequent EIR, CEQA prohibits the
agencies from preparing a subsequent or a supplemental
to a previously-certified EIR unless changes to the
project or changed circumstances will result in
significant new environmental effects.

A quote is also saying that TCA can approve --
approve an extension of SR 241 without first approving a
route for connecting SR 241 with the I-5. The truth is
that it's not all that unusual for a transportation
agency to complete a CEQA analysis for a segment of a
larger project while continuing to study of the location
of subsequent segments.

Two of the many recent examples include the
California High Speed Rail Project and the Exposition Quarter Light Rail Project in Los Angeles. On behalf of the South Orange County Economic Coalition as well as people that I would ask at this point to please rise and -- that are in support of this, the staff's recommendation.

We encourage you to approve the TCA waste discharge requirement application and I thank you so much for your time. Thank you.

MR. MORALES: I do appreciate that, but I would ask, if any of you that just stood up didn't like sign the sheet outside that stated you were in favor or didn't fill out a form, please find some way for us to have the record reflect your position. Thank you.

MR. ACUNA: Good afternoon, board members. My name is Sean Acuna and I am representing the United Coalition to protect Panhe. As one of the founding members of the organization, the United Coalition of -- to Protect Panhe, the grassroots alliance of the Acjachemen people dedicated to the protection of our sacred rite Panhe.

We are here to voice our strong opposition to the project before you today. Please refer to our written comments submitted Friday, July -- June 7th, 2013 for more detailed information on our position. In
summary, you see UCPP urges the board to deny this project on the following grounds:

The proposed five-mile extension will impact five cultural archaeological sites and potentially impact sites listed on the sacred lands inventory maintained by the California Native American Heritage Commission. This proposal forward -- put forward by the TCA is just an attempt to bypass State and federal agency's decision and public opinion.

The five-mile extension is literally -- I'm going to scratch that.

The Regional Water Quality Control Board must examine the cumulative environmental and cultural impact of the whole road and not merely the five-mile segment proposed here. The TCA has not provided sufficient notice of the project proposal to tribes with ancestral territories within the project boundaries, traditional cultural practitioners and representatives from local tribal communities and organizations. State and federal law requires lead agencies to consult in good faith with any active Americans in this instance. Good faith consultation includes adequate notice.

State and federal policies and procedures regarding Native American sacred places and cultural resources have substantially changed since the 2006
Environmental Impact Report that the TCA relies on for this project. The addendum does not address these changes. TCA as a lead agency must comply with these changes in policy and procedure before moving forward.

Panhe, which is located in State parks, is 9,000-year-old Acjachemen Village, sacred place and burial grounds. It is one of the few remaining Acjachemen sacred sites where our community can gather and for ceremonial and culture practices. The proposed toll road would destroy our sacred site. The project must be denied. Every one of the cities supporting this project have talked about the end result, the end result being that it links up to the 5 south of this project. That's what they're talking about. We're talking about our indigent impact in this area. We ask you to deny it. Thank you.

MR. MORALES: There have been references been made a couple of times today to the Native American sites.

MR. ACUNA: There are archaeological sites. There are along -- in that area where it was referenced, and I'm going to refer to you, board member Henry, where we're talking about in A-1, where they were talking about the wheel -- the creek along that area and they're
located along that creek. And all those areas where there was creek, or there was a river that ran through the ocean, there were sites of Acjachemen. Acjachemen would go from -- from Camp Pendleton, continue north to Newport Beach, inland to Santiago Canyon. These were all cultural resource areas for us.

MR. MORALES: Are the sites listed on --

MR. ACUNA: They are listed. They are listed.

MR. MORALES: -- in the registry?

And I guess the last question, how often are cultural -- I guess ceremonies held at Acjachemen?

MR. ACUNA: Panhe.

MR. MORALES: Panhe. Sorry.

MR. ACUNA: Since 2000 and -- since 2001, not as much because much of the site is off limits to us at this point. We're working with -- with the Department of Navy on getting access to our ceremonial site, but it is registered with them, this is an area of practice. We do still gather there as a ceremonial site off site and we register that with the State and Federal governments.

MR. MORALES: Thank you. Acjachemen, how do you spell that?


MR. MORALES: Thank you.
MR. ACUNA: I'd also like to add that I'm also an honorary member of the Hawaiian Surf Club of San Onofre who directly opposes this.

MR. STRAWN: I had a couple more cards from the Chamber of Commerce folks. Were you included in that last group or do you want me to call you up separately, Mr. Cave and Leah Hemsey.

MR. MORALES: Let's do it this way. For those of you that filled out green cards that weren't part of the group that stood up or that still want to speak, can you just let us know how many there might be, just so we know with a show of hands.

Green card, so one, two, three, four. Okay.

MS. HEMSEY: And I'm Leah Hemsey from the San Diego Chamber of Commerce and I won't repeat the points made by others here today, but I just want to state for the record that on behalf of our 3,000 member businesses, we urge you to adopt the staff recommendation of the revised tentative order so construction can move forward on this vital addition on the regional transportation system. Thank you.

MR. ABARANEL: Can I ask you a question? You support the extension in 241 all the way to I-5?

MS. HEMSEY: We do.

MR. STRAWN: Thank you for being brief. Drew
Murphy. He was designated some additional time from a
Howard Pippin, who I guess has left now.

MR. MURPHY: I'll be brief, try to be brief.
My name is Drew Murphy and I have taken the oath. And
thank you, Chairman Morales, regional board, for this
opportunity to speak.

I represent Trout Unlimited, the oldest,
largest trout and salmon conservation organization in
America with 10,000 members in the state, 700 in Orange
County, and I serve as the chairman the state council as
well as a board member in Orange County.

As a citizen, I'm a small business owner in
Mission Viejo. Apparently I'm a minority of about 30
percent that doesn't agree with the mayor, but I have
lived there 29 years so I got a pretty good handle. I
fished, swam, hiked and camped in South Orange County.
I came here in South Orange County to get a job as a
citizen, raised my family there, so I got a real big
vested interest.

To use testimony is always a little different
than the Coalition. We support the Coalition as we have
since 2009. We speak, as you know, for the fish. And
one of the rarest forms of life and the only trout
native to Southern California streams, and through our
projects and the chapter we spent over $2 million of
public money. This is on Trabuco Creek primarily, to
reconnect the lower sections to the upper sections.

People can't believe it. They say well, there's no fish. Well, yes. There are. There's a
slightly -- just like the migratory forms like the swallows that come back every single year. We see them
every single year, and that's why I'm here today.

A few points that maybe weren't addressed is that, you know, we're here about the fish but we're also
here about the watershed. And our staff, our program works; we try to protect, reconnect, restore and
sustain. That means in the upper areas, especially public lands, you want to protect that from distraction industries, from development, from hydro and just make sure that everything is in place before it's built.

And that's where we're looking at the watershed from San Juan, top to bottom. Not just a segment. You have to look at it from top to bottom. All the way from head waters in the mountains. It's 20 miles long to the ocean out at Doheny. You can say the same thing for San Mateo because if it goes to San Mateo, we talked about San Mateo in 2005 and we're talking about San Juan in 2009. All these little trips up high, they're important.

They're important for water quality, they're
important for the sediment because we all live
downstream; right? Everything flows downstream. So
when it hits down in this project area, whatever happens
in that project area is also going to be flowing
downstream. So water quality, number one, is -- I mean,
CEQA has been talked about to death, but the water
quality, there's very little baseline data actually on
San Juan.

They set all these different sites, we got this
and this and that. And we did the first water quality
assessment in 2006, and that was the first baseline data
that Fish and Game ever had on that creek. So there's
not a whole lot of data. I've shared some tips -- some
information with Ray Armstrong, the Orange County Coast
Keeper. He said we're really starving for data on that.
So I'm not sure how much data they really have and --
in support of that. But this whole area is just natural
capital. We don't want to squander it.

We got some of the beautiful beaches -- some of
most beautiful beaches in the world, oldest, ancestral,
everything and we just, you know, from top to bottom, we
just have very, very precious open space. We urge you
not to pass this permit at this time. Thanks for your

MR. STRAWN: Next up would be Jim Moriarty from
Surfrider. There's 24 cards from Surfrider, so if you
guys can figure out a way to maybe --

MR. MORIARTY: I'm smart enough that I don't
speak for every one of them. I would like to thank you
for your time and patience today. I would also like to
offer a special heartfelt thanks to all of the people
that are not paid today to come out.

I'm Jim Moriarty, the CEO of Surfrider
Foundation. As you can see from the hundreds of people
in this room and the overflow areas, this is a personal
issue. It's a personal issue to many of us. I go by
this issue twice -- this area twice a day and as much as
I can, I stop and I surf this area. This is an odd
meeting. I think we're living in parallel universes.

I go back to something that someone much
smarter than me said. When we were talking about
Trestles, they said what country in the world has the
highest, most stringent environment standards. One
could argue it's the United States. What state within
that country has the most stringent environmental
standards. One could argue California. What
designation within that state, within that country has
the highest environmental standards. One would think
it's a state park.

And so that's what is so strange about this.
We're here again and again talking about state parks.
That seems strange. It should make us all pause. Why
are we here talking about letting a private sea-based
road through a state park? Wouldn't we allow the same
thing in Yosemite? Would we put a toll bridge from one
rim to the other in the Grand Canyon? Of course we
wouldn't.

The road is a horrible idea. It's insulting to
the very foundation of democracy. National parks and
state parks are one of America's ideas and we are
sitting here and we are about to throw that out.
Splitting this road into pieces is a lie. And when we
were kids, when we told a lie, it was a lie. If I told
a lie to my mom in pieces, it was still a lie. This is
a lie.

And the jobs angle is insulting as well. In
the United States, it's a herring. The number one
tourist -- the number one draw in California is its
beaches. Second, tourism is one of the fastest-growing
industry in the economy. And third, 41 percent of the
United States -- United States gross domestic product is
generated from coastal community. All of those stats, I
got two weeks ago from Senator Stan Farr of California.
This is the golden goose. So I understand --

MR. STRAWN: Your time is up. If you have
somebody to donate, thank you. We will need a name on those.

MR. MORIARTY: Roderick Michener, Craig Cadwallader --

MR. SKELTEN: Don Skelton, he can have my time, too.

MR. MORIARTY: That's all the time I need. I have three sentences left.

I understand the pressures you're under. Still, skill we are talking about our collective legacy. What will you be remembered for? What will I be remembered for? What will our kids look up to us and be proud about? So I urge you to deny this discharge permit. I urge you to keep what's special about California special. Don't pave it. Leave it as it is. It's already a gem. We already have paradise. Why change that?

MR. STRAWN: Next up would be Alan Walti and Joe McCarthy. Jim Moriarty just spoke, and Joey McCarthy gave him some time.

MALE SPEAKER: No, I gave him time.

MR. MORALES: Joe, you're up then.

MR. WALTI: Alan Walti, and I've been a surfer for 55 years. First surfed San Onofre in 1958, probably before most of you guys were born. Anyhow, regardless
of that, you have all seen a lot of things happen over time, a lot of things like Killer Dana. We now have Dana Point Harbor. We got Limine, a prime surf spot there. We got Limine, a family diner up by Ventura about putting a freeway over that.

And this whole idea of the 241 extension in pieces, sooner or later, maybe not today, maybe not five years, ten years from now somebody is going to be in here talking to you guys about going down to the beach and eliminating San Juan and San Mateo Creek with supplies, the sand to the beaches which makes these breaks pristine.

Lower Trestles was rated one of the top ten surf spots in the world. If this continues on like you're talking now, you're going to eliminate one of the ten top spots in the world. Because you're going to eliminate the sands that fills in the rocks that makes it a perfect break. So I think it's a real travesty, and I hope you vote no on the extension. Thank you.

MR. STRAWN: Did we get Joe, or did we -- Joe McCarthy? Kristen Brenner and next one will be Graham Hamilton.

MS. BRENNER: My name is Kristen Brenner and I live in Solana Beach. I'm here to voice my opposition to the Tesoro Extension Project. Extension -- the PCS
plan to construct a toll road through the Trestles that we're speaking of. The plan is to construct the same toll road that was rejected in 2008.

THE REPORTER: Hold on. Start over.

MS. BRENNER: A plan to construct the same toll road was rejected in 2008 by both the Coastal Commission and the Bush Administration and there's no reason that a road should be built at this point. In the interest of time, I will skip through that. I urge the regional board to deny the WDC Tesoro Extension Project. Please respect the 2008 decision and the will of the people by not allowing the first section of this road to be completed. Thank you.

MR. STRAWN: Graham will be followed by a Lindsay Churrea.

MR. HAMILTON: Thank you very much for your time and your patience today. My name is Graham Hamilton. I'm the chairman of the West Los Angeles Malibu chapter of the Surfrider Foundation, and I'm sure you know how we all feel about this.

For centuries, people have been moving to California for the treasure of our lands and coastal resources, and I see a lot of people out here today with T-shirts that say "Good roads equal good jobs, equal good economies." But what I'm wondering -- I'm
wondering is how many quote, unquote good roads and good jobs is it going to take before we pave over all of the resources that have been the lifeblood of myriad California economies from tourism to agriculture.

As it's been stated before, the traffic problems in Southern Orange County are complex, and they require sophisticated 21st Century solutions. I was speaking with someone earlier who was in favor of this extension and she said she is tired of hearing everybody say no, but not offering any alternatives.

You guys are the Transportation Corridor Agency. Transportation and alternative, build rail. Please deny this permit.

MR. STRAWN: After Lindsay will be Sybil and I'm going to skip that last name.

MS. CHURREA: Hello. My name is Lindsay Churrea. Thank you for taking the time to hear us. I'm an educator and a lover of clean water, and I'm here from Los Angeles today because this is an important issue. I thought I was here to talk to you about water quality, but most people seem to be talking to you about how you should manage traffic and I'm just going to stick to my original plan.

If we are interested in approving projects that mitigate damage and protect our areas' water and water
quality, I think we should be looking ahead to projects that not only mitigate impact, but that also consider how we're going to eliminate and reduce carbon emissions, which we know will ultimately impact our water quality.

If the TCA is coming to you today with their report, it's like my students coming to me with a report that's incomplete and was an outline prepared for a completely different subject altogether. And if they brought that report to me, I would come back to them and say go back and do the actual work and come back to me when -- when I know that you deserve a grade on this project.

And so if your interest, which your mission statement says, is to protect your local water areas and water quality for this generation and for the generations that follow, I believe -- I strongly urge you to not approve this permit. I believe it's a step in the opposite direction of protecting our water quality. Thank you.

MR. STRAWN: Cybil -- Cybil Oechsle, something like that. Any Cybil? Patti Meade and then you will be followed by Scott Fish.

MADDY: My name is actually Maddy. Patti had to get on a bus but she left a statement for you. I'd like to read it on her behalf and then leave it with
your court reporter if that's okay.

MR. MORALES: You can read the statement but we are --

MADDY: Oh, okay. So this is -- this is from Patti Meade. "To the residents of San Clemente. My name is Patti Meade. All this talk of propane tanker, it would not have helped because it was where the 5 and 241 would have already been combined. The reason Orange County is for the toll road, which most residents according to Patti are not for this toll road; it's mainly the TCA -- is because the council people that come before you are also on the board of the TCA and have a conflict of interest.

"I live by one of the most polluted beaches in the state." She lives in Posh, I believe? Thank you. "I don't surf there or Doheny because of the polluted water from the San Juan Creek which kept coming up earlier today. I have been made very sick by poor water quality, strep throat to bronchitis to pneumonia, which they didn't discover until something" -- I'm sorry. I can't read her handwriting and something related to sinuses and related to her surfing activity.

"Trestles is not just a surfing place. It's an escape from urban congestion. There are not" -- sorry -- "there are wild oaks and deer and marshes and
wildlife. It is world famous and when I travel to Australia, when asked where I'm from, I say Trestles, and they all knew where that was. It's one of the few surf spots with clean water left. I raised my kids to respect nature and they have jobs as an environmental scientist and a geologist.

"Their jobs are cleaning up the environment. This toll road is one big mistake." And she asked that you not permit TCA's request.

MR. STRAWN: Scott Fish, and you will be followed by Andrew Fish. I don't suspect you two could get together?

MR. A. FISH: I'm going to speak on behalf of the Fish brothers. My name is Andrew Fish. I would like to thank you all for taking the time to listen to us all. My name is Andrew. I drove down here with a group of well-educated working professionals. We woke up at 5:00 in the morning. We met at my house. We all took vacation days to be here, and we surfed, we woke up at 5:00, left L.A., surfed Trestles and continued here salty and hungry.

And I also work in the solar industry, and so when I look around and see good jobs and good economy, solar is one of the fastest-growing industries in the nation. And it's one of the fastest-growing industries
here in California. This is the leading nation for
solar technology, so if we want good jobs, let's create
good opportunities for these jobs in training them
collectively.

With that, I would just like to applaud the
extra hoops that the TCA is being put through with
regard to this project. I would hope that all future
projects, big or small, be analyzed in the same way that
they are today. And that's the way we will have a much
safer in terms of traffic and safety, if there's
accidents and water quality for myself and for my future
children, which I hope to have one day. So Thank you.

MR. ANDERSON: Was the surf good?

MR. A. FISH: The surf was actually fantastic.
We got kicked by the grounds because they're having a
contest of theirs, so we had to get out and go up to
Upper instead.

MR. STRAWN: I have got to follow the Fish
brothers with Mark West. Followed by a Jake Wyrick and
a Mark Renchler.

FEMALE SPEAKER: Mark had to leave.

MR. WEST: I'm right here. I'm Mark West. I
know you guys are busy today, that this is a long time
coming so I'll make this quick.

Ladies and gentlemen, gentlemen of the public,
my name is Mark West. I am a retired naval officer, Surfrider activist, and resident of Imperial Beach. I appreciate the opportunity to speak before you on behalf of the San Diego Surfrider chapter. When I say "volunteers," we have volunteers. We have people who come out here and just like you, took time off of work, took time away from our families to come and talk about something that's very true to us.

We encourage people to get involved in these projects like these because we believe in the promise of Democratic process. The project which you are discussing today is one that received taxpayer money possibly, and public input needs to be respected in that process. We have endured working relationships with many people throughout the staff of the cities and counties.

We want to make sure that our coastline with the multitude of the issues associated with the iconic resources that is Trestles. Sorry. I ran up here, so I'm a little bit out of wind.

Make no doubt that surfing is an important component of this resource as anything else. Recently I returned from the global wave conference being held in Rosarita Beach, California North Bay. This conference attracted people from all over the world to discuss
items of threat, waves around the world.

One very interesting topic was what we called surfenomics. A new topic, you probably never even heard of it, but it's really a growing area of study relating to the economic impact that surfing has on our community and waves. The studies being conducted worldwide found that surfing is the biggest economic impact on the local economies. This -- this project that's one that's proposed has potential to destroy one of our classic Southern California waves. It's probably the best wave.

Our recent Surfrider surfenomics study found that Trestles direct economic impact on the City of San Clemente is anywhere from 8 to $13 million a year. That's direct economic impact from surfing. The economic value of surfing at Trestles is estimated at $26 million a year. These are huge numbers that surfing brings to San Clemente.

Jobs. Those are jobs. They're happening right now. If you like more information, I feel -- please, visit the Surfrider surfenomics web page. I'll wrap this by saying, you know, people, this has been an iconic place. The Beach Boys and Richard Nixon got together about this place. That's what they think about it.

The spot's been listed by surfing A list. Guys
like Robert August, Dewey Webber, Phil Edwards, Mike Doyle and Mickey Doral have all talked about it. This place is special. Please, please don't go down the slippery slope that this project is. Deny the permit. Keep Trestles safe. Thank you.

MR. WYRICK: Good afternoon, ladies and gentlemen. This is awesome. My name is Jake Wyrick, and I'm a law student at Duke University working Surfrider Foundation's legal department in the summer. I would like to offer you some brief comments about the purposes of CEQA and the revised tentative order currently under consideration.

Forty-three years ago, with crude oil still in the center of our channels and our thoughts, California demanded a dramatic new approach, the way we interact with our environment dedicated to the proposition that our government should not make decisions that impair our environmental treasures based only on optimism is unfounded assurances.

So our legislature enacted CEQA, which requires public agencies to collect and consider all relevant information giving prime consideration to preventing environmental damage before undertaking a project that may significantly affect our environment. An agency subverts the purposes of CEQA if it omits for
consideration material necessary to inform
decision-making and inform public participation.

Now, you are being asked to approve an order
informed only by a seven-year-old FS EIR that omits
necessary material and an addendum that blocked public
participation. Let there be no mistake. Improving this
order would subvert the purpose of CEQA. The FS EIR
cannot possibly allow the informed decision-making
required by CEQA because it omits crucial information
about the environmental consequences of this project.

According to the California Coastal Commission,
TCA did not follow standard protocols in preparing this
FS EIR. For example, TCA omitted from this FS EIR
analyses alternative from its 2004 draft EIR that the
federal highway associations concluded would provide the
same benefits as this toll road. TCA did not prepare
this FS EIR or addendum in the spirit of CEQA to inform
their decision.

This decision was made long before a word was
written. This revised tentative order relies entirely
on exactly the kind of post hoc rationalization that
CEQA prohibits, so I ask you as key members of this
board, does this FS EIR and the addendum really provide
you with all the material you need to make this
important decision.
I will leave you with this question which lies at the heart of CEQA and advice my parents gave me: You will never regret giving big decisions a bit more thought, but you will always regret not thinking them through enough. This is a big decision.

MR. STRAWN: Mark Renchler.

FEMALE SPEAKER: He left.

MR. STRAWN: He left? Okay. Julia Chen-Herr and then followed by Travis Newhouse and then Michael Lindsay.

MS. CHEN-HERR: Good afternoon, members of the board. Julia Chen-Herr. I'm a campaign coordinator for Surfrider San Diego. Appreciate your time today.

Question before you this afternoon is whether to issue a discharge permit for the very first segment of this road. The very language that they're using implies that it's part of a bigger project. Unless they're willing to sign off on some legally binding document suggesting that they will no longer extend the road or go further than this initial project, I don't think you even have a choice in front of you today because a full project, there was an alignment in 2008 that was rejected. They have had other previous alignments that they've thought of in the time since then.
Now they have a first segment. Obviously, the intention is to make a new alignment. And without analyzing the cumulative impact from the entire project, it's impossible to move forward from this point. The example they used with the rail project throughout California, yes, that project is analyzed and will be built in segments, but not without acknowledging all of the impacts to the entire project which is what we believe is legally necessary for this project today.

You have been made well aware of our concerns about the piecemealing, and the TCA doesn't exactly have the best track record with complying with the BMPs for managing water quality and storm water. We saw that with the 73. They really struggled to get these working properly.

This first segment of road is leading into one of the last undeveloped watersheds in California. You've heard me speak to you about the hydromodification and the MS4 permit. I would encourage you to stick with that watershed approach. That watershed includes a State park, also a campground at San Mateo that I grew up camping at and enjoying the open doors with my family and I hope future generations will be able to enjoy that as well. Thank you for your time.

MR. STRAWN: Do we have Travis?
MR. NEWHOUSE: Hi. I'm Travis Newhouse. Thank you for hearing my comments. I live in Encinitas and I grow up in Irvine. As a teenager, my friend's dad taught me how to surf at San Onofre State Beach. Every Saturday I would look forward to surfing with my friend and his dad and enjoying the natural beauty of the area. I have kids of my own now, and I hope when they're older, I will be able to take them and their friends to enjoy the unspoiled of San Onofre State Beach.

Today I urge you to deny the Tesoro permit. This extension will impact the San Juan Creek watershed that contributes to making San Onofre a special place. The proposed mitigation for two sites does not mitigate the impacts to an entire downstream watershed. Not only will this project itself have negative impact, but it will continue to promote sprawling development that creates the traffic problem that it itself tries to solve and will adversely impact water quality in San Juan Creek watershed and the sediment flow. Thank you.

MR. STRAWN: Michael Lindsay and then Ginger Osborne and Tom Osborne and then Jack Eidt.

MR. LINDSAY: My name is Michael Lindsay. I live in Laguna Beach and the issues that I wanted to raise have been talked about a number of times here, so I will keep this brief.
I am deeply concerned about the CEQA compliance aspects of this. It would appear to me based on the testimony that I've heard today, the conversations that what we're looking at really is a 16-mile project, the entire project. And that it should be addressed in that way to take this as a segment and look at the water quality of just one piece of it. When we know that the rest of it is coming, that seems to me to be not in compliance with CEQA, and that I ask that you deny this -- this application until these issues are addressed. Thank you.

MR. STRAWN: Ginger.

THE AUDIENCE: Tom and Ginger both left.


MR. EIDT: Yes.

MR. STRAWN: And Craig Cadwallader, I know you donated your time, but we didn't really use it. If you want to speak, you can.

MR. EIDT: I had time donated by Carrie Stromboughtnie and Amy Jackson. So Jack Eidt and I'm representing the Orange County Friends of Harbor, Beaches and Parks. I also am an urban planner with Wild Heritage Planners and do work out of San Juan Capistrano.

Real quick, I just -- because it's been said
before, I -- but I thought that Stephanie from Surfrider, her comments were not respected and finished properly. The point is, how can you approve a waste discharge permit without the baseline studies in place? It's -- it's -- as with just trust us, the BMPs will be in place, well, as was said Laguna Canyon is an example where trust was given and I don't think it came through. So I think that's a real important issue.

Another thing on the bigger picture of alternatives. I've done a number of alternatives with people in my group for -- for this very project and for Rancho Mission Viejo. When they approved what was a problematic EIR for Rancho Mission Viejo that covered the whole thing that they are now building in segments, they said that they did not need the toll road to build it. So now today, they're saying they absolutely need this toll road. It's imperative to build, particularly this five-mile stretch.

I would say this segment could be achieved by building a simple arterial heading south from the existing toll road if that's all they want to build. And -- and so the question remains, is this really an alternative for the I-5? The circuitous route heading north and then south to come back to the employment centers in Orange County are in Irvine, Santa Ana, these
areas, not Yorba Linda. 

So what -- what we Wild Heritage Planners has said is they need to directly connect this development with the -- with the existing facilities they're heading north towards the '73, you know, we called it a beltway. These alternatives, there's a lot of talk about people getting together and meeting with TCA. We met with TCA numerous times and they ignored us. They said thank you very much, but we're going to build this. So if they're not looking at alternatives that solve the traffic problems and will become a real alternative to I-5 which also needs to be widened without a doubt and it can be done within the right of way. These are very important and necessary transportation improvements to be done first before building through the back country.

You know, piecemealing this EIR and this development short-changes the alternatives analysis which I'm referring to. And the needs of the community, we have comprehensive impacts to land, air and water. So Friends of Harbors, Beaches and Parks has been very connected to the movement towards the sustainable communities Climate Protection Act. That's SB-375.

We need sustainable alternatives, and we only have so much pollution to put out there. Carbon pollution, we got a major climate problem. The Global
Warming Solutions Act as well. We need to be smarter about everything that we do, so I -- and I know that you guys aren't -- aren't the -- the -- you're here standing in line for -- for this issue which isn't water, but unfortunately, you have been placed in this position.

So I hope that you will reject this project and send them back to do a supplemental EIR and we will look into these alternatives, because I say there's a smarter way to build this stuff. So thank you very much.

MR. STRAWN: Excuse me. Could you tell me the names of the -- that donated their time to you.

MR. STRAWN: Amy Jackson and Carrie Stromboughtnie.

MR. MORALES: I want to reiterate. If any of you can lump your time together and choose one speaker, please do so because we still got approximately 35 speaker cards and folks, I think your positions for the most part have been registered. We want you to talk to the extent possible about modifications to the order of CEQA. Because at some point, there may be diminishing returns here because we still are going to have to do a fair amount of deliberation. Staff is going to have more time. I know counsel for the NGO's wanted to get in, you know, two, maybe three minutes prior to 6.o'clock because they have to catch a flight. That's
not happening, given the number of pink cards we have
got before us. So seriously, talk among yourselves,
please sir.

MR. CADWALLADER: Good evening. My name is
Craig Cadwallader. I'm the chair of the Surfrider
Foundation South Bay chapter, and I'll try to edit my
comments to get as short as possible. I understand
everybody is pressed for time. I too am pressed for
time. I spent a good deal of Monday, all day Tuesday in
the L.A. City Council meetings to try to ensure we get a
single use.

I followed that by meeting in Hermosa Beach on
the stop Hermosa Beach Oil, followed that by a meeting
in Manhattan Beach at the City Council meeting and then
came here. I'm here all day today. We got events
happening tomorrow. I'm an independent businessman and
I lose money by being here, but this is very important
to me. I love the ocean waves and beaches and it's one
of the reasons I'm as active as I am with the Surfrider
Foundation because that's Surfrider's mission.

These projects have a very serious potential to
impact our oceans, waves and beaches and I don't know
how you can do a permit without all the information. I
heard several comments today about information coming
later on. How can you do a permit unless you have a
final plan with all the documentation. The
hydromodification plan is the same as March, but you
don't have the documentation.

I urge you to not approve this permit and to
get full documentation to do the right thing. Thank
you.

MR. STRAWN: Okay. Patricia Marks.

MS. KALEMKIARIAN: I just want to make a
comment for the public. I don't know if you realize, we
don't want get paid either. I'm an independent
businesswoman. Mr. Morales is. There are folks here
who we all volunteer our time for the sake of water
quality. So when we say please consolidate your
comments, it's also because we're here an entire day as
really volunteers in the public service, and I don't
know that everybody realizes that.

MR. STRAWN: Patricia and then you'll be
followed by Catherine Stiefel and a Roger Kube.

DR. MARKS: Sara Real is donating this time to
me, and I'm not going to use all of it. I want to thank
Chairman Morales and the board for the opportunity to
speak. I'm hoping that I can clarify a few things about
the archaeological sites. I'm Dr. Patricia Marks. I'm
a Professor Emeritus at California State University Los
Angeles where I teach anthropology and archaeology, and
I'm president of the California Cultural Resources Preservation Alliance.

And you have heard that there are five sites, archaeological sites within the area of potential effect of this five-mile segment of the project and that these sites are important to the Native American community. Some of the sites -- all of the sites are recorded at the information center at Cal State Fullerton. Locations of the sites are confidential and so you won't see a lot of maps showing where the sites are located. On a need-to-know basis for development, they can be -- the location can be noted. The reason you're not hearing a lot about these sites is because probably the TCA is going to say that they don't meet State or federal requirements for significance. And if they do, we can mitigate them by scientific excavation to retrieve a sample, an archaeological sample of data. Usually it's like one percent of the entire site and then it's blown away.

This does not meet any mitigation for any Native American religious and culture sites. This is a traditional cultural property area with traditional landscape, and it's very important to this community. And even more important is the sacred sites that's located in San Mateo campground near San Onofre State.
Beach, and this site has -- it's 9,000 years old, has burials. And the plan was for the toll road to go over this site, put pillars in and put it over.

And I ask you, would you like to put a toll road over one of your cemeteries? This -- you know, this is just a really hurtful thing for these people. So obviously, this thinking of the mitigation for scientific -- and I'm a scientist and I appreciate the data and the information that can be learned from these sites, but I also appreciate that here are people that have lost everything, their culture, their lands and the dissemination of these people. To them, these sites have real important meaning to them. That's all that's left of their roots.

And these -- all these mitigations for these sites is avoidance and preservation. So I ask you not to approve this permit because it will result in the destruction of five more sites. And they have lost hundreds due to modern development and these toll roads.

Thank you.

MR. STRAWN: I guess we don't have a Catherine Stifel. Roger Kube? Jason Petters.

MR. KUBE: I'm going to keep this real brief. My name is Roger Kube. I'm chair of the Surfrider Foundation, San Diego County chapter. On behalf of
1 approximately 2500 San Diego County members and about
2 13,000 documented San Diego County supporters of our
3 organization, I just want to let you guys know we're
4 opposed to this project.
5
6 Surfrider's mission is the protection and
7 enjoyment of our oceans, waves and beaches through a
8 powerful activous network. And in alignment with our
9 mission, the significant concerns about the impact this
10 project will have on water quality and the San Juan
11 Creek and the surrounding watershed.

12 Along with my fellow Surfrider activists, I
13 stood before you a few months ago and gave comment at
14 the MS-4 hearing. I want to applaud you with your
15 unanimous decision to approve that permit. That
16 demonstrates your commitment to clean water and our
17 watersheds. I respectfully implore you to do the right
18 thing again here today and deny the TCA waste discharge
19 permit. Thank you.

20 MR. STRAWN: Joseph Fetters. Shannon Quirk,
21 and then a Scott Thomas.

22 MS. QUIRK: Hi. My name is Shannon Quirk.
23 Thank you for taking the time to listen to everyone
24 speak. On behalf of the Surf Channel's Television
25 Network and all of our viewers, since I'm the editor in
26 chief, I've had to read many letters and comments and
see the traffic that has been just outstanding because
of this Tesoro extension.

I have never seen the entire industry unite on
anything so powerfully, and I also hope that you can
think about every person that has ever surfed at
Trestles. And please protect it. Thank you.

MR. STRAWN: Gary Scott Thomas and Alex
Mintzer. And a Sharon Koch, Michael Takayama. Any of
those folks here? How about if we change notes -- there
were a couple of green cards that we held out. How
about you take a turn here? Give me your name and I'll
find you in the pile.

MR. SANDZIMIER: My name is Rick Sandzimier,
and I had some prepared statements, but having listened
to all the testimony today, I'm going to change gears
just a little bit and try and focus on some things that
I think we're losing sight of.

Good afternoon, Chairman Morales and honorable
board members. My name is Rick Sandzimier. I'm a
resident of the City of Mission Viejo for the past 20
years, a resident of Orange County for the past 32
years. Incidentally, the 32 years is the same year I
moved to Orange County from San Diego County is when
this road was put on the plans. So it's been in the
works for a long time.
I'm a professional planner with more than 28 years of experience in the community development transportation planning -- strategic planning and I've served as the planning transportation commissioner and I know what it's like to hear testimony like you're hearing today. I currently serve as a board member involved in workforce investment, creation of jobs, economic development and public safety non-profit.

I come here tonight before you because we're already at night now, with all due respect, to ask you to approve the project that is before you. And this is where I'm changing gears. I had some prepared testimony, but I just want to put in context some of the things that I know as you as an urban planner for 28 years. And I want to focus on the independent utility of the facility and the request before you today is the 5.5 mile segment.

It has standing as a former resident of San Diego County and a resident of Orange County, I've got family that lives in Temecula. I travel out to Riverside County and San Diego County for business. I know that this road has independent utility because it proves access to the 74. I have been involved in major investment studies in Orange County. Looking at the board between Riverside County, San Diego County and
L.A. County and I can tell you that there's a challenge on all fronts. It's no different than what you experienced down in San Diego where the 78 and the 15 intersect, and the improvements that were so recently done on the 15.

I travel those all the time. I've got family that comes out and takes alternative routes on the Ortega Highway, the 76 or the 78 to come visit me and vice versa. This project provides a benefit to them. There is a real development going on in San Juan Capistrano. 40,000 homes approved the 5.5 mile segment that independent utility provides benefit to that development.

It removes the traffic off the 5 Freeway, improves traffic flow and congestion relief for the people that are traveling on the 5. It also provides better access to those people who want to get to Riverside County, whether they want to go down the 74 or they want to travel down the 241 out to the 91 or the 15 or wherever else they want to go in the Inland Empire.

In 1993, I worked for a community that had the experience the Laguna Beach fires. I'll try to wrap up real quick. This is an important one. But for public safety standpoint, the independent utility of this facility in Laguna Beach and Irvine, when they were on
fire, there was limited access to the Canyon Road and some small roads, and it was a nightmare to try to evacuate people.

This road provides better opportunity to get people in and out of this new community -- existing community. I'll stop at that if you want to ask me some questions. I can go into a whole lot of -- but with all due respect, I'm asking for you to approve this project.

Orange County is investing its sustainability development. Billions of dollars are going to transit improvement. I have the pleasure to work on those. I can talk to you about that. We are looking at a multi-mode improvement strategy. This is just one piece if that puzzle. Thank you very much.

MR. STRAWN: Don Skelton, Paul Hernandez and a Patricia Colburn in that order.

MR. SKELTON: My name is Don Skelton. I live in Oceanside, California. I'm a surfer, and I'm here because I'm concerned about the fact that I think this is -- this is really going to be a 16-mile project. And I think it was kind of deceptive the way they segmented this application.

We have had so many bad situations with traffic polluting our oceans, people getting sick, I myself have had a fungus from being out in the ocean and I think a
lot has to do with the runoff. And the other thing that
I think needs to be done on this particular issue is
that because it has been changed to a five-mile portion
of the road, that I really think the original CEQA
document needs to be supplemented and resubmitted and
therefore I would ask that you deny this application.
Thank you.

MR. STRAWN: Paul Hernandez. Patricia Colburn.
Ivan Ascary. And should be followed by Dan Jacobson, it
looks like, and then a Chad Nelson.

MS. COLBURN: Good afternoon. I would like to
thank all those who have opposed this freeway expansion
through the decades of however long it's been proposed
and whatever forms it's been proposed for their
tenacity, for their perseverance to protect a national
treasure.

I'm a big fan of surfers. When I was younger,
they played a big part in my world view and their
influence continues in how I live my life today, and I'm
also a big fan of Marines. When it comes to rough men
and women who stand ready to use violence on our behalf,
I sleep like a baby.

My hope today is this board demonstrates
leadership similar to that which denied the quail brush
plant for being an unnecessary taxpayer burden. Will
you protect the comments? Will you preserve a natural
wonder, or will you take a page from the Duke Cunningham
School of Civic Duty.

This is about credibility and a councilwoman
earlier today touched on this and coincidentally, we
were probably reading the same materials because it did
sound familiar. But I want to tie it back because she
is gone and her rebuttal is gone, and I kind of want to
tie it together before we leave today. This is about
credibility. And this should be the easiest no vote of
your tenure today or on the board.

Last week the L.A. Times reported that rating
agencies give TCA the lowest investment grade rating
while $206 million of TCA notes are rated speculative or
junk. Maybe in 2008 the mainstream public didn't know
what a speculative bond is, but I can assure you we all
know what a speculative bond is in 2013. We have been
paying a heavy price in careers and loss of homes.

My understanding from Patti earlier today,
though, I spoke about TCA is already renigged on a -- on
a highway in Laguna. So they have a history of market
failure. Furthermore, according to the L.A. Times
article, ridership on California toll roads and highway
expansion have never reached predictions, so we build
them and no one comes. Thank you.
MR. JACOBSON: Good evening, Mr. Chairman and honorable members of the board. My name is Dan Jacobson. I'm from Tustin in central Orange County. I'm a retired member of the Board of Directors of the Richard and Donald O'Neil Land Conservancy and I was a close friend of Richard O'Neil, the patriarch of Rancho Mission Viejo.

I rise here today to speak against the requested permit. Any analogy to the high-speed rail, I think has to be rejected for a couple of reasons. One, that's going through multiple districts. This subproject is going through just your district. And two, that was planned to be built in segments. This was planned to be built all as one, a little over 16-mile route. And then it was rejected and now it's being built in segments.

So I think that the analogies simply do not work. And I think you don't have before you today the project. You have a subproject before you. And CEQA requires that you pass on the project, so I would encourage you to reject the permit until you have the project before you.

And I leave with a quote from Richard O'Neil in a letter he wrote to the Coastal Commission on January 31st, 2008. He said, "I built self-sustaining
communities that have greatly enhanced the future.
Building for the future is the right thing to do.
Building to destroy the future is the wrong thing to
do." Building the 241 extension is the wrong thing to
do. Thank you.

MR. STRAWN: Again, I may have butchered this
name, but Mahgum Asgarian.

FEMALE SPEAKER: He went.

MR. STRAWN: Chad Nelson.

FEMALE SPEAKER: He had to leave.

MR. STRAWN: Eva Lydick and then Andy Quinano.
Izzy Anderson. Going through them fast now. There's a
Kira Monahan. Devon Howard. Okay. So after Devon,
there's a Fred Mertz, if he is here. I didn't make that
up. And a Gisla Cosner.

MR. HOWARD: There's not much more I can say.
I feel that I'm opposed to it. I help run a $38 million
dollar business here, 20 years. I just have a quick
question and I guess if I can, when I think of toll
roads and think about what was done with Laguna was this
selling this idea of helping traffic and really what it
did was it opened up a tremendous amount of development
which impacts water quality.

So I'm wondering if this thing goes through all
a way, do we look a little bit forward and think about
the development that comes as a result of because a lot of the permitting for that development, it can't happen if the infrastructure's not there. Yes, There are some in the works, but they stop there. Once this things goes all the way through and we all know that this is a pig with lipstick. It is going to go through eventually if passed.

Do we think that far ahead about the water quality issues that are caused by the future development that will be based off of this and keep in mind there's water quality issues and we are in a water crisis. Lack of water. So those are the things that concern me and that's why I'm opposed, and I was just wondering, maybe a yes or no, are you allowed to look that far forward on future water quality issues based off the tremendous development, based around that road? Is that a yes or no?

MR. MORALES: I think we said we'll all base our decisions on the record before us.

MR. HOWARD: I thought I would try. Thank you. Appreciate it.

MR. STRAWN: One more time. Fred Mertz. Gisla Cosner. Steve Williams. He'll be followed by Marty Beson. And then Hond, just Bond.

MR. WILLIAMS: Thank you. Thank everybody for
the recitations. I know it's a long, long session here.
I'm Steve Williams. I'm a conservation biologist and
also an executive committee member of Surfrider West
L.A. Malibu. Came down with a bunch of folks.

As I came down in 2008, when I got this cool
shirt and I'm wearing here again and I'll wear it again
and again until this thing is put to rest. So anyway, I
believe the currently proposed upper watershed segment
of the project is piecemealing of the entire 16-mile
project, which is to be considered as such and is a
violation of CEQA.

I also think that the baseline water quality
studies one to two years minimum needs to be precluded
from any portion of the project rather than be conducted
concurrently with the project. These studies should
target predicted impacts such as brake dust, petroleum
products, et cetera, associated with highway runoff as
well as sedimentation rates from increased
impermeability -- impermeable surfaces of highways.

In my 15 years of monitoring water quality and
sensitive species in coastal Southern California
streams, my experience is this: Where you have roads
along the creek corridor, you have trash, water quality
degradation can introduce invasive species. For
example, where I work in the Santa Monica Mountains,
Louisiana crayfish have been introduced along Malibu and Topanga Creek Highways in the creek there and are devastating the populations of native amphibians as their eggs are a delicacy for crayfish. That's one example of many.

Also, while doing biannual creek cleanups with volunteers along these creek corridors and along these roads, we removed thousands of pounds of auto-ejected trash and roadside dumping sites. I often wonder what the creek would be like --

MR. STRAWN: Your time.

MR. WILLIAMS: I'm sorry. Well, just like to wrap up to say -- okay. Please deny the TCA permit. Thank you very much.

MR. BENSON: My name is Marty Benson. Thanks for your patience in letting me speak. I want to start with the elephant in the room or at least it appears to me and speak to the independent utility issue.

Roads create traffic. Anyone with a cursory understanding of the history of automotive transportation can see that when you build a road, it gets congested. So this road segment only has utility for the TCA, not the overall mobility of the community. It's going to create congestion.

And second of all, I actually attend all of the
TCA meetings and most of their financial committee meetings, and their failed experiment. They were supposed to monetize roads by incurring debt and then pay off the debt with the tolls from the road by 2040. No scenario that they can currently articulate allows them to do that.

They have the impunity and monopolistic advantage of a public entity and that avarice greed and salesmanship of a private corporation. To allow them to spend another dollar of revenue on PR, attorneys and lobbying is a fraud on the people of California. I really hope that you will deny this permit. Thank you.

MR. STRAWN: No, that's all they wrote down.

Ryan Wiggins. Then a Mark Babski and an Israel Adina.

MR. WIGGINS: Good evening. I'm Ryan Wiggins.

I'm the climate change director for an organization called Transforming California. I'd just like to say that this project is really a 20th Century band-aid for a problem that really requires a 21st Century solution.

A lot has changed since 2008. We now have a state climate change law, AB 32 which is in effect, and we also have complimentary piece of legislation which is called SB 375. SB 375 is our state's recognition that we must reduce urban sprawl and we also must provide alternatives to traditional automobile traffic in order
to combat climate change.

This project here is really a 20th Century planning relic. We need to go do -- move forward is to actually invest in public transportation, biking and walking corridors, such as trains. These are the type of solutions we really need to look forward to. We have a saying in the transportation planning community which says that fighting congestion by adding a highway capacity is like fighting obesity by losing your thumb.

What that really means is if you build or expand a freeway, yes, yes you will release some congestion. But give it a couple of years, give it four or five years. Empirical studies actually show that you will get induced traffic from induced development and you'll be back to square one.

And in terms of water quality, what will this get us? This will get us more parking lots, this will get us more roads, this will get us a lot more sprawl, which is going to get us more urban runoff. And that will directly impact this region, and then they will come back to you and they will say, we need this next section to move forward. And they will -- they will show the study about the traffic that was induced from this, and they will make the same case again.

And we can go ahead and decide whether to go
ahead and build a new segment or we can say at this point, no. We need to look at real alternatives, we'll create real solutions to this problem. Thank you.

MR. STRAWN: Mark Abski or Israel Adina. Scott Harrison. Dan Sulberg.

MR. HARRISON: Thank you for staying late tonight. I'm a volunteer as well and through that process, I've become involuntary --

MR. STRAWN: Your name, sir?

MR. HARRISON: Scott Harrison.

MR. STRAWN: You took the oath?

MR. HARRISON: I will give my opinion whether it's good or not. I signed the sheet, but I didn't have -- do we have to tell the truth here? Well, I appreciate your staying late and hopefully, make this briefer than it already has been usurped on from that part right there.

But three points that I would like to cover. They have been covered today already. One of the major arguments for the road is the jobs. The jobs will be temporary. The roads will be permanent and the damage to the environment will be permanent, so when the jobs are long gone, the road will still be here and causing the problems that we're here to try to figure out if the road will actually cause these problems.
Number two, what brings us sort of unsavory
pall over the proceedings today are the fact -- and you
have seen it here in San Diego -- is toll roads. That
the toll roads eventually, they're bankrupt. Esther
talked about this a little bit. All the monies being
made up front; therefore, I can see the enthusiasm by a
group like TCA, well, let's build a toll road; big money
grab.

They -- the local toll roads have actually gone
down because the use has gone down. The toll roads in
the other parts of the state went bankrupt and had to be
taken over by municipalities to recover those costs to
the taxpayer, so we all pay for those types of things.

Marty talked about an elephant. I'm more the
800-pound gorilla that's here to talk about the clean
water. You have all heard the saying, all stuff flows
downhill and mitigation, filtration, CEQA, NEPA, swales,
whales, all that stuff, when you come to a significant
reign event, the stuff is going to continue to flow
downhill anyway. And just about everything that we
value here today, we're talking about is downhill from
this road.

Please deny the permit and thanks for staying
late again tonight.

MR. STRAWN: There are about five more here.
This one, I just can't make -- actually, I'll go down the person that signed the oath is Eleanor Robbins. There might be a Norris Robbins or something. No? And just calling everybody once. If I called your name and -- Valerie Johnson, followed by a something Richmond.

MS. JOHNSON: Hi. I'm Valerie Johnson. I'll keep it short because I know everybody wants to get home. Thanks for your patience.

I listened to many of the comments in the other room from the elected officials. I couldn't help but feel that the claim that is only about a short segment that Tesoro extension is at best disingenuous, and I couldn't help but be struck by how many who were representing City Council were also part of the TCA board. It doesn't seem to me that these folks could possibly be unbiased about this.

It sounded really good on paper. The thing about safety and more access and weighs out in case of an emergency. Who wouldn't be in favor of that? The problem is that every place toll roads have been built, development has followed. And as many as the forms the speakers have said is more detail, the sprawl, the development follows and then so does the traffic. It's at best a Band-aid.

I also want to say that it makes me feel a bit
strange to be here speaking on the opposite side from so many representatives of unions that I see here, since I'm a proud union member myself. But I think that this jobs versus conservation dichotomy that has been set up is a very false one. We need to have the jobs, but they should be jobs that are sustainable and contribute to a better environment. Taxpayer money should not be spent on something that is going to degrade our environment. Instead it should be spent on increasing solar energy and perhaps some of the people, you know, the taxpayer money could be much better spent helping to much more quickly truck out the toxic awful that was left behind by San Onofre nuclear generating station. Thank you.

MR. STRAWN: Charles Richmond and then John Holder and a Larry Smith, and then we have T.M. Johnson. And was there any other green cards that didn't -- actually, why don't you come up next.

DR. LOCKREED: My name's Dr. Bill Lockreed. I'm currently retired, but I spent 45 years in the aerospace industry as an engineer and 25 of those as a program manager, relatively large programs. And I'm just amazed. I got prepared notes, but as I heard for this last hour some of the bizarre comments. Number one, taxpayer dollars being used for this.

There's no taxpayer dollars being used. Number
two, just going through a state park. It's not going through a state park. Number three, it's going to be 16 and a half miles long. It's not. It's 5.5 miles long. What you got in front of you, the CEQA which your staff reviewed, which you -- you're supposed to vote on only
the CEQA.

What we've got here, you got a gold standard on
how a highway will be built. It's got this porous
pavement which is very high tech. It's got a very
sophisticated filtration system. They have done -- the
rest of California will look at this as the best highway
in the State of California. So forget all this other
stuff you're hearing, because most of it is just
hyperbole.

The important thing is 5.5 miles, the CEQA
study was approved after extensive study by your own
staff. Go ahead and approve this thing and let's move
on-and get on with this thing and approve what your
staff is recommending. Thank you.

MR. STRAWN: T.M. Johnson.

MR. JOHNSON: Sir, once again, I want to thank
you for your time and your committed efforts to see one
way or the other the truth of the matter and for your
diligence in giving a good report on it.

I've sat in the back from the beginning since
this morning and I've listened to both sides and I'm for
it. I've seen growth. And I'm from San Diego and I
know what it did when 805 went over the 8. When nobody
had to drive 163 to go north. And so with that is going
to come production. There's going to come jobs.
There's going to be more schools. We have a state that
everybody wants to live in. We have kids who want to
own their own homes one day. We have to put them
somewhere.

So we have to do something to make that
available for them. I want to know how many people in
this room do not drive a car. If we're going to get
down to the brass tacks of it all, it's about traveling.
The best direct approach to a situation is forge
straight through. This is a hurdle we can get over it
or we can let it stop us. But we've got to do one thing
or the other. Stop production or make room for others.

I've seen road rage. I know what it's looks
like. I've been in L.A. where the traffic was stopped
for longer than a half hour to go five miles. So if
this helps a community grow and it gives them the time
they need to get to where they're going without leaving
a half hour earlier, we need to help them.

If it's about the environment, we waste more
gas sitting still than we do traveling. That's going to
help everyone in the long run. I's tell you what. I wouldn't want to go five miles to the grocery store over a dirt road to get there and get back on bicycle. Just telling you, man.

MR. MORALES: Okay. Those are all the public comment cards that we got.

MR. SMITH: You called me and you didn't let -- give me the opportunity to speak. I was walking up, so...

MR. STRAWN: Your name?

MR. SMITH: My name's Larry Smith. I presently reside at Provonda, which most folks know as Long Beach in Signal Hill area, and I'm obviously here to ask you to deny the permit. I've been indigenous for over ten years, and I probably spend about 99 percent of my time reporting on the genocide or forms of genocide perpetuated against indigenous peoples and their respective first nations.

And one document that this board may or may not be familiar with that does apply, is the United Nations declaration under the rights of indigenous people and was passed by the nation's general assembly on September 13th, 2007. And I want to refer to two articles. Article 8, Section 1 specifically states that

"Indigenous people, individuals have the right not to be
subject subjected to forced assimilation or the
destruction of their culture."

Article 11, Section 1 specifically states,
"Indigenous people have the right to practice in and
realize their culture, traditions and customs. This
includes the right to maintain, protect and develop the
past, present and future manifestations if their
cultures such as archaeological and historical sites,
artifacts, designs, ceremonies, technologies and visual
and performing arts and literature."

Now, there are 20 more articles that equally
apply in this situation, and I wanted to ask that all of
you in this room, staff, the board here, members of the
TCA community members, not be complicit in committing an
act of genocide by allowing this part of the toll road
to destroy a portion of what's remaining of the nation.
If you destroy the nation, you destroy the culture,
that's called genocide. So I'm asking you to deny the
permit. Thank you.

MR. MORALES: Okay. That's it for the public
comments. I think we have been going for a while and
our court reporter probably needs to rest her fingers.

Yeah, I know that NGO's might.

Okay. I'm going to give you guys two or three
minutes max. I'm going to add it to your time if you
wish to add that because we do believe that you used your 30 minutes.

        MR. WHITE: I have no objection to that. Thank you. And I appreciate your patience. I will try to make it brief. I want to bring it back. We heard a lot of testimony today -- bring it back to the issues that you're faced with today, the issues that pertain to your jurisdiction and what your options are today.

        But first I want to respond to a couple of misconceptions that have been floated out there, a couple of important ones anyway. The first is with respect to the SAM. We heard that because the TCA has looked at the SAM and tried to comply with the SAM, that we shouldn't be complaining about the HMP and having to do additional HMP conflicts with the timing of that.

        The SAM is a planning level document. It's not a project level document. It's not intended to be a project level document. I think you heard from one of authors of the SAM, PWA last time that this was not intended to govern project level decisions. It's exactly what the county HMP requirements are designed to do. That's why your staff is recommending that those be complied with. What we're saying is until that analysis is done, you should not be hearing this application.

        So this one, we think is a no-brainer. You
should just -- you should deny this application, require
they do the analysis before taking any further action.
To get back to the larger issue, the issue of what is
the project and whether the project has independent
utility.

I think the biggest misconception that we have
so far tonight is that this 5.5 segment of toll road is
needed to serve the Rancho Mission Viejo development.
The Rancho Mission Viejo development was approved by
Orange County. It has its own transportation plan. The
county itself determined that the toll road was not
necessary, was not a necessary part of the
transportation plan for that project. The
transportation will be adequately served for those
14,000 units if and when they're ever built by that
transportation plan as part of the project.

It includes an arterial called F Street which
as TCA itself has noted, is -- would serve generally the
same purpose as the toll road. It's a multi-mobile full
access road that people can drive on, they can walk on,
they can ride their bike on, they can access it from
side streets unlike the toll road.

It is a complete fallacy that the toll road is
needed at all to serve Rancho Mission Viejo. That is a
critical point that you have to understand. So back to
what are your options or what are your obligations at this point. I think I've already mentioned that you're required by CEQA to make findings before you approve the project with respect to the significant impact. This is something that you're not -- there is no definite of the TCA on these findings. They have to be independent findings.

I should -- CEQA provides -- TCA is wanting to use the 2006 EIR for this project. There is a process under the CEQA regulations for using an EIR from another project for a separate different project. Those regulations say if you want to do that, you take the EIR, you circulate it the way you circulate all the EIRs, you recirculate it for 30 days. You have to respond to comments just like you would under a normal CEQA process.

If TCA wanted this to be a separate project, they could've taken advantage -- if they wanted to use the 2006 EIR, they could have taken advantage of that process and done that. They chose not to. Instead they chose to call this a segment or a -- a phase or whatever you want, of the original project. They relied on the 2006 EIR, and that's all you have before you to make your findings. That EIR has over a dozen water quality related significant impacts.
You found in 2008 that the mitigation provided for those impacts was not enough to mitigate those significant impacts. You should do the same thing today. It's not a difficult decision. They want to make this a separate project, let them go through that process. They haven't done it yet. They've only given you one option and that is to make mitigation findings for the project as a whole. We urge that you do what you did in 2008 and reject the project. Thank you very much.

MR. MORALES: Break, folks. And as soon as we come back, we're going to start with TCA and then we will go to staff.

(Recess)

MR. MORALES: Please take your seats. Okay. Folks, the lights will come on. It's not from -- it's not from the -- it's just an energy-saving timer. It should indicate how long we have been going. So I think that Mr. Thornton, you're your okay starting in semi-darkness.

MR. THORNTON: No problem, Mr. Chairman and members of the board. We appreciate your patience very much. I want to bring this hearing back to where it began, Mr. Chairman. Your introductory comments indeed with having witnesses take the oath was, I think it's
important to focus.

Why is it that witnesses before a water board hearing on the WDR are required to take the oath because you're sitting as quasi-adjudicatory body. You're not sitting as a transportation policy entity, you're not sitting for the transportation commission, you're not sitting for the water quality entity, you're not sitting as a greenhouse gas entity, you're not sitting as a legislative body. You're the regional water quality control board and your obligation is to apply the rules and regulations of the State of California applicable to waste discharge. That's your role and responsibility.

That's why as the chairman appropriately noted this morning, there are restrictions on ex-parte communications because you're sitting as a quasi-adjudicatory body. So your obligation is to decide this matter on the basis of not emotion, not policies about growth in California, not whether some of us would prefer to have a population of less than 38 million people, but rather to fairly apply the laws of the State of California as they apply to water quality and the regulations of the State of California as they apply to water quality and has been articulated in your basic plan and the water committee quality facts of this matter.
And the facts of this matter are as your staff has articulated that you have a project before you that involves the impact to four-tenths of an acre in stated waters that has 15 to one mitigation ratio, an unheard of mitigation ratio, but your staff has drafted a tentative weight discharge order that requires this agency, this public agency by the way, public agency that represents two million people live in Orange County.

To me, the highest water quality standards of any highway in the State of California. That's what your staff is requiring. So your obligation is to apply the law to the facts -- to the facts presented, and there have been no facts presented here today to contradict the findings of your staff. And I refer to paragraph Roman 2, dash, K on Page 8 of the tentative order where your staff findings are through compliance -- quote, through compliance with the waste discharge requirements of this order, the project will not result in State water quality standards being violated.

And in Roman two, dash L, on Page 9 of your tentative order, your staff says, quote, the order contains waste discharge requirements to ensure beneficial uses are maintained or enhanced through mitigation and monitoring requirements for impacts to
waters of the State.

With regard to the CEQA issue, your council has advised you that you are obligated as a matter of law to presume that the CEQA documentation prepared by the TCA complies with CEQA. Now lawsuits have been filed. There is another entity, the judicial branch of our water system whose authority and jurisdiction is to review the TCA CEQA determinations. And they will do that in due course.

And a judge -- Superior Court judge and perhaps a court of appeals will decide that issue, but that's an issue to be decided in that venue, not in this venue.

Your council has advised you that there are no -- there is no basis to require additional environmental documentation.

Now, we have heard testimony on a variety of matters. Again, we have been here a long time today. This project comes nowhere close to Trestles, has nothing to do with Trestles. It's not going to impact Trestles. It's nowhere to Panhe. It's ten miles away from Panhe. There are no sacred sites. There are no burial sites. There are no facts to suggest that this project will have those impacts but again, refocusing on the water quality issues, there's been no facts presented to you today that contradict your staff's
recommendations to approve this WDR.

Finally, I just want to respond briefly to suggestions that determination by the opponents that the denial without prejudice in 2008 somehow constituted some kind of binding determination. Again, let's focus on the law. The State water board's regulations Section 3831H provides denial without prejudice, means inability to grant certification for procedural rather than substantive reasons.

This form of denial carries with it no judgment, so the suggestion again that the denial without prejudice of the certification in 2008 has any applicability to this proceeding is simply wrong as a matter of law. I submit to you, Mr. Chairman and members of the board, that you have before you a project that meets all of the applicable water quality standards protects the beneficial uses.

That's the role of the water board and we urge your approval of this WDR. Thank you for your time and patience. Thank you very much.

MR. MORALES: Are there any further comments by staff at this point?

MR. BRADFORD: Thank you. In closing, I would like to clarify a few pieces of information brought up today. Approving projects based on a refined conceptual
design plan at the time the WDR are issued is common practice by the water board. Therefore, approving the WDR for this project during this stage is appropriate.

Project impacts to water have been avoided and minimized to the maximum extent practical. The order contains requirements that are specific and enforceable. Staff finds that the mitigation requirement of the order adequately replaced aquatic resources that would be impacted by discharges of fill associated with the project.

The compensatory mitigation sites must be maintained and protected in perpetuity in a manner that maintains or improves the functions and values of the sites for the variety of beneficial uses of water that it supports. The order requires that TCA provide annual reports for compensatory mitigation sites until the sites be all long-term success criteria identified in the approved mitigation and monitoring plan that it met to satisfaction the San Diego Water Board.

Moreover, TCA must provide financial assurances for the mitigation sites acceptable to the San Diego Water Board. The financial assurances instrument shall -- shall allow the San Diego Water Board to immediately draw on the financial assurance if the San Diego Water Board determines in its sole discretion
that TCA has failed to meet the mitigation obligations.

There were some comments made about cultural
and archaeological impact. Please keep in mind impacts
to archaeological resources are impacts that pertain to
the adequacy of the environmental documents prepared by
TCA and to resources outside the board's purview.

There were also comments regarding the runoff
management plan. Revised tentative order requires that
the updated runoff management plan comply with the
Orange County HMP and water quality management plan.
These requirements must be met regardless of when the
runoff management plan is updated and submitted to the
water board.

A suite of BMPs -- a suite of appropriate BMPs
will be installed to reduce the discharge of fluids in
the project runoff. Incorporation of the BMPs into the
on-site drainage system will result in acceptable runoff
water quality before entering the receiving water.

Staff has considered the testimony given today
and maintains its recommendation to adopt the revised
tentative order. Thank you.

MR. MORALES: I think that concludes all of the
testimony that we are going to be receiving on this
matter, so at this point we go into our deliberations;
correct.
MS. HAGAN: So Chair Morales, so formally closing the public hearing?

MR. MORALES: Yes. At this point, we are formally closing the public hearing. Thank you all. So we have heard staff's recommendation and think -- oh, boy, the board -- where are we, folks?

MS. KALEMKIARIAN: I'll start. I'll start because I know we all want to get home. And I first want to thank both sides of the issue because this was very helpful to me today, and I feel that while we got sidetracked sometimes on transportation policy and good serving spots, we did get a very good exposition of the issues.

I guess what's most persuasive to me, being -- not having been here in '08 when this was last reviewed, was reading through the attorney general's complaint or writ, actually, because I do not believe that the project is Tesoro, and I think that the project has been presented is the entire highway. And the reason I think that is that there have been no alternatives at all brought forth by the TCA to tell us well, this is the first segment that's needed because we've got these homes here. It's not going to have an environmental impact. The water quality standards will be met, but the rest of it, what's happening there?
There's been no explanation. And from what I can gather from all the evidence that was presented to us, that was a very big issue in 2008, and it's still an issue. And there's not alternatives being presented. I think the staff has done a wonderful job. I don't -- I don't question the staff's conclusion that this segment meets water quality standards. That's not why I'm going to vote against the staff's recommendation. It's because I think that is not the project. In honesty, it is not the project.

If this had come forward as the entire highway, or an alternative to the entire highway and the environmental impact and the water quality -- not the -- the water quality issues, the discharge permit had been everything that we evaluated, I'm not going to do transportation policy. I'm not elected official in Orange County. You are correct, sir, our job is as an adjudicating body and as regulators, and I do not think we were provided with the project, and I think the staff evaluated what it was presented with and did a great job, but we have a different function.

So I can't approve the staff's recommendation.

Now, I'm persuadable otherwise, but I just don't believe that we have been given the project. So as the attorney general says in her first cause of action, it's not been
explained, the environmental impacts or the evaluated for the entire project and the water quality standards by definition as well.

MR. MORALES: Anybody else or should we vote?

MS. KALEMKIARIAN: Am I standing alone perhaps?

MR. STRAWN: I wish I could totally agree with you. Because I don't like this project. I don't like the toll road through the hill. I don't like what it does to endangered species. I don't like the fact that it's disturbing some tribal sites. But as the water quality control board of San Diego region, those cannot be the deciding factors. If we were to decide using those factors, our ruling would be appealed and I think we would lose it.

So just maybe it's blinders on, but looking at the project that we were presented, and I -- likewise, I don't think we can expand it to some potential larger project, even though we might believe that could happen. Looking at the evidence that's in front of us and looking at the revised tentative order and what it is we're approving, I reluctantly think I need to vote in favor.

MR. ANDERSON: Well, I'm not afraid of slippery slopes. This is a 5.5 mile section serving a fairly large planned community, and I will support the --
second your -- is that a motion?

MR. MORALES: Not yet.

MR. ANDERSON: I would support you on support the -- I think it's a whole other discussion for when we do move through the sacred sites and when we do go down towards the I-5 connection, and I'm -- I agree that will be a project and it's part of the project. In this case, I feel we're -- 5.5 well mitigated, and so I will support the staff's position on this.

MR. ABARANEL: I think the project that's in front of us is actually pretty clear. It's the project that was presented here in 2008 and rejected by the people of California in the United States of America. I have heard from Orange County elected officials more or less heard from the counsel, Mr. Thornton, that the project is the entire extension from where 241 ends now to somewhere intersecting Interstate 5 and the environmental impact report that is before us -- that's not actually before us -- it was before us. Clearly evaluates the whole project -- that project was rejected and I don't see any reason to accept part of it.

I feel as though somebody came before this board and the Coastal Commission and the Department of Commerce basically the people of California and the United States some years ago and said we want to build a
bridge and that was rejected. And somebody is coming back now and saying let's build a quarter of the bridge. It's not going to impact traffic. Right. Not going to cost as much. It's not going impact this or that now, but the whole project is clearly identified as impacting water quality and many other things.

I think our obligation here is not to be blinded by a representation of part of the project, but to recognize that the entire project impacts water quality in a way that this board should not support. Some people might say I made up what the project is, but I went to the website of the Transportation Corridor Authority and it shows the project going all the way through Interstate 5, somewhere kind of in San Diego County. I don't know if that's where they're going to do it.

But that's the goal of their project and they're asking us to support that, and I cannot.

MR. MORALES: Wow. I'm really torn on this one because while I got to say it's a -- a story. Having traveled on the 241 often, but the -- the time I recall actually traveling on the 241 was during one of the big fires that we had when my wife and I were at a conference in the desert and our two young children were with a good family friend at our home here in San Diego
and fires raged all over the county. And the only way that we were able to get home to our kids with all the roads shut down was by taking a portion of 241.

So I understand personally the utility of a number of roads for safety reasons. And I personally benefitted, you know, by it. I'm grateful for that. But that really can't be a part of my decision and the decision will be based on the information I have before us. I think my decision actually might be different if it were the entire segment, frankly. But as a five and a half mile, I guess, portion of the overall project, I really am sort of the same mind as two of my fellow board members.

And -- and I -- I think -- and I've said many times that we have the best staff in the state and they do excellent work and, you know, I take them at their word, and I know that their work and analysis is thorough and is as good as we're able to get, but we have to make some sometimes difficult decisions and I don't know anyone who's ever surfed at Trestles. I've never been there. I don't go to Trestles and, you know, okay, folks. It's going to impact Trestles.

I don't know. As I see it, the project as envisioned may end up there; may not. I don't know. I do think it's more than five and a half miles, though.
I was torn with a lot of the questions about CEQA and TCA, you know. They went -- they provided us with an NOD, which -- which I think is very, very helpful.

But I think there are some ambiguity in what we are required to do and not do in terms of our analysis, and I know there are arguments that go both ways. And we are a semi-adjudicative body and while the threat of litigation is always a possibility for us, quite frankly, it's going to happen no matter what we decide. So you know, it is with frankly a lot of reluctance that I can't support the staff.

MS. KALEMKIARIAN: I want to take a stab, if I might. But are you finished, Chair?

MR. MORALES: I am.

MS. KALEMKIARIAN: Because really, it's only when I put this in my mind in context because I was wavering back and forth because when I looked at the way the AG analyzes it, it hit on -- the nail on the head for what was bothering me. And that is the description as the project in quotes as consisting only as the Tesoro extension. I'm reading from the complaint -- the grid -- as the first 5.5 mile segment is contrary to decades of representation by the TCA as well as its most recent characterization of the Tesoro extension as the first step towards completion of the entire Foothill
South extension.

This is not an adequate project description and that's what bothers me. To say that this has an independent beneficial review, I have to refer to counsel for the NGO, said look, there's already been a transportation plan approved. And it's not my business whether there's been an independent beneficial use. That's a transportation question.

My business is have I been given a project description that's accurate to make a water quality decision in it, and I don't think that was the staff's task, frankly. They had their application. They reviewed the application. From a public policy perspective, I do not believe that the project description is genuine. And if that project description is the entire highway, show me the entire highway and then we make a decision if water quality standards are going to be compromised. We were not presented with that, which Mr. Abaranel said.

And it's not that I like it. I'm not a big fan of big highways. I'm not sure that I wouldn't prefer to see there be less growth, but, you know, the gentleman from the union who spoke last was very eloquent. We can't just stop growth in the state, and that's what I'm not about. But I do think you have to be genuine and
accurate and I do not believe the project description is
accurate the way it's being presented and that's my
problem. So...

MR. MORALES: I know. Okay. So what do we do
here, folks? I get a motion either way. Anybody?

MR. ABARANDEL: I move we do not approve
tentative order R92013 triple 07.

MS. KALEMKIARIAN: Second.

MR. MORALES: We have a motion that we not
approve the tentative order before us. All of those --

MS. HAGAN: Mr. Chair, may I make a suggestion
just for you to consider. If that motion were -- the
board is inclined to go -- one -- one option is for the
board to allow staff to draft a resolution stating the
board's reasons for not approving the project, that
would be brought back at the next meeting, but it's not
required but it would give an opportunity to more
clearly refine the reasons for that action.

MR. ABARANDEL: May I respond. That's always
possible, but I think the reasons with one exception
that I have, I, tried to articulate. I hope they're on
the record. If it's the opinion of counsel and the
senior staff, that would be very important to do, I
would be happy to go along with it. But if it's not so
important, I just as soon proceed now.
I do have another item that's important to me and maybe that would be -- which I haven't articulated yet. It's not important as the one that I did articulate, so I would like to know just how big a deal this is.

MS. KALEMKIARIAN: I -- we were both just discussing it, and I do think you, the board members, have fairly clearly stated their views in their deliberations, so I don't think a resolution is critical at this point.

MR. MORALES: I'm all for not punt ing. I -- like I said, that's why we make the big bucks.

So there is a motion and a second that the tentative order not be approved, and I guess I'll call for a vote. So all those in favor of the motion as stated nonapproval of the tentative order, signify by saying aye.

IN UNISON: Aye.

MR. MORALES: Those opposed?

MR. ANDERSON and MR. STRAWN: No.

MR. MORALES: Three, two, motion carries. I think that's it for tonight.

(Whereupon the hearing was concluded at 7:15 p.m.)

* * *
I, Johnell M. Gallivan, Certified Shorthand Reporter for the State of California, do hereby certify:

That the hearing was taken by me in machine shorthand and later transcribed into typewriting, under my direction, and that the foregoing contains a true record of the hearing proceedings.

Dated: This ___ day of ________________, 2013,
at San Diego, California

__________________________
Johnell M. Gallivan
CSR No. 10505
EXHIBIT 6
ITEM: 9

PURPOSE: To consider adoption of revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for the Foothill/Eastern Transportation Corridor Agency (F/ETCA), Tesoro Extension (SR 241) Project, Orange County.

RECOMMENDATION: Adoption of the revised Tentative Order No. R9-2013-0007 is recommended.

DISCUSSION: This Executive Officer Summary Report (EOSR) supplements the EOSR and Supplemental EOSR provided for Item 8 of the March 13, 2013 San Diego Water Board meeting (Supporting Document No. 1). At that meeting, the San Diego Water Board opened a public hearing to consider adoption of the Tentative Order for the Tesoro Extension (SR 241) (Tesoro Extension or Project), which was attended by over 200 people. The San Diego Water Board heard extensive testimony on the Tentative Order from a large diverse group of stakeholders including San Diego Water Board staff, F/ETCA, Save San Onofre Coalition (SSOC), elected officials, and other interested persons. The testimony included concerns that F/ETCA's Final Subsequent Environmental Impact Report (FSEIR) is not a valid final California Environmental Quality Act (CEQA) document that the San Diego Water Board can rely upon in considering adoption of the Tentative Order.

At the conclusion of the hearing proceedings on March 13, 2013, the San Diego Water Board continued the public hearing to today's meeting to allow staff and counsel adequate time to 1) evaluate the comments submitted on CEQA compliance, 2) prepare responses to the remaining issues, and 3) draft revised conditions and/or additional
findings as appropriate for inclusion in the Tentative Order.

As directed by Board Chair Morales at the March 13, 2013 Board meeting, San Diego Water Board member questions (Supporting Document No. 2) were sent to F/ETCA and SSOC and responses were required by March 29, 2013. Timely written responses were received from F/ETCA and SSOC on March 29, 2013 (Supporting Document Nos. 3 and 4). Additional questions posed by Board members during the March 13 Board meeting will be addressed during the Board staff and F/ECTA presentations at today's meeting.

On April 18, 2013, the F/ETCA Board of Directors adopted Resolution 2013F-005 entitled, "A Resolution of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency Approving Addendum to Final Subsequent Environmental Impact Report and Approving Conceptual Design of the Tesoro Extension Project" (Supporting Document No. 5). In adopting the Resolution, the Board of Directors approved a conceptual design plan for the Tesoro Extension Project and adopted an Addendum to the Final Subsequent Environmental Impact Report (FSEIR) which can be used to fulfill the environmental review requirements of CEQA for the Tesoro Extension (Supporting Document No. 6). F/ETCA filed a Notice of Determination regarding the approval and adoption of the Resolution with the State Clearinghouse on April 19, 2013 for state agency review as required under CEQA Guidelines Sections 15205 and 15206 (Supporting Document No. 7). San Diego Water Board counsel has reviewed the information submitted in responses to the Board's CEQA questions and considered the findings and conclusions of the F/ETCA Board of Directors in their adoption of Resolution 2013F-005. Based on these and other considerations, San Diego Water Board counsel has concluded that the CEQA documentation provided by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering adoption of the revised Tentative Order.

The testimony of participants at the March 13, 2013 Board meeting also included concerns with the Tesoro Extension Project meeting the coarse (bed material) sediment supply preservation requirements of the 2011 Southern Orange County Hydromodification Management Plan (HMP). The testimony focused on how the construction of the Tesoro Extension would affect the supply of bed material sediment
to Chiquita Creek, Gobernadora Creek, and San Juan Creek. F/ETCA testified that the findings and conclusions of the *Baseline Geomorphic and Hydrologic Conditions Report* for Rancho Mission Viejo (PCR, PWA, and BHI, 2002), demonstrated that constructing the Tesoro Extension through the headwater channels in Chiquita Creek and Gobernadora Creek would not adversely impact the supply of bed material sediment to those streams. The SSOC maintains that neither the overall purpose nor the detailed findings of the *Baseline Geomorphic and Hydrologic Conditions Report* support F/ETCA's assertion.

Tentative Order No R9-2013-0007 has been revised to address concerns regarding Project impacts to the coarse bed material sediment supply to downstream receiving waters. The Tentative Order now requires F/ETCA to submit and implement an updated Runoff Management Plan by October 31, 2013, prepared and certified by a properly qualified engineer, that clearly indicates the means for compliance with all of the requirements in the HMP, including those regarding coarse bed material sediment supply. The HMP contains provisions for avoiding coarse sediment yield areas and implementation of measures that allow coarse sediment to be discharged to receiving waters to prevent sediment deficit. A detailed discussion of this issue can be found in response to Comment No. 1 in the San Diego Water Board Revised Response to Comments document (Supporting Document No. 8). This document replaces and updates the previous version that was prepared for the March 13, 2013 Board meeting. The Revised Response to Comments document addresses all timely submitted comment letters that were received by March 1, 2013.

**Final Revisions to the Tentative Order**
San Diego Water Board staff is proposing final revisions to the Tentative Order for the San Diego Water Board's consideration. These revisions are shown in redline/strikeout text in the Revised Tentative Order (Supporting Document No. 9) and include:

1. A requirement to update, certify, and implement the Runoff Management plan (RMP) (See section V.B of the Revised Tentative Order);

2. A requirement to develop and implement a monitoring
program to protect water quality and assess compliance with the receiving water limitations of the Tentative Order (see Finding G and section VIII.A of the Revised Tentative Order);

3. Changes to the CEQA findings to acknowledge that the CEQA documentation produced by F/ETCA is adequate for the San Diego Water Board, as a responsible agency, to rely upon in considering the adoption of the Tentative Order (see Finding N of the Revised Tentative Order); and

4. Corrections of typographical errors and incorporation of suggested text by stakeholders.

By letter dated May 30, 2013 the Revised Tentative Order was released for public review and comment. Consistent with the direction provided by Board Chair Morales at the March 13, 2013 Board meeting, further written comments are limited to: 1) revisions to the Tentative Order since March 13, 2013; and 2) comments pertaining to the Revised Tentative Order and CEQA. Comments on the Revised Tentative Order must arrive no later than 5:00 p.m. on June 7, 2013. San Diego Water Board staff responses to comments received on the Revised Tentative Order and any errata for the Revised Tentative Order will be addressed during staff's presentation at today’s meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:
1. EOSR and Supplemental EOSR for Item 8 of the March 13, 2013 San Diego Water Board meeting.
2. San Diego Water Board Member Questions for Written Response Due March 29, 2013 by 5:00 p.m.
5. A Resolution of the F/ETCA Board of Directors Approving the Addendum to the Final Subsequent Environmental Impact Report and the Conceptual Design of the Tesoro Extension Project. (Resolution
6. Addendum to the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report, dated February 2013.
EXHIBIT 7
Boucher, Leanne

From: Thornton, Rob  
Sent: Wednesday, February 18, 2015 1:44 PM  
To: Boucher, Leanne  
Cc: Clark, Stephanie N.  

McFall, Valarie [mailto:vmcfall@thetollroads.com]  
Sent: Wednesday, February 18, 2015 1:40 PM  
To: 'R9_DredgeFill@waterboards.ca.gov'  
Cc: Kraman, Mike; Thornton, Rob  
Subject: "Comment - Tentative Resolution No. R9-2015-0022, Place ID: 785677"

Dear Mr. Bradford:

Please find attached the Foothill/Eastern Transportation Corridor Agency’s comments on the Tentative Resolution for the denial of the Waste Discharge Requirements Permit for the SR 241 Tesoro Extension.

Sincerely,

Valarie McFall

Valarie McFall  
Director, Environmental Services  
Transportation Corridor Agencies  
Office: (949) 754-3475  
Cell: (949) 874-2628  
Fax: (949) 754-3491  
vmcfall@thetollroads.com  
thetollroads.com
February 18, 2015

Mr. Darren Bradford
California Regional Water Quality Control Board,
San Diego Region
2375 Northside Drive, Suite 100
San Diego, California 92108

Via E-Mail:
RB9_DredgeFill@waterboards.ca.gov

Re: Comment – Tentative Resolution No. R9-2015-0022, Place ID: 785677;
Findings Regarding Denial of Waste Discharge Requirements for Tesoro
Extension of SR 241

Dear Mr. Bradford:

Thank you for providing the Foothill/Eastern Transportation Corridor Agency ("TCA") the
opportunity to provide comments on the San Diego Regional Water Quality Control
Board's (Regional Board) Tentative Resolution relating to the denial of Revised
Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern
Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County.
The following comments are for the Regional Board's consideration.1

As background, the Tesoro Extension Project is a 5 ½ mile link of a regional
transportation network that serves all of Southern California. As TCA designs each
project, the transportation benefit of each phase is evaluated along with ways to
minimize environmental impacts. This same approach was used in the design of the
Tesoro Extension. The Tesoro Extension will serve not only regional traffic, but also
local traffic for a growing South Orange County. In the past, TCA planned to pursue an alignment for the SR 241 that traversed through areas that raised concerns for some stakeholders. During the Regional Water Board’s two public hearings, many of the comments provided were unrelated to the Tesoro Extension, but instead focused on the former and longer alignment. As the TCA documented at length during the Regional Board’s prior proceeding, the construction of the Tesoro Extension is separate and distinct from potential future extensions of SR

1 The TCA incorporates by reference the TCA’s submissions to the State Board including, but not limited to, the Petition for Review and Memorandum of Points and Authorities in Support thereof dated July 18, 2013. All of the TCA’s submissions to the State Board were previously served on the Regional Board.
241. However, due to the on-going controversy regarding future extensions, TCA initiated a stakeholder process to re-evaluate the future transportation needs of South Orange County.

Although TCA is in the early stages working with stakeholders, there is optimism that consensus will be reached on the need for further improvements south of the Tesoro Extension. As such, any solution will require new state and federal environmental processes, including project permits. However, due to the emerging nature of the stakeholder process, any readily available information regarding potential future impacts does not exist at this time. As the process is more fully developed and stakeholder consensus is gained, the TCA will engage the Regional Board to provide further input on design and minimization measures.

As for our review of the Tentative Resolution, it does not appear to reflect the State Board's Order adopted at its September 23, 2014 hearing. The State Board's Order requires the Regional Board to adopt "detailed findings" explaining "why the regional board would be limited in its ability to exercise it full authority in the future" to restrict future discharges from future extensions of SR 241. (State Board Order No. WQ-2014-0154, at p. 11.)

Additionally, there is no evidence in the record to support a finding that the Regional Board's authority to restrict future discharges would be limited. As the Tentative Resolution concedes, any future extension of SR 241 south of Cow Camp Road would cross waters of the State -- thus providing the Regional Board with extensive authority to restrict future discharges. Because it is uncontested that Regional Board would have authority over future extensions of SR 241, the Regional Board should not adopt the Tentative Resolution as this would go against the direction provided in the State Board Order.

To eliminate any doubt that the TCA agrees that the Regional Board has authority to restrict any discharges associated with future extensions of State Route 241, on January 20, 2015, TCA delivered an executed agreement to Regional Board staff that stated the following (Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241 (January 15, 2015) [Attachment 1] that provides:

"The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to prohibit or otherwise restrict future discharges or other"

2 The TCA submitted a draft of the Stipulation to Regional Board staff on December 2, 2014 and request Regional Board staff comment on the draft Stipulation. Regional Board staff never responded to the TCA’s request.
In grading (Attachment WIR, to counsel to required because counsel On February 3, 2015, TCA's counsel discussed the Stipulation with Regional Board counsel Nathan Jacobsen. Mr. Jacobsen informed TCA counsel the Stipulation was not required because the Regional Board already had the full authority to restrict discharges to waters of the state of future extensions of SR 241. The statement by Regional Board counsel constitutes an acknowledgement of the obvious – the Regional Board is unable to support the finding required by the State Board Order.

In addition to the submitted stipulation, and subsequent to the June 2013 denial of our WDR, the Regional Board authorized the grading of Planning Area (PA) 2 of Rancho-Mission Viejo’s “Ranch Plan.” As permitted, the development of PA 2 included mass grading (Attachment 2) that eliminated certain waters of the state. These same waters were included in the Tesoro Extension's WDR application and calculated as an impact. As a result of the grading that was authorized by the Regional Board, the already minimal impacts of the Tesoro Extension (0.40 acre) on waters of the state have been reduced to 0.29 acre. The Regional Board’s approval of the mass grading, and the resulting reduction in the water quality impacts associated with the Tesoro Extension, is significant new evidence that should be considered by the Regional Board.

TCA staff discussed this reduced impact during a meeting with Regional Board staff on November 13, 2014, and requested an opportunity to present this important new evidence to the Regional Board. The Regional Board staff, however, advised the TCA that the Regional Board would not allow the introduction of any new evidence as part of the Board’s consideration of the Tentative Resolution. It is unclear to TCA why the Regional Board would not want to consider this important new evidence prior to making a decision on the Tentative Resolution. While the Regional Board has prohibited the TCA from introducing any new evidence, it has invited the public to submit comments without restriction. This highly irregular and unfair procedure raises fundamental questions of due process.

In addition to the impact this Tentative Resolution would have on the Tesoro Extension, it would also set a dangerous precedent for infrastructure projects throughout the state. The following transportation agencies throughout California testified before the State Board and testified that it is standard practice to permit and construct transportation projects in phases:

- Metropolitan Transportation Commission of San Francisco Bay Area
- Los Angeles County Metropolitan Transportation Authority
- Southern California Association of Governments
- San Bernardino Associated Governments
- Exposition Metro-Line Construction Authority
- Metro Gold Line Foothill Extension Construction Transportation Authority
For example, Metropolitan Transportation Commission of the San Francisco Bay Area testified:

"Almost all transportation projects in the State are permitted by regional quality control boards and other permitting agencies in phases. ¶ The factual setting raised by the proposed Tesoro Extension ... is very common in the transportation community. [Metropolitan Transportation Commission's] Regional Transportation Plan includes major transportation improvements ... that will be permitted and constructed in phases over the next several decades."

(Letter from Metropolitan Transportation Commission to State Board, p. 2 (Sept. 8, 2014).)

The agency building the Exposition light rail transit line in Los Angeles also testified that it is very common for one phase of a transit project to be permitted and built while the agency seeks to resolve community and other issues regarding subsequent phases:

"The Expo Line is a classic example of why it is necessary that transportation agencies retain the flexibility to permit and construct major transportation improvements in phases. The Expo Line was originally conceived and planned over twenty years ago as a single project between downtown Los Angeles and Santa Monica. Because of funding limitations and continuing public controversy over alignment and other issues on the western end of the project (e.g. in Santa Monica and Venice), the Los Angeles County Metropolitan Transportation Authority decided that the project should be permitted and built in phases. In 2005, L.A. Metro approved Phase 1 (from Downtown to Culver City), but deferred the consideration of Phase 2 until a later date. This decision allowed the Phase 1 light rail transit line to be completed and opened for service while the Expo Authority worked to resolve a complex array of environmental and community issues in Phase 2. The Expo Authority spent the next five years working to resolve Phase 2 issues and in February 2010 approved an alignment and project design for Phase 2. The experience on Expo Project demonstrates that it is essential that transportation agencies retain the flexibility to

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3 Attachment 3 contains letters submitted by several transportation agencies to the State Board on this issue.
phase the permitting and construction of major new transportation improvements."

(Letter to State Board from Exposition Metro Line Construction Authority to State Board, p. 2 (Sept. 2, 2014).) 4

The State Board’s Order clearly states that in "most cases" regional boards may issue WDRs for the current project and “defer issuance of WDRs for future discharges . . . until the point in time that those discharges are actually proposed." (State Board Order, p. 10.)

The State Board provided assurances to the transportation agencies that regional boards may not deny a WDR for a proposed phase because of potential impacts of subsequent phases, unless the regional board adopted findings that it would not have the full authority to restrict water quality impacts of future phases. By failing to adopt the express finding required by the State Board Order, the Tentative Resolution ignores the assurances made to the transportation agencies by the State Board and creates the potential for enormous adverse impacts on transportation projects throughout the state that are being permitted in phases including, but not limited to, the California High Speed Rail project and the many project identified in the letters to the State Board from the transportation agencies.

In conclusion and based upon the above comments, the TCA respectfully requests the Regional Board deny the Tentative Resolution as it does not comply with the State Board Order. There is no evidence in the record to support the finding required by the State Board. Indeed, the Tentative Resolution concedes that the Regional Board will have authority to restrict discharges associated with future extensions of SR 241.

Respectfully,

Michael A. Kraman
Chief Executive Officer

Attachments:

1.) Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241

2.) Tesoro Extension’s eliminated impacts due to grading of PA2 (aerial map)

4 Attached is a table of projects provided to the State Board further documenting that regional water quality control boards routinely permit transportation projects in phases.
3.) Transportation agency letters submitted to State Water Board

Cc: State Water Resources Control Board Members
State Board Executive Director and Counsel
San Diego Regional Water Quality Control Board Members
Dave Gibson, Executive Director
Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241

This stipulated agreement ("Agreement") is entered into by the Foothill/Eastern Transportation Corridor Agency ("Agency") with regard to the authority of the Regional Water Quality Control Board, San Diego Region ("Regional Board") to prohibit or otherwise restrict impacts to Waters of the State from the construction and/or operation of extensions of State Route 241 south of Cow Camp Road.

Recitals

1. On September 23, 2014 the State Water Resources Control Board ("State Board") issued Order WQ 2014-0154 (the "Order") with regard to the Petition filed by the Agency for Review of the Denial of Waste Discharge Requirements, Revised Tentative Order No. R9-2013-0007 for the extension of State Route 241 from Oso Parkway to Cow Camp Road in Orange County (the "Tesoro Extension"). The Order requires the Regional Board "to provide the factual and legal basis for [the Regional Board's decision], consistent with the Order."

2. The Order provides in pertinent part the following:

"There is a heightened need for detailed findings based on evidence in the record if a regional water board declines to issue WDRs for a project because it will likely lead to additional, future discharges of waste or other water quality impacts. Those findings should describe the potential for future discharges of waste or other water quality impacts, explain why they are likely to result from the current project before the regional water board, and most importantly, explain why the regional water board would be limited in its ability to exercise its full authority in the future..."
to prohibit, or otherwise restrict, those future discharges or other water quality impacts in such a manner as to carry out the regional water board's obligation to protect waters of the state." (Order, p. 11.)

3. The Agency has not decided whether to construct an extension of State Route 241 south of Cow Camp Road. The Agency is evaluating alternatives to an extension of State Route 241 south of Cow Camp Road. Any extension of State Route 241 south of Cow Camp Road will require the construction of bridge columns in San Juan Creek and thus will require Regional Board review of potential water quality impacts and Regional Board approvals of such impacts pursuant to section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341); and pursuant to California Water Code section 13263 and the applicable regulations of the State Board. The operation of any extension will also necessarily include discharges of storm water to Waters of the State and will thus require Regional Board review and approval pursuant to California law.

4. By this Agreement, the Agency intends to stipulate and agree that the Regional Board has the full legal authority to prohibit or otherwise restrict impacts to Waters of the State from the construction and/or operation of State Route 241 south of Cow Camp Road.

Agreement

1. The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to
prohibit or otherwise restrict future discharges or other impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.

2. The Agency hereby consents to the Regional Board exercise of its full authority as described in Paragraph 1 above.

Dated: January 5, 2015

TRANSPORTATION CORRIDOR AGENCIES

By: Michael Kraman
Chief Executive Officer

APPROVED AS TO FORM:

Nossaman LLP

By: Robert D. Thornton
Counsel to Foothill/Eastern Transportation Corridor Agency

ACKNOWLEDGEMENT:

Regional Water Quality Control Board,
San Diego Region

By: __________________________

Draft 12/1/2014
9000703.v3
Legend

- TES Impacts Eliminated by PA2 Grading
- Tesoro Extension Area of Disturbance

Attachment 2
Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 95812 - 0100


Dear Ms. Townsend:

The Metropolitan Transportation Commission (MTC), Bay Area Infrastructure Financing Authority (BAIFA) and the Bay Area Toll Authority (BATA) are concerned that the interpretation of the Porter Cologne Act in the State Board staff report on the above-referenced Petition will have an adverse impact on the timely implementation of important regional transportation improvements in the San Francisco Bay Area.

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. It is responsible for updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, freight, bicycle and pedestrian facilities. The most recent version of the Regional Transportation Plan -- known as the Bay Area Plan -- is an integrated transportation and land-use strategy through 2040 that marks the nine-county region's first long-range plan to meet the requirements of California legislation (Senate Bill 375), which calls on California's 18 metropolitan areas to develop a Sustainable Communities Strategy to accommodate future population growth and reduce greenhouse gas emissions from cars and light trucks. Successful implementation of the Bay Area Plan depends on the ability of the region's transportation agencies to deliver the transportation improvements identified in the Plan in a timely and cost-effective manner.
Almost all major transportation projects in the State are permitted by regional water quality control boards and other permitting agencies in phases. The State Board staff report acknowledges this reality, but then goes on to indicate that regional boards may require transportation agencies to obtain regional board approval for discharges for potential future phases of a transportation improvement that are not currently proposed to be constructed, and that may not be built for many years. We request that the State Board modify the Staff Report to make it clear that regional boards should limit their review of proposed WDRs and water quality certifications to the scope of the transportation improvement and discharge proposed by the transportation agency at the time of a particular application.

The regional transportation plan for San Francisco Bay Area identifies a large number of transportation improvements that will be implemented over the next two decades. Many of these improvements will be constructed in phases as funding becomes available, as the CEQA process is completed for each phase and as regulatory approvals are obtained. It is simply not feasible or practical to obtain regional board approvals or other permits for the entire length of each improvement identified in a multi-decade transportation plan at the time that BAIFA, BATA and/or MTC propose to construct an initial phase of a larger improvement described in the regional transportation plan.

The factual setting raised by the proposed Tesoro Extension to State Route 241 is very common in the transportation community. For example, MTC’s Regional Transportation Plan includes major transportation improvements in the I-80, I-680, I-880/SR-237, I-80, SR-84, SR-85 and SR-92 corridors that will be permitted and constructed in phases over the next several decades. This is an extremely complex project that extends 270 miles and crosses many state waters. The State Board Staff Report suggests that the regional water board will have unlimited discretion to require transportation agencies to obtain a WDR or water quality certification for future portions of the above improvements that will not be designed and built for decades. Transit improvements are also commonly permitted and constructed in phases. For example, the BART extensions to Santa Clara County are being permitted and constructed in phases. Expansions of the ferry system are also being permitted and constructed in phases as funding becomes available.

The well-established procedure in all of the state’s metropolitan areas is to apply for regional water board discharge approvals at the time that the CEQA process for the particular improvement is complete, when preliminary engineering is complete and funding is available to construct the improvement. The following are examples of projects in Bay Area where this approach was followed by the regional board.

- BART extensions to the Livermore Valley
- BART extensions to Santa Clara County
- Expansions of the ferry system
- Expansion of the HOV/Express Lane system
- Caltrain grade separation projects and track improvements
- San Francisco MUNI Third Street light rail improvements
- Santa Clara VTA light rail extensions
Capital Corridor rail improvements  
Hercules California Intermodal Station improvements  
Treasure Island transit capital improvements  
Sonoma Marin Rail Corridor improvements  
San Francisco Transbay - Caltrain Transit Center  

We respectfully request that the State Board revise the proposed order to recognize that regional boards should limit the scope of their review of water quality impacts of proposed transportation improvement proposed to be constructed by the transportation agency.

Sincerely,

Adrienne D. Weil
General Counsel

cc: Steve Heminger  
    Alix Bockelman
Expo

September 3, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 92814

Via E Mail: commentletters@waterboard.ca.gov

Re: Comments on A-2259; - September 23, 2014 Board Meeting. Petition of
Foothill/Eastern Transportation Corridor Agency – Waste Discharge
Requirements Tentative Order No. R-9-2013-0007 -- Tesoro Extension
Project -- State Route 241

Dear Ms. Townsend:

The Exposition Metro Line Construction Authority ("Expo Authority") submits the
following comments on the Draft Order in the above-referenced matter. The
Expo Authority is the public agency responsible for designing and building the
Expo Corridor 15-mile light rail transit line from downtown Los Angeles to Santa
Monica. As is the case with most complex transportation projects, the Expo Line
is being designed, permitted and built in phases. The first phase of the Expo
project (from downtown L.A. to Culver City) opened in 2012. The second phase
(from Culver City to Santa Monica) is under construction.

We request that the State Board modify the report accompanying the Draft Order
to make it clear that regional boards should limit their review of proposed Waste
Discharge Requirements (WDRs) and water quality certifications to the scope of
the transportation improvement and discharge proposed by the transportation
agency.

The State Water Board draft order in the above matter indicates that regional
water boards may require transportation agencies to obtain water board review
and approval of discharges associated with future phases of a transportation
improvement at the time of the initial phase – even in circumstances where the
future phase is not funded and may not be built for many years. This
interpretation is contrary to the existing practice of transportation permitting
agencies in Los Angeles County. If adopted, the interpretation reflected in the
Draft Order will adversely impact the timely and cost-effective delivery of
important transportation improvements.
Ms. Jeanine Townsend  
State Water Resources Control Board  
September 3, 2014  
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The Expo Line is a classic example of why it is necessary that transportation agencies retain the flexibility to permit and construct major transportation improvements in phases. The Expo Line was originally conceived over twenty years ago as a single project between downtown Los Angeles and Santa Monica. Because of funding limitations and continuing public controversy over alignment and other issues on the western end of the project (e.g. from Culver City to Santa Monica), the Los Angeles County Metropolitan Transportation Authority (Metro) decided that the project should be permitted and built in phases. In 2005, Metro approved Phase 1 (from Downtown to Culver City), but deferred the consideration of Phase 2 until a later date. This decision allowed the Phase 1 light rail transit line to be completed and opened for service while the Expo Authority worked to resolve a complex array of environmental and community issues in Phase 2. The Expo Authority spent the next five years working to resolve Phase 2 issues and in February 2010 approved an alignment and project design for Phase 2. The experience on Expo Project demonstrates that it is essential that transportation agencies retain the flexibility to phase the permitting and construction of major new transportation improvements.

Sincerely,

Samantha Bricker  
Chief Operating Officer

cc: Rob Thornton  
Document Control
September 11, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on Draft Order WQ 2014-xx, Petition of Foothill/Eastern Transportation Corridor Agency (SWRCB/OCC File A-2259)

Dear Ms. Townsend:

The Riverside County Transportation Commission (Commission) appreciates the opportunity to submit comments on the State Water Resources Control Board’s [State Board] Draft Order, WQ 2014-xx, in the matter of the petition of Foothill/Eastern Transportation Corridor Agency (Draft Order). The Commission supports the State Board’s goal of protecting the quality of water within the state. The Commission also supports the Draft Order’s holding, which requires a decision regarding waste discharge requirements to be supported by evidence in the record. This letter requests the removal or correction of a subtle, but consequential, misstatement of the law contained in the Draft Order.

The misstatement appears to arise from a conflation of the regional boards’ obligation under the California Environmental Quality Act (CEQA) to consider the environmental impacts of a proposed “project” with the obligation under Porter-Cologne Water Quality Control Act (Porter-Cologne) to consider the impact of a “proposed discharge.” This apparent confusion expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For this reason, the Commission requests that the State Board amend the Draft Order by deleting the last paragraph on page 9 and the first paragraph on page 10. These paragraphs are dicta and are not necessary to support the Draft Order’s holding.

CEQA Requires Consideration of a “Project”

An environmental impact report (EIR) prepared pursuant to CEQA must consider “the whole of an action” and cannot piecemeal a large project into multiple smaller projects to avoid consideration of cumulative impacts. (Pub. Res. Code, § 21065; 14 Cal. Code Regs., § 15378, subd. (a).) An EIR for a multi-phase project, such as the
Ms. Jeanine Townsend
Clerk to the Board
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linear transportation projects undertaken by the Commission and Foothill/Eastern Transportation Corridor Agency, considers the impacts from the whole of a project. A supplemental or subsequent EIR (SEIR) or other tiered document providing greater detail may be prepared for a later phase of a multi-phase project prior to approving that phase.

**Porter-Cologne Authorizes Consideration of a “Proposed Discharge”**

Water Code section 13263(a) authorizes a regional board to “prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge[.]” Prescribed requirements must implement any relevant and adopted water quality control plans and consider, among other things, “other waste discharges[.]” (Ibid.) Porter-Cologne is interpreted consistently with the federal Water Pollution Control Act, which defines a discharge as the “addition” of a pollutant to navigable waters or to waters in a contiguous zone. (33 U.S.C. § 1362, subd. (12), (16).) Discharges are “proposed” when a potential permittee submits a report of waste discharge pursuant to Water Code section 13260(a). A potential permittee is required to submit a separate report of waste discharge for each disposal area. (23 Cal. Code Regs., § 2207.) “Other waste discharges” may include additions of pollutants, proposed or occurring, in disposal sites or by dischargers other than those proposed in a report of waste discharge. (See, Water Code, § 13263, subd. (a).)

When an agency, such as the Commission, undertakes a specific phase of a multi-phase project, it may submit a report of waste discharge for that specific phase. The report of waste discharge proposes discharges accompanying that specific phase, but does not propose discharges from future phases. Future phases may never be approved by the Commission’s Board. Funding may never become available for future phases. Permits may not be granted for future phases. Such future discharges are not “proposed discharges,” as they are not proposed in a report of waste discharge. (Water Code, § 13263, subd. (a).) They are also not “other waste discharges,” because they are not actual additions of pollutants and may never constitute discharges. (Ibid.; 33 U.S.C. § 1362, subds. (12), (16).)

Porter-Cologne does not permit regional boards to condition or deny waste discharge requirements based on future phases of a CEQA “project” because the future phases do not constitute additions of pollutants and do not qualify as “proposed discharges” or “other waste discharges.”

**Draft Order Expands Regional Board Authority Contrary to Porter-Cologne**

The Draft Order expands the regional boards’ authority contrary to Water Code section 13263(a) by authorizing regional boards to prescribe or deny waste discharge requirements based on activities that do not constitute “proposed discharges” or “other waste discharges.” Specifically, the Draft Order authorizes regional boards to “request available information on those future phases in connection with a pending report of waste discharge or application for the current phase” if a future phase is “likely to occur and may have
water quality impacts[.]” (Draft Order, p. 10.) The Draft Order further authorizes regional boards to consider future phases of a project “when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharges of waste or other water quality impacts in the future.” (Ibid.)

Conditioning or denying waste discharge requirements for a proposed project based on future phases of a CEQA “project” that do not constitute “proposed discharges” or “other waste discharges” violates Water Code section 13262(a). This violation appears to arise from a confusion of an EIR’s consideration of all phases in a multi-phase project under CEQA with a regional board’s authority to consider discharges proposed in a report of waste discharge for one phase of a multi-phase project under Porter-Cologne. As noted above, this confusion impermissibly expands the regional boards’ authority in violation of Porter-Cologne. The last paragraph on page 9 and the first paragraph on page 10 are dicta and are not necessary to support the proposed holding of the Draft Order. For this reason, the Commission requests the deletion of these two paragraphs.

Draft Order Establishes an Unintelligible Standard

If the last paragraph on page 9 and the first paragraph on page 10 are not deleted, not only will the State Board’s Draft Order violate Porter-Cologne, but the Draft Order will establish an unintelligible standard for determining whether a future phase of a multi-phase project is a proper consideration in issuing or denying waste discharge requirements. (Gov. Code, § 11425.60; State Board Order No. WR 96-1, fn. 11 [unless stated otherwise, all State Board Orders adopted at a public meeting are precedential].) Regional boards will be expected to determine whether a future phase is “likely to occur and may have water quality impacts” even though the future phase is not the subject of a report of waste discharge, may never be approved, may never receive funding, and may never obtain relevant permits. A regional board is not in a position to determine the likelihood that a future phase will occur, and Porter-Cologne does not permit such consideration as part of the issuance or denial of waste discharge requirements.

In the event the last paragraph on page 9 and the first paragraph on page 10 are not deleted, they should be revised to clarify that regional boards may only consider future phases of a multi-phased project in the context of CEQA and not for the purpose of issuing or denying waste discharge requirements under Porter-Cologne. The Draft Order should clarify that waste discharge requirements cannot be denied or conditioned based on a future action which does not constitute a “proposed discharge” or “other waste discharge.”

Conclusion

The Draft Order’s apparent conflation of a CEQA “project” and a “proposed discharge” under Porter-Cologne expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For these reasons, the Commission requests that the State Board amend the Draft Order by deleting the last paragraph on page 9 and first paragraph on page 10.
Ms. Jeanine Townsend  
Clerk to the Board  
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September 11, 2014

In the alternative, these paragraphs should be revised to clarify, consistent with Porter-Cologne, that waste discharge requirements cannot be denied or conditioned based on a future action, which does not constitute a “proposed discharge” or “other waste discharge.”

Thank you for your consideration of these comments.

Sincerely,

Anne Mayer  
Executive Director

Via email (commentletters@waterboards.ca.gov)
September 12, 2014

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento CA 92314

Via email: commentletters@waterboard.ca.gov


Dear Ms. Townsend,

The County of Orange is undergoing several critical infrastructure projects that are critical to the quality of life and economic growth of our community.

According to the Draft A-2259 Order as proposed: “A regional water board is not required to put on blinders when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharge of waste or other water quality impacts in the future.”

We would add that a regional water board cannot make assumptions about a future project when the actual details of that project are not before them and cannot be properly evaluated.

This proposed Draft Order puts the process for acquiring necessary permitting for public works projects throughout our county, and others, at risk. I strongly encourage that you change the wording in the Draft Order to disallow your Regional Boards from considering potential project extensions that have not been proposed or perhaps even contemplated by the applicant.
The Orange County Board of Supervisors (Board) supports the extension of State Route 241 to Interstate 5, which has been on the County's Master Plan of Arterial Highways for more than 35 years. Further, the Board supports issuance of a Waste Discharge Permit for the Tesoro extension as defined. This extension is needed to serve future residents of Rancho Mission Viejo as well as regional traffic now using Ortega Highway.

Sincerely,

[Signature]

Michael B. Giancola
County Executive Officer
## RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

<table>
<thead>
<tr>
<th>Project Location (County)</th>
<th>Project Name</th>
<th>Description</th>
<th>Permit Construction Phases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bay Area</td>
<td>BART Extension to Silicon Valley</td>
<td>16-mile extension of the Bay Area Rapid Transit (BART).</td>
<td>Phase 1: 10-mile, two-station BART extension.&lt;br&gt;Phase 2: A future phase will include a 5-mile-long subway tunnel through downtown San Jose and extend the BART system from the planned Berryessa Extension terminus for approximately 6 miles, ending at-grade in Santa Clara near the Caltrain Station.</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Exposition Transit Corridor</td>
<td>15.5-mile light rail transit project.</td>
<td>Phase 1: 8.6-mile extension of the Metro Rail System from downtown Los Angeles to Culver City. Phase 2: 6.6-mile extension of the rail system from Culver City to Santa Monica.</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Poothill Gold Line</td>
<td>Light project from Los Angeles to Montclair in San Bernardino County.</td>
<td>Phase 1: Los Angeles to Pasadena.&lt;br&gt;Phase 2a: Pasadena to Azusa.&lt;br&gt;Phase 2b: Azusa to Montclair.&lt;br&gt;Phase 2c: Montclair to the Ontario Airport.</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Westside Subway Extension (Metro Purple Line)</td>
<td>Extension of metro line.</td>
<td>Phase 1: Wilshire/Western to Wilshire/La Cienega.&lt;br&gt;Phase 2: Wilshire/La Cienega to Century City.&lt;br&gt;Phase 3: Century City to Westwood/VA Hospital.</td>
</tr>
<tr>
<td>Riverside</td>
<td>Metrolink Perris Valley Line Extensions</td>
<td>24-mile Metrolink extension.</td>
<td>Perris Valley Line: Continues rail service 24 miles from the downtown Riverside station to south Perris, with the construction of four new stations, construction and rehabilitation of railroad tracks, upgrade at-grade crossings, and improvement of existing tracks. Future extensions: Anticipated but not yet planned.</td>
</tr>
<tr>
<td>Statewide</td>
<td>California High-Speed Rail Project</td>
<td>High-speed rail project from Los Angeles to San Francisco, with San Diego and Sacramento extensions.</td>
<td>Permitting Phase 1: 24 miles of the HST Project along the southern end of the Merced to Fresno segment. The overall project footprint is approximately 883 acres.&lt;br&gt;Additional Permitting Phases: Separate environmental documents and permits will be obtained for each segment of the project (Merced to Fresno, Fresno to Bakersfield, Palmdale to Los Angeles, etc.).</td>
</tr>
<tr>
<td>San Bernardino</td>
<td>Downtown San Bernardino and Redlands Passenger Rail Project</td>
<td>Metrolink extension.</td>
<td>Phase 1: 1-mile extension of the existing passenger rail service.&lt;br&gt;Phase 2: 9-mile construction of passenger rail line.</td>
</tr>
<tr>
<td>San Diego</td>
<td>Inland Rail Trail Bikeway</td>
<td>21-mile bike trail.</td>
<td>Phase 1: 6 miles of the bike trail.&lt;br&gt;Phase 2: 7 miles of bike trail.&lt;br&gt;Phase 3: 8 miles of bike trail.</td>
</tr>
<tr>
<td>Sacramento/Multiple</td>
<td>Sacramento Downtown/Riverfront Streetcar Project</td>
<td>5-mile urban streetcar network.</td>
<td>Phase 1: 3-mile Streetcar network.&lt;br&gt;Phase 2: Connecting South R Street and Broadway corridors.</td>
</tr>
</tbody>
</table>
### RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

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</thead>
<tbody>
<tr>
<td>Sacramento/Multiple</td>
<td>Union Pacific Third Track</td>
<td>17.8-mile railroad track.</td>
<td>4 total segments.</td>
</tr>
<tr>
<td>San Francisco</td>
<td>MUNI Third Street Light Rail Improvements</td>
<td>5.9-mile light rail project.</td>
<td>Phase 1: 5.1 miles of light rail construction. Phase 2: 1.7 miles of light rail construction.</td>
</tr>
<tr>
<td>Bay Area (Multiple Counties)</td>
<td>Bay Area Express Lanes</td>
<td>550-mile network of Bay Area express lanes.</td>
<td>Phase 1: Conversion of 150 miles of HOV lanes to express lanes. Addition of 120 miles of new lanes. Phase 2: 90 miles of express lanes. Phase 3: Improvements and additions to express lanes for a total of 190 miles in Silicon Valley.</td>
</tr>
<tr>
<td>El Dorado</td>
<td>Bass Lake Road Improvements</td>
<td>Road widening and reconstruction.</td>
<td>Phase 1A: US 50 to Hollow Oak Rd. Phase 1B: US 50 to Silver Springs Parkway.</td>
</tr>
<tr>
<td>El Dorado</td>
<td>Diamond Springs Pkwy</td>
<td>Construction of 4-lane divided roadway.</td>
<td>Phase 1A: SR 49 realignment - Pleasant Valley Rd to Lime Kiln. Realign SR-49/Diamond Rd from Pleasant Valley Rd to north of Lime Kiln Rd: SR-49/Diamond Rd will be improved with two 12-lane and 8-lane shoulders. Includes signal modification at Pleasant Valley Rd/SR-49 intersection and potential underground utility district. Phase 1A split from Phase 1 (CPR79254/GD15990) to advance this new roadway project. Phase 1B: New 2-lane roadway connecting Missouri Flat Road to SR 49. Phase 2: Widening/Improvement to 4-lanes from Missouri Flat Road to Highway 49. Phase 3: Ultimate widening/improvements for 4-lane divided SR 49.</td>
</tr>
<tr>
<td>El Dorado</td>
<td>US 50 Bus/Carpool Lanes</td>
<td>13 miles of HOV and bus/carpool lanes.</td>
<td>Phase 1A: Add HOV lanes from El Dorado Hills Blvd to Bass Lake Grade. Phase 2A: Add HOV lanes from Bass Lake Road to Cameron Park Drive. Phase 2B: Add HOV lanes from Cameron Park Dr. to Ponderosa Rd. Phase 3: Add Bus/Carpool lanes from Ponderosa Rd to Greenstone Rd.</td>
</tr>
<tr>
<td>El Dorado</td>
<td>Western Placerville Interchanges</td>
<td>Improvements on and around US 50.</td>
<td>Phase 1A/1B: Construct westbound access ramp from Ray Lawyer Drive onto US 50 and auxiliary lane between westbound access ramp and the existing westbound off-ramp at Placerville Drive. Realign Fairl Lane to accommodate new improvements, bicycle/pedestrian improvements, widened shoulders, retaining walls. Phase 2: Replacement and widening of overcrossing, improved interchange, new ramps at the existing</td>
</tr>
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### RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

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</table>
| Los Angeles               | I-10 HOV Lanes | 11 miles of HOV lanes. | Phase 1: I-605 to Puente Ave.  
Phase 2: Puente Ave. to Citrus Ave (9.2 miles of carpool lanes in each direction of I-10)  
Phase 3: Citrus Ave. to SR-57 |
| Los Angeles               | I-405 Sepulveda Pass | 10 miles of HOV lanes and infrastructure improvements. | Project includes: Mulholland Dr. Bridge Demolition and Reconstruction; Wilshire Boulevard Ramps Reconstruction; Sunset Bridge Ramp Reconstruction; and Sepulveda Center Drive On-ramps and Bridge Reconstruction |
| Los Angeles               | I-5 HOV/Truck Lanes Project | 14 miles of HOV lanes; 4 miles of truck climbing lanes. | Phase 1: Truck lanes for 3.7 miles southbound and 1.4 miles northbound.  
Phase 2: Truck lane and HOV lanes from SR-14 to Parker Road.  
Phase 3: Truck lane and HOV lanes from SR-14 to Parker Road. |
| Los Angeles/San Bernardino | High Desert Corridor | Construction of a new multi-modal link between State Route (SR)-14 in Los Angeles County and SR-18 in San Bernardino County. | Los Angeles County Project: 9 miles from SR-14 to 50th Street East.  
East/West Connection Project: 32 miles from 90th Street East to US-395.  
| Los Angeles/Orange County | I-5 Corridor Improvements | Corridor improvements consisting of 17 projects. | I-5 North Improvements: HOV Lanes - Carpool lanes; Direct HOV Connectors; Interchange Improvements; bridge widening and bridge reconstruction; truck lane designation; Pavement Replacements; and Grade Separation.  
I-5 South Improvements: High-Occupancy Vehicles (HOV or carpool) Lanes; Interchange Modifications; Pedestrian Overcrossing; and Frontage Road Modifications |
| Riverside/Orange County  | SR-91 Corridor Improvements | 20 miles of capacity, operational, and safety enhancements. | Phase 1: 6 miles of improvements; 5 miles of direct connectors. Construction of two express lanes, one general purpose lane, and auxiliary lanes.  
Phase 2: Construction of general purpose lanes, express lanes, and direct connectors; conversion of HOV lane to express lane. |
| San Diego                | I-15 Express Lanes | 20 miles of express lanes. | Middle Segment: SR-56 to Centre City Parkway.  
South Segment: SR-163 to SR-56.  
North Segment: Centre City Parkway to SR-78. |
SR-52 West - Construction of 1 additional general purpose lane in each direction and 2 reversible Managed Lanes from I-15 to SR-125.  
<table>
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<tbody>
<tr>
<td>Placer</td>
<td>1-80 Capacity &amp; Operational Improvements</td>
<td>Freeway widening and extension of carpool lanes.</td>
<td>Phase 1: Extension of eastbound on-ramp. Phase 2: Eastbound and westbound carpool and auxiliary lanes. Phase 3: Added auxiliary lanes and carpool lanes on both eastbound and westbound sides, approximately 2.2 miles.</td>
</tr>
<tr>
<td>Placer</td>
<td>SR-65 Lincoln Bypass</td>
<td>Construction of a new 4-lane and 3-lane expressway.</td>
<td>Phase 1: A 4-lane highway expressway on a new alignment from Industrial Avenue to north of North Ingram Slough and continue north with 2 lanes to Sheridan. Also design and construct a Park and Ride facility at SR-65 Bypass and Industrial Avenue. Phase 2A: Adds 2 southbound lanes to extend 4-lane section of Lincoln Bypass from its Phase 1 terminus. Phase 2B: 2 lanes from north of West Wire Road to Sheridan, providing a full 4 lanes (2 in each direction).</td>
</tr>
<tr>
<td>Sacramento</td>
<td>Auburn Blvd Complete Streets Revitalization Project</td>
<td>Construction of pedestrian and bicycle lanes; various infrastructure improvements.</td>
<td>Phase 1: Construct wide sidewalks, bike lanes, a pedestrian/bike bridge, enhanced transit stops and shelters, pedestrian-scale street lighting, raised medians and landscaping, and consolidated multiple driveways. Phase 2: ADA, Ped, Bicycle, and Transit Improvements, new street light installations, landscape, full road reconstruction. Phase 3: Design, ROW acquisition and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, landscape and other improvements. Phase 4: Design and construction; ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, landscape and other improvements. Phase 5: Design, ROW, and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, LED street light conversion, full road reconstruction, landscape and other improvements.</td>
</tr>
<tr>
<td>San Bernardino</td>
<td>US-395 Operational Improvements</td>
<td>90 miles of highway widening.</td>
<td>Multiple projects in various stages.</td>
</tr>
<tr>
<td>San Diego</td>
<td>SR-76 Improvements</td>
<td>Upgrade of SR-76 to a freeway or expressway.</td>
<td>West Segment: I-5 to Melrose Dr. Middle Segment: 5.5-mile segment. East Segment: 5.5-mile segment.</td>
</tr>
</tbody>
</table>
RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

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<td>San Diego</td>
<td>I-5 North Coast Corridor Program</td>
<td>27-mile series of highway, rail, transit, bicycle, and pedestrian projects.</td>
<td>Stage 1: 1 carpool lane in each direction. Stages 2-4: Second carpool lane in the median. Stage 5: Direct freeway to freeway HOV connector in the median.</td>
</tr>
<tr>
<td>San Joaquin Valley</td>
<td>SR 99 Corridor Improvements</td>
<td>44 programmed projects and 66 candidate projects to increase capacity and improve operations.</td>
<td>Capacity-increasing projects: Freeway widening Major Operational Improvements New Interchanges.</td>
</tr>
<tr>
<td>Los Angeles/San Bernardino</td>
<td>SCE Tehachapi Renewable Transmission Line</td>
<td>250 miles of transmission facilities.</td>
<td>11 Segments: Include substations expansions and construction of a 25.6 mile transmission line. The following permits have been issued: Segment 3R - Water Quality Order No. 2013-0007-DWQ; Waste Discharge Requirements WDID No. SB120031N Segment 4 and 5 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB100031N Waste Discharge Requirements Segment 6 - Section 401 Certification File No. SB10002IN Segment 9 - Water Quality Order No. 2004-004-DWQ, File No. SB10001IN Segment 10 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB100031N Waste Discharge Requirements Segment 11 - Section 401 Certification File No. SB130032IN</td>
</tr>
</tbody>
</table>
September 15, 2014

Ms. Jessine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812


Dear Ms. Townsend:

The San Bernardino Associated Governments (SANBAG) appreciates the opportunity to comment on Tentative Order No. R9-2013-0007 regarding the Transportation Corridor Agencies (TCA) Tesoro Extension Project for State Route 241.

SANBAG is the council of governments, county transportation commission, and transportation planning agency for San Bernardino County. As such, we are responsible for planning and implementing an efficient multi-modal transportation system to serve the 1.9 million residents of our county. SANBAG also administers Measure I, the half-cent transportation sales tax approved by county voters in 1989 and reaffirmed in 2004.

SANBAG is also part of the Southern California Association of Governments (SCAG) region. SCAG is the metropolitan planning organization (MPO) responsible for the adoption of the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) as required under SB 375 (Chapter 728, Statutes of 2008). This multi-modal plan contemplates a number of transportation improvements through 2035 and it is critical that the transportation agencies in the region are able to successfully implement the projects contained within these plans in a timely and cost-effective way.

Historically, the State Water Resources Control Board has considered it appropriate for regional water quality control boards to permit projects in phases, reflecting the current conditions and funding availability for the actual project being constructed at that time. The revised tentative order now indicates that regional boards may now require that transportation agencies obtain approval for discharges associated with future phases of a transportation improvement – even if that future phase is not funded and not scheduled for construction for many years. This goes well beyond a reasonable approach to permitting projects and associated California Environmental Quality Act (CEQA) requirements.

Towns of: Apple Valley, Yucca Valley
County of San Bernardino
Ms. Jeanine Townsend  
September 15, 2014  
Page 2

Given the cyclical and sometimes inconsistent nature of transportation funding, it is typical for improvements to be funded and constructed in phases, spanning multiple decades. Given the length of time that can pass between phases, it seems premature to judge the project in its entirety when it is still unknown whether the entire project will ever be fully funded or constructed. If this precedent is established, it will become increasingly difficult for transportation agencies to match projects with available funding and permitting requirements – thus resulting in delays to project delivery and an inability to meet greenhouse gas reduction requirements and federal air quality standards.

We respectfully request that you reconsider the tentative order to limit the ruling to the scope of the transportation improvement proposed at the time of the application and any discharge that may result. Transportation agencies must retain the necessary flexibility to phase major improvements in our regions in order to efficiently and effectively serve our respective populations and meet major state and federal environmental standards.

Sincerely,

[Signature]

Raymond W. Wolfe  
Executive Director  
San Bernardino Associated Governments

cc: Gonzales, Quintana & Hunter LLC
EXHIBIT 8
California Regional Water Quality Control Board, San Diego Region

March 6, 2015

To: Interested Persons


The purpose of this Notice, issued on behalf of Board Chair Dr. Henry Abarbanel, is to provide guidance to Interested Parties regarding the consideration of Tentative Resolution No. R9-2015-0022 by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board or Board) at its March 16, 2015 public meeting scheduled at the following location:

NTC at Liberty Station
McMillin Companies Event Center
2875 Dewey Road
San Diego, CA 92016.

Procedures for Board Consideration of Tentative Resolution R9-2015-0022
The item will be heard no earlier than 11:00 a.m., during a meeting that starts at 9:00 a.m. The meeting agenda and documents pertaining to the Tentative Resolution have been posted at: http://www.waterboards.ca.gov/sandiego/board_info/agendas/2015/Mar/Mar16.shtml

As indicated in the February 4, 2015 Notice of Availability for the Tentative Resolution, written comments on the Tentative Resolution were due on February 18, 2015. Written comments received after the close of the comment period on February 18, 2015 will not be included in the record for this proceeding. In addition, as provided in the February 4 Notice, the Board is limiting comments to the findings in the Tentative Resolution, and will not accept any new evidence into the record.

Order of Proceedings
Prior to the Board taking action on the Tentative Resolution, Interested Persons will have an opportunity to address the San Diego Water Board members, subject to the limitations outlined below.
Interested Persons may participate in the Board's consideration of the Tentative Resolution in the following general manner subject to modification by the Chair for good cause:

**San Diego Water Board Staff:** Staff will present the Tentative Resolution, summarize comments received on the Tentative Resolution, and as appropriate respond to questions from Board members.

**Save San Onofre Coalition (SSOC):** The Coalition will have 15 minutes to comment on the Tentative Resolution.

**Foothill Eastern Transportation Corridor Agency (F/ECTA):** F/ETCA will have 15 minutes to comment on the Tentative Resolution.

**Additional Interested Persons:** Interested persons will have 3 minutes each to comment on the Tentative Resolution, or as modified by the Chair. Due to the potential for a large number of interested persons wishing to speak, the Chair may modify the time limits to allow for the maximum number of individuals to participate. Following comment by Interested Persons, the Board may ask questions, deliberate and vote.

San Diego Water Board Members and Legal Counsel may ask questions at any time. Time for these questions and responses will not count against the time limits above.

**Ex Parte Communication Disclosure**

The consideration of the Tentative Resolution is a response to direction from the State Water Resources Control Board (State Water Board) in State Water Board Order WQ 2014-0154. The State Water Board directed the San Diego Water Board to further explain the factual and legal basis for its June 19, 2013 decision to deny Waste Discharge Requirements (WDRs) for the Tesoro Extension Project.

The issuance of WDRs is an adjudicative proceeding subject to prohibitions against ex parte communications. (Gov. Code section 11430.10.) Accordingly, the same ex parte limitations that applied to the Board’s consideration of the WDRs apply to the Board’s consideration of the Tentative Resolution. In accordance with the prohibitions, Board members have not directly communicated with any persons regarding their consideration of this matter. In an effort to ensure complete compliance with the laws concerning ex parte communications, the following disclosures are provided:

Board Member Betty Olson was approached by Orange County Supervisor Lisa Bartlett in December 2014 to discuss F/ETCA's toll road project and the Board's consideration of WDRs for the project. Ms. Olson advised she could not discuss the project with the Supervisor and had no further communications.

Board Member Stefanie Warren is a non-director, non-management public member of the Surfrider Foundation. The Surfrider Foundation is a member of the SSOC. Ms. Warren received a mass email communication that went to all public members of Surfrider Foundation.
The email advised Surfrider Foundation members of the Board’s consideration of WDRs for the toll road. Ms. Warren did not respond to the email and has had no communication with the Surfrider Foundation regarding the Tesoro Extension Project.

Board Member Dr. Henry Abarbanel received a mass email communication from the Natural Resources Defense Council regarding the Board’s consideration of WDRs for the proposed toll road. Dr. Abarbanel did not respond to the email, is not a member of NRDC, and has had no communication with the organization.

Contact for further Information
For questions or comments concerning this Notice, please contact Darren Bradford by phone at (619) 521-3356, or by email at RB9_DredgeFill@waterboards.ca.gov.

David W. Gibson
Executive Officer
San Diego Regional Water Quality Control Board
March 6, 2015
EXHIBIT 9
California Regional Water Quality Control Board
San Diego Region

Response to Comments Report

Tentative Resolution No. R9-2015-0022

Resolution Supporting Denial Of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements For Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County

March 16, 2015
California Regional Water Quality Control Board  
San Diego Region  

Henry Abarbanel, Chair  
Gary Straw, Vice Chair  
Eric Anderson  
Tomás Morales  
Stefanie Warren  
Betty Olsen  
Vacant  

David W. Gibson, Executive Officer  
James Smith, Assistant Executive Officer  
Nathan Jacobson, Staff Counsel, Office of Chief Counsel  

This report was prepared under the direction of  

David T. Barker, P.E., Supervising Water Resource Control Engineer, Surface Water Basins Branch  
Kelly K. Dorsey, P.G., Senior Engineering Geologist, Wetland and Riparian Protection Unit  

By  

Darren Bradford, Environmental Scientist
San Diego Water Board Response to Comments
Tentative Order No. R9-2015-0022

Introduction

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has prepared this Response to Comments Report on Tentative Resolution No. R9-2015-0022, Resolution Supporting Denial of Revised Tentative Order No. R9-2013-0007, Waste Discharge Requirements for Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241) Project, Orange County (Tentative Resolution). The Tentative Resolution was available for public review and comment for 14 days, with the comment period ending on February 18, 2015.

Written comments were received from:

Foothill/Eastern Transportation Corridor Agency (F/ETCA) 2
Save San Onofre Coalition 5
Buena Vista Audubon Society 6
California Native Plant Society; Orange County Chapter 6
Malibu Surfing Association 7
Saddleback Canyons Conservancy 8
South Coast Chapter of Trout Unlimited 8
Wild Heritage Planners 9
Private Citizen Comments in Support of the Tentative Resolution 9
Private Citizen Comments Against the Tentative Resolution 9

Comments and Responses

The written comments and staff responses are in the table that follows. The comments are organized according to the person that made the comment and some comments have been summarized. Complete copies of comments received have been provided as part of the agenda package for the Tentative Resolution Board item.
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<td>1.</td>
<td>As for our review of the Tentative Resolution, it does not appear to reflect the State Board's Order adopted at its September 23, 2014 hearing. The State Board's Order requires the Regional Board to adopt &quot;detailed findings&quot; explaining &quot;why the regional board would be limited in its ability to exercise it full authority in the future&quot; to restrict future discharges from future extensions of SR 241. (State Board Order No. WQ-2014-0154, at p. 11.)</td>
<td>State Water Board Order WQ-2014-0154 requires the San Diego Water Board to explain the factual and legal basis for its decision to deny Revised Tentative Order R9-2013-0007. The Tentative Resolution supplies the necessary findings to comply with the State Water Board's Order, Government Code section 11425.50, and bridges &quot;the analytical gap between raw evidence and the ultimate decision or order.&quot; (Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d. 506, 515.) The Tentative Resolution explains the basis for the San Diego Water Board's decision, the legal authorities it relies on, and the evidence in the administrative record to support its decision.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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<td>2.</td>
<td>Additionally, there is no evidence in the record to support a finding that the Regional Board's authority to restrict future discharges would be limited. As the Tentative Resolution concedes, any future extension of SR 241 south of Cow Camp Road would cross waters of the State -- thus providing the Regional Board with extensive authority to restrict future discharges. Because it is uncontested that Regional Board would have authority over future extensions of SR 241, the Regional Board should not adopt the Tentative Resolution as this would go against the direction provided in the State Board Order.</td>
<td>Please see response to Comment No. 1 above. In the Tentative Resolution the San Diego Water Board has cited the specific evidence in the administrative record that supports its decision. Please see Paragraphs 31 and 32 for the detailed findings that support the Board's position that by approving Revised Tentative Order No. R9-2013-0007, it would be limiting its authority to restrict future discharges associated with the SR 241 Project.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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<td>3.</td>
<td>To eliminate any doubt that the TCA agrees that the Regional Board has authority to restrict any discharges associated with future extensions of State Route 241, on January 20, 2015, TCA delivered an executed agreement to Regional Board staff that stated the following (Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241</td>
<td>The San Diego Water Board may exercise all authorities provided by the Porter Cologne Water Quality Control Act. Among the Board's authorities is the issuance of waste discharge requirements and Clean Water Act section 401 certifications to persons discharging waste that could affect the quality of waters of the state. (Water Code sections 13160, 13260, 13263.) The Board is obligated to protect beneficial uses and water quality within the San Diego Region, the exercise of</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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San Diego Water Board Response to Comments  
Tentative Resolution No. R9-2015-0022

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<td>(January 15, 2015) [Attachment 1] that provides: “The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to prohibit or otherwise restrict future discharges or other impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.”</td>
<td>such authority is not predicated on entering into a stipulated agreement with TCA.</td>
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<td>2</td>
<td>On February 3, 2015, TCA's counsel discussed the Stipulation with Regional Board counsel Nathan Jacobsen. Mr. Jacobsen informed TCA counsel the Stipulation was not required because the Regional Board already had the full authority to restrict discharges to waters of the state of future extensions of SR 241. The statement by Regional Board counsel constitutes an acknowledgement of the obvious - the Regional Board is unable to support the finding required by the State Board Order.</td>
<td></td>
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<td>3</td>
<td>in addition to the submitted stipulation, and subsequent to the June 2013 denial of our WDR, the Regional Board authorized the grading of Planning Area (PA) 2 of Rancho Mission Viejo's &quot;Ranch Plan.&quot; As permitted, the development of PA 2 included mass grading (Attachment 2) that eliminated certain waters of the state. These same waters were included in the Tesoro Extension's WDR application and calculated as an impact. As a result of the grading that was authorized by the Regional Board, the already minimal impacts of the Tesoro Extension (0.40 acre) on waters of the state have been reduced to 0.29 acre. The Regional Board's approval of the mass grading, and the resulting reduction in water quality impacts associated with the Tesoro Extension, is significant new evidence that should be considered by the Regional Board. TCA staff discussed this reduced impact during a</td>
<td>The San Diego Water Board closed the evidentiary hearing for Revised Tentative Order R9-2013-0007 at the close of public testimony on June 19, 2013. State Water Board Order 2014-0154 does not require the San Diego Water Board to conduct further evidentiary hearings regarding the issuance or denial of waste discharge requirements for the Tesoro Extension. The Tentative Resolution is based entirely on evidence that was in the record at the close of the public hearing on June 19, 2013. The Notice of Availability for Tentative Resolution No. R9-2015-0022 issued on February 4, 2015 states, &quot;Comments must be limited to the findings of the Tentative Resolution, additional evidence related to Order No. R9-2013-0007 will not be accepted.&quot; The San Diego Water Board, consistent with past practice, will allow comment from interested parties on the findings of the Tentative Resolution.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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### Comment

meeting with Regional Board staff on November 13, 2014, and requested an opportunity to present this important new evidence to the Regional Board. The Regional Board staff, however, advised the TCA that the Regional Board would not allow the introduction of any new evidence as part of the Board’s consideration of the Tentative Resolution. It is unclear to TCA why the Regional Board would not want to consider this important new evidence prior to making a decision on the Tentative Resolution. While the Regional Board has prohibited the TCA from introducing any new evidence, it has invited the public to submit comments without restriction. This highly irregular and unfair procedure raises fundamental questions of due process.

5. In addition to the impact this Tentative Resolution would have on the Tesoro Extension, it would also set a dangerous precedent for infrastructure projects throughout the state.

The State Board’s Order clearly states that in “most cases” regional boards may issue WDRs for the current project and “defer issuance of WDRs for future discharges ... until the point in time that those discharges are actually proposed.” (State Board Order, p. 10.)

The State Board provided assurances to the transportation agencies that regional boards may not deny a WDR for a proposed phase because of potential impacts of subsequent phases, unless the regional board adopted findings that it would not have the full authority to restrict water quality impacts of future phases. By failing to adopt the express finding required by the State Board Order, the Tentative Resolution ignores the assurances made to the transportation agencies by the State Board and creates the potential for enormous adverse impacts.

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<td>5.</td>
<td>In addition to the impact this Tentative Resolution would have on the Tesoro Extension, it would also set a dangerous precedent for infrastructure projects throughout the state. The State Board’s Order clearly states that in “most cases” regional boards may issue WDRs for the current project and “defer issuance of WDRs for future discharges ... until the point in time that those discharges are actually proposed.” (State Board Order, p. 10.) The State Board provided assurances to the transportation agencies that regional boards may not deny a WDR for a proposed phase because of potential impacts of subsequent phases, unless the regional board adopted findings that it would not have the full authority to restrict water quality impacts of future phases. By failing to adopt the express finding required by the State Board Order, the Tentative Resolution ignores the assurances made to the transportation agencies by the State Board and creates the potential for enormous adverse impacts.</td>
<td>State Water Board Order 2014-0154 is a precedential order. The Order provides that regional water boards may issue waste discharge requirements (WDRs) for the current phase of a phased project. The Order also states that in some instances a regional water board may be justified in declining to issue WDRs for the current phase of such a project. The San Diego Water Board's decision to deny Revised Tentative Order No. R9-2013-0007 is based on the evidence before the Board in this matter. It is not a decision that will have any bearing on infrastructure projects throughout the state or the California High Speed Rail project.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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San Diego Water Board Response to Comments
Tentative Resolution No. R9-2015-0022

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<td>9</td>
<td>The Tentative Resolution fully complies with the State Board's remand order. It confirms that the Board's decision was made pursuant to its authority under the Porter Cologne Act, and identifies substantial evidence in the record that Tesoro is simply the first step towards completion of the larger and more-damaging Foothill South project, and that TCA's failure to provide information on the impacts of that project restricted the Board's ability to exercise its full authority to condition the project to avoid or minimize impacts. Because it is clear that Tesoro exists only to facilitate completion of the entire Foothill South project, the Board properly denied TCA's application for WDRs. Approval of WDRs for a partial project would significantly impair the Board's options for addressing the future water quality impacts of the full project and prejudice the Board's ability to meet its obligations for protecting waters of the State. The Tesoro Extension requires a $200 million commitment to building the 241 Completion Project, which, once made, would effectively foreclose non-toll road alternatives that could avoid or substantially lessen impacts to waters, such as I-5 widening, arterial improvements, and transit. Courts have long recognized that this kind of piecemealing prejudices agency decision making. Once</td>
<td>Comments Noted.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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San Diego Water Board Response to Comments  
Tentative Resolution No. R9-2015-0022

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<td>agencies have approved the first piece of a project, it is extremely difficult to stop the financial and &quot;bureaucratic steam roller&quot; once it is launched.&quot; Colorado Wild, Inc. v. U.S. Forest Service (D. Colo. 2007) 523 F.Supp.2d 1213, 1221. The original approval will ultimately &quot;skew the analysis and decision-making&quot; of the agencies responsible for overseeing the project. Id.; see also Maryland Conservation Council, Inc. v. Gilchrist (4th Cir. 1985) 806 F.2d 1039, 1042 (4th Cir. 1986) (observing that permitting agency decision-makers &quot;would inevitably be influenced&quot; if a project were allowed to proceed in segments); San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) Cal.App.4th 713, 742 (full consideration of alternatives will be prejudiced as well). The Board's ability to retain and exercise the full range of its authority to protect waters-without limiting or prejudicing its ability to consider the full range of alternatives to the Foothill-South-requires that it be able to evaluate the entire project before the TCA irrevocably commits to the construction of a portion of that project. The Coalition therefore requests that the Board adopt the Tentative Resolution.</td>
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Buena Vista Audubon Society

7. This letter is being written on behalf of the 2,000-plus members of the Buena Vista Audubon Society in Oceanside, CA. We have commented previously against proposals for the Foothill Tollroad based on what we believe would be its extensive environmental impact. We ask you to adopt the staff-recommended findings for denial of the Tesoro Extension. These findings properly reflect the law and the necessity to understand the totality of the Foothill Tollroad's impacts to water quality prior to allowing construction to begin. | Comment Noted. | No changes to the Tentative Resolution have been made here. |
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<td>8.</td>
<td>The Orange County Chapter of the California Native Plant Society has long been concerned that the San Mateo Creek watershed continue to be Southern California’s only remaining undammed, unarmored watershed south of Ventura. It still supports the full range of riparian species and habitats that have largely been extirpated in most of southern California’s coastal plain. The natural riparian habitat in turn protects the watershed’s water quality. We have made these points throughout all the public processes of the long campaign to defeat the Foothill Tollroad. The proposed Tesoro Extension could too easily lead to further extension of the Tollroad down Cristianitos and San Mateo Creeks to I-5. Thus the project threatens the integrity of the San Mateo Creek watershed. We ask you to adopt the staff-recommended findings for denial of the project. These findings properly reflect the law and the necessity to understand the totality of the Foothill Tollroad’s impacts to water quality—and hence natural habitat—prior to allowing construction to begin.</td>
<td>Comment Noted.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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<td>9.</td>
<td>We write today to ask that you to adopt the staff-recommended findings for denial of the Tesoro Extension (SR241) Project, Orange County. These findings properly reflect the law and the necessity to understand the totality of the Foothill Tollroad’s impacts to water quality prior to allowing construction to begin. The Foothill Tollroad would run through some of Southern California’s most intact habitat lands in Orange and San Diego Counties and literally bisect San Onofre State Beach. The California Coastal Commission and the U.S. Department Commerce turned it down the TCA’s 241 project proposals. Even so, TCA has developed a strategy of first constructing the</td>
<td>Comment Noted.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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### San Diego Water Board Response to Comments

**Tentative Resolution No. R9-2015-0022**

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<td>northern segment called the Tesoro Extension and thus creating pressure for completion. We were part of a coalition who spoke out against their original proposal – we object with equal voice to this new proposal. We ask the Regional Board to adopt the staff findings and finalize this decision at your hearing on March 16, 2015.</td>
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#### Saddleback Canyons Conservancy

10. We have long opposed the extension of the Foothill Tollroad because of its significant environmental impacts and desecration of San Onofre State Park. We ask you to adopt the staff-recommended findings for denial of the Tesoro Extension. These findings properly reflect the law and the necessity to understand the totality of the Foothill SR 241 toll road’s impacts to water quality. We respectfully ask the Regional Board to finalize this decision at your hearing on March 16, 2015. Thank you for your consideration in this matter.

   Comment Noted.

   No changes to the Tentative Resolution have been made here.

#### South Coast Chapter of Trout Unlimited

11. We are concerned the TCA’s application does not meet the standards as required by the Southern Orange County Hydromodification Management Plan (HMP). TCA is overlooking impacts to wetlands, the San Juan Creek, and to the surrounding watershed that could subsequently impact coastal resources and ecology. The first section of the road is not only environmentally damaging, but this segment of the road would give the TCA momentum to complete the full road. Their full road would absolutely devastate fragile watersheds, greatly impact San Mateo State Park, San Onofre State Beach and the beloved recreation coastal zone for more than 2.4 million visitors/surfers each year. As if the impacts to the environment were not bad enough, this first 5-mile segment would be a literal “road to nowhere,” ending at a dirt road and threatening to create unnecessary traffic.

   Comment Noted.

   No changes to the Tentative Resolution have been made here.
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<td>11</td>
<td>Nightmares for thousands of Orange County residents. For these reasons, we urge the Regional Board to &quot;stay the course&quot; and again DENY waste discharge requirements for the so-called Tesoro Extension project.</td>
<td>Wild Heritage Planners</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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<td>12</td>
<td>We ask you to adopt the staff-recommended findings for denial of the Tesoro Extension. These findings properly reflect the law and the necessity to understand the totality of the Foothill SR 241 toll road's impacts to water quality prior to allowing construction to begin.</td>
<td>Comment Noted.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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<tr>
<td>13</td>
<td>As a concerned citizen, I ask you to adopt the staff-recommended findings for denial of the Tesoro Extension.</td>
<td>Comments Noted.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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<td>14</td>
<td>Join me and support TCA's WDR application.</td>
<td>Comments Noted.</td>
<td>No changes to the Tentative Resolution have been made here.</td>
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EXHIBIT 10
February 18, 2015

Via E-Mail and U.S. Mail

Darren Bradford
California Regional Water Quality Control
Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108
RB9_DredgeFill@waterboards.ca.gov

Re: Findings Supporting Denial of WDRs for Tesoro Extension
(Comment - Tentative Resolution No. R9-2015-0022, Place ID: 785677)

Dear Mr. Bradford:

The Save San Onofre Coalition strongly supports the Tentative Resolution prepared by staff in the above-referenced matter (“Resolution”) and requests that the Regional Board adopt the Resolution. The Resolution contains findings that are the culmination of a more than two-year process in which this Board and the State Water Resources Control Board (“State Board”) considered an application for Waste Discharge Requirements by the Foothill/Eastern Transportation Corridor Agency (“TCA”) for its so-called Tesoro Extension project. The findings detail the overwhelming record of evidence in support of the Regional Board’s prior decision to deny the application on the grounds that the Tesoro Extension is no more than an attempt to commence construction
Darren Bradford  
February 18, 2015  
Page 2  

of a larger and environmentally destructive project—the Foothill South toll road—that has been rejected by the Regional Board and every other agency (except the TCA) that has considered the project to date.

The Foothill-South is widely regarded as one of the most environmentally damaging projects ever proposed in California. Alternately known as the Southern Orange County Transportation Infrastructure Improvement Project (“SOCTIIP”) or the SR 241 Completion Project, the Foothill-South would place a six-lane, sixteen-mile highway through undeveloped lands, including the Donna O’Neill Land Conservancy and San Onofre State Beach. TCA approved the project in 2006, but in 2008, this Board denied water quality certification for the project, and soon thereafter the California Coastal Commission found the project inconsistent with the Coastal Zone Management Act, a finding upheld by the U.S. Department of Commerce.

TCA never developed an alternative to the Foothill-South. Instead, in 2012, it decided to pursue construction of the project, relying on its prior 2006 approval, and requested that the Regional Board approve WDRs for the first “phase” of the project, eventually named the Tesoro Extension. Extensive public review commenced in January 2013, and Regional Board staff received multiple rounds of comments on the project from the Coalition and concerned members of the public. After two lengthy public hearings in March and June of that year, the Board denied WDRs for Tesoro. The Board determined that, based on the record, Tesoro was not the entire project TCA intended to build, and that the only application TCA had submitted for the entire project was denied by the Board for failure to show compliance with water quality standards.¹

In its petition to the State Board, TCA argued that this Board lacked legal authority to deny TCA’s application on grounds of improper segmentation. The State Board rejected this argument, confirming that the Porter Cologne Act authorizes denial of WDRs for improperly segmented projects, and further found that there was substantial evidence in the record that the Tesoro Extension was not the entire project. The State Board remanded the matter back to this Board for the sole purpose of adopting findings that “provide the factual and legal basis for its decision” to deny TCA’s WDR application.²

The Tentative Resolution fully complies with the State Board’s remand order. It confirms that the Board’s decision was made pursuant to its authority under the Porter

¹ Administrative Record, Vol. 1, Index 27 at 198-99, 201-203.  
² WQ-2014-0154 at 15.
Cologne Act, and identifies substantial evidence in the record that Tesoro is simply the first step towards completion of the larger and more-damaging Foothill South project, and that TCA’s failure to provide information on the impacts of that project restricted the Board’s ability to exercise its full authority to condition the project to avoid or minimize impacts.

The evidence cited in the Tentative Resolution is more than sufficient to support the Regional Board’s decision, but the record contains further support as well. For example:

- **TCA’s Ongoing Reliance on Foothill South.** When TCA submitted its WDR application for the Tesoro Extension, it relied on its 2006 Foothill South EIR, CEQA findings, and approval to support the WDR application. TCA has never rescinded its 2006 approval of Foothill-South, which remains the only approved alignment of the TCA’s SR 241 Completion Project.

- **Intention to Continue Extension Southward.** As noted by the State Board, TCA’s CEQA Addendum for the Tesoro Extension indicates TCA’s intention to build the remainder of the Foothill South, and states that constructing Tesoro “does not preclude a connection to any of the 19 toll road alternatives evaluated in the” 2006 Foothill South EIR.

- **Foothill South in Regional Plans.** TCA has repeatedly claimed that Tesoro was a necessary element of the Southern California Regional Transportation Plan (“RTP”) and Sustainable Communities Strategy (“SCS”). But the project identified and analyzed as part of the road network in the RTP and in the SCS is the entire Foothill South, not the Tesoro Extension alone.

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3 Administrative Record, Vol. 1, Index 3; Vol. 6, Index 11 (TCA responding to Regional Board staff request for “CEQA findings and statement of overriding considerations” by forwarding 2006 approval resolutions).

4 Administrative Record, Vol. 4, Index 6 at 7, 54.

5 Administrative Record, Vol. 1, Index 5 at 19-29.

6 Administrative Record, Vol. 1, Index 4 at 5-6; see also Vol. 2, Index 2 at 48.
- **Artificial Truncation of Road.** The design of the Tesoro Extension was artificially truncated to avoid regulatory review of impacts to federal waters and wetlands, stopping just short of federal jurisdictional wetlands at San Juan Creek. This design is driven not by function, but to avoid Army Corps of Engineers environmental review and permitting authority. The Army Corps staff itself recognized that the road could be a “road to nowhere,” and noted:

  TCA is proposing to segment the project, starting with constructing the first approximately 4 miles and terminating at SR-74 in Orange County. That would present a major NEPA problem considering the previous environmental document had them evaluating all approximately 16 miles and they still intend ultimately (through construction of future segments) to build all the way to I-5.

- **Previous Rejection of Segment as Infeasible.** In 2006, TCA found that a partial extension of SR 241 similar to Tesoro would be infeasible because such extension “performed poorly for the traffic measures” because it terminated “at Ortega Highway and does not provide a connection to I-5.”

- **Tesoro Serves No Purpose Alone.** Without further extension, Tesoro serves only the Rancho Mission Viejo development (“RMV”). But RMV is in the process of seeking approvals from this Board to build a substantially less expensive, non-tolled arterial road (“F Street”) in the same location as Tesoro. TCA’s own traffic studies show F-Street

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7 Administrative Record, Vol. 4, Index 6 at 53-54.
9 Administrative Record, Vol. 2, Index 2 at 216.
10 Administrative Record, Vol. 2, Index 2 at 113; see also id. at 116 (TCA’s strategy was “beginning to look like a classic case of segmenting under NEPA”); id. at 118 (“The new proposal would segment the environmental evaluation, permitting and construction of the 16-mile toll road project into several phases”).
11 Administrative Record, Vol. 4, Index 5 at 87-88.
12 Administrative Record, Vol. 4, Index 6 at 8.
outperforms Tesoro. Tesoro thus serves no purpose except as a prelude to the extension of the toll road south of San Juan Creek.

Because it is clear that Tesoro exists only to facilitate completion of the entire Foothill South project, the Board properly denied TCA’s application for WDRs. Approval of WDRs for a partial project would significantly impair the Board’s options for addressing the future water quality impacts of the full project and prejudice the Board’s ability to meet its obligations for protecting waters of the State. The Tesoro Extension requires a $200 million commitment to building the 241 Completion Project, which, once made, would effectively foreclose non-toll road alternatives that could avoid or substantially lessen impacts to waters, such as I-5 widening, arterial improvements, and transit.

Courts have long recognized that this kind of piecemealing prejudices agency decisionmaking. Once agencies have approved the first piece of a project, it is extremely difficult to stop the financial and “bureaucratic steam roller’ once it is launched.” Colorado Wild, Inc. v. U.S. Forest Service (D. Colo. 2007) 523 F.Supp.2d 1213, 1221. The original approval will ultimately “skew the analysis and decision-making” of the agencies responsible for overseeing the project. Id.; see also Maryland Conservation Council, Inc. v. Gilchrist (4th Cir. 1986) 808 F.2d 1039, 1042 (4th Cir. 1986) (observing that permitting agency decision-makers “would inevitably be influenced” if a project were allowed to proceed in segments); San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 742 (full consideration of alternatives will be prejudiced as well).

The Board’s ability to retain and exercise the full range of its authority to protect waters—without limiting or prejudicing its ability to consider the full range of alternatives to the Foothill-South—requires that it be able to evaluate the entire project before the TCA irrevocably commits to the construction of a portion of that project. The Coalition therefore requests that the Board adopt the Tentative Resolution.

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13 Stantec Consulting Services Inc., Tesoro Extension Project Traffic Analysis: Final Report (October, 2012) (cited in Addendum to the SOCTIP FSEIR, Administrative Record, Vol. 4, Index 6) at 5.3; figs. 4-5, 4-6, 5-1 (the “Toll Free Project” alternative).

14 Administrative Record, Vol. 2, Index 2 at 92.
Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

William J. White

Joel Reynolds
Western Director
Senior Attorney
Natural Resources Defense Council

Elizabeth Goldstein
President
California State Parks Foundation

Susan Jordan
Director
California Coastal Protection Network

Dan Silver, MD
Executive Director
Endangered Habitats League

Bill Holmes
Friends of the Foothills Chair
Sierra Club

Stefanie Sekich-Quinn
California Policy Manager
Surfrider Foundation

Kim Delfino
California Program Director
Defenders of Wildlife

Scott Thomas
Conservation Director
Sea and Sage Audubon Society

Elisabeth M. Brown, Ph.D.
President
Laguna Greenbelt, Inc.

Brigid McCormack
Executive Director
Audubon California

Garry Brown
Executive Director
Orange County Coastkeeper

Serje Dedina, PhD
Executive Director
WiLDCOAST-COSTASALVÆ
September 8, 2014

Via EMail: commentletters@waterboards.ca.gov

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 95812 - 0100


Dear Ms. Townsend:

The Metropolitan Transportation Commission (MTC), Bay Area Infrastructure Financing Authority (BAIFA) and the Bay Area Toll Authority (BATA) are concerned that the interpretation of the Porter Cologne Act in the State Board staff report on the above-referenced Petition will have an adverse impact on the timely implementation of important regional transportation improvements in the San Francisco Bay Area.

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. It is responsible for updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, freight, bicycle and pedestrian facilities. The most recent version of the Regional Transportation Plan -- known as the Bay Area Plan -- is an integrated transportation and land-use strategy through 2040 that marks the nine-county region’s first long-range plan to meet the requirements of California legislation (Senate Bill 375), which calls on California’s 18 metropolitan areas to develop a Sustainable Communities Strategy to accommodate future population growth and reduce greenhouse gas emissions from cars and light trucks. Successful implementation of the Bay Area Plan depends on the ability of the region’s transportation agencies to deliver the transportation improvements identified in the Plan in a timely and cost-effective manner.
Almost all major transportation projects in the State are permitted by regional water quality control boards and other permitting agencies in phases. The State Board staff report acknowledges this reality, but then goes on to indicate that regional boards may require transportation agencies to obtain regional board approval for discharges for potential future phases of a transportation improvement that are not currently proposed to be constructed, and that may not be built for many years. We request that the State Board modify the Staff Report to make it clear that regional boards should limit their review of proposed WDRs and water quality certifications to the scope of the transportation improvement and discharge proposed by the transportation agency at the time of a particular application.

The regional transportation plan for San Francisco Bay Area identifies a large number of transportation improvements that will be implemented over the next two decades. Many of these improvements will be constructed in phases as funding becomes available, as the CEQA process is completed for each phase and as regulatory approvals are obtained. It is simply not feasible or practical to obtain regional board approvals or other permits for the entire length of each improvement identified in a multi-decade transportation plan at the time that BAIFA, BATA and/or MTC propose to construct an initial phase of a larger improvement described in the regional transportation plan.

The factual setting raised by the proposed Tesoro Extension to State Route 241 is very common in the transportation community. For example, MTC’s Regional Transportation Plan includes major transportation improvements in the I-80, I-680, I-880/SR237, I-880, SR-84, SR-85 and SR-92 corridors that will be permitted and constructed in phases over the next several decades. This is an extremely complex project that extends 270 miles and crosses many state waters. The State Board Staff Report suggests that the regional water board will have unlimited discretion to require transportation agencies to obtain a WDR or water quality certification for future portions of the above improvements that will not be designed and built for decades. Transit improvements are also commonly permitted and constructed in phases. For example, the BART extensions to Santa Clara County are being permitted and constructed in phases. Expansions of the ferry system are also being permitted and constructed in phases as funding becomes available.

The well-established procedure in all of the state’s metropolitan areas is to apply for regional water board discharge approvals at the time that the CEQA process for the particular improvement is complete, when preliminary engineering is complete and funding is available to construct the improvement. The following are examples of projects in Bay Area where this approach was followed by the regional board.

- BART extensions to the Livermore Valley
- BART extensions to Santa Clara County
- Expansions of the ferry system
- Expansion of the HOV/Express Lane system
- Caltrain grade separation projects and track improvements
- San Francisco MUNI Third Street light rail improvements
- Santa Clara VTA light rail extensions
Capital Corridor rail improvements
Hercules California Intermodal Station improvements
Treasure Island transit capital improvements
Sonoma Marin Rail Corridor improvements
San Francisco Transbay - Caltrain Transit Center

We respectfully request that the State Board revise the proposed order to recognize that regional boards should limit the scope of their review of water quality impacts of proposed transportation improvement proposed to be constructed by the transportation agency.

Sincerely,

Adrienne D. Weil
General Counsel

cc: Steve Heminger
    Alix Bockelman
EXHIBIT 12
September 15, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 92814

Via E Mail: commentletters@waterboard.ca.gov


Dear Ms. Townsend:

The Los Angeles County Metropolitan Transportation Authority (Metro) would like to express our concerns regarding the proposed order referenced above. If the Order’s language is kept as is, it will have an adverse potential impact on all infrastructure projects—including transportation projects—in the Los Angeles region.

Our agency environmentally clears its new rail projects through an EIR or EIS process, depending on the source of funding, but sometimes constructs a project in phases due to funding limitations. Environmental impacts of the entire rail project are identified and analyzed during the environmental clearance phase to determine if they exceed the applicable thresholds of significance. If the project impacts exceed an applicable threshold of significance, appropriate mitigation measures are identified in the EIR/EIS and fully implemented when the project is constructed.

In the case of project related waste discharges that may be subject to the Porter-Cologne Act, while those may be identified during the EIR/EIS phase, WDR applications are developed and submitted for approval to the Water Board only for those locations within the whole project where construction has been funded. WDRs for possible discharge locations in future locations along the approved alignment (if indeed the project is constructed in phases due to funding limitations) will be pursued when construction at those sites are funded.

Metro recognizes changing alignment conditions in all of its projects and whenever necessary, updates its adopted EIR/EIS for a project to ensure that human health and environment are consistently protected over the course of all of the phases of a project. In addition, Metro closely works with its local and regional water quality regulators to ensure that all water quality issues are adequately addressed in advance, so that WDR applications for all phases of a project preserve the highest water quality that is reasonable. We issue an addendum or supplemental EIR/EIS as necessary to address any newly identified environmental conditions or significant impacts.
Given these circumstances, Metro supports the State Water Resources Control Board in its Final Order for a remand of the WDR application for the Tesoro Extension back to the San Diego Regional Water Quality Control Board for further explanation of its factual and legal bases for its June 19, 2013 decision to deny Petitioner's WDR application. Further, the State Water Resources Control Board should make clear that the San Diego Regional Water Quality Control Board should not deny the WDR application based on the speculative impacts of future phases of a project.

Project proponents have the option to environmentally clear only certain sections of a linear project (so long as the sections have independent utility) or a public agency may environmentally clear the entire linear project (notwithstanding the lack of immediate funding to construct the entire project). The CEQA/NEPA process already requires project proponents to identify and analyze cumulative impacts of reasonably foreseeable projects. To avoid confusion in the regulated community, a Regional Water Quality Control Board should not pre-judge the water quality impacts of future phases of a linear project when it is considering a WDR application for a preceding phase.

Thank you for this opportunity to provide comments.

Sincerely,

Arthur T. Leahy
Chief Executive Officer
EXHIBIT 13
September 15, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 92814
Via E-Mail: commentletters@waterboard.ca.gov


Dear Ms. Townsend:

The Southern California Association of Governments (SCAG) is the nation’s largest Metropolitan Planning Organization representing six counties, 191 cities and more than 18 million residents. We appreciate the opportunity to review the Proposed Order to be considered on September 23rd related to the petition of the Foothill/Eastern Transportation Corridor Agency (TCA), which had its Waste Discharge Requirement (WDR) permit for the Tesoro Extension denied by the San Diego Regional Water Quality Control Board. As you consider TCA’s petition, SCAG respectfully requests that you consider the following for your information.

First, the Tesoro Extension is part of the 11-mile SCAG portion of the SR-241 project (SR-241 project). The SR-241 project is included in SCAG’s federally-approved 2012-2035 Regional Transportation Plan/Sustainable Communities Project. The project is designated as a Transportation Control Measure (TCM) needed to help the region meet federal ozone standards by 2022. Last week, SCAG’s governing board, the Regional Council, approved SCAG’s 2015 Federal Transportation Improvement Program (2015 FTIP) and determined timely implementation of the SR-241 project as a TCM.

We recognize that both the State Water Resources Control Board (State Board) and the San Diego Regional Water Quality Control Board acknowledged that the Tesoro Extension is one segment of a larger project. However, it is also important to acknowledge that the pending WDR permit was only for the Tesoro Extension. Specifically, SCAG is concerned with the interpretation of the State Board of the Porter Cologne Water Quality Control Act. As drafted on pages 9 and 10, the Proposed Order would appear to allow regional boards to require...
WDR permit approvals not only for the current proposed phase of a project, but also for all possible future phases that are not currently being proposed and may not be constructed for many years. This would appear to be contrary to the long-standing practice of regional water quality control boards of permitting major transportation projects in phases, as transportation demand and funding warrant.

Within the SCAG region, phased transportation projects are a fiscal necessity. The 2015 FTIP includes many phased projects in every county. It is an established practice in our region to advance major transportation projects in phases as traffic demand and funding warrant. Typically, project sponsors apply for regional board WDR permit approvals once the California Environmental Quality Act (CEQA) process and preliminary engineering for the proposed improvement is complete. Prominent examples of phased projects in the SCAG Region include the Exposition Corridor Light Rail Transit Line between downtown L.A. and Santa Monica; the Red Line subway project; the Purple line subway extension to Westwood and ultimately to the ocean; the Gold Line between downtown Los Angeles and Montclair in San Bernardino County; improvements to State Route 30; and HOV improvements to the I-405. Of particular note, the northern portion of SR 241 has already been permitted and built in three phases since 1993.

The Tesoro Extension is the next logical link of SR 241 to meet existing and future traffic demand in Rancho Mission Viejo and greater South Orange County. The facility has been programmed in local and SCAG regional plans since 1989 to serve the population and employment expected by SCAG’s adopted growth projections. Those projections are now being realized as Rancho Mission Viejo constructs 14,000 housing units and five million square feet of employment-generating development in addition to growth throughout South Orange County.

Because of the potentially significant consequences that the Proposed Order may have to SCAG and other state and local transportation planning agencies and project sponsors throughout the State, SCAG requests that the Proposed Order be clarified on pages 9 and 10 so that the language is specific to the Tesoro Extension and that regional board review of proposed WDR permits and water quality certifications remain focused on the scope of the currently committed phase of the transportation improvement and discharge proposed by the transportation project sponsor.

Sincerely,

Hasan Ikhrata  
Executive Director  
Southern California Association of Governments
EXHIBIT 14
September 11, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on Draft Order WQ 2014-xx, Petition of Foothill/Eastern Transportation Corridor Agency (SWRCB/OCC File A-2259)

Dear Ms. Townsend:

The Riverside County Transportation Commission (Commission) appreciates the opportunity to submit comments on the State Water Resources Control Board’s (State Board) Draft Order, WQ 2014-xx, in the matter of the petition of Foothill/Eastern Transportation Corridor Agency (Draft Order). The Commission supports the State Board’s goal of protecting the quality of water within the state. The Commission also supports the Draft Order’s holding, which requires a decision regarding waste discharge requirements to be supported by evidence in the record. This letter requests the removal or correction of a subtle, but consequential, misstatement of the law contained in the Draft Order.

The misstatement appears to arise from a conflation of the regional boards’ obligation under the California Environmental Quality Act (CEQA) to consider the environmental impacts of a proposed “project” with the obligation under Porter-Cologne Water Quality Control Act (Porter-Cologne) to consider the impact of a “proposed discharge.” This apparent confusion expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For this reason, the Commission requests that the State Board amend the Draft Order by deleting the last paragraph on page 9 and the first paragraph on page 10. These paragraphs are dicta and are not necessary to support the Draft Order’s holding.

CEQA Requires Consideration of a “Project”

An environmental impact report (EIR) prepared pursuant to CEQA must consider “the whole of an action” and cannot piecemeal a large project into multiple smaller projects to avoid consideration of cumulative impacts. (Pub. Res. Code, § 21065; 14 Cal. Code Regs., § 15378, subd. (a).) An EIR for a multi-phase project, such as the
Ms. Jeanine Townsend  
Clerk to the Board  
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Linear transportation projects undertaken by the Commission and Foothill/Eastern Transportation Corridor Agency, considers the impacts from the whole of a project. A supplemental or subsequent EIR (SEIR) or other tiered document providing greater detail may be prepared for a later phase of a multi-phase project prior to approving that phase.

**Porter-Cologne Authorizes Consideration of a “Proposed Discharge”**

Water Code section 13263(a) authorizes a regional board to “prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge[].” Prescribed requirements must implement any relevant and adopted water quality control plans and consider, among other things, “other waste discharges[].” (ibid.) Porter-Cologne is interpreted consistently with the federal Water Pollution Control Act, which defines a discharge as the “addition” of a pollutant to navigable waters or to waters in a contiguous zone. (33 U.S.C. § 1362, subds. (12), (16).) Discharges are “proposed” when a potential permittee submits a report of waste discharge pursuant to Water Code section 13260(a). A potential permittee is required to submit a separate report of waste discharge for each disposal area. (23 Cal. Code Regs., § 2207.) “Other waste discharges” may include additions of pollutants, proposed or occurring, in disposal sites or by dischargers other than those proposed in a report of waste discharge. (See, Water Code, § 13263, subd. (a).)

When an agency, such as the Commission, undertakes a specific phase of a multi-phase project, it may submit a report of waste discharge for that specific phase. The report of waste discharge proposes discharges accompanying that specific phase, but does not propose discharges from future phases. Future phases may never be approved by the Commission’s Board. Funding may never become available for future phases. Permits may not be granted for future phases. Such future discharges are not “proposed discharges,” as they are not proposed in a report of waste discharge. (Water Code, § 13263, subd. (a).) They are also not “other waste discharges,” because they are not actual additions of pollutants and may never constitute discharges. (ibid.; 33 U.S.C. § 1362, subds. (12), (16).)

Porter-Cologne does not permit regional boards to condition or deny waste discharge requirements based on future phases of a CEQA “project” because the future phases do not constitute additions of pollutants and do not qualify as “proposed discharges” or “other waste discharges.”

**Draft Order Expands Regional Board Authority Contrary to Porter-Cologne**

The Draft Order expands the regional boards’ authority contrary to Water Code section 13263(a) by authorizing regional boards to prescribe or deny waste discharge requirements based on activities that do not constitute “proposed discharges” or “other waste discharges.” Specifically, the Draft Order authorizes regional boards to “request available information on those future phases in connection with a pending report of waste discharge or application for the current phase” if a future phase is “likely to occur and may have
water quality impacts[]." (Draft Order, p. 10.) The Draft Order further authorizes regional boards to consider future phases of a project “when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharges of waste or other water quality impacts in the future.” (Ibid.)

Conditioning or denying waste discharge requirements for a proposed project based on future phases of a CEQA “project” that do not constitute “proposed discharges” or “other waste discharges” violates Water Code section 13262(a). This violation appears to arise from a confusion of an EIR’s consideration of all phases in a multi-phase project under CEQA with a regional board’s authority to consider discharges proposed in a report of waste discharge for one phase of a multi-phase project under Porter-Cologne. As noted above, this confusion impermissibly expands the regional boards’ authority in violation of Porter-Cologne. The last paragraph on page 9 and the first paragraph on page 10 are dicta and are not necessary to support the proposed holding of the Draft Order. For this reason, the Commission requests the deletion of these two paragraphs.

**Draft Order Establishes an Unintelligible Standard**

If the last paragraph on page 9 and the first paragraph on page 10 are not deleted, not only will the State Board’s Draft Order violate Porter-Cologne, but the Draft Order will establish an unintelligible standard for determining whether a future phase of a multi-phase project is a proper consideration in issuing or denying waste discharge requirements. (Gov. Code, § 11425.60; State Board Order No. WR 96-1, fn. 11 [unless stated otherwise, all State Board Orders adopted at a public meeting are precedential].) Regional boards will be expected to determine whether a future phase is “likely to occur and may have water quality impacts” even though the future phase is not the subject of a report of waste discharge, may never be approved, may never receive funding, and may never obtain relevant permits. A regional board is not in a position to determine the likelihood that a future phase will occur, and Porter-Cologne does not permit such consideration as part of the issuance or denial of waste discharge requirements.

In the event the last paragraph on page 9 and the first paragraph on page 10 are not deleted, they should be revised to clarify that regional boards may only consider future phases of a multi-phased project in the context of CEQA and not for the purpose of issuing or denying waste discharge requirements under Porter-Cologne. The Draft Order should clarify that waste discharge requirements cannot be denied or conditioned based on a future action which does not constitute a “proposed discharge” or “other waste discharge.”

**Conclusion**

The Draft Order’s apparent conflation of a CEQA “project” and a “proposed discharge” under Porter-Cologne expands the regional boards’ authority contrary to Porter-Cologne and establishes an unintelligible standard for applying that expanded authority. For these reasons, the Commission requests that the State Board amend the Draft Order by deleting the last paragraph on page 9 and first paragraph on page 10.
In the alternative, these paragraphs should be revised to clarify, consistent with Porter-Cologne, that waste discharge requirements cannot be denied or conditioned based on a future action, which does not constitute a "proposed discharge" or "other waste discharge."

Thank you for your consideration of these comments.

Sincerely,

Anne Mayer
Executive Director

Via email (commentletters@waterboards.ca.gov)
EXHIBIT 15
September 15, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812


Dear Ms. Townsend:

The San Bernardino Associated Governments (SANBAG) appreciates the opportunity to comment on Tentative Order No. R9-2013-0007 regarding the Transportation Corridor Agencies (TCA) Tesoro Extension Project for State Route 241.

SANBAG is the council of governments, county transportation commission, and transportation planning agency for San Bernardino County. As such, we are responsible for planning and implementing an efficient multi-modal transportation system to serve the 1.9 million residents of our county. SANBAG also administers Measure I, the half-cent transportation sales tax approved by county voters in 1989 and reaffirmed in 2004.

SANBAG is also part of the Southern California Association of Governments (SCAG) region. SCAG is the metropolitan planning organization (MPO) responsible for the adoption of the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) as required under SB 375 (Chapter 728, Statutes of 2008). This multi-modal plan contemplates a number of transportation improvements through 2035 and it is critical that the transportation agencies in the region are able to successfully implement the projects contained within these plans in a timely and cost-effective way.

Historically, the State Water Resources Control Board has considered it appropriate for regional water quality control boards to permit projects in phases, reflecting the current conditions and funding availability for the actual project being constructed at that time. The revised tentative order now indicates that regional boards may now require that transportation agencies obtain approval for discharges associated with future phases of a transportation improvement – even if that future phase is not funded and not scheduled for construction for many years. This goes well beyond a reasonable approach to permitting projects and associated California Environmental Quality Act (CEQA) requirements.
Ms. Jeanine Townsend  
September 15, 2014  
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Given the cyclical and sometimes inconsistent nature of transportation funding, it is typical for improvements to be funded and constructed in phases, spanning multiple decades. Given the length of time that can pass between phases, it seems premature to judge the project in its entirety when it is still unknown whether the entire project will ever be fully funded or constructed. If this precedent is established, it will become increasingly difficult for transportation agencies to match projects with available funding and permitting requirements – thus resulting in delays to project delivery and an inability to meet greenhouse gas reduction requirements and federal air quality standards.

We respectfully request that you reconsider the tentative order to limit the ruling to the scope of the transportation improvement proposed at the time of the application and any discharge that may result. Transportation agencies must retain the necessary flexibility to phase major improvements in our regions in order to efficiently and effectively serve our respective populations and meet major state and federal environmental standards.

Sincerely,

Raymond W. Wolfe  
Executive Director  
San Bernardino Associated Governments

cc: Gonzales, Quintana & Hunter LLC
EXHIBIT 16
Expo

September 3, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Post Office Box 100
Sacramento, CA 92814

Via E Mail: commentletters@waterboard.ca.gov


Dear Ms. Townsend:

The Exposition Metro Line Construction Authority ("Expo Authority") submits the following comments on the Draft Order in the above-referenced matter. The Expo Authority is the public agency responsible for designing and building the Expo Corridor 15-mile light rail transit line from downtown Los Angeles to Santa Monica. As is the case with most complex transportation projects, the Expo Line is being designed, permitted and built in phases. The first phase of the Expo project (from downtown L.A to Culver City) opened in 2012. The second phase (from Culver City to Santa Monica) is under construction.

We request that the State Board modify the report accompanying the Draft Order to make it clear that regional boards should limit their review of proposed Waste Discharge Requirements (WDRs) and water quality certifications to the scope of the transportation improvement and discharge proposed by the transportation agency.

The State Water Board draft order in the above matter indicates that regional water boards may require transportation agencies to obtain water board review and approval of discharges associated with future phases of a transportation improvement at the time of the initial phase – even in circumstances where the future phase is not funded and may not be built for many years. This interpretation is contrary to the existing practice of transportation permitting agencies in Los Angeles County. If adopted, the interpretation reflected in the Draft Order will adversely impact the timely and cost-effective delivery of important transportation improvements.
The Expo Line is a classic example of why it is necessary that transportation agencies retain the flexibility to permit and construct major transportation improvements in phases. The Expo Line was originally conceived over twenty years ago as a single project between downtown Los Angeles and Santa Monica. Because of funding limitations and continuing public controversy over alignment and other issues on the western end of the project (e.g. from Culver City to Santa Monica), the Los Angeles County Metropolitan Transportation Authority (Metro) decided that the project should be permitted and built in phases. In 2005, Metro approved Phase 1 (from Downtown to Culver City), but deferred the consideration of Phase 2 until a later date. This decision allowed the Phase 1 light rail transit line to be completed and opened for service while the Expo Authority worked to resolve a complex array of environmental and community issues in Phase 2. The Expo Authority spent the next five years working to resolve Phase 2 issues and in February 2010 approved an alignment and project design for Phase 2. The experience on Expo Project demonstrates that it is essential that transportation agencies retain the flexibility to phase the permitting and construction of major new transportation improvements.

Sincerely,

Samantha Bricker
Chief Operating Officer

cc: Rob Thornton
Document Control
September 3, 2014

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Post Office Box 100  
Sacramento, California 92814  

Via E Mail: commentletters@waterboard.ca.gov  

Re: Comments on A-2259; - September 23, 2014 Board Meeting. Petition of  
Foothill/Eastern Transportation Corridor Agency -- Waste Discharge Requirements  
Tentative Order No. R-9-2013-0007 – Tesoro Extension Project – State Route 241  

Dear Ms. Townsend:  

The Metro Gold Line Foothill Extension Construction Authority (“Construction Authority”) submits the following comments on the Draft Order in the above-referenced matter. The Construction Authority is the public agency responsible for designing and building the Foothill Gold Line Project, extending the Metro Gold Line light rail from Union Station in Los Angeles to the City of Montclair in San Bernardino County. Like nearly all long, linear transportation projects, the Foothill Gold Line is being designed, permitted and built in phases – often many years apart. The first phase of the Foothill Gold Line Project (from Union Station to Pasadena) started in 1999 and opened in 2003. The second phase (from Pasadena to Azusa) began in 2009/2010 and is under construction with expected completion toward the end of 2015. The third phase (from Azusa to Montclair) is awaiting funding and not expected to be completed for many years.  

We request that the State Board modify the report accompanying the Draft Order to reinforce that regional boards should limit their review of proposed WDRs and water quality certifications to the phase of the project being proposed by the transportation agency.  

It is unrealistic and highly disruptive, not to mention extremely costly and at odds with planning functions, to require water board approval for phases of a project that could be decades away from construction. The Draft State Water Board draft order in the above matter indicates that regional water boards may require transportation agencies to obtain water board review and approval of discharges associated with future phases of a transportation improvement at the time of the initial phase – even in circumstances where the future phase is not funded and may not be built for many years. This interpretation would be nearly impossible to implement due to the realities of staged planning and would
cause material delay and expense at a time when the need for effective delivery of transportation projects is high and budgetary capacity is low.

The Foothill Gold Line Project could not have reached this point unless it utilized a phased approach that called for permits only on the phase under immediate consideration. When the Project began in 1999, there was funding available only for the first phase of the Project. Then six years after completion, additional funding became available and design and construction (including permitting) began anew. Once the Construction Authority receives funding for the phase to Montclair, it will begin design and construction of that phase, including obtaining all required permits. All in all, total completion of the Foothill Gold Line Project will take over 20 years from start to finish.

The Construction Authority could not possibly have known enough about each phase of the Project to obtain WDRs and water quality certifications for the entire Project back when it began the first phase fifteen years ago in 1999. Details of future phases of a Project are not known well enough to apply for a permit until planning and design are advanced to a certain point. Public agencies must retain the flexibility to phase the permitting and construction of large transportation projects if they are ever going to succeed in delivering them.

Sincerely,

Habib F. Balian
Chief Executive Officer
EXHIBIT 18
September 15, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100


Dear Ms. Townsend:

The Orange County Transportation Authority (OCTA) is Orange County’s primary transportation agency with the mission to develop and deliver multimodal transportation solutions to enhance the quality of life and keep Orange County moving. We appreciate the opportunity to review the waste discharge requirements revised tentative order No. R9-2013-0007 (tentative order) for the Transportation Corridor Agency’s (TCA) Tesoro Extension Project for State Route 241.

OCTA is charged with implementing Orange County’s voter-approved transportation sales tax measure, Measure M2, which includes over $15 billion in transportation improvements through 2041. Measure M2’s funding will allow for improvements to the county’s freeways, arterials, and public transportation system. In addition, the program provides funding for innovative mitigation and water quality improvement programs. As currently written, the tentative order could impede our ability to implement and phase major portions of Measure M2.

Construction phasing has long been utilized as a mechanism for efficient implementation of large-scale transportation improvements in Orange County and statewide. Almost all of these improvements require permitting by regional water quality control boards and other permitting agencies. There is significant precedent for regional water control boards to permit phases of transportation projects, recognizing the need to often deliver transportation improvements in phases based on funding availability and other cost and time constraints.
This permit process allows for mitigation of impacts created by a project in correlation to the impacts. This process is recognized on page 9 of the tentative order where it discusses how regional water quality boards may issue waste discharge requirements for future discharges when the project is actually proposed, without compromising the ability to protect the impacted waters.

However, the tentative order goes on to state that linear projects should be treated differently, and that the entirety of a potential project should be permitted, even if there are no concrete plans or funding identified for future phases. This contradicts existing practice and could adversely affect OCTA's ability to phase projects over a span of multiple years to match funding availability. If the tentative order sets precedent, it could impede OCTA's ability to obtain separate permits for each phase of a project. This could substantially increase costs and require larger funding commitments that go beyond our financial capacity.

OCTA requests clarification that regional water board permit reviews are to be limited to the scope of the transportation improvement proposed by the transportation agency at the particular time of the application and any discharge that may result.

Thank you again for the opportunity to review the draft order. We look forward to a collaborative effort with the State Water Resources Control Board that will enable projects to comply with the Clean Water Act while concurrently allowing OCTA to meet its mission. If you or your staff have any questions regarding OCTA's comments on the tentative order, please contact Kurt Brotcke, Director of Strategic Planning, at (714) 560-5742.

Sincerely,

[Signature]

Darrell Johnson
Chief Executive Officer

DJ:dp

c: Platinum Associates, LLC
EXHIBIT 19
## RWQCB PERMITTING: ADOPTED/TENTATIVE ORDERS FOR LINEAR PROJECTS

<table>
<thead>
<tr>
<th>Project Location (County)</th>
<th>Project Name</th>
<th>Description</th>
<th>Permit Construction Phases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transit/Light Rail/Bikeway Projects</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bay Area</td>
<td>BART Extension to Silicon Valley</td>
<td>16-mile extension of the Bay Area Rapid Transit (BART).</td>
<td>Phase 1: 10-mile, two-station BART extension. Phase 2: A future phase will include a 5-mile-long subway tunnel through downtown San Jose and extend the BART system from the planned Berryessa Extension terminus for approximately 6 miles, ending at-grade in Santa Clara near the Caltrain Station.</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Exposition Transit Corridor</td>
<td>15.2 mile light rail transit project.</td>
<td>Phase 1: 8.6-mile extension of the Metro Rail System from downtown Los Angeles to Culver City. Phase 2: 6.6 mile extension of the rail system from Culver City to Santa Monica.</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Foehn Rail Gold Line</td>
<td>Light project from Los Angeles to Montclair in San Bernardino County.</td>
<td>Phase 1: Los Angeles to Pasadena Phase 2a: Pasadena to Azusa Phase 2b: Azusa to Montclair Phase 2c: Montclair to the Ontario Airport</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>Westside Subway Extension (Metro Purple Line)</td>
<td>Extension of metro line.</td>
<td>Phase 1: Wilshire/Western to Wilshire/La Cienega. Phase 2: Wilshire/La Cienega to Century City Phase 3: Century City to Westwood/VA Hospital</td>
</tr>
<tr>
<td>Riverside</td>
<td>Metrolink Perris Valley Line Extensions</td>
<td>24-mile Metrolink extension.</td>
<td>Perris Valley Line: Continues rail service 24 miles from the downtown Riverside station to south Perris, with the construction of four new stations, construction and rehabilitation of railroad tracks, upgrade at-grade crossings, and improvement of existing tracks. Future extensions: Anticipated but not yet planned</td>
</tr>
<tr>
<td>Statewide</td>
<td>California High-Speed Rail Project</td>
<td>High-speed rail project from Los Angeles to San Francisco, with San Diego and Sacramento extensions.</td>
<td>Permitting Phase 1: 24 miles of the HST Project along the southern end of the Merced to Fresno segment. The overall project footprint is approximately 885 acres. Additional Permitting Phases: Separate environmental documents and permits will be obtained for each segment of the project (Merced to Fresno, Fresno to Bakersfield, Palmdale to Los Angeles, etc.).</td>
</tr>
<tr>
<td>Sacramento/Multiple</td>
<td>Sacramento Downtown/Riverfront Streetcar Project</td>
<td>9-mile urban streetcar network.</td>
<td>Phase 1: 3 - mile Streetcar network. Phase 2: Connecting South R Street and Broadway corridors.</td>
</tr>
<tr>
<td>Project Location (County)</td>
<td>Project Name</td>
<td>Description</td>
<td>Permit Construction Phases</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sacramento/ Multiple</td>
<td>Union Pacific Third Track</td>
<td>17.8-mile railroad track.</td>
<td>4 total segments.</td>
</tr>
<tr>
<td>San Francisco</td>
<td>MUNI Third Street Light Rail Improvements</td>
<td>6.9-mile light rail project.</td>
<td>Phase 1: 5.1 miles of light rail construction. Phase 2: 1.7 miles of light rail construction.</td>
</tr>
</tbody>
</table>

**Highway Projects**

| Bay Area (Multiple Counties) | Bay Area Express Lanes | 550-mile network of Bay Area express lanes. | Phase 1: Conversion of 150 miles of HOV lanes to express lanes. Addition of 120 miles of new lanes. Phase 2: 90 miles of express lanes. Phase 3: Improvements and additions to express lanes for a total of 190 miles in Silicon Valley. |

| El Dorado                 | Bass Lake Road Improvements | Road widening and reconstruction. | Phase 1A: US 50 to Holly Oak Rd. Phase 1B: US 50 to Silver Springs Parkway. |

| El Dorado                 | Diamond Springs Pkwy | Construction of 4-lane divided roadway. | Phase 1A: SR 49 realignment - Pleasant Valley Road to Lime Kiln. Realign SR-49/Diamond Rd from Pleasant Valley Rd to north of Lime Kiln Rd. SR-49/Diamond Rd will be improved with two 12-ft lanes and 8-ft shoulders; includes signal modification at Pleasant Valley Rd/SR-49 intersection and potential underground utility district. Phase 1A split from Phase 1 (CIP12334/ELD15990) to advance this new roadway project. Phase 1B: New 2-lane roadway connecting Missouri Flat Road to SR 49. Phase 2: Widening/Improvement to 4-lanes from Missouri Flat Road to Highway 49. Phase 3: Ultimate widening/improvements for 4-lane divided SR-49. |

| El Dorado                 | US 50 Bus/Carpool Lanes | 13 miles of HOV and bus/carpool lanes. | Phase 1A: Add HOV lanes from El Dorado Hills Blvd to Bass Lake Grade. Phase 2A: Add HOV lanes from Bass Lake Road to Cameron Park Drive. Phase 2B: Add HOV lanes from Cameron Park Dr. to Ponderosa Rd. Phase 3: Add Bus/Carpool lanes from Ponderosa Rd to Greenstone Rd. |

| El Dorado                 | Western Placerville Interchanges | Improvements on and around US 50. | Phase 1A/1B: Construct westbound access ramp from Ray Lawyer Drive onto US 50 and auxiliary lane between westbound access ramp and the existing westbound off-ramp at Placerville Drive. Realign Fair Drive to accommodate new improvements, bicycle/pedestrian improvements, widened shoulders, retaining walls. Phase 2: Replacement and widening of overcrossing, improved interchange, new ramps at the existing... |
## RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

<table>
<thead>
<tr>
<th>Project Location (County)</th>
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<th>Description</th>
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</tr>
</thead>
</table>
| **Los Angeles**           | I-10 HOV Lanes | 11 miles of HOV lanes. | **Phase 1:** I-605 to Puente Ave.  
**Phase 2:** Puente Ave. to Citrus Ave (9.2 miles of carpool lanes in each direction of I-10)  
**Phase 3:** Citrus Ave. to SR-57 |
| **Los Angeles**           | I-405 Sepulveda Pass | 10 miles of HOV lanes and infrastructure improvements. | Project includes: Mulholland Dr. Bridge Demolition and Reconstruction; Wilshire Boulevard Ramps Reconstruction; Sunset Bridge Ramp Reconstruction; and Skirball Center Drive On-ramps and Bridge Reconstruction |
| **Los Angeles**           | I-5 HOV/Truck Lanes Project | 14 miles of HOV lanes; 4 miles of truck climbing lanes. | **Phase 1:** Truck lanes for 3.7 miles southbound and 1.4 miles northbound.  
**Phase 2:** Truck lane and HOV lanes from SR-14 to Parker Road  
**Phase 3:** Truck lane and HOV lanes from SR-14 to Parker Road |
| Los Angeles/San Bernardino | High Desert Corridor | Construction of a new multi-modal link between State Route (SR)-14 in Los Angeles County and SR-18 in San Bernardino County. | **Los Angeles County Project:** 9 miles from SR-14 to 50th Street East.  
**East/West Connection Project:** 32 miles from 50th Street East to US-395.  
**San Bernardino County Project:** 20 miles from US-395 to SR-18 |
| Los Angeles/Orange        | I-5 Corridor Improvements | Corridor improvements consisting of 17 projects. | I-5 North Improvements: HOV Lanes – Carpool lanes; Direct HOV Connectors; Interchange improvements; bridge widening and bridge reconstruction; truck lane designation; Pavement Replacements; and Grade Separation.  
I-5 South Improvements: High-Occupancy Vehicle (HOV or carpool) Lanes; Interchange Modifications; Pedestrian Overcrossing; and Frontage Road Modification. |
| Riverside/Orange          | SR-91 Corridor Improvements | 20 miles of capacity, operational, and safety enhancements. | **Phase 1:** 8 miles of improvements; 3 miles of direct connectors. Construction of two express lanes, one general purpose lane, and auxiliary lanes.  
**Phase 2:** Construction of general purpose lanes, express lanes, and direct connectors; conversion of HOV lane to express lane. |
| San Diego                 | I-15 Express Lanes | 20 miles of express lanes. | **Middle Segment:** SR-56 to Centre City Parkway.  
**South Segment:** SR-163 to SR-56.  
**North Segment:** Centre City Parkway to SR-78. |
**SR-52 West** – Construction of 1 additional general purpose lane in each direction and 2 reversible Managed Lanes from I-15 to SR-725.  
**Additional Improvements** – Construction of 2 HOV lanes between I-805 and I-15. |
# RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

<table>
<thead>
<tr>
<th>Project Location (County)</th>
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</tr>
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| Placer                    | I-80 Capacity & Operational Improvements | Freeway widening and extension of carpool lanes. | **Phase 1**: Extension of eastbound on-ramp.  
**Phase 2**: Eastbound and westbound carpool and auxiliary lanes.  
**Phase 3**: Added auxiliary lanes and carpool lanes on both eastbound and westbound sides, approximately 2.2 miles. |
| Placer                    | SR-65 Lincoln Bypass | Construction of a new 4-lane and 2-lane expressway. | **Phase 1**: A 4-lane highway expressway on a new alignment from Industrial Avenue to north of North Ingram Slough and continue north with 2 lanes to Sheridan. Also design and construct a Park and Ride facility at SR 65 Bypass and Industrial Avenue.  
**Phase 2A**: Adds 2 southbound lanes to extend 4-lane section of Lincoln Bypass from its Phase 1 terminus.  
**Phase 2B**: 2 lanes from north of West Wise Road to Sheridan, providing a full 4 lanes (2 in each direction). |
| Sacramento                | Auburn Blvd Complete Streets Revitalization Project | Construction of pedestrian and bicycle lanes; various infrastructure improvements. | **Phase 1**: Construct wide sidewalks, bike lanes, a pedestrian/bike bridge, enhanced transit stops and shelters, pedestrian-scale street lighting, raised medians and landscaping, and consolidated multiple driveways.  
**Phase 2**: ADA, Ped, Bicycle, and Transit Improvements, new street light installations, hardscape, landscape, full road reconstruction.  
**Phase 3**: Design, ROW acquisition and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, 1st street light conversion, full road reconstruction, hardscape and landscape.  
**Phase 4**: Design and construction; ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, 1st street light conversion, full road reconstruction, hardscape and landscape.  
**Phase 5**: Design, ROW, and construction; utility undergrounding, ADA, Pedestrian, Bicycle and Transit Improvements, traffic signal upgrades, 1st street light conversion, full road reconstruction, hardscape and landscape. |
| San Bernardino            | SR-138 Capacity Enhancement | 54 miles of highway widening. | **Phase 1**: 13 miles of highway widening.  
**Phase 2**: LA County to San Bernardino County. |
| San Bernardino            | US-395 Operational Improvements | 90 miles of highway widening. | Multiple projects in various stages. |
| San Diego                 | SR-76 Improvements | Upgrade of SR-76 to a freeway or expressway. | **West Segment**: I-5 to Melrose Dr.  
**Middle Segment**: 5.5-mile segment.  
**East Segment**: 5.2-mile segment. |
I-805 North Express Lanes Project: 4-mile project in multiple phases. |
## RWQCB Permitting: Adopted/Tentative Orders for Linear Projects

<table>
<thead>
<tr>
<th>Project Location (County)</th>
<th>Project Name</th>
<th>Description</th>
<th>Permit Construction Phases</th>
</tr>
</thead>
</table>
| San Diego                 | 1-5 North Coast Corridor Program | 27-mile series of highway, rail, transit, bicycle, and pedestrian projects. | Stage 1: 1 carpool lane in each direction.  
Stage 2-4: Second carpool lane in the median.  
Stage 5: Direct freeway to freeway HOV connector in the median.  
Highway - Phases 1-3: 1-5 Widening to accommodate four new Express Lanes and HOV connectors:  
Rail: Double tracking of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor.  
Transit: Enhanced Coastal Bus and a Bus Rapid Transit service.  
Bikeways: A new 27 mile NCC Bikeway.  
Trails: 7 miles of the Coastal Rail Trail, as well as other shorter connections to existing trail networks and transit stations. |
| San Joaquin Valley        | SR 99 Corridor Improvements | 44 programmed projects and 66 candidate projects to increase capacity and improve operations. | Capacity increasing projects: Freeway widening  
Major Operational Improvements  
New Interchanges |

### Utility/Transmission Line Projects

| Los Angeles/ San Bernardino | SCE Tehachapi Renewable Transmission Line | 250 miles of transmission facilities. | 11 Segments: Include substation expansions and construction of a 25.6 mile transmission line.  
The following permits have been issued:  
Segment 3B - Water Quality Order No. 2012-0007-DWQ; Waste Discharge Requirements WDID No. SB12009IN  
Segments 4 and 5 - Water Quality Order No. 2010-0015-DWQ; WDID No. SB10003IN Waste Discharge Requirements  
Segment 6 - Section 401 Certification File No. SB11003IN  
Segments 7 and 8 - Section 401 Certification File No. SB10002IN  
Segment 9 - Water Quality Order No. 2004-001-DWQ; File No. SB10001IN  
Segment 10 - Water Quality Order No. 2010-0015-DWQ, WDID No. SB10003IN Waste Discharge Requirements  
Segment 11 - Section 401 Certification File No. SB13003IN |
EXHIBIT 20
EXHIBIT 21
To get high-speed rail from Palmdale to Burbank, planners have focused for years on two potential routes that parallel the 14 Freeway and course through the rural and growing communities of Acton, Agua Dulce and Santa Clarita — hostile territory for the bullet train project.

Los Angeles County Supervisor Michael D. Antonovich thinks there's a better way to go.

He is recommending to the California High-Speed Rail Authority an alternative to the south that would rely on extensive tunneling to cross the rugged Angeles National Forest.

"Such an approach," Antonovich recently told bullet train officials, "could provide a boon to the authority by eliminating conflict with Acton, Agua Dulce and Sand Canyon communities in my district while also helping the project reduce its costs and travel times."

He has made the pitch before, but this time his suggestion is getting some traction. The authority, which recently accelerated planning for the Palmdale-to-Burbank leg, has begun to seriously consider Antonovich's proposal.

During seven meetings this month in communities from Palmdale to Los Angeles, high-speed rail officials have asked members of the public to comment on the proposed corridors, including Antonovich's.

The public has a month to respond. If there is enough support for the supervisor's recommendation, the authority says his proposal could qualify for more in-depth studies, the outcome of which might eventually lead to its selection as the route for the Palmdale-Burbank leg.

"We ought to take a serious look at this," said Jeff Morales, the authority's chief executive. "I continually push our team to look at ideas and to solicit and listen to what we get from the outside. We are sensitive to community input, and we've heard the concerns of Acton, Agua Dulce and Santa Clarita. That matters."

Antonovich first approached the authority with his idea several years ago, but board members and the chief executive at the time were reluctant to work with the range of federal environmental agencies that would have to be involved in planning and approving a route through a national forest. With the arrival of Morales and board Chairman Dan Richard, the agency has been more receptive.

"We've had some discussions and talked to the supervisor," Morales said. "I'm impressed by his focus to bring improvements to that part of the county and state. He's pushed hard and we've listened."
Antonovich's proposal would run about 35 miles through the Angeles National Forest. It would go around the Hansen Dam Recreational Area, authority officials say, and include roughly 20 miles of tunnels. A specific route has not been determined.

In contrast, the other two proposals along the 14 Freeway are about 48 miles long and generally follow the highway and a San Fernando Valley railroad right-of-way used by the Metrolink commuter line. About 18 to 20 miles of tunneling and more than 20 grade separations would be necessary if either was chosen.

Both corridors would begin at the Palmdale Transportation Center and end at the Burbank Airport Station, a developing transportation hub.

Although none of the proposals have been fully vetted, Morales said there could be advantages to Antonovich's plan, including lower construction costs and shorter travel times. The trip would take an estimated 15 minutes, 7 to 10 minutes less than the highway routes.

In addition, both Morales and the supervisor said there would be substantial benefits from reducing the project's effects on communities along the 14 Freeway, where the population has grown at least 24% in the last decade.

Local leaders and community groups say the routes along the 14 would bring high-speed trains near schools, disrupt the rural setting and mar the center of Acton with a viaduct. The Santa Clara River, residential water wells and hundreds of properties would be adversely affected, they said, including the Shambala Preserve in Acton, a big cat sanctuary owned by a partnership that includes actress Tippi Hedren.

Michael Hughes, president of the Acton Town Council, said he was "very much in favor" of Antonovich's proposal, but residents and local leaders would like to see the suggested corridor moved a few more miles east to take it completely out of Acton.

In a recent letter to the rail authority, Assemblyman Scott Wilk, a Republican who represents the Santa Clarita Valley, said he supported Antonovich and urged the agency to disavow the routes along the 14 Freeway in order to "reset the discussion."

Katherine Tucker, who has a ranch off the Angeles Forest Highway in east Acton, said, however, that Antonovich needs to be more specific and move his proposal out of the area.

"If Palmdale wants a station so bad, the route should all be in Palmdale so we can maintain the rural environment" in Acton, said Tucker, whose land and neighboring properties could be crossed by the project's right of way. "We are trying to save what we have here."

Other concerns could come from environmental groups should Antonovich's alternative gain ground.

"The environmental impacts would be enormous," said Kathryn Phillips, director of Sierra Club California, which generally supports the high-speed rail project. "Going through a national forest isn't going to sit well with my members."

Morales defended Antonovich's proposal. Even if a route is built through the forest, he said, there would be substantial environmental benefits, such as reductions in traffic and air pollution across the region.

dan.wiecki@latimes.com

GRAPHIC: PHOTO: COMMUNITIES ALONG the 14 Freeway fear disruptions that would be caused by running the bullet train along that corridor. Supervisor Michael Antonovich backs an alternate route through national forest.

GRAPHIC: MAP: Angeles National Forest

CREDIT: Thomas Suh Lauder Los Angeles Times

LOAD-DATE: August 24, 2014
EXHIBIT 22
Stipulation to Full Authority of Regional Water Quality Control Board Regarding Extension of State Route 241

This stipulated agreement ("Agreement") is entered into by the Foothill/Eastern Transportation Corridor Agency ("Agency") with regard to the authority of the Regional Water Quality Control Board, San Diego Region ("Regional Board") to prohibit or otherwise restrict impacts to Waters of the State from the construction and/or operation of extensions of State Route 241 south of Cow Camp Road.

Recitals

1. On September 23, 2014 the State Water Resources Control Board ("State Board") issued Order WQ 2014-0154 (the "Order") with regard to the Petition filed by the Agency for Review of the Denial of Waste Discharge Requirements, Revised Tentative Order No. R9-2013-0007 for the extension of State Route 241 from Oso Parkway to Cow Camp Road in Orange County (the "Tesoro Extension"). The Order requires the Regional Board "to provide the factual and legal basis for [the Regional Board's decision], consistent with the Order."

2. The Order provides in pertinent part the following:

"There is a heightened need for detailed findings based on evidence in the record if a regional water board declines to issue WDRs for a project because it will likely lead to additional, future discharges of waste or other water quality impacts. Those findings should describe the potential for future discharges of waste or other water quality impacts, explain why they are likely to result from the current project before the regional water board, and most importantly, explain why the regional water board would be limited in its ability to exercise its full authority in the future..."
to prohibit, or otherwise restrict, those future discharges or other water quality impacts in such a manner as to carry out the regional water board's obligation to protect waters of the state." (Order, p. 11.)

3. The Agency has not decided whether to construct an extension of State Route 241 south of Cow Camp Road. The Agency is evaluating alternatives to an extension of State Route 241 south of Cow Camp Road. Any extension of State Route 241 south of Cow Camp Road will require the construction of bridge columns in San Juan Creek and thus will require Regional Board review of potential water quality impacts and Regional Board approvals of such impacts pursuant to section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and pursuant to California Water Code section 13263 and the applicable regulations of the State Board. The operation of any extension will also necessarily include discharges of storm water to Waters of the State and will thus require Regional Board review and approval pursuant to California law.

4. By this Agreement, the Agency intends to stipulate and agree that the Regional Board has the full legal authority to prohibit or otherwise restrict impacts to Waters of the State from the construction and/or operation of State Route 241 south of Cow Camp Road.

Agreement

1. The Agency stipulates and agrees that the Regional Board has full authority pursuant to section 401 of the Federal Water Pollution Control Act, and California law (including but not limited to California Water Code section 13263), to
prohibit or otherwise restrict future discharges or other impacts to Waters of the State from the construction or operation of State Route 241 south of Cow Camp Road.

2. The Agency hereby consents to the Regional Board exercise of its full authority as described in Paragraph 1 above.

Dated: January 15, 2015

TRANSPORTATION CORRIDOR AGENCIES

By: Michael Kraman
Chief Executive Officer

APPROVED AS TO FORM:

Nossaman LLP

By: Robert D. Thornton
Counsel to Foothill/Eastern Transportation Corridor Agency

ACKNOWLEDGEMENT:

Regional Water Quality Control Board,
San Diego Region

By:______________________________
EXHIBIT 23
TO: [via e-mail]  
Board Members  
STATE WATER RESOURCES CONTROL BOARD AND  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

FROM: Michael A.M. Lauffer  
Chief Counsel  
OFFICE OF CHIEF COUNSEL

DATE: April 25, 2013

SUBJECT: TRANSMITTAL OF EX PARTE COMMUNICATIONS QUESTIONS AND ANSWERS DOCUMENT

Attached please find an updated document on ex parte communications. This memorandum and the accompanying Ex Parte Questions and Answers supersede all previous Office of Chief Counsel memoranda on the same subject.¹

The changes in the attached reflect recent legislation that amends the Porter-Cologne Water Quality Control Act effective January 1, 2013. The changes resulting from Senate Bill 965 (Wright) (Stats. 2012, ch. 551) generally allow ex parte communications about issues concerning certain pending general orders of the water boards, but make certain interested persons subject to reporting requirements. Questions 28 through 35 and question 45 of the Ex Parte Questions and Answers document address these new ex parte communication rules and reporting requirements for general orders.

The State Water Resources Control Board and the nine California Regional Water Quality Control Boards perform a variety of functions. The boards convene to set broad policy consistent with the laws passed by Congress and the Legislature. In this regard, the boards perform a legislative function. The boards also routinely determine the rights and duties of individual dischargers or even a class of dischargers. In this regard, the boards perform a judicial function. The judicial function manifests itself when the boards adopt permits and conditional waivers or take enforcement actions. Some water board actions, such as the adoption of general permits, straddle the line between judicial and legislative functions because they establish rights and duties of future, unnamed dischargers.

¹ The most recent memorandum was a December 28, 2012 memorandum from me to members of the State Water Resources Control Board and the California Regional Water Quality Control Boards. That memo superseded prior memoranda from the Office of Chief Counsel concerning ex parte communications. The only change since my December 28, 2012 memorandum is the addition of question 45 addressing site visits and pending general orders.
Different rules apply depending on the type of action pending before a water board. One of the distinctions between legislative and judicial proceedings is the prohibition against ex parte communications. An ex parte communication is a communication to a board member about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. In legislative-type proceedings, ex parte communications are allowed. In judicial-type proceedings, ex parte communications are prohibited. In hybrid proceedings, such as the issuance of certain general permits, ex parte communications are generally allowed, but communications from certain interested persons must be disclosed. The accompanying questions and answer document addresses common issues pertaining to ex parte communications.

I have structured the questions and answers document to serve as a reference document for board members and the attorneys within the Office of Chief Counsel. By breaking the subject matter into discrete questions, my intent is to provide a list that board members can quickly scan to identify relevant issues and the accompanying legal answer.

There are four broad themes pertaining to communications with board members.

1. If a proceeding is not pending or impending before a water board, board members may communicate with the public and governmental officials regarding general issues within the water board’s jurisdiction. Water board members may also participate in information gathering efforts such as tours or site visits.

2. If a proceeding is pending or impending before a water board for the issuance of general waste discharge requirements, a categorical waiver, or a general 401 certification, board members may communicate with the public and government officials about the pending order. Special disclosure requirements apply to communications that involve certain persons with an interest in the proceeding.

3. If any other adjudicative proceeding is pending or impending before a water board, ex parte communications with that water board’s members regarding an issue in that proceeding are prohibited.

4. If a rulemaking or other proceeding is pending or impending before a water board, a board member may, if he or she chooses to do so, have ex parte communications regarding issues in that proceeding.

The questions and answer document does not and cannot address all the issues pertaining to ex parte communications. Over time additional questions may be added based on feedback from board members.

Attachment

cc: [All via e-mail only]
   Tom Howard, EXEC
   Jonathan Bishop, EXEC
   Caren Trgovcich, EXEC
   All Executive Officers, Regional Water Boards
   All Assistant Executive Officers, Regional Water Boards
   Branch Offices
   All Office of Chief Counsel attorneys
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EX PARTE QUESTIONS AND ANSWERS

I. EX PARTE SUMMARY

Summary of ex parte framework:

1. If a proceeding is not pending or impeding before a water board, board members may communicate with the public and governmental officials regarding general issues within the water board’s jurisdiction. Water board members may also participate in information gathering efforts such as tours or site visits.

2. If a proceeding is pending or impeding before a water board for the issuance of general waste discharge requirements, a categorical waiver; or a general 401 certification, board members may communicate with the public and government officials about the pending order. Special disclosure requirements apply to communications that involve certain persons with an interest in the proceeding.

3. If any other adjudicative proceeding is pending or impeding before a water board, ex parte communications with that water board’s members regarding an issue in that proceeding are prohibited.

4. If a rulemaking or other proceeding is pending or impeding before a water board, a board member may, if he or she chooses to do so, have ex parte communications regarding issues in that proceeding.

1. Q. What is an ex parte communication?

A. An ex parte communication is a communication to a board member from any person¹ about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. People often refer to these communications as “one-sided,” “off-the-record,” or private communications between a board member and any person concerning a matter that is pending or impeding before the applicable water board.

One-sided communications does not mean that the communication must occur in privacy or among two people in order to be an ex parte communication. Even a public communication before a large audience may still be an ex parte communication if other parties to the proceeding do not have notice of and an opportunity to participate in the communication.

Examples of ex parte communications include:

1. A water board has scheduled a hearing to consider the assessment of administrative civil liability against a discharger for an illegal discharge. Before the hearing, a representative of an environmental group attempts to speak to a new board member regarding the discharger’s alleged long-term violations of environmental laws. Such a communication would be ex parte.

2. A water board has scheduled a hearing to consider the issuance of a new discharge permit to Dairy X. The president of Dairy X invites a board member out to the site to

¹ There are special rules for certain staff who advise the board member. Please see Question 22.
EX PARTE QUESTIONS AND ANSWERS

show him/her the facility and explain its operation. Such a communication would be ex parte.

2. Q. What is a communication?

Communications include face-to-face conversations, phone calls, written correspondence, e-mails, instant messaging, and the next level of technology that presents itself. The Office of Chief Counsel also considers site visits and tours to be ex parte communications. By their very nature, site visits communicate evidentiary information to board members. Site visits can be a useful part of the decision-making process and special procedures should be used for site visits. (Please see Questions 43-45.)

3. Q. What purposes are served by limitations on ex parte communications?

Rules regarding ex parte communications have their roots in constitutional principles of due process and fundamental fairness. With public agencies, ex parte communications rules also serve an important function in providing transparency. Ex parte communications may contribute to public cynicism that decisions are based more on special access and influence than on the facts, the laws, and the exercise of discretion to promote the public interest.

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

4. Q. Do ex parte communications rules prevent water board members from understanding the issues and people’s concerns?

Ex parte communications rules do not prevent the flow of information to water board members. Instead, ex parte rules shape how the board members receive that information and are intended to ensure that board members receive relevant information in a fair and transparent manner. A person can share issues and concerns by filing appropriate documents with the board and during a public meeting consistent with the water boards’ administrative procedures.

Essentially, ex parte rules allow everyone to know and, if desired, rebut the information upon which the water boards make decisions before they make their decisions. The rules are also intended to ensure that all board members have a common record upon which to make their decisions and that a court will be able to ascertain the bases for such decisions.
EX PARTE QUESTIONS AND ANSWERS

5. **Q.** How can board members educate themselves without violating the prohibition on ex parte communications?

Rules on ex parte communications should not serve to prevent board members from understanding the matters to be considered and decided by the board. If a board member needs additional information about a matter, there are appropriate processes that can be used. There is no substitute for an active, engaged board member when it comes to understanding an issue. Asking questions on the record, or requesting staff and interested persons to specifically address certain issues on the record, helps provide the necessary foundation for board action. In addition, staff assigned to advise the board (see Question 22) may provide assistance and advice, and may help evaluate evidence in the record, so long as the staff does not furnish, augment, diminish, or modify the evidence in the record.

6. **Q.** How can water board members explain ex parte rules to the public?

This is a decision for individual board members to make. Board members are free to refer callers to the Office of Chief Counsel. If the board member chooses to explain ex parte limitations with a person, there are certain themes to keep in mind when explaining ex parte rules.

First, ex parte rules do not prevent anyone from providing information to the water boards or requesting specific actions from the water boards. Ex parte rules simply require that the information come into the record through a writing subject to public review or in a duly noticed, public meeting. Second, ex parte rules are designed to ensure fairness for everyone. No person or interest uniquely benefits from ex parte rules. The rules apply to everyone, and prevent any one person or interest from having special access to water board members. Third, ex parte rules provide transparency, allowing everyone to understand and to appreciate how the water boards reach a decision. By encouraging persons to submit written comments or speak on the record, a person’s comments will be heard by all the water board members and other stakeholders. If a person persists, however, a board member can explain that s/he might become subject to disqualification, in which case the person’s efforts to communicate with the board member will have been to no avail.

7. **Q.** What proceedings are subject to the prohibition on ex parte communications?

Only adjudicative proceedings are subject to the prohibition on ex parte communications. The water boards function in many capacities, from setting broad policies on water quality control, to planning to implement those policies, to implementing those policies through specific regulatory actions that determine the rights and duties of a person or class of persons. Adjudicative proceedings fall in the latter category of implementing policies through actions that determine the specific rights and duties of persons. (Please see Questions 8-10.)

The continuum from policy-setting to policy-implementing does not have discrete breakpoints. This question and answer document is designed to answer some of the most common questions and provide a useful framework for understanding ex parte issues. It does not create any rules beyond those contained in the Administrative
EX PARTE QUESTIONS AND ANSWERS

Procedure Act or court decisions. Board members will need to work closely with legal counsel at times to determine whether the prohibition on ex parte communications applies to a specific action or proceeding.

II. ADJUDICATIVE PROCEEDINGS

A. Types of Adjudicative Actions

8. Q. What actions are adjudicative?

Adjudicative actions are those actions where the water boards make a decision after determining specific facts and applying laws and regulations to those facts. Adjudicative proceedings are the evidentiary hearings used to determine the facts by which a water board reaches a decision that determines the rights and duties of a particular person or persons. Adjudicative proceedings include, but are not limited to, enforcement actions and permit issuance. For example, any person who proposes to discharge waste to waters of the state must apply for a discharge permit. The proceeding to consider whether to issue the permit and the conditions to include in the permit would be adjudicative.

Below is a partial list of common water board actions that often follow adjudicative proceedings:

- National Pollutant Discharge Elimination System (NPDES) permits;
- Waste discharge requirements (WDRs);
- Water right permits and requests for reconsideration;
- Orders conditionally waiving waste discharge requirements;
- Administrative civil liability (ACL) orders;
- Cease and desist orders;
- Cleanup and abatement orders;
- Water quality certification orders (401 certification);
- Permit revocations.

A list of common actions that are not subject to the ex parte prohibition is provided in Part III.

9. Q. Are ex parte communications prohibited for pending adjudicative actions?

Yes. The ex parte communications prohibition for adjudicative proceedings originates in court decisions and has been codified in Chapter 4.5 of the Administrative Procedure Act. The Administrative Procedure Act prohibits "direct or indirect" communications to water board members about an issue in a pending adjudicative proceeding.

10. Q. Does the ex parte communications prohibition apply to a conditional waiver of waste discharge requirements that identifies a specific person or persons?

Yes. The issuance of a conditional waiver pursuant to Water Code section 13269 that identifies a specific person or persons is more appropriately considered an adjudicative proceeding. These types of waivers determine the rights and duties of those persons identified in the order. The orders are directly enforceable against the persons. Conditional waivers are specifically exempt from the rulemaking provisions of the...
EX PARTE QUESTIONS AND ANSWERS

Administrative Procedure Act. The water boards adopt conditional waivers following the same procedures that are used for any other permitting decision, as opposed to the legislative procedures used to adopt water quality control plans or for administrative rulemaking. Conditional waivers are also subject to the same judicial review standards as any other permit. Together these attributes mean that the issuance of a conditional waiver is an adjudicative action.

11. Q. May discrete policy issues within an adjudicative proceeding be considered separately in a non-adjudicative proceeding?

Under appropriate circumstances, a discrete, significant policy issue may be segregated from the adjudicative proceeding and decided using suitable procedures for policy-setting (e.g., regulations, amendments to a water quality control plan, or state policy for water quality control). The Court of Appeal recently sanctioned this approach in the State Water Resources Control Board Cases, while noting the importance of recognizing the different requirements that apply to matters decided in an adjudicative proceeding and those decided separately in legislative proceedings. Those issues considered in the policy-setting procedure would not be subject to the prohibitions on ex parte communications during the policy-setting proceeding. However, the ex parte communications prohibition still applies to the adjudicative proceeding (including those issues not involved in the policy-setting proceeding and those issues addressed in the policy-setting proceeding once the policy-setting proceeding has concluded).

B. Pending Adjudicative Proceeding

12. Q. When is a proceeding pending?

A proceeding is pending from the time the water board issues an initial pleading in an evidentiary proceeding, or from the time an application for a decision is filed that will require an evidentiary hearing, whichever is earlier. In many circumstances, the "initial pleading" will be a notice of hearing with the staff's proposed action.

For example, an adjudicative proceeding is pending for an administrative civil liability order from the time an administrative civil liability compliant is issued. A proceeding for issuance of waste discharge requirements is pending before a regional water board when the board receives a report of waste discharge, because that is an application for decision that will occur in a hearing before the board. For general waste discharge requirements, the notice of an evidentiary hearing makes the matter pending. For water rights permits, the best legal interpretation is that the proceeding is pending when the State Water Board issues a notice of hearing, because prior to that time there is no assurance that there will be an evidentiary hearing since the division chief may issue certain water rights permits.

13. Q. What is an impending matter?

The Administrative Procedure Act only addresses "pending" proceedings, however, there may be circumstances where board members are aware that an adjudicative

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action is impending. The fairness and transparency of the process are no less compromised if an ex parte communication takes place a few days before the issuance of a notice of hearing or the filing of a report of waste discharge. The desire of a person to speak with a board member about a specific site should generally be viewed as a signal that something is impending. Where a proceeding is clearly impending, water board members should consider ex parte communications to be prohibited based on due process considerations. For example, if a water board member knows that a notice on an enforcement action is to be signed on a Tuesday, it would be inappropriate for the board member to receive an ex parte communication concerning the enforcement matter on Monday night. On the other hand, a matter would generally not be considered impending if the issuance of a notice of hearing or the filing of a report of waste discharge is not reasonably expected to occur until several months after the communication in question.

The issues concerning impending matters can be difficult and fact-specific. The most important issue with impending matters is to avoid a situation where it appears the communication was timed to avoid the Administrative Procedure Act’s prohibition on ex parte communications for pending adjudicative actions. In the event there is a communication received on an impending matter, the board member may want to consider whether an appropriate disclosure should be made to avoid a subsequent allegation of impropriety. (Please see Question 26.) Water board members should consult with legal counsel if they have any questions on a specific communication in an impending matter.

14. Q. How can a board member determine whether an action is pending?

Some regional water boards maintain a list of applications under consideration and outstanding notices. Confer with your regional water board’s Executive Officer (or for State Water Board members, the Executive Director) to determine how your water board maintains a list of pending adjudicative actions.

15. Q. Are adjudicative matters pending before the regional water boards also pending before the State Water Board?

No, but once the State Water Board receives a petition requesting the State Water Board to commence review of a regional water board action, the ex parte communications prohibition applies to the petition proceeding. The State Water Board has the authority to review the regional water boards’ adjudicative actions. Most regional water board adjudicative actions are not petitioned to the State Water Board. It would be inappropriate to consider a matter pending before the State Water Board while it is still pending before the regional water board and it might never be challenged to the State Water Board.

A State Water Board member may wish to confer with the Office of Chief Counsel before having a communication about a controversial regional water board adjudicative action where there is a substantial likelihood that a petition will be filed with the State Water Board. In certain circumstances, the more cautious legal advice may be to regard the adjudicative proceeding as impending before the State Water Board, even though it is still pending before the regional water board. Determining whether the matter is
impending would be a fact-specific inquiry, and would only be the advice of legal counsel in light of those facts.

Once the State Water Board receives a petition, the basis for the State Water Board’s review will generally be the evidentiary and administrative record before the regional water board. As a result, the same prohibition on ex parte communications that applies to regional water board members in the region taking the action applies to the State Water Board members deciding the petition on the merits. The prohibition on communications with the State Water Board members concerning a petition begins when the State Water Board receives a petition requesting the State Water Board to commence review of a regional water board’s action or inaction.

The State Water Board’s regulations authorize an interested person to submit a petition and hold that petition abeyance. The regulations also authorize a petitioner to request that a petition be removed from active review and placed in abeyance. Consistent with the Administrative Procedure Act, a petition in abeyance is not pending before the State Water Board because a petition in abeyance does not request the State Water Board to make a decision. The petition in abeyance serves as placeholder that allows the interested person to request a decision from the State Water Board at a later date. Until and unless a petition in abeyance is activated, there is no application for a decision pending before the State Water Board.

16. Q. Does a reopener provision in a permit mean an action is pending?

No, not until a specific reopener or permit modification action is noticed for board action. Many permits include provisions that allow the regional water board to modify the permit based on subsequent information or conditions. The ability for a regional water board to reopen and modify the permit in the future does not trigger the prohibition on ex parte communication. However, once a water board issues a notice to reopen the permit, the rules concerning pending adjudicative proceedings would apply to the consideration of permit amendments.

C. Scope of Ex Parte Communications Prohibition

17. Q. What subjects are covered by the ex parte communications prohibition?

The Administrative Procedure Act’s prohibition on ex parte communications is very broad. It extends to “direct and indirect” communications. Board members must be mindful that persons who ordinarily would not be subject to the prohibition (e.g., secretaries, staff assigned to advise the board) cannot be used as a conduit for a prohibited ex parte communication, and thereby a source of an indirect communication.

The ex parte communications prohibition also extends to “any issue in the proceeding.” With limited exceptions discussed in Questions 19-20, if the communication involves any issue in the proceeding, be it a factual issue, a legal issue, or a policy issue, it is subject to the ex parte communications prohibition.
EX PARTE QUESTIONS AND ANSWERS

18. Q. Are all communications prohibited with a person interested in an adjudicative proceeding pending before a water board?

No. Communications are only prohibited to the extent they reach an issue in the proceeding. Even where a matter is pending before a water board, a communication with a party to the matter is not considered ex parte if the communication does not relate to the matter.

19. Q. Are there exceptions to the prohibition?

There are certain limited exceptions to the prohibition on ex parte communications. First, as discussed in Questions 28-3534, different rules apply to proceedings involving general orders. Second, as discussed in Question 22, certain staff advising the board are not subject to the prohibition. Second, there are limited statutory exemptions, but generally they should only be used after consultation with legal counsel. The first statutory exemption is typically not available to the water boards, and involves communications to resolve an ex parte matter specifically authorized by statute. The second statutory exemption is for communications that concern a matter of procedure or practice that is not in controversy.

20. Q. What is a matter of practice or procedure that is not in controversy?

The Law Revision Commission comments supporting the Administrative Procedure Act give several examples of the types of "practice and procedure" matters that are not in controversy. Matters of practice and procedure include the format of papers to be submitted, the number of copies, manner of service, and calendaring meetings. The Administrative Procedure Act also identifies continuances, as a matter of practice or procedure. Delays associated with a continuance request, however, may often be controversial. As a result, a request for continuance ordinarily should be made through more formal procedures to ensure that all parties are aware of the request and have an opportunity to respond.

Generally, staff or counsel, as opposed to a board member, would handle the types of matters embraced by this exception to the Administrative Procedure Act's prohibition on ex parte communications.

D. Persons Subject to the Ex Parte Communications Prohibition

21. Q. Who is subject to the rules prohibiting ex parte communications?

Generally, the prohibition on ex parte communications extends to any person attempting to communicate with a board member about an issue in a pending adjudicative proceeding. The Administrative Procedure Act broadly defines person to include "an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character." As a result, essentially anyone expressing an interest in a water board action and attempting to communicate with a board member is subject to the prohibition on ex parte communications in adjudicative proceedings.
EX PARTE QUESTIONS AND ANSWERS

The notable exceptions to the prohibition are for communications between board members and from certain staff of the water boards (see Question 22), as well as the exception to the prohibition for certain general orders (see Questions 28-35). Because board members collectively serve as the presiding officer for an adjudicative hearing, communications among the board members are not subject to the ex parte prohibition. Obviously the members remain subject to other substantive and procedural laws (such as the Bagley-Keene Open Meeting Act, which prohibits a quorum of a state board from discussing an issue either collectively or through serial discussions).

22. Q. May staff communicate with board members without violating ex parte rules?

Certain staff may communicate with the board members without violating ex parte rules. Staff may communicate with water board members about a pending adjudicative proceeding under three circumstances. Staff and legal counsel will generally be responsible for knowing their assignments on specific proceedings, and will only contact board members if appropriate pursuant to one of the following circumstances. If a board member wishes to communicate with staff and does not know which staff may be an appropriate contact, the board member should contact the Office of Chief Counsel to determine the appropriate staff contact. (Please see Question 51.)

1) **Staff Assigned to Assist and Advise the Board:** In virtually all circumstances, there are some staff (including at least one attorney) assigned to assist and advise a water board. These staff members are not advocates for a particular action, and in fact, cannot have served as investigators, prosecutors, or advocates in the proceeding or its pre-adjudicative stage for the ex parte exception to apply. These staff members may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record. For certain proceedings, the water board may issue a memorandum detailing staff responsibilities and identifying the staff assigned to assist and advise the board.

2) **Staff Advising the Board on a Settlement Offer:** A staff member of the water boards, even if s/he has previously served as an investigator or advocate in the pending adjudicative proceeding, may communicate with a board member concerning a settlement proposal advocated by the staff member. In order to fit within this exception, the settlement proposal must be a specific proposal, supported by the staff member and another party to the proceeding, and the staff member must be advocating for the specific proposal. While the Administrative Procedure Act permits such communications, the more cautious approach would be for the water board to receive the proposed settlement communication in writing to avoid any subsequent claims of irregularity and to allow the water board to receive a candid assessment from advisory staff who have not participated in the investigation or advocacy of a specific action. A written communication should be used when the proposed settlement is not supported by all the parties to the proceeding.

3) **Staff Advising the Board in Nonprosecutorial Proceedings:** A staff member of the water boards, even if s/he has previously served as an investigator or advocate in the pending adjudicative proceeding may communicate with a board member concerning issues in a non-prosecutorial proceeding. These discussions are not subject to the ex parte communications prohibition.
EX PARTE QUESTIONS AND ANSWERS

23. Q. Are other government officials subject to the ex parte rules?

Yes. Persons representing other government officials and agencies (local, state, or federal) are subject to the Administrative Procedure Act's prohibition on ex parte communications if they attempt to communicate with a water board member about a pending adjudicative proceeding. Keep in mind that the State Water Board and regional water boards are separate state agencies. As a result, the ex parte rules extend to communications between members of different water boards. However, the limitations on communications from governmental officials generally will not apply to certain general orders as discussed in Questions 28-35.

24. Q. May a board member attend a publicly noticed staff-level workshop on an adjudicative matter?

Yes. When water board staff notice a meeting, even as a staff-level workshop, interested persons are on notice that issues pertaining to the adjudicative matter will be discussed. The staff workshop record (including, for example, the audio tape from the workshop) would become part of the record and basis for the subsequent action by the water board. It is permissible for a board member or multiple board members to attend such a workshop, and the communications received during such a workshop are not ex parte communications. If a quorum of the water board may be present, a Bagley-Keene Open Meeting Act notice may also be necessary.

E. Consequences of Prohibited Ex Parte Communications

25. Q. What are the consequences of violating the ex parte communications prohibition?

Prohibited ex parte communications can have a number of consequences. First, board members must disclose a prohibited ex parte communication on the record and the board may be required to hear comments or additional evidence in response to the ex parte communication. Second, a prohibited ex parte communication may be grounds for disqualifying the board member from participating in the adjudicative proceeding. Third, a prohibited ex parte communication could be used as a basis for a subsequent legal challenge to the board's adjudicative action, especially if the communication is not properly disclosed and the board member participates in the proceeding. The Administrative Procedure Act also authorizes a water board to sanction a person violating the prohibition on ex parte communications, although this is likely to be used only for egregious or recurring violations.

26. Q. How may a board member cure an inadvertent ex parte communication?

The Administrative Procedure Act provides explicit procedures that a board member is required to follow if there has been an ex parte communications. These procedures do not subsume the rule or provide a mechanism for circumventing the Legislature's prohibition on ex parte communications in adjudicative proceedings.

In the event of receiving a prohibited ex parte communication, the water board member must disclose the communication on the record. Disclosure requires either (1) including
EX PARTE QUESTIONS AND ANSWERS

a written ex parte communication in the record, along with any response from the board member, or (2) memorializing an oral communication by including a memorandum in the record stating the substance of the communication, identifying who was present at the time of the communication, and any response from the board member. The board member must notify all parties of the ex parte disclosures. Additional proceedings may be necessary if a party timely requests an opportunity to address the disclosure.

In the event a board member receives what may be a prohibited ex parte communication, it is important to work with legal counsel to determine whether the communication is indeed prohibited, and, if the communication is prohibited, that it is disclosed as required by the Administrative Procedure Act.

27. Q. What if a board member received a communication about an adjudicative proceeding before becoming a board member?

The Administrative Procedure Act requires a water board member to disclose any communications the member received, prior to becoming a board member, about adjudicative proceedings pending before the water board at the time the member received the communication. This provision recognizes that the communication was not per se prohibited (because the person was not yet a board member), but still provides a mechanism to disclose such communications in the interest of fairness. The disclosure follows the same procedure discussed in Question 26.

Importantly, this provision of the Administrative Procedure Act does not require all communications the new board member has ever received to be disclosed simply because the communication involves an issue in the adjudicative proceeding. Instead, the provision only reaches back to the time the adjudicative proceeding was pending before the water board. Further, the factual circumstances requiring disclosure rarely occur because there are three necessary elements to trigger this disclosure requirement: (1) a communication the member recalls receiving prior to serving on the board, (2) the communication involves an adjudicative matter pending before the board, and (3) the communication occurred at a time the adjudicative matter was already pending before the board.

F. Exception for Certain General Orders

28. Q. Are proceedings on general waste discharge requirements, categorical waivers, and general 401 certifications (general orders) considered adjudicative proceedings?

Yes. A general order determines the rights and duties of those persons subject to the general order. A general order does not identify the specific dischargers it covers by name, but instead allows discharges to enroll for coverage under the general order. Upon enrollment, these general orders are directly enforceable against the dischargers who enroll under them. In addition, general orders are specifically exempt from the rulemaking provisions of the Administrative Procedure Act. The water boards also issue general orders following the same procedures that are used for any other permitting decision. Finally, general orders are subject to the same judicial review standards as any other permit. In function and form, the issuance of general orders is an adjudicative
EX PARTE QUESTIONS AND ANSWERS

29. Q. Does the ex parte communications prohibition apply to general orders?

No. Effective January 1, 2013, the Water Code exempts general orders from the ex parte communications prohibition. A general order for this purpose is an order that does not name specific dischargers, but instead allows persons to enroll for coverage under the order. Any person may engage in oral or written ex parte communications with board members regarding a pending or impending general order, but certain categories of persons must provide public disclosure of those ex parte communications.

The ex parte exception for general orders only applies to the water board’s adoption of the order. Once a facility enrolls in a general order, enforcement actions are subject to the usual ex parte communications prohibition.

30. Q. Who must disclose ex parte communications regarding general orders?

The Water Code requires three categories of persons to disclose ex parte communications with a water board member about a pending general order. These categories are:

(i) a potential enrollee in the general order, and representatives or employees of such person;
(ii) any person with a financial interest in the general order, and the representatives or employees of such person; and
(iii) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the board’s decision.

For purposes of ex parte communications concerning general orders, these persons are considered “interested persons,” and the ex parte communication disclosure requirements for general orders only apply to these three categories of interested person.

The Water Code places the disclosure obligation for general orders on the interested person engaged in ex parte communications with a board member. A board member who participates in ex parte communications regarding general orders is not required to make any oral or written disclosures; however, nothing precludes a board from assisting an interested person in making the required disclosure. Further, if for some reason an interested person neglects or refuses to make the required disclosure, then the board member should disclose the ex parte communication at the board meeting where the general order is considered to ensure completeness of the record and to afford an opportunity for other persons to address the communication.

There is no disclosure requirement for members of the public who do not fall within one of the three categories above. Board members are nevertheless encouraged to disclose ex parte communications in the same manner as in rulemaking proceedings. (Please see Questions 38-39.)
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31. **Q. What disclosure requirements apply to ex parte communications regarding general orders?**

As with other adjudicative proceedings, no disclosure is required for an ex parte communication about a matter of procedure or practice that is not in controversy. (Please see Question 20.) For all other ex parte communications concerning a general order, interested persons in the three categories identified in Question 30 must provide a written disclosure to the applicable water board within seven working days after the communication takes place. The disclosure must include the date, time, location, and type of communication (written, oral or both); identify all participants; state who initiated the communication; and describe the substance of the communication. All materials (including PowerPoint presentations) used as part of a meeting or other communication must be included.

Board members are encouraged to request meeting agendas in advance to facilitate the meeting participants’ timely preparation of disclosure materials. Board members should remind any interested person requesting ex parte communications on a general order of the disclosure requirement, and provide contact information for the staff member designated to receive the disclosure documents.

Water board staff must post the disclosure on the board’s website and email a copy to any available electronic distribution lists for the general order. Before posting and distributing a disclosure, the staff should provide a copy of the disclosure to the member and any water board staff who were present during the ex parte communication to ensure the disclosure accurately summarizes the communication.

Although the statute only refers to “pending” general orders, the same disclosure process should be used for “impending” general orders. (Please see Question 13.)

32. **Q. How can a board member determine whether a member of a group is a “representative” for purposes of the disclosure requirements for general orders?**

The special disclosure requirements for general orders apply to “representatives acting on behalf of” an association that intends to influence the board’s decision. If it is not clear whether an individual represents an interest group or is simply a member, board members may ask what the individual’s position is with the organization; whether the individual is speaking on behalf of the organization; whether the organization has formally or tacitly authorized the individual to speak on its behalf; and what the individual’s role will be in preparing formal written comments or speaking at the hearing.

Because the disclosure requirement is intended to ensure fairness and transparency in water board proceedings, the term “representative” should be interpreted broadly. In cases where it is unclear whether a particular individual is acting in a representative capacity, board members should request the individual to provide the disclosure. Any questions about the requirements may be addressed to the board’s legal counsel.
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33. Q. Can a water board limit ex parte communications regarding a pending general order?

Yes. A water board may prohibit ex parte communications during the 14 days prior to the board meeting at which the board is scheduled to adopt the general order. If the item is continued, the board may lift any existing 14-day prohibition on ex parte communications, in which case it then has the option to impose a new prohibition for the 14 days prior to any rescheduled adoption meeting. Individual board members may decline invitations to meet with members of the public at any time, even if no prohibition is in place.

34. Q. Are all region-wide or statewide permits “general orders”?

No. The ex parte exception only applies to orders that do not name specific dischargers but instead require eligible dischargers to enroll or file a notice of intent to be covered by the general order. Several regional water boards have issued region-wide or regional municipal separate storm sewer system (MS4) permits that identify specific dischargers. Issuance, reissuance, or modification of these orders is subject to the same prohibition on ex parte communications that applies to individual waste discharge requirements. Any other waste discharge requirement, waiver, or 401 certification issued to a group of named entities would also be subject to the ex parte communications prohibition.

35. Q. What are the consequences of violating the special disclosure requirements for general orders?

Board staff or legal counsel should contact the interested person for further information if a disclosure does not meet the statutory requirements. If the disclosure does not accurately summarize the communication, the board member or staff may request the interested person to correct the disclosure or the board member or staff may supplement the disclosure either in writing or at the board meeting where the general order is considered.

In appropriate circumstances, a water board may impose sanctions on an interested person who violates the disclosure requirements.

III. RULEMAKING AND OTHER PROCEEDINGS

36. Q. What actions are rulemaking?

Rulemaking proceedings are proceedings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application. Rulemaking proceedings include proceedings to adopt regulations, water quality control plans, policies, or guidelines. The water boards adopt most total maximum daily loads (TMDLs) as basin plan amendments, so TMDLs typically are rulemaking proceedings.

Below is a partial list of common water board actions resulting from rulemaking proceedings:
   • Water quality control plans (e.g., basin plan amendments, statewide plans such as the Ocean Plan);
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- State Policy for Water Quality Control (e.g., the State Water Board’s Water Quality Enforcement Policy);
- Regulations;
- Guidelines.

37. **Q. Is there a prohibition on private communications in rulemaking actions?**

No. The Administrative Procedure Act contains no prohibition against private communications during rulemaking proceedings. However, information obtained outside of the public record for the rulemaking action may not form the basis for a board’s action and the board’s action must be supported by the information contained in the record. Some of the same policy rationales for the ex parte communications prohibition exist for rulemaking. Nothing prevents individual water board members from choosing to avoid such communications during rulemaking proceedings.

38. **Q. What is the Office of Chief Counsel’s recommendation on handling communications in rulemaking proceedings?**

There is no constitutional or statutory duty to disclose private communications in rulemaking proceedings, but the Office of Chief Counsel advises water board members to disclose on the record any private communications received during rulemaking proceedings. The reasons for this recommendation are multifold. First, the water boards must base rulemaking decisions on the public record, because the public record is a water board’s justification for defending an action in court. If a board member supports a specific rulemaking decision because of technical information the member receives from an ex parte communication but fails to disclose the communication, that information will not be in the record to support the board’s action.

Second, the same fairness and transparency issues that underlie the ex parte prohibition for adjudicative proceedings support disclosing private communications in rulemaking proceedings. The water boards only have limited jurisdiction within the ambit delegated by the Legislature. It is appropriate that the public know the information and basis for the water boards’ decisions to ensure that those decisions are being made not only in conformance with the law, but also within the scope of the considerations identified by the Legislature and water board regulations.

39. **Q. If a member chooses to disclose a communication, what is the preferred procedure?**

If a board member chooses to participate in private communications in rulemaking proceedings and chooses to disclose those communications, the Office of Chief Counsel recommends a procedure similar to that described in Question 26 for adjudicative proceedings. First, the board member would notify the person that a full disclosure of the private communication will be entered in the water board’s record. Second, the board member would disclose the private communication in the water board’s record. The disclosure would include the identity of the persons involved in the communication, the approximate date of the communication, and the substance of the communication.
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40. Q. May a board member communicate with a person about how a general requirement may be translated into a subsequent permit requirement?

Yes, as long as the subsequent permit proceeding is not pending or impending. When a water board is considering a general provision of rulemaking action it is appropriate to hear testimony about how the general provision may be converted into specific, subsequent permit requirements. The fact that this information is received during a rulemaking proceeding does not trigger the ex parte communications prohibition for the subsequent adjudicative proceeding that implements the requirements of the rulemaking. The ex parte communications prohibition will attach when the subsequent adjudicative action is pending. (Please see Questions 12-13.)

41. Q. What are “other proceedings”?

Certain proceedings before the water boards are neither adjudicative nor rulemaking proceedings. For example, the water boards often have informational items presented by staff or stakeholders. Informational items do not necessarily lead to a specific board action, but inform members about general water quality or water rights matters. In addition, the State Water Board takes some actions that are neither rulemaking or adjudicative actions (e.g., certain contracting and grants actions).

Below is a list of common, other proceedings:

- Information items;
- Workshops not conducted as part of an adjudicative or rulemaking proceeding;
- Contracting;
- Grant awarding;
- Hiring decisions and awards for employee accomplishments;
- Adopting or making comments to other entities conducting their own proceedings, such as comments on a federal Environmental Impact Statement;
- Discretionary actions to initiate or consider initiating proceedings, not amounting to a decision on the merits, such as referral of a matter to the Attorney General for enforcement.

42. Q. Are “other proceedings” subject to ex parte rules?

These other proceedings do not trigger ex parte communications prohibitions under the Administrative Procedure Act and do not have the same factors supporting the Office of Chief Counsel’s recommendation to disclose ex parte communications in rulemaking proceedings. Where these proceedings involve closed sessions, communications subject to the attorney-client privilege, or certain law enforcement related information, confidentiality protections may apply. Otherwise, nothing prevents individual water board members from choosing to avoid such communications or to disclose such communications.
IV. SITE VISITS

43. Q. Is a site visit a form of ex parte communication?

Yes. Unless a tour or site visit is publicly noticed, the Office of Chief Counsel considers a site visit or tour of a facility, while an adjudicative proceeding is pending for that facility, to be an ex parte communication. By their very nature, site visits communicate evidentiary information to water board members. In addition, site visits frequently result in communications from the site operator about the pending matter.

44. Q. Can a board member visit a regulated facility when an adjudicative action is pending?

Yes, but only if the board provides interested persons notice and an opportunity to participate. Site visits can be a useful part of the decision-making process and special procedures should be used for site visits. A site visit essentially moves part of the evidentiary proceeding from the board hearing to a visit of the site. It is not necessary that all board members participate in the site visit for it to be permissible. In fact, a single board member can participate in a staff-level site visit if the board properly notices the visit.

To notice a site visit, the interested party list for an adjudicative proceeding should be provided sufficient notice with information about the tour and how to participate. There may be special concerns about accessibility and liability that may raise other legal issues. It is important to work with legal counsel when arranging site visits during a pending adjudicative proceeding.

45. Q. Can a board member visit a facility that will be regulated by a pending general order when an adjudicative action is pending?

If a site visit concerns a facility that will be regulated by a pending general order subject to the special disclosure requirements of Questions 29-31, then the board member should work with legal counsel to determine the extent to which any special disclosure or notice requirements apply. The most transparent and fair way to handle site visits while a general order is pending is to provide notice and an opportunity for interested persons to participate as described in Question 44. Providing public notice also reduces potential evidentiary concerns. For these reasons, the Office of Chief Counsel recommends the procedure described in Question 44 for site visits to a facility that will be regulated by a pending general order.

If notice and an opportunity for public participation is not provided, then the disclosure requirements in Questions 29-31 apply to any site visit concerning a pending general order. Moreover, because site visits are inherently evidentiary in nature, steps should be taken either by the person hosting the site visit, the board member, or the water board staff to visually document the portions of the site visit relevant to the proceeding (e.g., photo documenting physical features, best management practices, etc.). Unlike most ex parte communications, which discuss or explain evidence that is already in the record, the visual documentation is evidentiary in nature. Therefore, any site visits should occur and be reported before the close of the evidentiary record. Board members should work
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closely with staff and counsel to ensure the appropriate timing and documentation of these types of site visits.

46. Q. Can a board member visit a regulated facility when no adjudicative action is pending for that facility?

Yes. When there is no adjudicative action pending or impending, a water board member may visit a site that is subject to the water board's regulations. Before scheduling such a visit, it is important to coordinate with water board staff to ensure there is no pending enforcement action involving the facility and to ensure that the owner has no objection to a visit.

V. GENERAL ISSUES

47. Q. Why can legislators talk to anyone and the board members cannot?

Ex parte communications rules reflect the water boards' hybrid powers. Unlike the Legislature, the water boards have attributes of both legislative power and judicial power. The ex parte communications prohibition arises when the water boards are exercising their judicial power. Rules and due process preclude judges from receiving ex parte communications on matters pending before them or inferior courts. Similarly, even when exercising legislative power, the water boards do so within the narrow confines of power granted by the Legislature. Ex parte rules can help ensure that the water boards are exercising the powers conferred by the Legislature within the confines of the power conferred by the Legislature.

48. Q. Why can the public talk to city council members and not board members?

There is some overlap between ex parte communications prohibitions for city council members and water board members. To the extent the prohibition is broader for water board members it reflects the greater number of adjudicative matters decided by the water boards and the breadth of the Administrative Procedure Act. The Administrative Procedure Act is not directly applicable to city councils. As a result, ex parte communications with city council members do not necessarily reach "direct and indirect" communications on "any issue in the proceeding."

49. Q. How should a board member handle comments concerning pending adjudicative proceedings raised in connection with other proceedings in which the board member participates?

As part of a board member's participation in other matters, a board member may receive communications relating to specific adjudicative proceedings. For example, a legislator may ask a State Water Board member to participate in a meeting related to proposed proceedings relating to application processing. As part of that meeting the legislator or another participant may complain about how a particular application, that is the subject of a pending adjudicative proceeding, is being handled. The meeting does not involve an improper ex parte contact, because it concerns proposed legislation, not an adjudicative proceeding, but the specific complaint involves an inappropriate ex parte contact.
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To avoid this problem, board members should make clear at the outset that they cannot discuss specific adjudicative proceedings pending before the water boards. If, despite this warning, a participant begins to raise issues concerning a specific pending proceeding, the board member should interrupt to remind the participants that the board member cannot discuss those issues. Any ex parte communications that occur as part of the meeting should be disclosed following the procedures discussed in Question 26.

50. **Q.** Is a communication about a pending adjudicative matter, received during a public forum, an ex parte communication?

Yes. While the water boards traditionally allow members of the public to briefly address during a "public forum" any items not on the agenda, persons interested in a pending adjudicative proceeding do not have notice that their issue may be discussed during a specific public forum. Therefore, even though the board receives the communication during a public meeting, the communication may violate the ex parte prohibition if it concerns a pending adjudicative proceeding. Legal counsel will typically work with a water board's chair if this circumstance occurs. Fortunately, such communications can typically be cured by including a copy of the public forum transcript or tape into the administrative record for the adjudicative proceeding.

51. **Q.** Whom can a board member speak with to clarify ex parte concerns?

Water board members should contact the Office of Chief Counsel with questions about ex parte issues. A regional water board member should contact the attorney assigned to represent the member's region or the assistant chief counsel for regional board services. State Water Board members should contact the chief counsel.

In all circumstances, a water board member should indicate that he or she has a question about ex parte communications in Matter X—identifying the specific matter. It is important to identify the specific matter, because at times certain attorneys within the Office of Chief Counsel (even the chief counsel) may be recused from a matter or may be assigned to prosecute the matter. By identifying the matter from the outset of the communication, the attorney can make sure you are getting the correct advice from the correct person.

52. **Q.** Who is responsible for complying with the ex parte rules — the board members or the public?

There is a shared responsibility for complying with the ex parte communications prohibition of the Administrative Procedure Act. Water board members are expected to know the rules and remain vigilant in their application of the rule. If a person attempts to violate the prohibition on ex parte communications, the board member should be prepared to stop the communication, because of the risk the communication could result in disqualification of the board member.

Persons participating in adjudicative proceedings also have an obligation to understand and follow the rules, particularly attorneys and professional lobbyists. As discussed in
Question 25, in egregious circumstances violating the prohibition on ex parte communications can subject a person to civil contempt proceedings.
EXHIBIT 24
August 23, 2012

Via electronic mail

Mr. Sam Unger
Executive Officer and Members of the Board
California Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Email: sunger@waterboards.ca.gov

Re: Participation of Board Member Mary Ann Lutz in Los Angeles MS4 Permit Hearing

Dear Mr. Unger and Members of the Board:

On behalf of the Natural Resources Defense Council ("NRDC") and the Los Angeles Waterkeeper ("Waterkeeper"), we are writing with regard to Board Member Mary Ann Lutz's proposed participation in the Hearing of the Los Angeles Regional Water Quality Control Board ("Regional Board") on the Tentative National Pollutant Discharge Elimination System ("NPDES") Permit for Municipal Separate Storm Sewer System (MS4) Discharges Within the Los Angeles County Flood Control District, Including the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach, Draft permit R4-2012-XXXX, NPDES Permit No. CAS004001 ("Tentative Order"), scheduled for October 4-5, 2012 ("Permit Hearing"). Due to positions taken and statements made by Board Member Lutz and by groups with whom she has partnered—and in order to ensure a fair hearing—we respectfully request that she be recused from the Permit Hearing and any further Board process concerning the Tentative Order.

I. Background and California Water Code Section 13207

As the Mayor of the City of Monrovia, a waste discharger subject to the Los Angeles County MS4 permit, Board Member Lutz was barred by California Water Code section 13207 from participating in Regional Board proceedings related to the Tentative Order. However, based on changes to section 13207 made effective on June 27, 2012, the Regional Board transmitted a letter on July 6, 2012, stating that "[u]nder the new law,  

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1 California Water Code section 13207 required that a Board member "shall not participate in any Board Action," including an action to adopt an NPDES permit, "which involves ... any waste discharger with which he or she is connected as a director, officer or employee."
Board Member Lutz is not prohibited from participating as a discharger. . . .”2 We disagree with this conclusion reached by the Regional Board, as Board Member Lutz continues to receive salary of $400 per month that implicates Water Code section 13207’s prohibition against a “disqualifying financial interest in the decision within the meaning of Section 87103 of the Government Code.”

II. Board Member Lutz Must be Recused For Due Process Considerations Including Bias and Presence of Ex Parte Communications

California Courts are clear that “[j]ust as in a judicial proceeding, due process in an administrative hearing also demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor of assuring that such hearings are fair.” (Nightlife Partners v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 90.) In order to assure a fair hearing, Board Member Lutz must not participate in the Permit Hearing or further Board process related to the Tentative Order.

A. Board Member Lutz’s Prior Statements Demonstrate an Unacceptable Probability of Actual Bias

“Procedural due process in the administrative setting requires that the hearing be conducted ‘before a reasonably impartial, noninvolved reviewer.’” (Nasha, L.L.C. v. City of Los Angeles (2004) 125 Cal.App.4th at 483 (emphasis in original).) Where “an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims” is present, it violates the “undeniable public interest in fair hearings in the administrative adjudication arena.” (Id. at 483.) The actions of Board Member Lutz while she was precluded from participation in Regional Board action on the Tentative Order, demonstrate such “an unacceptable probability of actual bias.”

For example, Board Member Lutz has stated, with respect to the stormwater requirements at issue before the Regional Board that, “the basic issue is that groups simply do not have the money to adhere to the requirements.”3 In this regard, she has predetermined issues of cost and selection of pollution control measures that will be before the Regional Board as part of the Permit Hearing. Further, Board Member Lutz has worked, “in partnership” with the L.A. Permit Group, a consortium of 60 or more municipalities in Los Angeles County that have advocated for and taken specific positions on terms in the Tentative

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2 Letter from Frances McChesney, Office of Chief Counsel, to Regional Board Members, re: Amendment to Water Code Section 13207(a) (July 6, 2012), at 2.
Order, “to develop a unified voice to participate in a collaborative negotiating process.”

Indeed, many of these same dischargers also fund a staff advisor for Board Member Lutz.5 Her significant involvement in this organized effort by LA MS4 Permittees and the funding provided for her staff advisor demonstrate that she cannot reasonably be expected to cast the unbiased, impartial vote mandated by due process. Were Board Member Lutz to now vote to adopt any of the positions advocated by the LA Permit Group at the Permit Hearing, such as to incorporate a “safe harbor” provision in the Tentative Order’s Receiving Water Limitations, or to oppose the incorporation of TMDL waste load allocations as numeric effluent limitations,6 it would taint the entire Tentative Order adoption process.

B. Board Member Lutz has engaged in Ex Parte Communications Regarding the Tentative Order

We also note that prior to the July 6 Regional Board letter, Member Lutz engaged in an as yet unreleased number of *ex parte* communications with stakeholders and parties to the Permit Hearing, that would ordinarily be prohibited under California Government Code section 11430.10.7 Receipt of such communications by a Member of the Regional Board may be grounds for disqualification under Government Code section 11430.60 and, even if properly authorized when received, such communications may further compound due process concerns. We understand that that the Regional Board is working to release these communications for public review and comment. We reserve the right to comment on any *ex parte* communications of Board Member Lutz at that time and to request her disqualification as a result of these *ex parte* communications and any demonstration of potential bias they may reveal. We urge the Board to make these communications available by the end of this week to allow for their full evaluation prior to the Permit adoption hearing.

As the Board is well aware, procedural due process issues have previously resulted in the voiding and setting aside of an amendment to the Los Angeles County MS4 Permit.8 In that case, years of work and substantial resources of the Regional Board, the Permittees,

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4 San Gabriel Valley Council of Governments (December 21, 2011) Letter from Nicholas T. Conway, Executive Director, to City Manager’s Steering Committee, re: LA Permit Group Technical Assistance, at 1.
5 San Gabriel Valley Council of Governments (February 8, 2012) Letter from Nicholas T. Conway, Executive Director, to City Manager’s Steering Committee, re: FY 2011-12 Mid-Year Budget Review and Revision, at 53.
6 See, e.g., Letter from LA Permit Group to Regional Board re: Technical Comments on Los Angeles Regional Water Quality Control Board Staff Working Proposals for the Greater Los Angeles County MS4 Permit (Permit) — Watershed Management Programs, TMDLs and Receiving Water Limitations (May 14, 2012); Letter from LA Permit Group to Regional Board re: Comments on Draft NPDES Permit (Draft Order), Order No. R4-2012-XXXX, NPDES Permit No. CAS004001, for MS4 Discharges within the Los Angeles County Flood Control District (July 23, 2012).
7 See, e.g., email from Mary Ann Lutz re: SAVE THE DATE - Meeting with US EPA (February 18, 2012).
and stakeholders, including Environmental Groups, to incorporate and implement the Santa Monica Bay Beaches Dry Weather Bacteria TMDL were lost due to improper adherence to procedural due process requirements. The Board should take every step to ensure that such an outcome is not repeated here. While it is unfortunate that the timing of changes to the California Water Code complicate the participation of a Board member in these proceedings, for the foregoing reasons we respectfully request that Board Member Lutz be recused here.

Please do not hesitate to contact us with any questions you may have.

Sincerely,

Noah Garrison
Project Attorney
Natural Resources Defense Council

Liz Crosson
Executive Director
Los Angeles Waterkeeper